The Planning Inspectorate

Appeal Decision

Inquiry commenced on 18 June 2019

Site visit made on 1 August 2019

by C Sherratt DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 December 2019

Appeal Ref: APP/P1560/C/18/3193406
Land at 102 Colne Way, Point Clear Bay, St Osyth, Clacton-on-Sea, Essex CO16 8LN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Carol Patterson against an enforcement notice issued by Tendring District Council.
- The enforcement notice, numbered 10/00614/BRCHC3, was issued on 8 December 2017.
- The breach of planning control alleged in the notice is failure to comply with condition no 2 of a planning permission Ref TEN/119/59 as amended on appeal on 3 July 1990 as set out in paragraph 22.9 of the Inspectors decision letter.
- The development to which the permission relates is for construction of new chalets.
- The condition in question states that:
  The chalet may be occupied for residential purposes only during the following periods
  (i) At any time from 1 March to 31 October
  (ii) At weekends from noon on Friday until noon on Monday between 1 November in any year and the end of February in the following year
  (iii) During any period of 10 consecutive days which shall include both Christmas Day and New Years Day.
- The notice alleges that the condition has not been complied with by the breach of the new condition to planning permission TEN/119/59 dated 7 May 1959 as amended at appeal on 3 July 1990 as set out in the Inspectors decision letter paragraph 22.9 by the occupation of this chalet between the period of 1 November and 28 February (20 February in a leap year) each year otherwise than in compliance with the amended condition of the said planning permission.
- The requirements of the notice are to comply with the condition of Planning Permission TEN/119/59 dated 7 May 1959 as set out in the Inspectors appeal decision letter dated 3 July 1990 in paragraph 22.9 by ceasing the occupation of the chalet on the land between 1 November and 28 February (29 February in leap year) each year unless such occupation is during a period allowed by the said Condition during that period.
- The period for compliance with the requirements is 1 November 2018.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Procedural Matters

1. A number of appeals relating to several properties at Point Clear Bay were heard together at the above Inquiry. There was an opportunity for any matters specific to individual appeals to be heard throughout the remainder of the

Inquiry. I heard the evidence relating to this appeal on 30 July 2019. All evidence was taken on oath.

2. The period for compliance stated in the notice gives a date rather than a period of time. However, it is possible to establish the time period between the notice taking effect on 15 January 2018 and the time for compliance on 1 November 2018. No prejudice would be caused to the main parties if I were to specify an equivalent period for compliance. The Council confirmed any corrected period for compliance could be rounded up to the nearest month.

3. It has also been necessary to correct the period for compliance in relation to other notices. The Council's witness accepted that there should be a consistent compliance period across this group of appeals. Accordingly, I intend to vary the compliance period to 14 months to correspond with the longest period specified for compliance with the notices amongst this set of appeals, should the notice be upheld.

Decision

4. The appeal is allowed and the enforcement notice is quashed.

Reasons

Ground (d)

5. Ground (d) is pleaded on the basis that at the date when the notice was issued, no enforcement action could be taken in respect of the breach alleged in the notice; in other words, it was too late for the local planning authority to take action. The time limits for taking enforcement action are set out in Section 171B of the Act. In these appeals S171B(3) applies which states that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

6. For the appeal on ground (d) to succeed the onus is upon the appellant to demonstrate, on the balance of probability, that the condition referred to in the enforcement notice has been breached for a continuous period of ten years or more prior to the date of the issue of the Enforcement Notice; in other words that the property has been occupied during the winter period (other than only on weekends from noon Friday to Monday and for 10 consecutive days including Christmas and New Year) for 10 consecutive years without compliance with the condition. The relevant date is therefore on or before 8 December 2007.

7. A Breach of Condition Notice (BoCN) was served in 2012 on the appellant's late husband, Mr Tatchell. The parties agreed that the service of the BoCN on him does not have any impact on the accumulation of the immunity period in this case, a position with which I agree.

8. I heard that an application for a certificate of lawful development for the same breach has been refused by the Council since the appeal was lodged.

9. The appellant and her late husband purchased the property in April 2000. A conveyancing bill is produced to substantiate this. The appellant explained that in 2002 she and her late husband separated but that he remained at the appeal property and occupied it on permanent basis until his death in September

2013. It was then refurbished and shortly after, rented out to the existing tenant and family friend, Ms Jenny Tracey who also gave evidence to the Inquiry. The occupation by Ms Tracey is not disputed or contradicted by the evidence of the Council. It is substantiated by documentary evidence, statutory declarations from the appellant and tenant and the oral evidence I heard such that, I am satisfied, on the balance of probability, that the property has been occupied in breach of the relevant condition since 11 August 2014.

10. Turning to the period prior to that, the appellant's case is that Mr Tatchell, the appellant's late husband lived in the appeal property on a permanent basis starting at some point in either 2004 or 2005 until his death in September 2013. There is agreement between the parties that the appeal site was registered for single occupation for Council Tax purposes from 11 May 2010 until 2 September 2013. The appellant then renovated the property with the intention of living there permanently herself. She lived there for two months from March 2014 with her then partner. Her partner continued to live there until July 2014 at which point he was asked to leave.

11. The period between 2004/5 and May 2010 is contradicted by the Council Tax records which show it was registered as having a "Second Home Discount" applied between April 2003 and March 2005; and "Second Home, restricted use" between April 2005 and May 2010 before becoming Single, full qualifier" in May 2010.

12. The oral evidence of the appellant and Mrs Tracey was clear and consistent that Mr Tatchell was living at the appeal property at the very least from 2005, notwithstanding the Council Tax records. Correspondence was frequently directed to 20-22 St Peters as number 22 was a business address, separate to number 20 that was occupied by the appellant. The Council's witness accepted that Council Tax records are not direct evidence of occupation and drawing inferences from these records relies upon the occupant providing accurate information. The evidence from the appellant and Mrs Tracey suggest that it is more probable than not that Mr Thatchel may have told an untruth to get a Council Tax discount that he was not entitled to. This is further supported by the failure of Mr Tatchell to pay Council Tax for significant periods of time and that several Council Tax Liability Costs Orders were made against the property.

13. Based on the written and oral evidence I heard, I accept that on the balance of probability, the other properties that Mr Tatchell had an interest in were not lived in by him.

14. It is also necessary to consider whether or not there was an ongoing breach of the condition over the winter period between October 2013 and March 2014 when the renovation works were being carried out by the appellant. The renovations were extensive and done at considerable cost. I therefore accept that it is more probable than not that it was the appellant's intention to renovate it for herself to live in permanently. The reasons for leaving after only two months, given it is where the death of her late husband occurred, are credible. I have carefully considered the various caselaw that I was referred to and whether, in particular, enforcement action could have been taken at all material times, successfully, in relation to what was happening at the premises, or to the premises, at any material time. In my view, the detailed renovation works were all being carried out in furtherance of the breach of condition that had already occurred for a good number of years. Thus, if any enforcement

action had been taken while the renovation works were being carried out it would, I suggest, have succeeded because a continuing breach of the condition was the purpose behind the activities being carried out. Indeed, the appellant said, under oath, that she was still, at that point, unaware of the condition restricting winter occupancy.

15. Accordingly, the evidence submitted does demonstrate that the property has been occupied in breach of the relevant condition for a continuous period of 10 years or more. The appeal on ground (d) therefore succeeds and the Notice will be quashed. As enforcement notice will be quashed, it is not necessary to consider the appeal under ground (g).

Conclusion

16. To conclude, the appeal on ground (d) therefore succeeds and the notice will be quashed. In view of the success on legal grounds, the appeal under ground (g) as set out in section 174(2) of the 1990 Act as amended does not fall to be considered.

Claire Sherratt

Inspector

APPEARANCES

FOR THE APPELLANT:

Rosie Scott of Counsel	Instructed by Mr John Pearce of LSR Solicitors
She called:	
Mrs Patterson	Appellant
Mrs Tracey	Tenant and family friend.

FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Ground QC	Instructed by the Council's solicitor
He called:	
Mr Chris Stathers	Enforcement Officer for Tendring District Council

Documents received at the Inquiry

Document 1	Statement of Common Ground
Document 2	Copy of Breach of Condition Notice dated 28 June 2012.
Document 3	Correspondence with Council Tax department.
Document 4	Basingstoke and Deane Borough Council v SSCLG & Sir Thomas Stockdale [2009] EWHC 1012 (Admin).
Document 5	North Devon District Council v FSS and NC Stokes [2004] EWHC 578 (Admin)
Document 6	North Devon District Council v SSE and Mr D. Rottenbury and Mrs D E Rottenbury [1988] PLCR
Document 7	Closing Submissions from Rosie Scott on behalf of the appellant.