



Appeal Decision

Site visit made on 5 November 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 5th February 2020

Appeal Ref: APP/X1545/C/18/3203073

147 Smugglers' Club Ground, Bridgemarsh Lane, Althorne, Chelmsford CM3 6DQ.

- 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 by Gary Jones against an enforcement notice issued by Maldon District Council.
 - The enforcement notice, ref. ENF/12/00104/02, was issued on 19 March 2018.
 - The breach of planning control alleged in the notice is:
Failure to comply with Condition 1 of planning permission granted on appeal under ref. APP/X1545/C/01/1068200, namely that the bungalow was erected by virtue of planning permission granted on 26 November 1968 (ref. MAR/464/68) shall not be used for human habitation between 31 October in any year and 1 March in the following year.
 - The requirement of the notice is to:
Discontinue the use of the land for human habitation between 31 October in one year and 1 March in the following year in compliance with Condition 1 of planning permission granted on appeal ref. APP/X1545/C/01/1068200.
 - The period for compliance with the requirements is 2 calendar months.
 - 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 application for planning permission deemed to have been made under section 177(5) of the Act as amended has lapsed.
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Decision

1. The appeal is allowed on ground (g), and I direct that the enforcement notice be varied by:
DELETION of *2 months*; and,
SUBSTITUTION of *12 months* as the period for compliance.
Subject to this variation the appeal is otherwise dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by the Council against the appellant. This application is the subject of a separate Decision.

Background matters

3. The condition limiting the periods of occupation originated from the planning permission for erection of the property in 1968¹. Following enforcement action taken in 2001 the condition was carried over in the resulting appeal decision². This also included a personal permission for the previous owner Mr Alfred Jones to live there permanently for 25 years or for the period of his occupation, whichever was shorter. The property was sold by Alfred Jones to the present owner at some time in 2008, when it became subject to the seasonal occupation condition again.

The appeal on ground (d)

4. This ground is that at the time the enforcement notice was issued it was too late to take action against the matters stated. In this case, where a breach of condition is alleged, the burden of proof is on the appellant to show that on the balance of probabilities the breach has continued for 10 or more years prior to issue of the notice on 19 March 2018.
5. In an appeal on the legal ground (d), with matters of fact in dispute, it is settled law that if a local planning authority has no evidence itself, nor any from others to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss an appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
6. The appellant says that he and Ms Murray his partner bought and moved in to the property on 19 March 2008 and have lived there permanently since then. Both Gary Jones and his partner have submitted statutory declarations to that effect. On that basis they say the enforcement notice was therefore issued 10 years and 1 day after that date.
7. Evidence as to when the property was acquired is a letter from the mortgage provider dated 19 March 2008 giving details of monthly repayments. A subsequent statement dated 28 February 2009 shows that the loan was advanced on 19 March 2008, with the first repayment made on 21 April 2008. Ms Murray states that they moved in to the property on the day of the advance.
8. The Land Registry entry for the appeal property records the purchase payment was made on 20 March 2008 and that on 28 March 2008 Ms Murray was the proprietor. My reading of this is that while the latter date may confirm the date of registration rather than the date of occupation, the former date is quite specific as to when payment was made.
9. The Council's Council Tax records indicate the property was sold to Ms Murray on 20 March 2008, that she moved in on 3 April 2008 and was exempt from the tax for the intervening period. The appellant has put in Council Tax demands, but the earliest of these is from March 2009. Other evidence put in by the appellant and Ms Murray – such as television licence renewals, bank records, car insurance and repair details, and receipts for works on the building – indicates that they were probably in occupation subsequent to March 2008, but nearly all of this material is from 2009 onwards. Statements from friends

¹ Decision notice ref. MAR/464/68, dated 26 November 1968.

² Appeal ref. APP/X1545/C/01/1068200, dated 8 January 2002.

and neighbours are not specific as to the period for which they have known the occupants, or any date of moving in.

10. In an appeal on the legal ground (d), with matters of fact in dispute, it is settled law that if a local planning authority has no evidence itself, nor any from others to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss an appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
11. The claimed date of first occupation is highly critical in this case since the 10 year period that might give immunity ended on 18 March 2019, one day before the notice was issued. However, the only pieces of documentary evidence supporting that date are the letter and statement of account from the mortgage provider. Against that, the land registry record and Council Tax records indicate that the property was actually bought on 20 March 2008, and not occupied until 3 April 2008 – both dates falling within the ten-year period.
12. Although the money from the mortgage provider would have been available on the claimed date, that is commonly slightly in advance of completion, and I do not consider provides definitive evidence on occupation.
13. For such a major transaction as buying a house there will be definitive evidence available as to the precise date of possession. This would probably be held by the buyer's solicitor or conveyancer and would confirm the date of completion of the contract between the buyer and seller – and the point at which the property could be occupied by the new owner. Given that date is so critical in this case I would expect to see a document such as the transfer deed or completion statement put in as evidence. No such document has been made available.
14. Overall, I find the evidence as to the date of possession of the property to be imprecise, given the various dates in the Land Registry document, the mortgage provider's letter, and Council Tax records. I do not consider the appellant has demonstrated that on the balance of probabilities he had occupied the property in breach of condition for 10 years prior to issue of the notice.
15. At a late stage – with their costs application - the Council introduced the argument that the breach did not first occur until 31 October 2008, the first day of the appellant's occupation on which the seasonal occupancy condition came into play, and that the 10 year period should be taken to run from then.
16. The appellant has put forward the high court case of *North Devon*³ in support of the view that the relevant date should be that of first occupation rather than the date the first breach occurred. The argument in this judgment may be relevant to a case such as this. However, as I conclude above, it has not been shown that on the balance of probabilities the property was occupied in breach of the condition for 10 years prior to issue of the enforcement notice. The appeal on ground (d) must therefore fail.

³ *R oao North Devon District Council v First Secretary of State and Stokes* [2004] JPL 1396.

The appeal on ground (g)

17. This ground is that the compliance period is too short, and the appellant states that 18 months should be allowed. The Council argue that a two month period would give the appellant the same notice as would be given to a tenant by a landlord. However, this has been the appellant's permanent dwelling for some years. He is not a tenant but an owner and I do not consider arrangements for alternative accommodation could readily be made in the two month period. This would be particularly so, since he would be looking for winter accommodation rather than year-round accommodation.
18. Furthermore, it has been put forward that the appellant is in poor health. I have no reason to doubt this, and consider it adds weight to the argument that a longer period should be allowed. Overall, I consider a period of one year would be appropriate in the circumstances. The appeal therefore succeeds on ground (g).

Conclusions

19. For the reasons given above and having regard to all other matters raised I conclude that the appeal should succeed to the limited extent on ground (g), and that a reasonable period for compliance would be 12 months. I am therefore varying the enforcement notice accordingly, prior to upholding it.

Stephen Brown

INSPECTOR