The Planning Inspectorate

Appeal Decision

Site visit made on 17 February 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2020

Appeal Ref: APP/X1118/C/19/3229443
1 Europa Park, Woolacombe Station Road, Woolacombe EX34 7AN

- 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 Mrs Rosemary Ann Facey against an enforcement notice issued by North Devon District Council.
- The enforcement notice was issued on 10 May 2019.
- The breach of planning control alleged in the notice is failure to comply with condition No 2 of a planning permission Ref 26875 granted on 12 April 1999.
- The development to which the permission relates is: Proposed variation of occupancy condition attached to Plan. Per. 2/75/110/47/3 to allow 12 months holiday occupation. The condition in question is No 2 which states that: The chalet shall be occupied for holiday occupation only and not for permanent residential accommodation. The notice alleges that the condition has not been complied with because the chalet is being occupied as a permanent residential unit.
- The requirements of the notice are: Cease the permanent residential occupation of the chalet edged red on the attached location plan.
- The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (e) and (g) of the Town and Country Planning Act 1990 as amended. Since the appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with corrections.

The Enforcement Notice

2. The enforcement notice should have been issued under Section 171A(1)(b) of the Act as opposed Section 171(1)(a). It is however clear from the enforcement notice that it relates to a breach of condition and injustice would not arise from making this correction.

3. Whilst the requirement of the enforcement notice specifies that the permanent residential occupation of the chalet should cease, it would be more precise, given the alleged breach of planning control relates to a breach of condition, to require that the chalet should only be occupied in accordance with the requisite condition. I do not consider that injustice to the parties would arise from this correction, which I shall detail within my formal decision below, as it would not make it more onerous.

The ground (e) appeal

4. This ground of appeal concerns whether the enforcement notice was properly served on everyone with an interest in the land.

5. The enforcement notice was served on the appellant at two different postal addresses as well as at the appeal site itself. The appellant confirms that the tenant received a copy, which was forwarded to her, and that she also received a copy at a later date.

6. Evidently, the appellant received a copy or copies of the enforcement notice and was able to lodge an appeal within the relevant timeframe. It cannot therefore be said that parties with an interest in the land have been substantially prejudiced.

7. Consequently, the appeal on ground (e) must fail.

The ground (d) appeal

8. For this ground of appeal to succeed it would be necessary for the appellant to demonstrate, on the balance of probabilities, that the chalet had been occupied in breach of the requisite condition for a 10-year continuous period prior to the issue of the enforcement notice.

9. The appellant has responded[1] to a Planning Contravention Notice which indicates that the chalet has been let full time since 2007. It is also asserted that it has been rated domestically for Council Tax purposes since this date, although those records are not before me. I however have little further documentary evidence, for example in the form of statutory declarations, to provide sufficiently precise and unambiguous evidence in order to persuade me, on the balance of probabilities, that there has indeed been a breach of the requisite condition for a 10-year continuous period.

10. Whilst it is noted that the appeal was lodged within the relevant timeframe, this is then not a matter for a ground (d) appeal.

11. Consequently, the appeal on ground (d) must fail.

The ground (a) appeal

Main Issue

12. The main issue is whether or not the chalet is in a suitable location for permanent as opposed holiday occupancy having regard to local and national planning policy.

Reasons

13. The site is located on a holiday park and consists of one modest sized unit of accommodation, a chalet, within a short row of terraces. The site is outside of any development boundary and so is located in open countryside. It is also within a designated Area of Outstanding Natural Beauty, amongst other such designations.

14. If the ground (a) appeal were to be successful it would mean that the chalet could be occupied without any restrictions as the planning condition would be

[1] Letter dated 8 April 2019

removed. Currently the chalet is restricted by a planning condition for holiday occupation only and not for permanent residential accommodation. The reason given is that the chalet is located in an area where permanent residential accommodation would be contrary to planning policy.

15. The chalet was therefore granted planning permission in an area that would not normally be appropriate for a dwelling. It is therefore subject to a restrictive planning condition so that it provides for holiday accommodation and with it a contribution would be made to the important local tourist economy.

16. Whilst I appreciate that the current tenant works at the holiday park, I have little evidence before me to demonstrate that there is an essential operational need for a full time agricultural or rural worker to be resident at the chalet. I also appreciate that there are few places to rent in the local area that are affordable, but this in itself does not amount to compelling evidence to demonstrate that the current restriction is no longer justified.

17. The number of second homes and lack of affordable housing in Woolacombe is a concern that is shared by the Council. However, I have not been convinced that addressing this in a piecemeal fashion, though the incremental loss of holiday accommodation such as the appeal chalet, is appropriate.

18. I am aware that other chalets at the holiday park have different occupancy restrictions, but I have not been made aware of any chalets that are now unfettered, or if they were, how this would support the loss of a further unit of holiday accommodation.

19. I conclude that the chalet is not in a suitable location for permanent as opposed holiday occupancy and therefore contravenes Policies DM18 and DM28 of the North Devon and Torridge Local Plan 2011-2031, adopted October 2018. These policies, amongst other things, only permit the removal of occupancy conditions on holiday accommodation where there is compelling evidence to demonstrate that such a restriction is no longer justified, and, only permit accommodation in the countryside where it can be demonstrated that there is an essential operational need for a full time worker to be resident at or near the place of work. For the same reasons, the removal of the planning condition fails to comply with the rural housing objectives of the National Planning Policy Framework.

Other considerations

20. The Government is seeking to significantly boost the supply of housing and the removal of the condition would make a contribution, albeit modest, to this supply. However, this brings only very limited benefits to the economic and social well-being of the local community, and indeed results in the loss of tourist accommodation and with it the economic benefits that this should bring. I appreciate that dismissing the appeal would result in the loss of the current tenant's home, but I have very little evidence concerning personal circumstances or to persuade me about the complete absence of alternatives, given a period of nine months for compliance has been afforded.

21. I have therefore found that the chalet is not in a suitable location for permanent as opposed holiday occupancy. There are no other considerations that outweighs this planning harm.

Conclusion

22. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal on ground (a) fails.

The ground (g) appeal

23. The enforcement notice affords a period of nine months for compliance, and so the appellant, by lodging this ground of appeal, needs to evidence why the time given to comply with the requirement of the enforcement notice is too short. However, I have very little evidence to indicate that a longer period would reasonably be necessary in order to comply and no alternative period for compliance has been suggested by the appellant.

24. Accordingly, the appeal on ground (g) must fail.

Overall Conclusion

25. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Formal Decision

26. It is directed that the enforcement notice be corrected by:

- deletion of the words *'Section 171(1)(a) of the Act,'* and their replacement with the words *'Section 171A(1)(b) of the Act,'*
- deletion of the words *'Cease the permanent residential occupation of the chalet edged red on the attached location plan.'* and their replacement with the words *'Cease the occupation of the chalet edged red on the attached location plan other than in accordance with condition 2 of planning permission ref 26875 granted on 12 April 1999.'*

27. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul T Hocking

INSPECTOR