



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: 13 March 2020

Appeal Ref: APP/X1118/C/19/3234179

19 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 Ms Helena Duignan against an enforcement notice issued by North Devon District Council.
 - The enforcement notice was issued on 16 July 2019.
 - The breach of planning control alleged in the notice is failure to comply with condition No 2 of a planning permission Ref 11656 granted on 31 July 1990.
 - The development to which the permission relates is: Prop variation of occupancy condition attached to plan per 2/75/110/47/3 & 2/77/538/47/3 to allow use of chalet nos 2, 5-8, 14-16, 18-20 for 10 months of year. The condition in question is No 2 which states that: The holiday chalets the subject of the application shall be occupied only from the 15th March to the 15th January. 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) and (d) 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 a correction.

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. It was highlighted to the parties¹ that the requirement of the enforcement notice does not mirror the alleged breach of planning control, as specified by the requisite condition. It was not that this requirement would cause injustice to the appellant, rather, it was queried whether it would fully remedy the alleged breach of planning control. Nevertheless, the Council were content for the appeal to proceed and thus it will remain a matter for the Council, in the first instance, to determine whether there would be any subsisting or future

¹ Email from the Planning Inspectorate dated 19 February 2020

breach of planning control at the site. I will therefore determine the appeal based on this requirement.

The ground (d) appeal

4. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice.
5. It is therefore necessary for the appellant to demonstrate a continuous 10-year period of occupation in breach of condition 2 of planning permission 11656 in order to accrue immunity from enforcement action. This continuous period will need to be prior to the issue of the enforcement notice on 16 July 2019.
6. To this effect, the evidence of the appellant, in the form of an unsigned letter as well as her final comments document, is that she purchased the chalet in April 2013 and has lived in it herself as well as letting it to tenants. It is said to have been rented to tenants prior to her ownership going back a period more than 10 years. In itself, given the brevity and nature of this correspondence it lacks the necessary precision.
7. The Council has provided Council Tax records for the chalet for the period since May 2009. This provides some evidence that the chalet may have been permanently occupied, and by a number of tenants, but it does not necessarily follow that because Council Tax was paid the chalet was then occupied, on the ground, continuously in breach of the requisite condition. Such records are therefore not sufficiently precise and are unambiguous in this regard.
8. Moreover, there is a period of 5 months between 16 November 2012 and 18 April 2013 when the chalet, according to these records, was unoccupied. The appellant says that this was due to the chalet being sold and is then when she purchased it.
9. The breach of planning control must continue throughout a 10-year period before it can achieve lawfulness, although some minor interruption will not normally be fatal, provided it is not significant. A short suspension will not usually stop the period running, but it is a matter of fact and degree in each case whether an interruption in activity on the ground has resulted in the cessation of the breach.
10. I appreciate this period was when the chalet was being sold, but in my view a period of 5 months is not a minor interruption, but a significant one. Moreover, it covered a period when the chalet should not have been occupied, thus bringing it into accordance with the requisite condition and with it bringing about the cessation of the breach of planning control.
11. I appreciate that there has been no change of use of the chalet, but that is not the matter before me; rather, it is confined to its occupation given the requisite condition. The appellant says that she has received legal advice and that case law on this topic is complicated. Nevertheless, very limited supporting case law has been put forward by the appellant to persuade me why a period of 5 months would only amount to a minor interruption.
12. The appellant has also provided a letter from the owner of a neighbouring chalet which states that for the last 10 years the chalet has had a permanent

resident living in it and that it has never been let as a holiday home. However, this letter post-dates the issue of the enforcement notice and so does not relate to a relevant 10-year period. As well as being unsigned, it lacks any form of detail about residents and makes no mention of the period when it is known that the chalet was empty in 2012/13. This correspondence is therefore ambiguous and lacks the necessary precision.

13. I am therefore not satisfied on the balance of probabilities that the appellant has demonstrated a continuous 10-year period of occupation in breach of the requisite condition. Consequently, the appeal on ground (d) fails.

The ground (a) appeal

Main Issue

14. 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

15. The site is located on a holiday park and consists of one modest sized unit of accommodation, a chalet, within a 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.
16. If the ground (a) appeal were to be successful it would mean the chalet could be occupied without any restrictions as the planning condition would be removed. Currently the chalet is restricted by a planning condition for holiday occupation as it should only be occupied between 15 March and 15 January.
17. I appreciate the chalet is one of 22 units and that there are other residences and development in the area. Nevertheless, for the purposes of planning policy the site is outside of a development boundary, such as Woolacombe, which is a designated local centre. The chalet was therefore granted planning permission in an area that would not normally be appropriate for a dwelling. It is accordingly subject to a restrictive planning condition so that it provides for holiday accommodation and with it a contribution should be made to the important local tourist economy. I appreciate the chalet has not been occupied in this manner for some time, however this does not amount to compelling evidence to demonstrate that the current restriction is no longer justified.
18. The appellant says that she is a local rural worker as she coaches sports in a number of local schools. I however do not accept that this demonstrates there is an essential operational need for a full-time worker to be resident at or near the place of work or that this amounts to an essential need to live in the countryside. Such work can thus still be carried-out whilst living in a town or urban area.
19. The appellant says that Woolacombe is not lacking in holiday spaces, but rather lacks places for local residents to live. There has also been an increase in the number of holiday homes and second homes and the price of property in the area is high. I however do not accept that a holiday condition, such as the one before me, amounts to an outdated restriction or one that is not enforceable. Whilst the removal of the condition would undoubtedly result in an open

market property that is more affordable, owing to its size, I am not convinced that addressing the lack of housing in the area in a piecemeal fashion, though the incremental loss of holiday accommodation such as the appeal chalet, represents a positive step or sensible measure.

20. I am also not persuaded on the evidence before me that the Council's Spatial Strategy for the area, principally because the site is outside of the development boundary, supports the removal of the requisite condition. Whilst the Mortehoe & Woolacombe Parish Plan is said to stipulate that affordable housing for local people is a high priority, a copy of this Plan is not before me and the removal of the requisite condition would result in open market as opposed meeting the definition² of affordable housing. Neither would the removal of the condition form part of a rural exceptions site scheme such as that indicated to be the case in respect of the Community Land Trust.
21. I accept that in this instance the permanent occupation of the chalet is unlikely to harm the surrounding designated landscape. The chalet is also of brick-built construction and I have little evidence to indicate that physically it is not suitable for permanent occupation.
22. I nevertheless 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 (the NDTLP). 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 permits 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. I however do not find Policy ST07 of the NDTLP to be relevant on the evidence before me as this is concerned with new development, as opposed matters relevant to the removal of the planning condition.

Other considerations

23. 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 appellant having to move from the chalet, but I have very little evidence concerning personal circumstances or to persuade me about the absence of alternatives, given a period of nine months for compliance has been afforded.
24. I have therefore found that the chalet is not in a suitable location for permanent as opposed holiday occupancy. The payment of Council Tax year-round or that the chalet may then become mortgageable is not relevant in this regard. There are no other considerations that outweighs this planning harm.

² As defined in the National Planning Policy Framework Annex 2: Glossary

25. The appellant has also put forward that other chalets do not have the 10-month restriction and are therefore available for year-round holiday use. However, varying the condition in this way under a ground (a) appeal could lead to injustice or stymie the enforcement action that has been taken, which brought about this appeal. No suggested wording for how the enforcement notice could be varied has been put before me to indicate otherwise. It however remains open to the appellant to pursue a variation of the condition directly with the Council if she considers it appropriate, and I consider that adequate time is afforded, although the determination of any such planning application would be a matter entirely for the Council.

Conclusion

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

Overall Conclusion

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

Formal Decision

28. 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,*'

29. Subject to this correction, 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