



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 October 2021

Appeal Ref: APP/P2114/X/21/3269156

**28 Beachside Bungalows, Fort Warden Road, Totland, Isle of Wight
PO39 0DA**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr John Hall against the decision of Isle of Wight Council.
 - The application Ref: 20/01444/CLEUD, dated 28 August 2020, was refused by notice dated 30 October 2020.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is a permanent residential dwelling (C3).
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Decision

1. The appeal is dismissed.

Main Issue

2. Under s191(1)(c) of the 1990 Act, if a person wishes to ascertain whether any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, they may make an application for that purpose to the local planning authority. Under s191(2)(a) of the 1990 Act, uses and operations are lawful at any time if no enforcement action may then be taken in respect of them because the time for enforcement action has expired. The relevant time limit for not being able to take enforcement action in breach of condition cases under s171B(3) of the 1990 Act is the period of ten years beginning with the date of the breach.
3. In this case the occupation of the appeal property is restricted by condition 1 of planning permission Ref: P/00370/98 which reads: "*The occupation of the holiday chalets within the site identified on the submitted plan shall be limited to use as holiday accommodation all year round with the option of short term residential letting between 1 October and 1 April in any succeeding year. When the units are used as holiday lets, they shall not be occupied by a person, a family, or group of persons, for a period in total exceeding six weeks in any rolling year without the prior written consent of the Local Planning Authority*".
4. Given that the date of the LDC application was 28 August 2020, the appellant needs to show that, as a matter of fact and degree, the breach of the holiday

occupancy/short let condition occurred on a substantially uninterrupted basis for at least from 28 August 2010. In this case, the appellant contends that the property has been used as a permanent family residence since 2005. My consideration of this appeal will be based on this main issue. I shall examine whether the evidence shows there has been a ten-year breach during the time from 2005 onwards up until the date of the LDC application.

5. The consideration to be given to the appeal is a legal determination that does not have regard to matters of planning merit. Therefore, whilst I have read and noted the personal circumstances of the appellant and his wife, they are not relevant to the outcome of the appeal. Moreover, whether other units at the site have been granted LDCs for continuous occupation has no bearing either. I also cannot take account of concerns raised about how the Council handled the application. They are matters between the appellant and the Council away from this appeal. The onus to make out the case in legal grounds of appeal rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Reasons

6. The series of Council Tax bills supplied appear to have some missing. However, even if there was a complete set from 2005 or 2008 onwards, the payment of Council tax does not in itself show that the property was being occupied by persons living there permanently in breach of the occupancy restrictions imposed by the planning condition. At best all they show is that the property, which has an authorised residential use albeit one that has restricted occupancy, was liable for Council Tax. Furthermore, it appears that Council tax would be payable on this unit whether it was being occupied permanently or in accordance with the restrictions of the condition. The bills do not help to distinguish between lawful and unauthorised use of the property throughout the relevant period.
7. The same can be said for the copies of gas bills submitted. Payments of utility bills by the appellant does not show who was living there throughout the relevant period or how the property was being occupied. The copy of the Driver and Vehicle Licensing Agency tax disc reminder from 2008 only gives the appellant's address at the appeal property, but nothing else and this falls well short of the substantive evidence needed in this case. The letter from the local GP practice on the Isle of Wight confirms that the appellant has been registered at that practice since 2004. However, this statement does not go to the heart of being able to show continuous breach of the occupancy restriction.
8. I accept that the letter from the proprietor of Beachside Bungalows states that the appellant has been occupying the property since 2004. Nevertheless, that occupation could have been in accordance with the occupancy restriction. Even if this was not the case, a statement of mere occupation does not show that was on a substantially uninterrupted basis. This evidence, and that in the planning statement from the appellant, has also not been given in the form of, for example, a statutory declaration signed in the presence of a solicitor under the provisions of the Statutory Declarations Act 1835 whereby there are sanctions for not telling the truth. Consequently, the proprietor's letter and the claims made in the statement have very little weight.
9. All in all, the appellant has not as a matter of fact and degree discharged the burden on them to show on the balance of probabilities that the breach of the

occupancy condition occurred over a substantially uninterrupted 10 years so that the use of the property as a permanent C3 dwelling has become lawful.

Conclusion

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use in respect of a permanent residential dwelling (C3) was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Gareth Symons

INSPECTOR