



Appeal Decision

Site visit made on 11 January 2022

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 31 January 2022

Appeal Ref: APP/Q9495/C/21/3279611

Land to the rear of High Cross, Hawkshead, Ambleside, LA22 0QB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Crossley Properties Limited against an enforcement notice issued by Lake District National Park Authority.
 - The notice, numbered E/2019/0374, was issued on 28 May 2021.
 - The breach of planning control as alleged in the notice is Without planning permission, the making of a material change of use of the land and buildings to a residential use.
 - The requirements of the notice are to: permanently cease to use the Land and the buildings for residential purposes.
 - The period for compliance with the requirement is: 6 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.
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Decision

1. It is directed that the enforcement notice is corrected by: the deletion of the words "the making of a material change of use of the land and buildings to a residential use" from paragraph 3 of the enforcement notice; and replacement with the words "the use of the buildings as a dwellinghouse (Building 1 as annotated on the attached plan) and an ancillary building (Building 2 as annotated on the attached plan) and the making of a material change of use of the land to a residential use".
2. Subject to the corrections, the appeal is allowed and the enforcement notice is quashed.

Ground (d)

3. An appeal on this ground is on the basis that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice. The notice alleges *'the making of a material change of use of the land and buildings to a residential use.'*
4. The appellant's case, which the Council accepts, is that Buildings 1 and 2 were constructed for residential purposes: Building 1 was completed by February 2007 and Building 2 in August 2010. There was therefore not a material change of use of Buildings 1 and 2 to a residential use which had never had any other use (and it is not the appellant's case that the land had a residential use prior to 2007). The allegation in the notice is therefore incorrect and should be corrected to take out the reference to change of use of the buildings. I am satisfied that this can be done without causing injustice to the parties as it simply reflects the Authority's stated case regarding the use of the appeal site, and I am therefore proceeding on that basis. The relevant time limit for taking

enforcement action in respect of the change of use of the land to a residential use is therefore 10 years as set out in section 171B(3) of the 1990 Act.

5. The Council accepts the construction dates provided by the appellant and that the buildings afford all of the facilities required for day to day private domestic existence in line with caselaw¹. The Council also agrees that the use as both a holiday home and permanent dwellinghouse fall within Class C3 (a) of the Town and Country Planning (Use Classes) Order 1987. The appellant's case is that Building 2 has been used as an annex to Building 1, and not as a separate dwelling. Both buildings sit within the enclosed and gated parcel of land owned by the appellant with various other structures including a shed, greenhouse and outbuilding, and which is part of the appellant's wider ownership which includes the access road and parking/storage area.
6. The Council argues that the appellant has not proven on balance a continuous period of 10 years residential use of the land as it was not permanently occupied until 2017. The appellant agrees that the permanent residential occupation did not start until 2017 but states that as the use as a holiday home is also within a residential use under Class C3, and it is possible to prove the necessary 10 year time period between February 2007 and May 2021. The appellant also argues that the very nature of a holiday or second home is that there is not someone always present.
7. The Authority relied on the cases of Swale² and Thurrock³ in support of their argument that to be immune from enforcement action the use of a building as a dwellinghouse must be 'affirmatively established', and that there is a difference between an established dwellinghouse when an occupier does not have to be continuously or even regularly present in order for the building to remain in use as a dwellinghouse, and a building where there is no established use as such. However, those cases related to material change of use of a building to a single dwellinghouse and the time limit of 4 years under section 171B(2). In this instance, the Council accepts that the buildings were constructed as a dwelling and used as a holiday home by a single family and their friends from that point.
8. It is therefore necessary to also consider the case of Welwyn Hatfield⁴ and ask 'what use the building has or of what use it is'? The appellant is not relying solely on the physical works to show that the change of use of the land to residential occurred but also the actual use of it as a holiday home, and the fact that it was available to be used at all times for residential purposes. The appellant's sworn evidence is that the buildings were constructed as a dwelling and used as such, albeit as a second or holiday home, on a very regular basis (generally every two to three weeks) between February 2007 and July 2017 and then as a permanent dwelling for much of the time between July 2017 until the service of the notice. The appellant's case, which is accepted by the Authority, is that his daughter moved into Building 1 on a permanent basis in July 2017 and lived there until the issue of the notice on 21 May 2021 other than a period between April and October 2019 when it was used as a holiday home. Building 2 was substantially completed in August 2010 and the appellant's evidence is that it was used from that time to provide additional

¹ Gravesham BC v SSE & O'Brien [1983] JPL 306

² Swale BC v FSS & Lee [2005] EWCA Civ 1568

³ Thurrock BC v SSETR & Holding [2002] EWCA Civ 226

⁴ Welwyn Hatfield BC v SSCLG & Beesley [2011] UKSC 15

accommodation associated with Building 1 (and is described as the annex). The Authority also accept that Building 2 has been used since July 2017 in association with the permanent occupation of Building 1.

9. The appellant's factual evidence regarding the use of the appeal site is corroborated by statutory declarations from: his daughter; two friends who had also visited the appeal property throughout that time period; and another friend who lives in the village and who was aware of the use of the appeal property. The authority did not produce any evidence of their own to contradict this version of events, and would have been able to take enforcement action at any point during that initial 10 year period, even if the appellant was not staying in the buildings on any specific date, as the buildings had been constructed and equipped as a dwelling and was regularly used as a holiday home and always available to be used as such. The operational development coupled with the frequent actual use and ongoing availability for residential use throughout the time period indicated the material change of use of the land. This is different from the cases which fall within section 171B(2) where there has been a material change of use of an existing building to a single dwellinghouse. In any event, in this case the appellant can prove in excess of 10 years use for residential purposes as set out above, and there is no evidence that this use has been subsequently abandoned.
10. The appellant's evidence is sufficiently precise and unambiguous to prove on the balance of probability the residential use of the appeal land from 2007 to the date of the service of the notice, and the authority has not provided any evidence to contradict the appellant's version of events.
11. The appellant accepts that there was a change in the frequency in which the appeal property was occupied after July 2017 when his daughter began to live in it permanently. However, the Council have not argued that this was in itself a material change of use and I do not find it to be so as it remained with Class C3, and there was not a significant difference in the character of the activities or the implications for the area.
12. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is incorrect. On the balance of probabilities, the appeal on ground (d) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control. The enforcement notice will be corrected and quashed. In these circumstances the appeal on ground (g) does not need to be considered.

Zoë Frank's

INSPECTOR