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## Appeal Decision

Site visit made on 10 January 2023

**by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 January 2023**

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**Appeal Ref: APP/M0933/C/22/3298385**

**Land at Eden House, Conishead Grange, Red Lane, Bardsea LA12 9QH**

- 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 Mr Ernst Liehr against an enforcement notice issued by South Lakeland District Council.
- The enforcement notice was issued on 5 April 2022.
- The breach of planning control as alleged in the notice is:
  - I. Operational development including erection of a single storey (with mezzanine) timber building on the area of the building coloured green (Building C) on the attached plan, which has occurred within the last four years.
  - II. Part material change of use to a mixed use comprising two primary uses: a holiday complex and self-catering holiday accommodation.
  - III. Use of outdoor spaces highlighted yellow in connection with the buildings B and C.
- The requirements of the notice are:
  - A. Permanently remove Building C within the red boundary on the attached plan; the unauthorised building currently situated in the area coloured green and outlined in blue.
  - B. Permanently cease the use of the buildings (B and C) outlined in blue for self-catering accommodation, on the site within the red line boundary of the attached plan.
  - C. Permanently cease the use of the areas shaded yellow for outdoor open space used in connection with self-catering accommodation, on the site within the red line boundary of the attached plan.
  - D. Permanently remove from the land all building materials, all rubble and associated materials arising from compliance with A.
- The period for compliance with the requirements is 13 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice upheld.**

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### Application for Costs

1. There is an application for costs made by Mr Ernst Liehr against South Lakeland District Council. This application is the subject of a separate Decision.

### The appeal on ground (b)

2. The ground of appeal is that the breach of planning control alleged in the enforcement notice has not occurred. In respect of Building C, the appellant accepts that it has been erected on the site within the last four years. Therefore, that alleged breach has occurred as a matter of fact and therefore with respect to allegation I the appeal on ground (b) must fail.

3. With respect to allegation II the part material change of use comprising 2 primary use; a holiday complex and self-catering holiday accommodation, the appellant contends that the Land is not a holiday complex at all but is a single planning unit with two self-catering units that operate independently but have some shared areas including the parking area and some outdoor space, including the extensive garden. Taking the description of the alleged breach in II and the requirement B of the Notice to permanently cease the use of Buildings B and C for self-catering purposes, it is clear to me that the "*self-catering holiday accommodation*" identified in II relates to Buildings B and C.
4. The appellant argues that neither Building B nor C have ever been used for self-catering accommodation on a commercial basis. Instead, it is contended that on occasion, in the distant past, friends and family have stayed in them. However, at my site visit I noted that Building B is named "4 Little Eden" on a name plaque next to the door and is set out as accommodation with two bunk beds with pillows, sheets and quilts, en-suite bathroom with sink, toilet and shower, a wardrobe and other features that would be associated with occupancy as holiday accommodation.
5. Building C is named "3 Little Eden" on a name plaque and is a timber built structure with ground and mezzanine floors. The ground floor exhibits a dining table with chairs, L-shaped settee, television, fully equipped kitchen area with oven and 4 burner hob, sink and draining board, refrigerator, full sets of crockery and cutlery and a range of kitchen equipment such as kettle, toaster and coffee maker. There is also a bathroom with sink, shower cubicle and toilet and storage cupboards and space. At mezzanine level there is a double bed and single bed; both with pillows, quilts and sheets.
6. Both Building B and Building C appear to be self-contained in terms of the accommodation and equipment provided and are laid out for occupancy as self-catering holiday accommodation rather than for general storage purposes or for occasional occupancy by friends and family. In addition, both units have key safes adjacent to their front doors as would be expected at self-catering holiday accommodation.
7. As a consequence of the layout, furniture and equipment presents both buildings are set out for habitation and that would appear to be for self-catering holiday purposes. Occupancy appears to have been relatively recent rather than in the distant past. I see no reason for them being separately named other than to identify them as separate units of accommodation nor would I expect to see the access arrangements to be as I found if the buildings were occupied other than for self-catering holiday accommodation purposes.
8. Both buildings have direct and easy access onto small areas of open space. The appellant contends that Building B is used for storage purposes and therefore there is no reason for the adjoining yellow land to be used in association with it. However, there is direct and easy access from Building B onto the area of land in question. In addition, the small area has seating and a barbecue and is set out for outdoor recreation purposes. It is clear to me that it is not being used as ancillary to any storage use, but instead as outdoor recreation use associated with adjacent self-catering holiday accommodation.
9. The second yellow shaded outdoor area has direct access from patio doors in Building C and is laid out for outdoor recreation with seating, tables, and planting. Again, it appears to be used for outdoor recreation purposes

associated with the adjacent self-catering holiday accommodation rather than for an ancillary storage or other use.

10. Based on these observations and the evidence that the wider site also has two self-catering units known as Eden Lodge and Eden House with a range of associated facilities including gardens and outdoor recreational space, the Council's description as a "holiday complex" is accurate. Indeed, that reflects the conclusions of my colleague Inspector when determining a previous appeal for the site. Consequently, the material change of use of the Land to a holiday complex and self-catering holiday accommodation is an accurate description of what is alleged. Since both uses are primary uses within the site the change of use comprising two primary uses is also accurate.
11. In the absence of any clear evidence to the contrary I therefore conclude that on the balance of probabilities the breach of planning control as identified in the Notice has occurred as a matter of fact and the appeal on ground (b) cannot succeed.

### **The appeal on ground (f)**

12. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the permanent removal of Building C, permanent cessation of Buildings B and C for self-catering accommodation, permanent cessation of the use of the areas shaded yellow for outdoor space self-catering accommodation and the removal from the land of all building materials, the purpose is clearly to remedy the breaches. Leaving any part of Building C in place or continuing the use of Buildings B and C for self-catering accommodation and continued use of the areas shaded yellow for outdoor open space used in connection with self-catering accommodation would not achieve the purposes. In this respect, the appeal on ground (f) cannot succeed.
13. Furthermore, since there is no appeal on ground (a) and the purpose of the notice is to remedy the breach of planning control, any lesser steps that would not remedy the breach cannot be accepted through ground (f).

### **Conclusion**

14. For the reasons given above I conclude that the appeal should not succeed.

### **Formal decision**

15. The appeal is dismissed and the enforcement notice is upheld.

*A A Phillips*

INSPECTOR