The Planning Inspectorate

Appeal Decision

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2020

Appeal A Ref: APP/X1118/C/29/3249032
Appeal B Ref: APP/X1118/C/29/3249033
Chalet 12, Europa Park, Woolacombe Station Road, Woolacombe, Devon 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.
- Appeal A is made by Ms Rebecca Worth against an enforcement notice ('the notice') issued by North Devon District Council.
- Appeal B is made by Mr Dennis Worth against an enforcement notice issued by North Devon District Council.
- The enforcement notice, numbered 10667, was issued on 20 February 2020.
- The breach of planning control as alleged in the notice is within the last ten years, a breach of condition 2 of planning permission 28132 consisting of the permanent residential occupation of the holiday chalet.
- The requirement of the notice is cease the permanent residential occupation of the holiday chalet.
- The period for compliance with the requirements is within nine months from the date when this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Decision

1. With reference to Appeal A and Appeal B: It is directed that the enforcement notice is corrected by: the deletion of the words " Section 171(1)(a) of the Act" and the substitution of the words " Section 171(1)(b) of the Act " in section 1 of the enforcement notice.

2. Subject to the correction, the appeals are allowed and the enforcement notice is quashed.

Procedural Matter

3. Given that both appeals were made on ground (d) alone, the parties were asked whether they had any objection to the appeal being taken forward without a site visit. Neither objected to this. As no party would be prejudiced by doing so, my decision has been reached on this basis.

4. The notice was issued in respect of the alleged failure to comply with a condition subject to which planning permission has been granted. Thus, the reference to 'Section 171(1)(a) of the Act' is incorrect. This should read 'Section 171A(1)(b) of the Act'. As this would not cause injustice to either party, I will correct the notice by substituting the former with the latter.

Reasons

5. From the evidence, Chalet 12 is one of a number of similarly-designed single storey buildings on what was Europa Park. The Council tells me this is now known as Tranquility Park Homes; however, to avoid confusion, I will use the former as this is how it is described in the notice and appeal form.

6. On the 23 November 1999 the Council approved application 28132 allowing for the 'Variation of holiday occupancy conditions attached to planning consents 2/75/110/47/3 and 2/77/538/47/3 to allow all year round holiday occupancy at 9, 10, 12, 21 and 22 Europa Park, Woolacombe Station Road, Woolacombe'. The decision on 28132 was subject to two conditions, the statutory time-limit and that numbered 2 which reads: 'The chalet shall be occupied for holiday occupation only and for no other permanent residential accommodation'.

7. The reason for the condition reads: 'The chalet is located where permanent residential accommodation would be contrary to national and Development Plan policies and the associated domestic paraphernalia would have an adverse impact on the Area of Outstanding Natural Beauty and Coastal Preservation Area'.

8. There is an inconsistency between the title of planning application 28132, which relates to the variation of conditions for 5 chalets, and the text of the condition, which refers to a singular chalet. However, as this is not a matter that the appellants challenge in their submissions and has not hindered their ability to make their case, it is not one that need detain me.

9. The case to be made under ground (d) is at the time when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Here, the Council alleges that condition 2 has been breached. In such a case, it is incumbent upon an appellant to show that the breach has occurred continuously for a period of ten years. Given that the notice was issued on 20 February 2020, such a breach would have had to have started on or before 20 February 2010. It is for the appellants to prove their case on the balance of probability, using evidence that is precise and unambiguous.

10. The appellants' case is supported by three statutory declarations, one from each of them and the other from the chalet's previous owner, Ivan Leslie.

11. Ivan Leslie owned Chalet 12 from 29 November 2002 until he sold it to Dennis Worth on the 19 April 2011. He undertook trials of letting the chalet for holiday purposes for two seasons, starting in 2003. However, this did not work out and he decided to rent it out on a permanent residential basis. This he did do continuously until he sold it.

12. A letter attached to the statutory declaration states that Beverley Luke lived in Chalet 12 on a permanent basis between 1 April 2008 to 13 September 2010. Between 13 September 2010 and 12 November 2010 the chalet was vacant to allow for cleaning, redecorating and re-carpeting, which I refer to as refurbishment, before new tenants took up occupation. There were two of these who lived in the chalet permanently until he sold it, he says, though they are not named.

13. Dennis Worth is the father to Rebecca Worth. Their statutory declarations are very similar and, for this reason, they can be summarised together. Dennis

Worth states that before he bought Chalet 12, Rebecca Worth lived permanently at his home in Pilton, Barnstaple. She moved to Chalet 12 on a permanent basis on the 19 April 2011 and has continued to do so until the present day. Both state that, to the best of their knowledge, the chalet was used for permanent residential purposes under the ownership of Ivan Leslie. Dennis Worth says that this was from 1 April 2008.

14. Both of their statutory declarations attach, as Exhibit A, email correspondence from a Revenue Officer of the Council, relating to Council Tax records for Chalet 12. This confirms Rebecca Worth being registered as the sole occupier of the chalet and paying Council Tax since 19 April 2011. It further states that the Council could only give details of periods when the chalet was liable for Council Tax during Ivan Leslie's ownership. In this regard, it sets out that there were two periods when the chalet was registered as being 'empty and unfurnished' – between 13 September 2010 and 12 November 2010 and between 15 April 2011 and 18 April 2011.

15. A letter was received from John Trull, whose address is given as Chalet 11 Europa Park. He states that Chalet 12 has been permanently occupied for residential purposes since May 2008. He corroborates Ivan Leslie's version of events, adding that the names of the two tenants that occupied Chalet 12 between its refurbishment in Autumn 2010. Further, a Councillor Malcolm Wilkinson states that to his knowledge Chalet 12 has been occupied as a dwelling for at least 10 years.

16. For its part, the Council disputes the 10-year continuous use of the caravan for two reasons: the length of the period of refurbishment in Autumn 2010; and the response given by Dennis Worth to a Planning Contravention Notice (PCN) served on him.

17. The Council's position is that the two-month break for refurbishment of Chalet 12 in the Autumn of 2010 was such that it ceased the continuous breach of condition 2 attached to planning permission 28132. In this respect, it cites case law in *Thurrock BC v SSE & Holding* [2002] EWCA Civ 2266 and quotes from an appeal relating to Chalet 19 at Europa Park, (Planning Inspectorate Ref: APP/X1118/C/19/3234179).

18. In essence, these set out that to become lawful the ten year breach must be continuous, though there is scope for some interruption. However, such interruptions should be short and not significant. It will be a matter of fact and degree in each case.

19. In the appeal at Chalet 19, the break lasted for 5 months and was found to be significant. Rather than that break being 'slightly longer' it was significantly longer. Although the refurbishment might have been carried out more quickly, two months was not an inordinate period of time to refurbish the chalet. It is tantamount to a 'substantial holiday', of the type referred to in *Swale BC v FSS & Lee* [2005] EWCA Civ 1568, [2006] JPL 886, and I find that this did not cease the continuous nature of the breach.

20. The evidence given by Ivan Leslie has not been challenged by the Council, and I have not been provided with sufficient reason to find differently. On the balance of probability, Chalet 12 was used as a permanent dwelling in the manner he sets out. Similarly, the Council does not dispute that Rebecca Worth

has lived in the chalet in the manner that she and her father claim. Again, I find no reason to find differently.

21. The PCN, attached as Appendix 3 to the Council's statement, was dated 29 March 2019, with four of its six questions relating to the permanent residential occupation of Chalet 12. The evidence shows that the questions were not answered individually but through a handwritten letter. The signature for this is redacted, but the Council tells me that it was signed by Mr D Worth. This has not been challenged by Mr Worth in his final comments, so I take it to be the case. He has written that "The property has all year round holiday occupancy. It has been used solely by myself and family but not for residential purposes". This is very much at odds with the content of his statutory declaration.

22. Whilst Mr Worth's letter responding to the PCN does little for his credibility, I do not find that it has a fatal effect on his appeal. I find that, taken as a whole, the evidence provided relating to the permanent residential occupation of Chalet 12 by Rebecca Worth is sufficient on the balance of probability. Of the two versions of events given by Mr Worth, I find that the letter in response to the PCN was not accurate.

23. Had I found that there was sufficient doubt regarding the continuous period of the breach of condition 2, this might have amounted to an act of concealment that could have ceased the breach. As it is, the continuous breach of the condition had subsisted for a period in excess of 10 years at the time of Mr Worth's response to the PCN. Therefore, even had his response been accurate, the Council would not, on the evidence before me, have been able to take enforcement action against the breach of condition.

Other matters

24. A decision from an appeal[1] against an enforcement notice, in respect of the breach of a holiday occupancy condition attached to a permission for 1 Europa Park, was submitted as Appendix 1 to the Council's statement. Part of that appeal was also made under ground (d). The case on that ground failed as, unlike here, insufficient documentary evidence was submitted to prove the case. It does not alter the conclusion I reach on this appeal. Although the appeal is allowed, the condition remains in place. It would, however, be unenforceable unless at some point in future the chalet was used in compliance with the condition, which would restart the clock and the condition would be enforceable again.

Conclusion

25. On the balance of probabilities, the appeals 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.

Roy Curnow

INSPECTOR

[1] APP/X1118/C/19/3229443