



Appeal Decisions

Site visit made on 1 August 2018

by **B M Campbell BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 August 2018

Appeal Ref: APP/V2255/C/17/3184653 & 3184654

Chalet No.7, Hazeldene Chalet Park, Fourth Avenue, Eastchurch, Sheppey, Kent ME12 4EW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr A and Mrs G McSweeney against an enforcement notice issued by Swale Borough Council.
- The enforcement notice was issued on 8 August 2017.
- The breach of planning control alleged in the notice is failure to comply with condition No. (ii) of planning permission Ref SW/94/588 granted on 15 August 1994.
- The development to which the permission relates is described as "Variation of conditions of SW/87/1168 and SW/88/338 to extend occupancy of the chalets 23rd December – 2nd January inclusive". The condition in question states that: *The chalets shall be used solely as holiday accommodation and shall not be used for human habitation between 31st October and 1st March in the following year excepting only 11 days and nights at Christmas and New Year namely 23rd December to 2nd January inclusive.* The notice alleges that the condition has not been complied with in that the chalet is being occupied in contravention of this condition.
- The requirements of the notice are to cease the use of the chalet for human habitation other than between 1st March and 31st October inclusive and the 23rd December to 2nd January inclusive in any year.
- The period for compliance with the requirements is 31 days.
- The appeals are proceeding on the grounds set out in section 174(2) (e) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of decision: The appeals are dismissed and the enforcement notice is upheld.

Preliminary matters

1. An enforcement notice was initially issued on 27 February 2017. However, due to a discrepancy in service, the Council withdrew that notice and issued another, the subject of this appeal.
2. Correspondence between the Planning Inspectorate and the Appellants suggests that it was agreed that all paperwork from the appeals against the first enforcement notice could be transferred to the current appeals. The initial appeal form brought grounds (e) and (f). The current appeal form does not indicate which grounds are brought but the Appellants' case is set out in the space following ground (a) suggesting appeals brought on that ground. However, a fee needs to have been paid for ground (a) to proceed. It has not

been. Therefore the appeals can only proceed on the remaining grounds (e) and (f).

The appeals on ground (e)

3. The ground of appeal is that copies of the notice were not served as required by s172 of the Act. Section 172(2) requires the notice to be served on the owner and occupier of the land to which the notice relates and on any other person having an interest in the land which would be materially affected by the notice.
4. "The land to which the notice relates" is the property known as 7 Hazeldene Chalet Park (or 7 Hazeldene Close or 7 Hazeldene Park as indicated on the forms submitted by the Appellants). It is clearly identified by a red outline on the plan accompanying the enforcement notice. It does not extend to any other part of the Park. The Council has provided evidence to show that copies of the notice were served on the owners and occupiers of No.7. There is no indication that there are any other persons who have an interest in the land (that is No.7) and thus no evidence whatsoever that the notice was not served as required by s172 of the Act. The appeals on ground (e) are thus bound to fail.
5. The Appellants' argument on this ground appears to be questioning why, in their view, some occupiers living on the Chalet Park in breach of the condition requiring vacation at certain times of the year have been subject to enforcement action whilst others have not. In other words they consider that the Council is being inconsistent in its approach. That is a matter best raised with the Council. It cannot influence the outcome of the appeal on ground (e) as it does not suggest that the enforcement notice, attacking the occupation of No.7 in breach of the condition, has been incorrectly served.

The appeals on ground (f)

6. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary. The purpose of the notice is to remedy the breach of planning control that has occurred by requiring the property to be vacated at certain times of the year as required by condition (ii) of planning permission SW/94/588. No lesser steps than those specified would remedy the breach that has occurred and neither do the Appellants suggest any. The requirements of the notice are not, therefore, excessive and the appeals on ground (f) must fail.
7. The Appellants' argument under this ground is that they should be allowed to occupy the property as their permanent residence and, in support, they raise personal circumstances. However, in order to consider whether the condition should be discharged so as to enable them to continue to live in the property all year round, an appeal on ground (a) should have been brought and the necessary fee paid. There is no ground (a) and so the question of whether there are any good reasons why the condition should be discharged is not before me.
8. Other matters raised by the Appellants question how the Council can take enforcement action when they have accepted Council Tax paid on the property all year round and have paid housing benefit all year round. These are not matters that have any bearing on the grounds of appeal brought and are best

been. Therefore the appeals can only proceed on the remaining grounds (e) and (f).

The appeals on ground (e)

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The appeals on ground (f)

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taken up with the Council. In addition, whilst the Appellants say they were unaware of the restriction on occupation; that is no argument that any lesser steps than those specified are apposite.

Formal Decision

9. The appeals are dismissed and the enforcement notice is upheld.

B M Campbell

Inspector