



## Appeal Decision

Site visit made on 25 September 2015

**by P N Jarratt BA(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 20 October 2015**

**Appeal Ref: APP/Z0835/C/15/3006441**

**The Chalet, White Cottage, Porthloo, St Mary's, Isles of Scilly , TR21 0NF**

- 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 E Hicks against an enforcement notice issued by Council of The Isles of Scilly.
- The Council's reference is E/15/006.
- The notice was issued on 10 February 2015.
- The breach of planning control as alleged in the notice is without planning permission, (1) the erection of the Building; and (2) the change of use of the Building to a use as a separate dwelling house.
- The requirements of the notice are:
  - (a) stop using any part of the Building as a dwelling; and,
  - (b) Remove the building and all equipment from the land.
- The period for compliance with the requirements is 16 weeks.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
- **Summary of decision: Appeal allowed, notice quashed and planning permission granted in part.**

### **The site and relevant planning history**

1. The appellant purchased White Cottage and adjoining land in 2004. It is unclear whether the planning unit at that time comprised the whole of the site or was restricted to the dwelling of White Cottage and its garden which extends to the road.
2. The appeal site is a 2 bedroom chalet constructed between White Cottage and the road and is contained within a garden area surrounded by hedgerows although there is a wide opening in the hedgerow between the garden areas of White Cottage and the chalet. The chalet is very modest in size and is of timber construction with a part felt and part corrugated roof. It has the appearance of a domestic outbuilding such as a large shed.
3. The chalet and the attached garden store were constructed in stages although the store does not form part of the allegation and is excluded from the appeal site. The chalet contains a small lounge, kitchen, bathroom and 2 bedrooms and is connected to the usual services.
4. Two applications have been refused for an LDC for the use of the structure as an independent dwelling (P/14/039/CLE and P/14/062/CLE). No appeals were lodged against the refusals. The Council acknowledges that more evidence has

been produced in this appeal than for the LDC applications including details of the evolution of the building and the submission of statutory declarations.

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

5. An appeal on this ground is that at the time the enforcement notice was issued (10 February 2015), no enforcement action could be taken in respect of any breach of planning control relating to the matters stated in the notice. The breach relates to the erection of a building and to its change of use as a separate dwelling house. It is necessary for the appellant to demonstrate on the balance of probability that the building was substantially completed and continuously occupied as a dwelling for a period of four years prior to the issue of the notice. The relevant date is therefore 10 February 2011.
6. Some 23 statutory declarations have been submitted by the appellant in support of his case.

#### *The building*

7. The appellant states that the building was constructed in 3 phases. The original Section (A) was constructed in 2005, replacing an earlier structure, and comprised a living room, bedroom/kitchenette and shower room. This was extended in 2007 with the addition of a bedroom and changes to the internal layout (Section (B)). It was further extended with an additional bedroom and attached garden store (Section (C)) but as referred to earlier, the garden store does not form part of the allegation or the appeal site.
8. An aerial photo taken in 2009 and submitted by the appellant shows Sections (A) and (B) although there is no date on the photo. An oblique aerial photograph submitted by Richard Hand and Claire Harvey with their statutory declarations shows the same sections of the building and the date of the oblique photograph is stated to be February 2009.
9. In the statutory declaration of Miss Joanne Salter, she states that she lived at the chalet with Miss Leanne Hicks (the appellant's daughter) from July 2009 to September 2010 and that a second bedroom was added later. Consequently the earliest date that Section (C) could have been constructed is after September 2010. Mr Stuart Thomas in his statutory declaration states that he helped the appellant build the second bedroom and small shed in 2010. This would still have been achievable within that year and I have no reason not to accept his declaration.
10. On the basis of the evidence before me I conclude that the chalet structure was constructed more than four years before the relevant date and accordingly it would therefore be immune from enforcement action against operational development through the passage of time. I note the Council's comments in respect of the building not being constructed under permitted development rights but in view of my conclusion regarding when the various sections were built, this argument carries little weight.

#### *The use*

11. Some of the statutory declarations are of little evidential value as they do no more than state that Ms. Leanne Hicks was at the property at certain times, with no information about the internal layout or whether it was being used independently of the White House. However evidence from some of the

declarations, including those from tradesmen, indicate that the use and occupation of the building as it was extended was as follows.

12. Section (A) was occupied By Ms Leanne Hicks from the end of 2006 who continued occupation after Section (B) was built in 2007 until November 2012. She vacated the property between October and December 2008 whilst at College. Her boyfriend Chris Mumford stayed at the chalet from time to time from September 2006 to April 2008.
13. Sections (A), (B) and (C) were occupied by Ms Leanne Hicks from the end of 2010 for 1 year 10 months when the appellant, Mr Hicks occupied the building from November 2012 to September 2014, whilst White Cottage was being refurbished. Mr Liam Richards lived in the second bedroom in the summer of 2012. Since Mr Hicks' re-occupation of White Cottage in September 2014, the agent advises that The Chalet has been vacant.
14. The agent is of the view that if the occupation of the sections of the building is considered separately, then Section (C) has not been occupied in excess of 4 years and the use is not immune from enforcement action. I see no reason to disagree with this conclusion.
15. With the exception of Section (C), the property has been occupied as an independent dwelling in excess of 4 years prior to the relevant date. Although there was a period of non occupation for a short time in 2008, this is not significant in that more than 4 years have elapsed since then and prior to the relevant date. Balanced against this is the absence of any tenancy agreements, separate Council Tax or utility bill records to support the argument that the chalet has been used as a separate independent dwelling. Furthermore, the Council draws attention to the common practice of some islanders to move out of their main residence to a curtilage building for the purpose of renting out the main building as a holiday let. However, in this case I consider that the Sections (A) and (B) have been occupied as an independent dwelling for the relevant period.
16. I conclude that the appeal on this ground should succeed insofar as the operational development carried out in 3 stages has been substantially completed in excess of 4 years prior to the date of the notice; and that the use of Sections (A) and (B) as a self contained dwelling has also continued for a similar period. However the use of Section (C) as a dwelling has not been continuous for the requisite 4 year period and the appeal on this ground in respect of this part of the building fails. As the appeal is successful for Sections (A) and (B) it is unnecessary for me to consider the appeal under grounds (a) and (f). However I consider the ground (a) appeal for Section (C) (excluding the garden store) below.

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

17. As I have already concluded that the operational development representing the final part of the chalet erected as Section (C) is lawful, the appeal on this ground relates solely to whether planning permission should be granted for the use of the structure as part of the lawful dwelling occupying Sections (A) and (B) of the chalet.
18. I consider the main issues to be the effect of the development on the character and appearance of the Conservation Area, the Area of Outstanding Natural

Beauty and Heritage Coast; and, whether development accords with relevant national and local planning policy.

19. As the structure exists and is lawful, and that the use of Sections (A) and (B) is lawful, I consider that the use of Section (C) (excluding the garden store) as a part of the dwelling would have no material effect on the character or appearance of either the Conservation Area or AONB and Heritage Coast.
20. The parties make reference to the requirement of the National Planning Policy Framework in respect of the provision of a 5 year supply of housing but such considerations are irrelevant given my conclusion that the use of Sections (A) and (B) of the chalet as a dwelling is lawful. Similarly due to the facts in this case I attach little weight to the saved Policy 3 of the Isles of Scilly Local Plan 2005 which seeks to ensure that new housing is made available to meet the needs of the local community housing.
21. The Council has suggested that in the light of permission being granted for the whole structure, two conditions should be imposed; namely that permitted development rights should be withdrawn for external alterations to the structure and that a plan should be submitted showing the domestic curtilage.
22. Neither condition would be appropriate. Being lawful, Sections (A) and (B) will already benefit from permitted development rights and it would serve little purpose to withdraw them from part of the structure. In respect of the curtilage, the allegation relates only to a 2 bed chalet as outlined in red on the plan attached to the enforcement notice and not to any garden land that could constitute a curtilage for the purposes of establishing permitted development rights. That would be a matter to be determined by the Council at a future time.
23. Having had regard to all the material considerations, I conclude that planning permission should be granted for the use of Section (C) (excluding the garden store) as part of the dwelling known as the Chalet that I have found to be lawful.

### **Conclusion**

24. For the reasons given above I conclude that the appeal should succeed in part on ground (d) and in part on ground (a) and planning permission will be granted for the use of Section (C) (excluding the garden store) of the chalet for use as a part of the dwelling known as the Chalet. Accordingly the enforcement notice will be quashed. In these circumstances the appeal under ground (f) set out in section 174(2) to the 1990 Act as amended does not need to be considered.

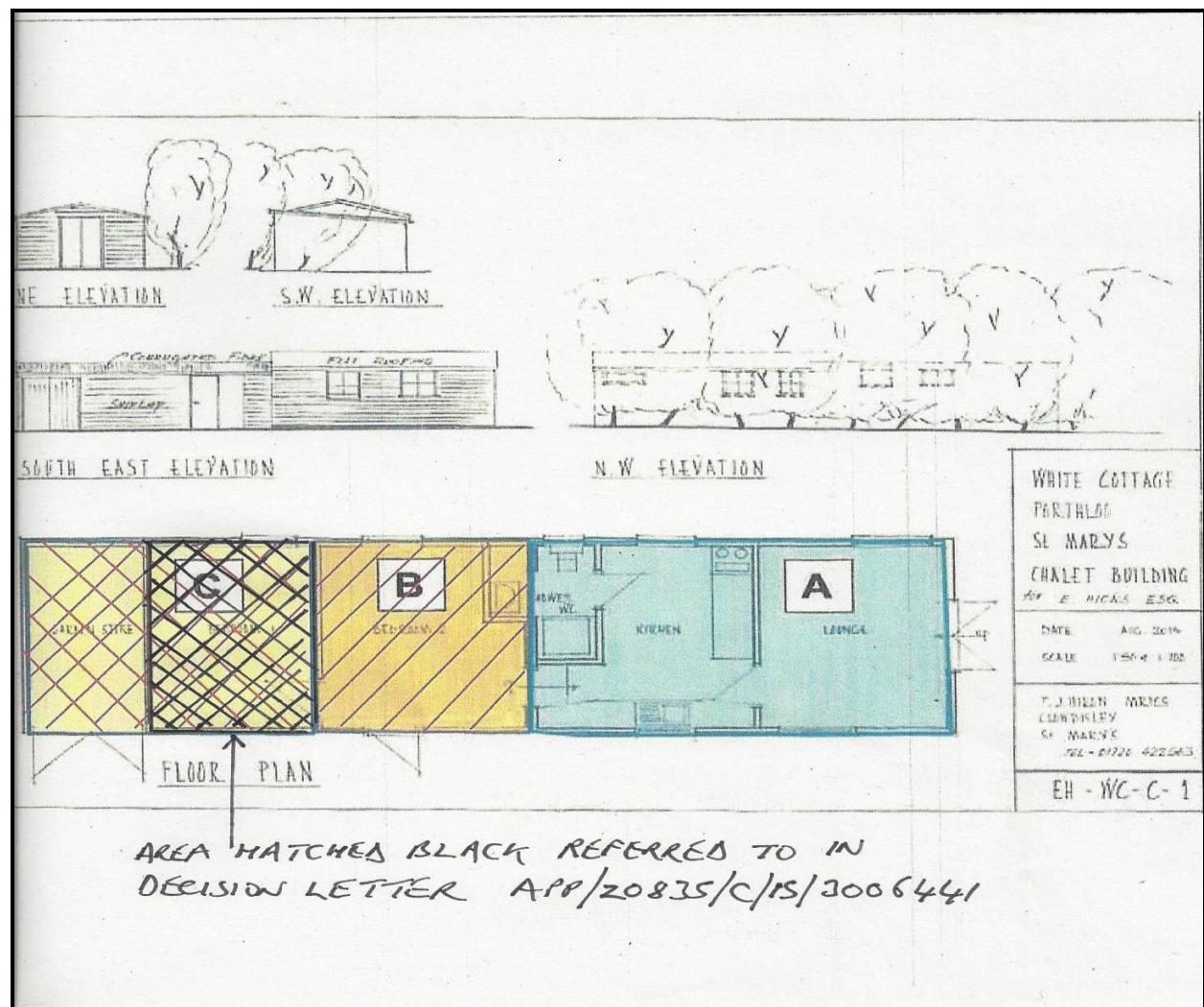
### **Formal decision**

25. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of Section (C) (excluding the garden store) of the building known as the Chalet at The White Cottage, Porthloo, St Mary's, Isles of Scilly , TR21 0NF, as shown on the plan attached to the notice and more particularly, hatched black, on the drawing attached as an annex to this decision.

*P N Jarratt*

INSPECTOR

**ANNEX**



*P N Jarratt*

INSPECTOR