



## Appeal Decision

Site visit made on 30 October 2018

by **D H Brier BA MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 December 2018

**Appeal Ref: APP/Q0505/C/18/3193261**

**17 Richmond Road, Cambridge CB4 3PP**

- 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 I Bramwell against an enforcement notice issued by Cambridge City Council.
- The enforcement notice was issued on 12 December 2017.
- The breach of planning control as alleged in the notice is the material change of use of the premises to from a Class C3 dwellinghouse to short-term visitor accommodation.
- The requirements of the notice are:
  - (i) Permanently cease the use of the premises for short-term let visitor accommodation of less than 90 days duration provided for paying occupants.
  - (ii) Permanently cease and remove all forms of advertising the entire premises for let in relation to short-term let visitor use.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (g) of the Town and Country Planning Act 1990 as amended.

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

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### Preliminary Matters

#### *Grounds of Appeal*

1. On the appeal form the boxes for grounds (a), (c) and (g) have been ticked. The accompanying statement of case, however, refers to grounds (a), (c) and (f). Notwithstanding this, the submissions in the part of the statement headed ground (f) are more appropriate to ground (g). It seems to me therefore that the appellant's references to ground (f) are erroneous. In the light of this, and mindful that the Council's statement addresses ground (g), I will determine the appeal on the basis of the grounds of appeal as indicated shown on the appeal form.

#### *Application for Costs*

2. An application for costs was made by Mr I Bramwell against Cambridge City Council. This application is the subject of a separate Decision.

#### *Development Plan and the National Planning Policy Framework (The Framework)*

3. The reasons for issuing the notice cite a number of policies in the Council's Local Plan, adopted in 2006. However, since the appeal was lodged, a new Local Plan was adopted in 2018. As the 2006 plan is no longer extant, the

current (2018) Plan is now the relevant development plan for the purposes of assessing the planning merits of the appeal.

4. The revised Framework also came into force after the appeal was lodged. Both parties have made submissions in respect of it and I have had regard to these in coming to my decision.

#### *The Enforcement Notice*

5. At my behest, the Inspectorate wrote to the parties on 9 November 2018 seeking views on a number of matters, including the wording of the allegation and the requirements of the notice. The allegation is somewhat imprecise in that the actual nature of the short-term visitor accommodation is not elaborated upon. In response, the Council have drawn my attention to a document entitled 'Short-term Visitor Accommodation: Officer Guidance Note'. This provides some insight into the Council's stance, and contains what is termed a 'working definition', but I do not consider it offers much assistance insofar as putting the allegation into sharper focus is concerned. Moreover, as the document appears to be no more than an internal note, I share the appellant's reservations about its status. Accordingly, therefore, I am not inclined to attach much weight to it.
6. In the light of the foregoing, despite the somewhat general manner in which the allegation is framed, the appellant does not appear to have been misled by it and has been able to respond to it fully via the appeal. As a result, I am not satisfied that there is a need for me to exercise my power of correction.
7. Arguably, requirement (ii) could appear to relate to matters outside the ambit of planning control in that it is not a device that helps facilitate the use in the physical sense. But, taking the appellant's point that if the notice is upheld, there would be nothing to advertise I do not therefore propose to take any action in respect of this matter.
8. While requirement (i) is clear on its face, it points to an element of under-enforcement. Instead of requiring the complete cessation of the use in question, it is only directed at short-term lets of less than 90 days. It may be that this reflects the 'working definition' in the Council's guidance note. However, mindful of the provisions of section 173(11) of the 1990 Act, compliance with the notice could give rise to something that, despite the Council's definition, could well be interpreted as another form of relatively short-term residency. Given the second reason for issuing the notice, this is something that the Council appear to be seeking to avoid.
9. The potential problem I have identified could have been resolved by correcting the notice by deleting the reference to 'of less than 90 days duration' from requirement (i). However, I am not satisfied that it would be appropriate for me to do so in this instance. As I see it, such a step would cause the appellant injustice as in this respect it would leave him worse off than would have been the case had he not lodged the appeal.

#### **Appeal on Ground (c)**

10. In order for the appeal on this ground to succeed it has to be shown that there has not been a breach of planning control. Ground (c) is a legal ground of appeal, distinct from any planning merits. In particular, the Courts have held that the onus of proving it lies with the appellant.

11. In essence, the premise underlying the appeal is that the use of the premises as what the appellant terms 'serviced accommodation/short-term holiday let' does not amount to a material change of use.
12. The appeal property is a 3 storey terrace house which, according to the appellant has 3 bedrooms and is let out for a maximum of 5 guests. Citing the Court of Appeal judgement in *Moore v Secretary of State for Communities and Local Government [2012] EWCA Civ 1202*, and pointing out that the appeal property is let out as a whole entity as opposed to separate parties at the same time, the appellant contends that it is still used as a permanent dwelling. It is submitted that the occupation of the dwelling by single households, whose comings and goings would differ little from the use of the house by a family, is the same as for a Class C3 dwelling. No change of use has occurred.
13. In terms of the size of the appeal property and the number of guests involved, the scale of the use in question is more modest than was the case in *Moore*. Nevertheless, as the judgement in *Moore* made clear, whether the use in question amounts to material change of use is a matter of fact and degree. In the light of this, the Council's 'working definition' offers scant assistance.
14. In terms of the numbers of guests at any one time, the information contained in the appellant's log, which spans a period from 21 January 2017 to 2 January 2018, has not been questioned. As the majority of the entries concern 4 or 5 people, this is probably not dissimilar from the numbers to be found in many of the family houses in the area. However, while it is claimed that the occupancies display the characteristics of single households, the log only records the number of guests, when they stayed, and for how long. It may well be that a proportion at least of the guests are single families, but this is not clear from the log. Similarly, while mention is made of 'household groups' whether these comprise individuals who have come together as groups, or some other relationship or common interest or purpose is involved, has not been made clear either.
15. What is clearer though, is that the log records 60 separate stays during the 12 month period it covers. These include 9 stays in one month (June 2017) and 7 apiece in 2 other months (April 2017 and October 2017). The 60 figure is rather less than the 72 logged by a complainant mentioned in the Council's planning enforcement report. Nevertheless, even the appellant's lower figure points to a very frequent turnover of occupants, a trait that is apparent throughout the year. To my mind, the number of recorded stays points to a markedly transient pattern of occupancy. This somewhat striking characteristic which, as the log notes, is only based upon a 45% occupancy rate, is not something I would normally associate with a dwellinghouse, or even a house in multiple occupation.
16. The transient nature of the use also tends to be borne out by the recorded duration of stays. Although the appellant's log includes individual stays of 11, 13 and 20 nights, for the most part, the stays are for less than 5 nights; indeed, the appellant calculates their average length to be 2.7 nights. I regard the consistently short periods of residency, together with the frequency of the associated comings and goings as occupants arrive and depart, as another feature that distinguishes the nature of the use in question from the more settled pattern of occupancy generally found at a house.

17. There is nothing to indicate that, in terms of its facilities, the appeal property is anything other than a house in the physical sense. However, the evidence indicates that the character of the use in question, in particular the notably transient pattern of occupancy, together with the pattern of related arrivals and departures, is significantly different from that normally associated with a house. The difference is such that, as a matter of fact and degree, I consider it amounts to a material change of use. In the apparent absence of any relevant planning permission for the use in question, I find there has been a breach of planning control. Accordingly, therefore, the appeal on ground (c) fails.

### **Appeal on Ground (a) and the Deemed Application**

18. I consider there are 2 main issues. Firstly whether there would be adverse consequences for the city's stock of housing. And secondly, whether the living conditions of the occupiers of the nearby dwellings would be adversely affected.
19. As noted in paragraph 3 above, planning policies for the area are contained in the Council's 2018 Local Plan. Unlike the 2006 Plan cited in the reasons for issuing the notice, there is no policy that deals exclusively with the loss of housing. However, Policy 3, headed 'Spatial strategy for the location of residential development' indicates, amongst other things, that in order to maintain housing provision, planning permission to change housing to other uses will only be supported in exceptional circumstances.
24. Although the Local Plan contains no policy expressly directed at the type of use in contention here, Policy 77 deals with concerns the development and expansion of visitor accommodation. In addition, the main thrust of Policy 78, headed 'Redevelopment or Loss of Visitor Accommodation', is to prevent the loss of such accommodation. Policy 35 is headed 'Protection of Human Health and Quality of Life from Noise and Vibration'. Amongst other things, it indicates that development will be permitted where it is demonstrated that, amongst other things, it will not lead to significant adverse effects on the quality of life from noise.
20. On the first issue, it seems to me that the change in the pattern of occupancy of the appeal property associated with use has led to a reduction of the city's stock of permanent living accommodation. I therefore find the use in question contrary to Policy 3. Although, perhaps self-evidently, the reduction would not amount to much, there would be adverse consequences for the stock of housing nonetheless.
21. I accept that, by providing a base for people visiting the city, the use in question contributes to the city's visitor economy. I am also mindful that the 2018 Local Plan is generally supportive insofar as the provision and safeguarding of visitor accommodation is concerned. However, noting that Policy 77 and paragraphs 8.53 and 8.54 of the supporting text focus primarily on the city centre, I do not consider that any benefit insofar as the visitor economy is concerned amounts to an exceptional circumstance sufficient to justify the use in question.
22. Notwithstanding the above points, I have had regard to the possible scenario that compliance with the notice, as discussed in paragraphs 8 and 9, could give rise to. In particular, the possibility that some form of what could well be regarded as short-term visitor accommodation, despite the definition contained

- in the Officer guidance note, could ensue. This tends to diminish the weight to be attached to my conclusion on first issue somewhat.
23. Turning to the second issue, Richmond Road lies within an established residential area, characterised by a fairly tight-knit pattern of housing, the appeal property being in the middle of a short terrace of 3 houses. As a result, activity associated with the use of the appeal property, such as comings and goings by guests, is likely to be apparent to, and to affect, the occupiers of the nearby dwellings.
  24. I acknowledge that ordinary families are capable of generating a good deal of activity. Be that as it may, the pattern of comings and goings by visitors, who may wish to take full advantage of the attractions the city has to offer, in the evenings as well as the daytime, could well be very different from the lifestyles pursued by the more settled populace. And, such activity may well occur at times when most residents ought reasonably to be able to expect periods of relative peace and quiet.
  25. That said, there is nothing that shows that activity inside the property has given rise to serious problems to date. The appellant notes that no action has been taken under environmental protection legislation, and the Council acknowledge that there is generally an acceptable noise level within the premises. I am also mindful that the occupier of one of the adjoining properties in the terrace has indicated that she has never experienced any issues in this respect. A similar view has been expressed by another neighbour.
  26. On the face of it, the contents of the preceding paragraph appear to provide persuasive reasons for viewing the use in question in a favourable light. However, appended to the submissions made by the local Residents' Association is a reference to late night 'revelries' during a particular weekend. Neither this, nor the references to instances of loud voices and car doors slamming, have been challenged by the appellant.
  27. The 'house rules' for the property that have been drawn my attention appear to reflect a genuine desire on the part of the appellant to ensure that neighbours are not inconvenienced. But, as the supervision of the property only appears to extend to meeting guests when they arrive, and cleaning in between lets, ensuring that the rules are adhered to appears to be very much down to individual guests. And, even if there is only one complainant, as the appellant claims, this does not necessarily mean that the reported problems should be disregarded or should carry little weight. On the contrary, if anything, these matters strongly suggest that the Council's concerns are well-founded.
  28. As recorded occupancy rate is only 45%, it is not inconceivable that a greater number of stays, together with associated activity could ensue. This, in turn, could well increase the potential for further disturbance to the neighbours. Likewise, the possibility that the ownership of the property could change at some stage in the future, and a future owner may have less regard for the well-being of the neighbours, cannot be discounted. These are all longer term matters that I have to have regard to.
  29. In my view, good neighbourliness is an important yardstick for assessing a use such as this. Even though there is no evidence of a statutory nuisance, activity associated with people entering or leaving the accommodation, even if this amounted to no more than good natured conversation, together with vehicles

stopping and starting, and the closing of car doors, could well be disturbing to the neighbours whose living conditions would be adversely affected to a significant degree. Accordingly, therefore, I consider the use in question is contrary to Local Plan Policy 35.

30. A further factor referred to by the Residents Association is the claimed non-participation in events at the local Community Centre by occupants of the property. This is perhaps understandable, as guests using the property may well have other priorities during their generally brief stays, but it is probably a reflection of the highly transient nature of the occupancy of the appeal property.
31. While other aspects of the city's economy may well benefit from fresh influxes of short-term visitors, it seems to me that that the non-participation described is likely to extend to other community institutions such as libraries, schools and the like. The consequences attributable to one property in this respect would probably not amount to much. But, were this to be repeated elsewhere, far from helping to create a sustainable community, the cohesion of the local community could well be eroded. This, in turn, could well make the area a less pleasant place in which to live and would be at odds with the social objective to support strong vibrant and healthy communities contained in The Framework<sup>1</sup>. Nor would it be consistent with the promotion of social interaction advocated in The Framework<sup>2</sup>. I see all this as a further disadvantage which adds to my concern. I am not satisfied that this concern could be overcome by conditions, including that suggested by the Council.
32. I appreciate that the scenario referred to above could be said to apply to the sort of letting pattern that may result from compliance with the notice. I am not inclined to attach much weight to this though, as it is reasonable to assume that occupants staying for longer would be more likely to be encouraged to engage with the local community.
33. In the light of the foregoing, the appeal on ground (a) fails. I find the use in question contrary to the provisions of the development plan when read as a whole. Accordingly, therefore, in accordance with the development plan, the deemed application should be refused. Other considerations, including The Framework, do not indicate otherwise.

### **Appeal on Ground (g)**

34. Pointing out that bookings are taken some time in advance when Airbnb requires up-front payments, the appellant seeks what is described as a 'compromise' compliance period of 4 months.
35. I accept that extending the compliance period as sought would help the appellant meet his outstanding obligations. I also appreciate that this would probably mean that fewer of those who have made advance bookings would be inconvenienced. However, while I accept that some people who have made bookings, doubtless in good faith, may encounter some difficulties, I am not satisfied that either of these factors is sufficiently compelling to show that the time given to comply with the notice is too short or that a longer compliance period is warranted in this instance.

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<sup>1</sup> National Planning Policy Framework: paragraph 8 b).

<sup>2</sup> Ibid: paragraph 91 a).

36. The appeal on ground (g) therefore fails.

**Other Matters**

37. I have taken into account all the other matters raised. None, however, are sufficient to outweigh the considerations that have led me to my conclusions.

**Formal Decision**

38. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

*D H Brier*

Inspector