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## Appeal Decision

Site visit made on 6 August 2019

**by Elizabeth Jones BSc (Hons) MTCP MRTPI**

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

**Decision date: 2 October 2019**

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**Appeal Ref: APP/R3705/C/18/3217237**

**The High House, Broad Lane, Fillongley, Coventry CV7 8EH**

- 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 Mrs Kate Venables against an enforcement notice issued by North Warwickshire Borough Council.
- The enforcement notice was issued on 17 October 2018.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of a residential house (Class C3) to a mixed use as residential house and events venue (*Sui Generis*).
- The requirements of the notice are cease the use of the residential home for an events venue.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (a) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary Decision: The appeal is dismissed and the enforcement notice is upheld with correction and a variation.**

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### The Enforcement Notice

1. The allegation refers to a change of use. However, the act of development is a '*material*' change of use. The word '*material*' should therefore be inserted into the allegation. Under s176(1) of the 1990 Act as amended, I may correct any defect, error or mis-description in the notice, or vary its terms, if there would be no injustice to the Council or appellant. The appellant argues that there is no material change of use and so clearly knew that was the basis for the allegation. I am satisfied that no injustice is caused to either party by correcting the notice.

### Background

2. High House is a large detached dwelling within the Green Belt. There is no dispute between the parties that the lawful use of the property is as a dwellinghouse within the meaning of Class C3 of the Town and Country Planning (Use Classes) Order 1987, as amended.
3. The house provides facilities including a number of reception rooms, nine/ten bedrooms, a number of bathrooms and a gym. It is set in large gardens which include a tennis court, croquet lawn, a swimming pool, an outdoor kitchen and entertainment area and a children's play area. For personal reasons the appellant and her family ceased full time occupation of the property in around 2016 to live elsewhere thus, providing them the opportunity to rent out the appeal property.

4. According to the appellant, the property is now rented out for “holiday leisure breaks” as well as being used on occasions by the appellant and her family.

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

5. The appeal on ground (c) is that the matters alleged in the enforcement notice do not constitute a breach of planning control. The onus of proof is on the appellant to show that there has not been a breach of planning control and the standard of proof is on the balance of probabilities.
6. The appellant refers to the Court of Appeal judgement *Moore v SSCLG*<sup>1</sup>. In that case a large house was rented out through a company for short term holiday lets. The Court found that “whether the use of a dwellinghouse for commercial letting as holiday accommodation amounts to a material change of use will be a question of fact and degree in each case, and the answer will depend upon the particular characteristics of the use as holiday accommodation. Neither of the two extreme propositions — that using a dwellinghouse for commercial holiday lettings will always amount to a material change of use, or that use of a dwellinghouse for commercial holiday lettings can never amount to a change of use — is correct”.
7. In the context of *Moore*, the question to be answered was whether the character of the use of this dwellinghouse as a private residence had been changed so substantially as to amount to a material change of use. It is a question of fact and degree. It is a decision that is based on the particular facts of the case.
8. The Council’s view is that since approximately mid 2018 there has been a material change in the character of the use.
9. In this case the appellant contends that the property is rented out generally at weekends for the celebration of family occasions. Other times it is used by the appellant’s family. The appellant contends that the renting out of the property for “small groups of families for their own private celebrations, relaxation and enjoyment” does not amount to a material change of use of this residential property.
10. Local residents have questioned the frequency of family use. Nevertheless, there is no basis to conclude that the property is not used as a private dwelling by the appellant and her family some of the time. This is reflected in the allegation which refers to the use as a residential house as a component within the mixed use. Moreover, there is no evidence to suggest that the appellant’s family will not take up full time occupancy of the house at some future date.
11. The appellant accepts that in 2016/2017 mistakes were made concerning the type of events allowed at the premises but submits that this has since been addressed and steps taken to reduce the possibility of noise and disturbance associated with the ‘rented’ use by way of strict house rules, a signed agreement and a deposit which is lost if the house rules are not adhered to. Notwithstanding these steps, the evidence from neighbouring residents includes records of times and dates in 2018 and 2019 which describe regular late-night disturbances from the use of the property by partying guests. These include reports of shouting, swearing, screaming and loud music.

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<sup>1</sup> [2012] EWCA civ 1202

12. Whilst the appellant argues that the property is currently only rented out to "small groups of families for their own private celebrations, relaxation and enjoyment", this is contradicted by the evidence from local residents. Their evidence includes a number of screen shots from a number of websites which indicate that the property is available for hire for celebration events including hen parties, weddings and large family gatherings, corporate events, TV/filming location shoots and ticketed public events. Thus, whilst the appellant contends that the 'rented' use of the property is more regulated and controlled than when it first began and the property is only let out to family groups of up to a maximum of twenty people, the evidence clearly demonstrates that the property continues to be advertised and let out to different types of groups for a variety of reasons.
13. Moreover, although the appellant states that up to 20 guests are allowed to stay and there are strict house rules<sup>2</sup> which are supported by a signed agreement and substantial deposit, the property can sleep up to 23 people and it is advertised for events of up to 50 people. Thus, the use is not confined to what might be considered as a typical 'holiday leisure break' for small family groups and it is clearly directed at large groups. Furthermore, the evidence indicates that there is a regular pattern of bookings for the property, this is confirmed in the appellant's Statement of Case dated May 2019 which states that there are 20 dates booked until the end of 2019, all at weekends with further bookings in 2020. No evidence is provided regarding the nature of these bookings or the number of guests attending.
14. Despite the appellant's assurances that the property is now only rented out to small groups of families for holiday leisure break there is evidence from residents to the contrary which indicates that it is not only small family groups which rent the property. The evidence details an account from a house sitter at the neighbouring property being disturbed on a number of occasions including one from a Saturday evening until four o'clock on a Sunday morning which has led to the house sitter feeling unable to continue to house sit. Other accounts include two events in January and April 2019 respectively of being disturbed by screaming taking place on the tennis court at six o'clock in the morning and on another occasion of a loud Asian event where the noise continued late into the night; both of which were harmful to the neighbour. Consequently, I am not convinced that the stricter control imposed by the appellant or the conditions restricting any music to the inside of the premises at all times and restricting outside activities to finish by 23.00 hours have been or would be effective in the future of overcoming such harm.
15. For there to be a material change of use there needs to be some significant difference in the character of the activity from that previously. The appellant argues that given the extent of the indoor and outdoor facilities the property offers, its use for events generates no more noise and car parking issues than when used by the appellant's family. However, while there may be common features between some events and the appellant's family, this is not a valid comparison. In assessing whether there has been a material change of character in the use, the impact of the use of the property for event purposes must be considered as a whole. The frequency, nature and the scale of the events, and the potential for off-site effects on the character of the highway due to the significant increase in the comings and goings and on residential

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<sup>2</sup> Appendix 4 Appellant's Statement of Case

amenity, due to noise and disturbance, can all be considered as indicative of a material change in planning terms.

16. For the above reasons, based on the evidence, I conclude that there is a definable change in the character of the use made of the appeal site as an events venue, which is significantly different in character compared to the lawful use as a dwellinghouse. The intensity and nature of the use for events goes well beyond that which may reasonably be expected of a lawful dwellinghouse use.
17. As a matter of fact and degree, I consider that there is a material change of use from a residential house (Class C3) to a mixed use comprising a residential house and events venue (*Sui Generis*). Thus, there is a breach of planning control as alleged in the notice.
18. The appeal on ground (c) fails.

### **The appeal on ground (a) and the deemed planning application**

#### **Main Issue**

19. The appeal site is located within the Green Belt. The Council considers that having regard to the National Planning Policy Framework (the Framework), the mixed use of the property falls within paragraph 146 (d) which advises that the re-use of buildings provided that the buildings are of permanent and substantial construction, preserve openness and do not conflict with the purposes of including land within it are not inappropriate development in the Green Belt. I have no reason to take a different view and therefore I do not need to consider the Green Belt further.
20. Thus, the main issue is the effect of the development on the living conditions of local residents with particular reference to noise and disturbance.

#### **Reasons**

##### *Living Conditions*

21. High House is located in a predominantly rural location on a quiet country lane. Although the property occupies a substantial plot it is adjacent to another residential property known as Hardingwood House with other residential properties nearby.
22. The evidence provided from neighbouring residents includes records of times and dates which describe regular late-night disturbances from the use of the property by paying guests. These include reports of shouting, swearing, screaming and loud music.
23. There does not need to be a statutory noise nuisance arising under environmental protection legislation for noise to be unacceptable in planning terms. Thus, although the Council have not issued a formal 'noise notice', having regard to the outdoor facilities which include a swimming pool, tennis court, landscaped garden, large patio and outdoor kitchen/entertainment area with seating, it is reasonable to assume that noise will be created when groups of people congregate outside, particularly those partying. I accept that the appellant's family and friends when staying at the property have use of the same facilities, however, it is likely that the number of parties taking place as a result of the mixed use will be greater when compared to a single-family

- household and as confirmed by the appellant, the use of the house by paying guests is substantially at weekends. Moreover, having regard to the way in which the property continues to be advertised, there is potential for larger groups of paying guests with noise levels of such events being much higher.
24. For the steps taken by the appellant to 'police' the use of the property to be successful, in my view, would require a degree of control that is difficult to achieve as to be unrealistic and which local residents' experiences suggest has not been successful to date despite assurances to the contrary from the appellant. Moreover, the imposition of planning conditions as suggested by the council would not in my view, acceptably mitigate the identified harm.
25. It is accepted that given its location and the limited public transport the lawful residential use of the property will generate a certain amount of traffic. Notwithstanding, the property cannot be seen from the highway and a number of parking spaces are provided within the appeal site, residents describe the comings and goings of people arriving by car, coach and taxi resulting in on-street parking issues and the associated noise and disturbance of comings and goings.
26. The appellant's evidence concerning future bookings provides no indication of the nature of those bookings or the numbers attending however, it is reasonable to assume that the nature of the use has the potential to generate a level and frequency of noise which would be harmful to local residents particularly occupiers of Hardingwood House which is in close proximity to the appeal site.
27. The benefits the development may afford in terms of its contribution to tourism, aiding health and mental health wellbeing and promoting diversification as highlighted by the appellant are insufficient to outweigh the identified harm to the living conditions of local residents.
28. Overall, based on the evidence before me, I consider that the noise and disturbance associated with the mixed use, is harmful to the living conditions of neighbouring residents having regard to noise and disturbance. The development is contrary to Policy NW1 and NW10 of the North Warwickshire Local Plan Core Strategy (2014) which amongst other things, state that development should avoid and address unacceptable impacts upon neighbouring amenities through overlooking, overshadowing, noise, light, fumes or other pollution.

### **Other Matters**

29. The appellant refers to correspondence from the Council and argues that the Council previously considered that a material change of use of the property had not occurred and no further action was necessary. The continuing use of the property as an 'events venue' led to the enforcement notice being issued. Whether it was expedient to issue the notice is a matter for the Council and is not relevant to the s174 grounds of appeal. Thus, I afford little weight to the appellant's comments regarding this matter.

### **Conclusion**

30. For the above reasons and with regard to all other matters raised, I conclude that the appeal on ground (a) should not succeed. I shall uphold the

enforcement notice and refuse to grant planning permission on the deemed application.

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

31. Ground (g) is that the time given to comply with the requirements of the notice is too short. The appellant has requested twelve months to allow for existing bookings to be honoured. Whilst the Council considers that three months is sufficient time to comply with the notice, in its appeal submissions it acknowledges that the compliance period could be extended to six or nine months to honour existing bookings.
32. The appellant's evidence suggests that bookings have been taken up to March 2020. Given the harm it is causing the development should not be allowed to continue for any longer than is necessary. I consider that a twelve-month period for compliance would be unnecessarily long and as the Council has indicated if agreed would enable the use to continue for a complete 'annual season'.
33. Having regard to the submission from both parties, I consider that a period of nine months would represent a more reasonable length of time which would strike the appropriate balance between the legitimate interests of enforcing planning control and the interests of the appellant. To that extent the appeal on ground (g) succeeds.

### **Formal Decision**

34. It is directed that the enforcement notice be corrected by the insertion of the word 'material' before the words 'change of use' in paragraph 3 of the notice.
35. It is directed that the enforcement notice be varied by the deletion of the words "three months" from paragraph 6 (Time for Compliance) of the notice and the substitution therefor of the words "9 months."
36. Subject to the above correction and variation, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Elizabeth Jones*

INSPECTOR