



Appeal Decisions

Site visit made on 9 June 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2020

Appeal A: APP/N4720/C/19/3243956

Appeal B: APP/N4720/C/19/3243957

Flat 4, Littlecroft, Bridge Close, Boston Spa, Wetherby LS23 6HE

- 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 Matthew Woods and Mrs Lynn Woods against an enforcement notice issued by Leeds City Council.
- The enforcement notice was issued on 26 November 2019.
- The breach of planning control as alleged in the notice is the material change of use from residential (Class C3) to a mixed use of residential use (Class C3) and holiday letting/commercial (leisure or business) use (sui generis).
- The requirements of the notice are:
 - Step 1: Permanently cease the use of the property as short term commercial let.
 - Step 2: Permanently cease and remove all forms of advertising (including on line) associated with the unauthorised use of the property as a short term commercial let.
- The period for compliance with the requirements is two months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.

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

The appeals on ground (c)

1. The ground of appeal is that the matter alleged does not constitute a breach of planning control. Under s55 of the Act development includes the making of any material change on the use of any buildings or land. ‘Material’ is not defined in the Act and therefore is a matter of judgement. In this case, what is important is the nature and characteristics of the original authorised residential use and the mixed use short term letting and residential. The nature and effect of any change of use needs to be considered. Indeed, case law¹ confirms that whether the use of a dwellinghouse for commercial letting as holiday accommodation amounts to a material change of use is a question of fact and degree in each case, and the answer will depend on the particular characteristics of the use as holiday accommodation.
2. From the evidence presented and my own observations of the property the flat has facilities which enable it to be used for residential purposes, but this was not how it was being used at the time the enforcement notice was served. It is my understanding that the appellant and his family use the property for short breaks and he plans to retire to the appeal property at some time in the future.

¹ Moore v SSCLG & Suffolk Coastal DC [2012] EWCA Civ 2101

However, the pattern of use associated with the alleged mixed use for residential and short term holiday letting is materially different from a residential use. As a matter of fact and degree the use of the property is materially different in character to that of a C3 residential use. The pattern of movements associated with arrivals and departures, the likely short term nature of stays, different characteristics of visitor groups and general tendency for having less awareness of, and consideration towards, neighbouring residential occupants and servicing arrangements gives holiday letting a quite different character.

3. The appellant contends that the Council has no policy guidance on this type of use and that properties are looked at on a case by case basis. For the reasons I have set out above a breach of planning control has occurred and the appeals on ground (c) fail.

Appeal A on ground (a)

4. The ground of appeal is that planning permission should be granted. The main issue is the effect on the living conditions of the occupants of adjoining residential properties with particular reference to noise and disturbance.
5. The appeal site is a two bedroom flat in a building which contains four other residential flats. Access into the property is off a relatively enclosed shared courtyard and the access door leads to a communal hallway and staircase which serves four of the flats. The courtyard is overlooked at close quarters by a number of residential properties which share the access arrangements and I also observed at my visit that the entrance door to the appeal flat is directly opposite the entrance door to another flat. It is clear to me that the flats have a particularly close physical relationship to one another and the movements and activities taking place in one is likely to affect the living conditions of others.
6. The appellant's evidence demonstrates that there is a high and frequent turnover of visitors staying at the appeal property. This high level of turnover results in there being very regular and frequent servicing of the property for cleaning and checking purposes. The additional movements and activity generated by the flat, above and beyond those that would be associated with a residential use is therefore likely to cause noise and disturbance. Given the access arrangements and close proximity to other residential properties in the building the additional activity is likely to be particularly noticeable by adjacent residents in conflict with reasonable expectations of their quiet enjoyment of their places of residence.
7. I understand that there are measures in place to mitigate potential noise and disturbance by having no children under 12 unless by specific consent of the appellant, no parties or loud music and other parameters. However, local residents' evidence is that the use of the property has led to additional noise, activity and general disturbance to the detriment of their living conditions. Given my own observations I find no reasons to dispute these claims.
8. Therefore. I conclude that the development has a harmful effect on the living conditions of the occupants of adjoining residential properties with particular reference to noise and disturbance. As such it conflicts with Saved Policy GP5 of the Leeds Unitary Development Plan (Review 2006) Volume 1: Written Statement and the National Planning Policy Framework which, among other

objectives, require development proposals to avoid problems of loss of amenity, among others. The appeal on ground (a) fails.

The appeals on ground (f)

9. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve its purpose. The purpose of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the use as a short term commercial let to permanently cease, the purpose is clearly to remedy the breach. Any lesser steps would not achieve that purpose.
10. The appellant refers to Greater London where short term letting is allowed up to ninety nights. However, that specifically relates to the Deregulation Act 2015 and carries little weight in this case. I do not consider the requirements to be excessive, nor do I find that there is a grey area with respect to the use of the appeal property. In this respect the appeals on ground (f) fail.

Conclusion

11. For the reasons given above I conclude that the appeals should not succeed.

Formal Decision

12. The appeals are 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.

A A Phillips

INSPECTOR