



Appeal Decisions

Hearing Held on 23 March 2021

Site visit made on 24 March 2021

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2021

Appeals Refs: APP/Q0505/C/20/3257639, 3257640 Land at The Moorings, Thrifts Walk, Cambridge CB4 1NR

- 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 the Reverend Helen Orr and Doctor James Orr against an enforcement notice issued by Cambridge City Council.
- The enforcement notice, numbered EN/0066/19, was issued on 15 July 2020. The notice will be referred to as **Notice 1** for the purposes of these appeal decisions.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the Land (identified in red on the attached plans) to a mixture of C3 residential dwelling and short-term visitor accommodation (Sui Generis) (identified in blue on the attached plan for identification purposes only).
- The requirements of the notice are:
 - i. Permanently cease the commercial use of the outbuildings (identified in blue on the attached plan) at the premises for short-term visitor accommodation (sui generis use) provided for paying occupants.
 - ii. Permanently cease and remove all forms of advertising the commercial use of the outbuildings at the premises for short-term visitor accommodation (sui generis use).
- The period for compliance with the requirements is Four [4] month(s) from the date the notice comes into effect.
- The appeal by the Reverend Helen Orr, ref APP/Q0505/C/20/3257639, is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
- The appeal by Doctor James Orr, ref APP/Q0505/C/20/3257640, is proceeding on the grounds set out in section 174(2) (b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are allowed following corrections of the enforcement notice in the terms set out below in the Formal Decisions.

Appeals Refs: APP/Q0505/C/20/3257642, 3257643 Land at 9 & 9a Thrifts Walk, Cambridge CB4 1NR

- 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 the Reverend Helen Orr and Doctor James Orr against an enforcement notice issued by Cambridge City Council.
- The enforcement notice, numbered EN/01222/20, was issued on 15 July 2020. The notice will be referred to as **Notice 2** for the purposes of these appeal decisions.

- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the Land (identified in red on the attached plan) to a mixture of C3 residential dwelling and short-term visitor accommodation (Sui Generis).
- The requirements of the notice are:
 - i. Permanently cease the commercial use of the 9 Thrifts Walk (ground floor flat) at the premises for short-term visitor accommodation provided for paying occupants.
 - ii. Permanently cease and remove all forms of advertising the ground floor flat for let in relation to short-term visitor accommodation use.
- The period for compliance with the requirements is Four [4] month(s) from the date the notice comes into effect.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decisions.

Application for Costs

1. After the oral event an application for costs was made by the appellants against Cambridge City Council. The admissibility of the application was accepted by the Secretary of State by a decision dated 28 April 2021. The application is the subject of a separate Decision.

Matters relevant to Notices 1 and 2

2. The appeals concern residential properties in a terrace at the southern end of Thrifts Walk. The appellants bought The Moorings, a family dwelling house with a large garden and the self-contained flats at 9 and 9a in December 2017. An internal door provided access between the house and the hallway to the adjoining flats.
3. Thrifts Walk is a short residential street within Ferry Lane Conservation Area. The dwelling types include historic two storey terrace houses, modern semi-detached dwellings with garages and a small close of detached houses. Thrifts Walk is a cul-de-sac, an unadopted highway with no footway or on-street parking controls and is lit by a single gas lamp. Buildings and boundary features provide a high degree of enclosure.
4. The enforcement notices allege material changes of use to a mixed use of "C3 residential dwelling and short-term visitor accommodation (Sui Generis)". Essentially a mixed use is where in a single planning unit the component activities fluctuate in their intensity from time to time but the different activities or uses are not confined within separate and physically distinct areas of land. The planning unit is the physical area against which the materiality of change is assessed.
5. The National Planning Practice Guidance confirms there is no statutory definition of 'material change of use'. Generally, this type of development is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree, determined on the individual merits of a case. Case law has established that an essential consideration is whether there has been a material change in the definable character of the use of the land, as opposed to a change in the particular purpose of a particular occupier. Off-site impacts are relevant, as well as the extent to which an existing use fulfils a planning

purpose and the planning consequence(s) of the loss of an existing use. More particularly, the use of a dwellinghouse for commercial holiday lettings will not always amount to a material change of use, nor is it the case that such a use can never amount to a material change of use¹. The same principles apply in these appeals where the accommodation is described as 'short-term visitor accommodation'.

6. Following discussion at the hearing there was agreement that the enforcement notices should state 'short-term visitor accommodation for paying guests' in order to distinguish the alleged use from the use of accommodation at the properties by family and friends. The appellants also made the point that the word 'commercial' should be deleted from the description because provision of the visitor accommodation was not a hotel business but a supplement to the appellants' income. The Council raised no objection to this request. I agree that these minor corrections are appropriate.
7. In the legal grounds of appeal the onus is on the appellants to prove their case and the standard of proof is the balance of probability.
8. Incidents occurring within Thrifts Walk were drawn to my attention, including the stationing of a caravan over a period of months and the removal of a tree. The incidents are of no direct relevance to the appeals, although they appear to have been divisive within the community and may have affected peoples' sensitivity to and perception of change.
9. Within this context, the two appeals for each property will be considered separately.

THE MOORINGS

10. The Moorings is a five bedroom terrace house with an attached carport and garage. At the back is a large garden of just over 0.5 hectares, which extends to the bank of the River Cam. This land forms part of a protected open space. Towards the north east corner of the garden is an outbuilding that was leased as an artist's studio and is now used by the appellants and their family. Further to the south east is a new building that is used as a study (known as the Clock House). On the opposite side of the garden is a timber building used primarily by the Reverend Orr in connection with her pastoral work (known as the Writer's Cabin). At the far end of the garden are the two outbuildings identified in the enforcement notice. Near the northern boundary is Cam Cottage, a former summerhouse. A shepherd's hut has been sited near the southern boundary. The space along the river frontage is maintained and kept easily accessible for relaxation and leisure by the appellants and their family and probably guests.
11. The gravelled stretch of Thrifts Walk to the front of the terrace house is highway land and provides access to the neighbouring house Lane End. The appellants' ownership is limited to a small western section, beyond the gateway to Lane End, where there is a double garage and associated parking space to the front and side.

Enforcement Notice

¹ *Moore v Secretary of State for Communities and Local Government* [2012] EWCA Civ 2101

12. The notice relates to The Moorings, shown on the plan attached to the notice as encompassing the terrace house, car port and attached garage and all the garden down to the river (the Land). Cam Cottage and the shepherd's hut are identified in blue on the plan.
13. The Council considers the Land is the planning unit. The enforcement notice alleges that the Land is in a mixed use consisting of two primary uses – a residential dwelling and short-term visitor accommodation. The reference to Class C3 and sui generis indicates the type of activities comprised in the alleged new use. The short-term visitor accommodation is identified as taking place only in the two outbuildings identified in blue. The reasons for issuing the notice are directed at this component of the alleged mixed use. Therefore the activity complained of has taken place only on a small area of the Land. The local planning authority has decided to enforce against the planning unit it has defined as a whole, which it is entitled to do, being the area occupied by the alleged mixed use.
14. Representations from interested parties claimed that additional accommodation was used for paying guests but on exploring the matter there is no reason to conclude that was the case in any material way.
15. The detail of the wording of the alleged breach of planning control was discussed at the hearing. Subsequently the main parties also were afforded the opportunity to comment on possible corrections to the wording.
16. The amended wording preferred by the appellants and the Council is "Without planning permission, the material change of the use of the Land to a mixed use comprising a residential dwelling and short-term visitor accommodation for paying guests in two outbuildings (identified in blue on the attached plan for identification purposes only)." This description reflects that a mixed use is not a use falling within any use class and is a use of its own kind (a sui generis use), omits the unnecessary definition of the Land² and incorporates the changes to the description of the visitor accommodation set out above in paragraph 6. These corrections to the original wording are limited in scope and would not cause injustice to either the appellants or the Council.
17. One matter I raised was whether step (i), that requires the use of the two outbuildings to cease, would prevent the use of the main dwelling or other outbuildings as short-term visitor accommodation for paying guests as part of a mixed use. In this respect I had in mind the provisions of section 173(11) of the 1990 Act that operates to grant planning permission where there has been an element of under-enforcement. The Council took the view that by identifying that part of the Land where the short-term visitor accommodation had taken place (the two outbuildings in blue) that the notice appropriately only required the use of those two outbuildings for visitor accommodation to cease. I will proceed on that basis because to increase the scope of the allegation or the requirements by omitting reference to the outbuildings in blue would cause injustice.

Appeals on ground (b)

18. The issue is whether the outbuildings (identified in blue) have been used as short-term visitor accommodation for paying guests as a matter of fact. The

² The Land is defined in paragraph 2 of the Notice: The Land to which the Notice Relates

existence and change to a mixed use and whether such a change was material will be considered under the ground (c) appeals.

19. In response to a Planning Contravention Notice in March 2020 the appellants confirmed and supplied data on the use of Cam Cottage and the shepherd's hut as short-term visitor accommodation for paying guests. The first booking for Cam Cottage was for 4 December 2018 and bookings continued regularly over a period to 8 March 2020. The use of the shepherd's hut was over a similar timescale, the last booking being on 2 March 2020. The bookings were as a result of advertising through AirBnB. There is no evidence to the contrary.
20. Therefore as a matter of fact the outbuildings (identified in blue) have been used as short-term visitor accommodation for paying guests. The appeals on ground (b) do not succeed.

Appeals on ground (c)

21. Ground (c) is a legal ground of appeal, distinct from any planning merits. In order for the appeals to succeed on this ground, it has to be shown that the matters alleged in the notice do not constitute a breach of planning control. The appellants submitted that the two outbuildings are effectively no more than spare en-suite bedrooms located in the garden, they do not have the facilities for separate living and were not used as separate dwellings. In their view, having visitors is a normal use of a home and paying guests were indistinguishable from other non-paying guests coming to stay. The use of the outbuildings was ancillary to the main house.
22. The main issues are whether, as a matter of fact and degree, the use of the two outbuildings as short-term visitor accommodation for paying guests became a primary use resulting in a change to a mixed use of the Land and, if so, whether there was a change in the character of the use such that a material change of use occurred. It is necessary, on the particular facts, to consider both what happened on the land and its impact off the land when deciding whether the character of the use has changed.
23. The use and type of activity taking place at the property over the period 1999 to the sale of the property in 2017 was indicated by the former owners in a statutory declaration and also through information provided at the hearing. There were four outbuildings – an artist's studio, a timber cabin, a summerhouse and a shed for tools and such like. The summerhouse and cabin were used as garden rooms to relax in when enjoying the garden and when necessary on occasion for guest accommodation when family and friends came to stay. They never had a paying guest and no-one, apart from children, slept in the summerhouse or cabin because of a lack of basic facilities.
24. While there are some inconsistencies and a lack of precision in details, the probability is that the accounts provide a reasonable description. In particular they confirm that the summerhouse and cabin were not used to accommodate paying guests but were used as additional living and incidental space to the main dwelling and to make the most of the garden. Evidence from others confirms that the artist's studio was rented to a local artist, a resident in Thrifts Walk and that this use was very low key. I conclude that when the property was sold in 2017 the lawful use of The Moorings was a Class C3 dwellinghouse. This was also the view of the Council and the appellants. The actual use of the

property during the previous ownership and occupation helps to provide a benchmark for comparison with the alleged mixed use enforced against.

25. After the appellants acquired The Moorings work was undertaken to improve the property, including the existing outbuildings and the Clock House was constructed. More specifically in relation to the allegation, the summerhouse was refurbished through the addition of insulation and a stove, the installation of a shower room with a toilet, shower and hand basin, along with a small kitchenette with a sink, fridge and fitted cupboards. The shepherd's hut was brought onto the site in 2018. It also has a shower room and small kitchenette. The facilities enable Cam Cottage and the shepherd's hut to be occupied independently of the main dwelling. The inclusion of a kitchenette in particular distinguishes the accommodation from bedrooms in the main dwelling and spare bedrooms more generally.
26. The main dwelling continued to be used as a family home by the appellants and their two children. In addition, people and students regularly went to and from and visited in connection with the appellants' pastoral and University work. The outbuildings were used for guest accommodation when friends came to stay and as places to work, study and relax in. The Reverend Orr also explained in a statutory declaration³ that in between using the outbuildings for personal use and for accommodating family and friends the outbuildings were used on occasion for short term holiday lets.
27. The position appears to have changed in December 2018. The record of lettings over the period from December 2018 to March 2020 shows that there were bookings for each outbuilding in every month. On the Council's analysis there was an average of around 6 bookings per month for each of the two outbuildings. Cam Cottage had 92 bookings (a total of 212 nights). The length of stay ranged from 1 to 5 nights, the average stay being 2 nights. The number of guests per booking was either 1 or 2. The shepherd's hut had 90 bookings (a total of 229 nights). The length of stay ranged from 1 to 6 nights, the average stay being 2 to 3 nights. The number of guests per booking was either 1 or 2. There is no information on if or when the outbuildings were occupied by non-paying guests or relatives over this period.
28. The pattern of use was significantly different from that during the previous ownership and the initial period of occupation of The Moorings by the appellants. The numbers and frequency of unknown people distinguished the pattern from the one normally characteristic of visits by friends and family to the home. There is nothing to indicate paying guests used any facilities in the main dwelling or that there was a material functional link with the use of the main dwelling as a family home. Whilst occupation by paying guests was not continuous, the amount, frequency and level of use was very significant. In my view the use of the two outbuildings by paying guests was a separate use in its own right and not either integral to or incidental to the primary use as a dwellinghouse.
29. The appellants did not challenge the Council's assessment that the Land has remained a single planning unit during their ownership of The Moorings. I found that there is no separate means of access to the two outbuildings and access is either via the main house or the car port and then through the garden. The two

³ Statutory declaration dated 26 September 2019 to support an application for a certificate of lawfulness of existing use of the outbuildings for residential use incidental to use of the main dwelling.

outbuildings and adjacent amenity space are partly enclosed by a hedge but the area is not clearly separated physically from the rest of the garden or river frontage. The use of the two outbuildings was not exclusively for paying guests. On the basis of these considerations, together with the AirBnB data, there is not the physical and functional separation of activity to justify the selection of a smaller planning unit. I conclude the Land is the relevant planning unit and that there was a change to a mixed use. It is generally recognised that the larger the unit of ownership or occupation the less likely is a change in the use of part of it liable to constitute a material change in the whole.

30. By all accounts the residential use as a family dwelling with large garden continued. At the hearing reference was made to the hosting of regular prayer meetings and events for the local church and to visits by 6 to 12 students on Sundays and 2 to 3 students during the week alongside the family use. The paying guests were accommodated with no reported on-site impacts. On this matter, the Council confirmed that no complaints had been received by the Environmental Health team. The two outbuildings primarily offered sleeping accommodation. Cam Cottage has a patio overlooking the garden and also the river. Bicycles and boats probably were available for use to take advantage of the location of the site. The probability is that activities and the type of use of the outbuildings by paying guests was similar to and consistent with a residential use and use by the occupiers of The Moorings. No harm to the character of the protected open space was identified by the Council and no harm was demonstrated in other representations. Views from the opposite side of the river of guests in the garden would be no different to seeing residents. In these respects there was no fundamental change to the character of the use of the Land.
31. The mixed use resulted in the reduction in flexibility and the ability to use the two outbuildings for ancillary or incidental use. However, the booking information shows that there were days and weeks when the two outbuildings were not let and would have been available for the family's use. Also, the size of the garden and the presence of other outbuildings and facilities provide more than adequate scope for enjoyment of the home even when the two outbuildings were let. Considering the use of the planning unit as a whole, there was no loss of a family dwelling, housing provision or a decrease in the dwelling stock. Having regard to the policy context any planning consequence in this respect was insignificant, bearing in mind the description of the alleged breach (as proposed to be corrected). I agree with the Council that paying guests would be unlikely to engage and invest in the local community. However, the use of the two outbuildings did not preclude the appellants and their family continuing to take a full and active part in community life, which they did. The effect in this instance is very slight, if any and not comparable to the effect if the terrace house was lost to use by paying guests.
32. The main area of dispute concerns off-site impacts. The reasons for issuing the enforcement notice refer to increased frequency of turnover of arrivals and departures, especially at the weekend including late at night and early in the morning, and the potential use by large groups of people and their subsequent arrival and departure often by taxi. This activity is said to be likely to result in increased noise and disturbance to surrounding residents. The Council's case against the appeals placed greater emphasis on the 'churn' and changeover of individuals, which would not occur with Class C3 residential accommodation.

The Council's view was that short stay visitors in some instances will demonstrate less respect and consideration to neighbours than permanent residents.

33. Those local residents who supported the action taken by the Council explained the sensitivity of Thrifts Walk to change. Their concerns included a change in the pattern of comings and goings, footfall and activity in the street, increases in traffic, parking and deliveries, noise and disturbance, a loss of privacy from the increased number of strangers, wear and tear on and obstruction of the highway, and increased risks to highway safety.
34. Contrary views were expressed by other local residents who had not experienced inconvenience, disruption or disturbance, not noticed guests arriving early or late and who found visitors respectful and friendly. Minor issues with parking were quickly resolved. The appellants were clear that paying guests complied with booking conditions on arrival and departure times, as well as those conditions on behaviour and parking. Any instance of a late arrival was a rare occurrence. Guests came for the peace and quiet. The Reverend Orr confirmed at the hearing that paying guests were given detailed instructions on how to find the property and the parking arrangements and she could not recall any guests getting lost.
35. There is no factual evidence on traffic movements, or of specific instances of parking problems or late night/early morning disturbance directly attributable to paying guests. The actual factual evidence is limited to the booking information for Cam Cottage and the shepherd's hut. This data, in part summarised above, clearly shows a significant number of people went to and from the property who would not otherwise be doing so and who would otherwise not be travelling up and down Thrifts Walk. The data also shows that the total number of guests per month was quite variable. Every month there were days when no guests were recorded, ranging from around 5 to 21 days per month. The appellants referred to an average occupancy rate of less than 50%. The size of each unit of accommodation limits the number of guests per booking to 1 or 2 and there is no evidence of large groups of people staying there. Claims of a burgeoning AirBnB business are not supported by the facts.
36. Thrifts Walk is a well-overlooked street. Short stay visitors would have been unfamiliar faces in the street, which was unsettling to some residents used to a very stable community. Unfamiliar vehicles would have been noticeable and could be a cause of disturbance. Given the limited amount of on-street parking and width of the street even a small increase in demand or lack of care in parking could have led to inconvenience on occasion. However, despite some claims, the factual evidence suggests such effects associated with AirBnB visits probably were not a daily or even a regular occurrence. Significantly the very near neighbours to The Moorings confirmed they had not experienced any off-site disruption or disturbance from paying guests. In the reasons for issuing the enforcement notice I note in particular the use of the words 'likely' and 'potential' and the comparison with the use as an ancillary or incidental outbuilding, rather than the pattern of movements related to the lawful residential use of the Land as a dwellinghouse.
37. On other matters raised, paying guests would have been unlikely to rely on deliveries to any significant degree because of the proximity to a range of places to eat out, the secluded location of the accommodation on-site and the

short nature of the stays. Delivery of building materials used in improvement works to the property may have caused wear and tear on the street surface but private motor vehicles generated by paying guests is not an impact of any significance when placed in the wider context of the use of the street by all vehicles. All matters considered, on the balance of probability off-site impacts as a result of a change to a mixed use were limited.

Conclusions on ground (c)

38. The Land, the physical area against which the materiality of change is assessed, is a relatively large site, notable for its big garden and river setting. The history shows the use of the home gave rise to a number of comings and goings related to family, social and work activities. The garden and river bank surroundings gave opportunities for relaxation and leisure within a domestic setting. This pattern of activity continued after December 2018 and the use of two outbuildings for accommodating paying guests did not result in any significant change or unneighbourly effects on site.
39. Over the period December 2018 to March 2020, the short-term visitor accommodation was confined to two outbuildings at the far end of the garden. The main dwelling fronting Thrifts Walk and other outbuildings continued in residential use. Having regard to the Council's development plan policies housing provision has been maintained. In the specific context of the site, including the availability of other outbuildings, the reduction in the availability of the two outbuildings for residential, incidental or ancillary use had no significant planning consequences for the overall use of the Land.
40. The evidence on the effect on Thrifts Walk is largely anecdotal. Strong and conflicting views were expressed by local residents. As a matter of fact, the use of the two outbuildings by paying guests resulted in more people visiting The Moorings and therefore travelling up and down Thrifts Walk than would have occurred in the absence of the use. Additional parking also occurred. However, regular comings and goings to The Moorings was a characteristic even without the AirBnB visitors. The activity of paying guests was limited in scale and probably for the most part resulted in limited off-site impacts.
41. Weighing all the considerations I conclude that as a matter of fact and degree, the use of the outbuildings as short-term visitor accommodation for paying guests became a primary use resulting in a change to a mixed use of the Land. However, there was not a sufficiently significant change in character to have resulted in a material change in the use of the Land and development did not occur. Based on the particular circumstances and available evidence there was not a breach of planning control and the appeals on ground (c) succeed.

Overall conclusion

42. For the reasons given above, and having taken account of all other matters raised, I conclude that the appeals should succeed on grounds (c). Accordingly the enforcement notice, once corrected, will be quashed.
43. In these circumstances the appeals under grounds (d) and (f) set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

9 AND 9A THRIFTS WALK

Enforcement notice

44. The enforcement notice alleges a material change in the use of numbers 9 and 9a to a mixed use comprising a residential dwelling and short-term visitor accommodation. The reasons for issuing the notice refer only to the use of the ground floor flat at number 9 for short-term visitor accommodation and the requirements relate only to this ground floor flat.
45. The planning history of the Land shows that the use of number 9 as a self-contained residential unit was certified by the Council as lawful on 26 September 2019⁴. The use of number 9a as a self-contained residential unit also was certified as lawful on 26 September 2019⁵. The two certificates of lawfulness of use or development were issued under section 191 of the 1990 Act for an existing use. A certificate for each residential unit indicates the ground floor flat is a separate planning unit to the upper floor flat. In addition, each flat has all the facilities to support normal day to day domestic living. In effect each unit is self-contained and the only common physical feature is the shared hallway. There was no evidence that the upper floor flat was used for short-term visitor accommodation. Even though the flats are in the same ownership, they have been separately occupied. Each of the two flats constitutes a planning unit in its own right.
46. At the hearing the Council accepted that the notice should have focussed on number 9 only and requested that the wording be corrected to exclude all reference to number 9a. That being so the material change was to a single primary use as short-term visitor accommodation as opposed to a mixed use. In the subsequent discussion the appellants confirmed that the notice clearly was directed to number 9 and that to correct the notice as the Council proposed would not cause them injustice.
47. In conclusion, the enforcement notice should be corrected to relate only to the ground floor flat at 9 Thrifts Walk. The alleged breach of planning control will become "Without planning permission the material change of use of the Land from a use as a self-contained residential unit to use for short-term visitor accommodation for paying guests." These corrections would not cause injustice to either the appellants or the local planning authority. The use of number 9a will not be for consideration in determining the grounds of appeal.

Appeals on ground (b)

48. The issue is whether Number 9 was used as short-term visitor accommodation for paying guests as a matter of fact.
49. The main points of the unchallenged evidence of the appellants are that shortly after the acquisition of the property in December 2017 the Reverend Orr's parents moved into the flat under a formal tenancy agreement. However due to their ill health the flat was vacated the following year and the Reverend Orr's sister stayed occasionally in the flat. During a period of uncertainty a tenancy

⁴ Certificate of lawful use or development dated 4 December 2019 ref 19/1337/CLEUD

⁵ Certificate of lawful use or development dated 4 December 2019 ref 19/1338/CLEUD

agreement was in place to enable occupation by new tenants from November 2018 to June 2019.

50. Over the following months to February 2020 the flat was occupied by a number of paying guests through AirBnB as short-term visitor accommodation. Information submitted by the appellants shows that between 16 June 2019 and 14 February 2020 the residential unit was occupied by around 77 different people. The flat was then let to new tenants under a lease agreement dated 20 April 2020. The initial 4 month term was subsequently extended and the same tenants have continued to occupy the flat until the current time.
51. On the basis of the occupancy between June 2019 and February 2020, I conclude the flat was used as short-term visitor accommodation for paying guests as a matter of fact. It is also a matter of fact that the enforcement notice was issued on 15 July 2020, some 3 months after the new tenancy agreement was completed and when there was no ongoing unauthorised use of the property. However, this is not necessarily a reason to quash the notice.
52. The Council stated that investigations began in May 2019, alongside those into The Moorings. In March 2020 the appellants provided a breakdown of the dates and number of guests occupying Number 9 as short-term visitor accommodation in response to a Planning Contravention Notice (PCN). The 3 to 4 month period until the date of issue of the enforcement notice and the absence of an internal inspection immediately beforehand are understandable and reasonable, particularly bearing in mind the statutory procedures that must be followed and additionally the Covid-19 restrictions that applied at the time.
53. Section 172(1) of the 1990 Act provides that a local planning authority may issue a notice when it appears that there has been a breach of planning control, as opposed to when there is a breach, and it is considered expedient to do so. The wording of section 174(2)(b) "that those matters have not occurred" also indicates that the relevant question is whether the breach had occurred by the date of issue of the notice. It is often the case that a notice is issued some time after a potential breach has been detected and authorisation for taking action confirmed. In this instance there is no reason for taking a different approach.
54. Furthermore, in view of section 57(4) of the 1990 Act, in the event I conclude that a material change of use occurred and the notice is upheld, planning permission would not be required to change the use back to a residential flat. The same provision does not apply in the absence of an enforcement notice.
55. I conclude there are no reasons to quash the notice and the appeals on ground (b) do not succeed.

Appeals on ground (c)

56. This ground of appeal is that the matter alleged does not amount to a breach of planning control. The main points of the appellants' case are that the flat remains a residential dwelling. The use of the flat by a few visitors was only a temporary stop gap in a period of uncertainty. Having paying visitors was no different to having visitors, such as a member of the family. There has been no permanent loss of a dwelling and the use by paying guests had no negative impact on surrounding residents.

57. The main issue in determining this ground of appeal is whether as a matter of fact and degree the use as short-term visitor accommodation for paying guests amounts to a material change in the use of the ground floor flat.
58. The ground floor flat comprises a sitting/dining room, a fitted kitchen, a bedroom and a shower room. It has a gross internal area of 58m² and is larger than the upper floor flat (44 m²) because of the extension at the back⁶.
59. A statutory declaration by the previous owner explains that dating back to 1999 the unit was let on shorthold tenancy agreements that were renewed on an annual basis. Prior to the sale of the property the unit was occupied from 2009 by one couple, who agreed to leave before the completion of the sale. A local resident also described the flat being occupied by tenants for periods of several years. They became known to their neighbours in the street and became part of the community. They worked locally and mainly used bicycles. There is no evidence to the contrary or that casts doubt on these descriptions.
60. No significant physical changes were carried out to the external appearance of the flat to facilitate the letting for short-term visitor accommodation from June 2019. No significant conversion works were undertaken and the furniture of the appellant's parents remained in situ. The flat remained a dwelling in a physical sense.
61. The information submitted in response to the PCN shows that over the 8 month period of 16 June 2019 to 14 February 2020 there were some 30 bookings and some 77 different people stayed in the accommodation. The number of guests in any booking ranged from 1 person to 4. Most stays were of short duration of between 2 to 7 nights. The final two bookings were each for one guest for 28 and 31 nights respectively. At the hearing the appellants explained that paying guests were mainly individuals or couples, a couple of families or students. The appellants stated that later in the period the availability of the accommodation was limited to enable use by family and friends. However, this was not supported by any more detailed information and the bookings data does not demonstrate less frequent AirBnB take up.
62. In my view the information demonstrates a very different, transient pattern of occupancy compared to the stable, settled occupancy patterns before. Even bearing in mind an occupancy rate of around 50%, the turnover of occupiers was not typical or characteristic of what happened before at the flat or more generally in flats occupied under shorthold tenancy agreements.
63. Development plan policy is to maintain housing provision by strictly controlling the loss of housing to other uses. The existing lawful use fulfils an important planning purpose. During the period of letting to paying guests the flat was not occupied as a single dwellinghouse and the unit was no longer part of the available stock of housing units. Unlike the assessment for The Moorings, the use for short-term visitor accommodation had planning consequences, notwithstanding the current occupation of the flat under a tenancy agreement.
64. When the flat was used for paying guests there is no evidence of any undue noise or disturbance or other on-site impacts such as to distinguish their occupation or activities from the domestic use by previous tenants. The

⁶ Details taken from the sales particulars 2017

representations of the resident of the upper floor flat and the neighbouring dwelling are particularly relevant on this matter.

65. The evidence on off-site effects is less consistent, with different descriptions of comings and goings being reflected in the representations from local residents. Strong views were expressed on both sides of the argument. The appellants maintained that no early or late arrivals or departures by guests had occurred, no large groups had been permitted to use the flat and most guests travelled around Cambridge by on foot or bicycle. Near neighbours stated they had not experienced any inconvenience or patterns of movement at unsocial hours and had noticed very little traffic. On the other hand, some neighbouring residents referred to increased comings and goings and footfall and a change in the local community with unfamiliar faces and intrusions on privacy. Matters raised included increased traffic and speeding taxis, parking problems and late night noise in the street.
66. The off-site impacts, if any, are a factor in informing whether there has been a change in the character of the use of the land as a matter of fact and degree. The probability is that changes in activity in Thrifts Walk are noticeable because of the tight pattern of development, high degree of enclosure and quiet surroundings. Peoples' awareness of change may well be affected by such factors as length of residence in the street, proximity of their home to the highway and its outlook. Bearing in mind the size of the flat and the number of paying guests accommodated, 'constant' activity and extremes would have been unlikely. However, I agree with the local planning authority that the churn and turnover of people staying in the flat for short visits resulted in a very different pattern of activity and movements in the street compared to what happened before. The circumstances are distinguished from the situation at The Moorings where the change of a larger planning unit was to a mixed use and the pattern of visitor activity was relatively small alongside the greater activity associated with the continued residential use of the family home.

Conclusions

67. In its broadest sense the unit was used for residential purposes but it does not necessarily follow that a material change is not possible. Whether there was a material change in the use of the flat falling within the definition of "development" in section 55 of the 1990 Act depends upon whether there was a significant change in the character of the use of the land.
68. Based on all the above findings I conclude that the use of the flat as short-term visitor accommodation for paying guests did amount to a change in the use of the ground floor flat and the change was material. Development requiring planning permission took place. The material change of use was not authorised by a grant of planning permission. There was a breach of planning control and the appeals on ground (c) do not succeed.

Appeals on ground (f)

69. Minor corrections to the wording of the requirements will be made to ensure consistency with the corrected description of the short-term visitor accommodation. The main issue is whether the requirements of the notice are excessive, taking account of the purpose of the notice.

70. The appellants initially proposed requirements to limit the number of paying guests, limit the frequency of bookings, restrict arrival and departure times and require submission of a quarterly audit of paying/non-paying guests to the local planning authority. At the hearing the appellants submitted that provision should be made for a low level of use by paying guests linked to a specific number of nights per month.
71. The purpose of the enforcement notice is to remedy the breach of planning control. To require the use of the flat for paying guests to cease is not excessive in order to achieve that purpose. The requirements proposed by the appellants would not be consistent with the purpose of the notice. Furthermore, they would be more appropriately considered as potential mitigation of any harm as part of a ground (a) appeal seeking planning permission, where there would be the ability to impose planning conditions. Requirements must be able to be carried out in the stated compliance period, whereas restrictions put forward would be continuing requirements without a specified end date. To impose them would be unreasonable and cause injustice.
72. In conclusion the requirements are not excessive and the appeals on ground (f) do not succeed.

Conclusion

73. For the reasons given above, and having taken account of all other matters raised, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections.

DECISIONS

Appeals refs APP/Q0505/C/20/3257639 and 3257640

74. It is directed that the enforcement notice is corrected:

- In paragraph 3 by the deletion of the wording of the alleged breach of planning control and the substitution of the words "Without planning permission, the material change of the use of the Land to a mixed use comprising a residential dwelling and short-term visitor accommodation for paying guests in two outbuildings (identified in blue on the attached plan for identification purposes only)."
- In paragraph 5 by the deletion of words "commercial" and "(sui generis use)" from the wording of steps (i) and (ii) and in step (ii) the addition of the words "for paying guests" after the word "accommodation".

75. Subject to the corrections, the appeals are allowed and the enforcement notice is quashed.

Appeals refs APP/Q0505/C/20/3257642 and 3257643

76. It is directed that the enforcement notice is corrected:

- In paragraph 2 by the deletion of 'Land at 9 & 9a Thrifts Walk' and the substitution of the words 'The ground floor flat, 9 Thrifts Walk'.
- In paragraph 3 the deletion of the wording of the alleged breach of planning control and the substitution of the words "Without planning permission, the material change of use of the Land from use as a self-

contained residential flat to use as short-term visitor accommodation for paying guests.”

- In paragraph 5 the deletion of the wording of step (i) and the substitution of the wording “Permanently cease the use of the Land as short-term visitor accommodation for paying guests.”
- In paragraph 5 the deletion of the wording of step (ii) and the substitution of the wording “Permanently cease and remove all forms of advertising the use of 9 Thrifts Walk for short-term visitor accommodation for paying guests.”

77. Subject to the corrections, the appeals are dismissed and the enforcement notice is upheld.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

The Reverend Helen Orr
Doctor James Orr
Mr Tom Cleeve, barrister

FOR THE LOCAL PLANNING AUTHORITY:

Mr John Shuttlewood BA(Hons)
MSc Assoc RTPI

Principal Planning Enforcement Officer, Greater
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INTERESTED PERSONS:

Professor Molly Andrews
Charlotte Cornish
Julie Chambers
Margaret White