The Planning Inspectorate

Appeal Decisions

Site visit made on 13 October 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2021

Appeal Refs: APP/W2465/C/21/3271798 & APP/W2465/C/21/3271799
25 Cambridge Street, Leicester LE3 0JQ

- 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 Sarbjit Kullar (APP/W2465/C/21/3271798) and Mr Harjinder Rana (APP/W2465/C/21/3271799) against an enforcement notice issued by Leicester City Council.
- The enforcement notice was issued on 26 February 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the unauthorised material change of use from residential flats (Class C3) to commercial short term let aparthotel at the Property.
- The requirements of the notice are to cease the use of the Properties for short term let aparthotel commercial letting.
- The period for compliance with the requirements is 3 months.
- The appeals are proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Reasons

2. The question to be determined in these ground (c) appeals is whether the matter stated in the notice constitutes a breach of planning control. The onus is on the appellants to make their case and the standard of proof is the balance of probability.

3. Number 25 Cambridge Street started life as a terraced house. In 2018 planning permission was granted retrospectively to extend the property and for a change of use to 3 flats. It is common ground that the property is now used as an 'aparthotel' – that is, as 3 serviced apartments. I understand that the property has been registered for business rates as serviced apartments since October 2019. The 3 flats for which planning permission was granted would each have fallen within Class C3 (dwellinghouses) of *The Town and Country Planning (Use Classes) Order 1987* (as amended). If the aparthotel use is also a C3 dwellinghouse use, then no development has taken place and the notice must be quashed. If, on the other hand, the use does not fall within Class C3 and is materially different from the lawful use as flats, a breach of planning control will have occurred.

4. Both parties refer to the Court of Appeal decision in *Sheila Moore v Secretary of State for Communities and Local Government [2012] EWCA Civ 1202.* From

that case it is clear that whether a material change of use has occurred in a case such as this is a matter of fact and degree. It would be wrong to take the view that a property used for short term lets would always be a C3 dwellinghouse, or that it could never be one; whether or not it is will depend on the details of the individual case. Thus, while the principles set out in *Moore* are important, the court's decision to dismiss the appeal and support the Inspector's decision that a material change of use had occurred in that instance does not, in itself, assist in deciding this very different case.

5. The appeal property is arranged with a flat on each floor. Each unit is laid out as an ordinary flat, with all the normal facilities for day-to-day living, as per *Gravesham*[1]. In physical terms, therefore, each has all the characteristics of a C3 dwellinghouse. That does not, however, show that the use of the properties has not changed. As the judgement in *Moore* says, 'While *Gravesham* is authority for the proposition that a dwellinghouse can be so described even if it is not occupied throughout the year as a permanent home, it is not authority for the proposition that any use of a dwellinghouse for holiday lettings will not amount to a material change of use'. While this property is not specifically for holiday lettings, the same principle applies.

6. Some aspects of the way the property is managed distinguishes it from certain types of commercial accommodation; it is plainly not a hotel and there are none of the services and facilities that would be typically associated with that use. The appellants also point out that the units are available for more than very short periods, and have submitted evidence of them being let for periods of up to 65 nights. They are also modest flats, which distinguishes them from the kinds of larger accommodation often let to large groups as 'party houses'.

7. However, notwithstanding the longer lets referred to by the appellants, the units are let via a lettings website and are available for very short periods, often being let for a day or two at a time. I have not been provided with full details of every letting, but the evidence of the Council and a neighbour, including reviews on the letting web-site, suggests that stays of a week or less account for a very significant proportion of the stays. It also appears that lettings take place all year round.

8. Moreover, despite the size of the flats, it is clear that they have often been used for parties. These have caused significant levels of noise and disturbance to neighbouring occupiers, often at very late hours. These appear to have got out of hand on occasion, and I am told that the police were called to No 25 on 6 occasions between April 2020 and January 2021. All of this is clearly evidenced by a written log provided by a neighbour, supplemented by photographs, showing things such as people spilling out onto the street during a party and the rubbish and damage that has resulted. I am told that contact has been made with the Council's noise monitoring service on 14 occasions. The Council's Noise Team was only able to respond by visiting the property on 2 occasions but, in both instances, the officer concluded that a nuisance was being caused due to 'party noise and raised voices'.

9. Of course, many dwellinghouses occupied on a long-term basis are occupied by people who are inconsiderate and hold loud parties. In such circumstances, neighbours might well complain to the occupiers to hopefully improve matters. However, the constant turnover of occupiers of the units appears to have

[1] Gravesham BC v SSE & O'Brien [1983] JPL 306

resulted in a much higher incidence of parties and noisy socialising than would be expected if the units were occupied on a longer-term basis. It is very clear that this has caused significant levels of noise, disturbance and stress to the occupiers of an adjoining property within this residential terrace. None of the evidence regarding this is disputed. The regular turnover of visitors must hinder the neighbours in any attempt to complain and resolve matters.

10. Even setting the parties aside, the use of the units for very short periods will create a greater degree of comings and goings, including people arriving, and unloading their things, packing and leaving, together with visits by cleaning staff in between visits. One of the reviews of the property provided by a relatively long-term resident states, 'expect a constant flow [of] human traffic (over the weekend especially)'.

11. The appellants advise that measures have been taken to prevent anti-social behaviour, including the installation of CCTV and a noise level tracker. Nevertheless, the use of the property has given rise to the difficulties I have outlined and the provision of those measures does not alter my view that, on the facts of this case, the short-term letting of the units has brought about a material change in the character of the use of the property. I have no reason to doubt that there is a market for short term lets in the area, but that has no bearing on the question of whether a material change of use has occurred.

12. I appreciate that Class C3 does not specify any minimum letting period or any requirement for the property to be a sole or main residence. However, it is clear from *Moore* that a material change can nevertheless occur as result of the particular way a short term let property is used, depending on the facts of the case. It is true that many dwellinghouses are commercial properties in that they are rented out for profit, but that does not make the reference in the notice to 'commercial short term let aparthotel' wrong. Nor does the fact that the Council has not identified a use class for the property indicate any flaw in the allegation, since many uses do not fall into a use class.

13. For these reasons I conclude, on the balance of probability, and as a matter of fact and degree, that the short term letting of the units has brought about a material change in the character of the use of the flats, such that they are no longer Class C3 dwellinghouses. It follows from this that a material change of use has taken place and, since planning permission was not secured, a breach of planning control has occurred. Accordingly, the appeal fails.

Peter Willows

INSPECTOR