



Appeal Decision

Site visit made on 18 May 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2022

Appeal Ref: APP/R4408/C/20/3263058

Land at 12 Lee Lane, Millhouse Green, Sheffield S36 9LN (otherwise known as Hartcliffe View, Lee lane, Millhouse Green, Sheffield S36 9LN)

- 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 Edwin Morris against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The enforcement notice, numbered 2020/ENQ/000543, was issued on 16 October 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of the land and buildings from a residential dwelling house (C3 use class) to one of a commercial holiday lettings property (Sui generis).
 - The requirements of the notice are to cease the unauthorised change of use relating to the operation of a commercial holiday lettings activities/business/property (sui generis) and return the dwelling to a C3 use class.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision

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

1. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated two substantive reasons for issuing the enforcement notice, from which the following main issues are raised:
 - the effect of the loss of a large family dwelling on the supply of housing in the Borough
 - the effect of the breach of planning control on the living conditions of the occupiers of surrounding residential properties, specifically in relation to noise disturbance, trespass and traffic generation

The supply of housing in the Borough

2. Policy H9 of the Barnsley Local Plan states, amongst other things, that the loss of existing larger dwellings will be resisted. The supporting text to Policy H9 explains that the definition of 'larger dwellings' for the purposes of that policy will be contained in the Council's Supplementary Planning Document: Design of Housing Development (SPD). That document, which was adopted in May 2019,

- defines 'larger dwellings' to be those that have four or five bedrooms, or are capable of accommodating four or five bedrooms without significant adaptation.
3. The appeal property comprises seven bedrooms, and as such falls outside of the definition of four or five bedrooms set out in the SPD. I am mindful that the definition in the SPD, and by extension properties to which Policy H9 of the Local Plan applies, includes dwellings that are capable of accommodating four or five bedrooms without significant adaptation. The phrase 'without significant adaptation' is not expanded upon in the SPD. Neither does the supporting text to Policy H9 provide any explanation that might assist in the interpretation of that phrase.
 4. Reading Policy H9, its supporting text and the SPD in the round, it seems to me that the phrase 'without significant adaptation' must be read in conjunction with preceding phrase in the same sentence: 'capable of accommodating'. To my mind, the latter phrase connotes a building that is of sufficient size to provide four or five bedrooms but which for some reason is not so configured. On my reading, nothing in those two phrases could be reasonably be interpreted as requiring the reduction in the number of bedrooms in properties that exceed the threshold of four or five bedrooms in order to bring a property into the remit of that policy.
 5. My reasoning in that regard is supported by a logical interpretation of the definition of 'larger dwellings' set out in the SPD. That definition specifically targets dwellings of four or five bedrooms. Had the definition been intended to encompass dwellings of more than five bedrooms, it would have been a relatively simple matter to have stated that: for example, by setting the threshold at four bedrooms and above. But it does not. The corollary is that, as a matter of ordinary language, the definition in the SPD and by extension Policy H9 itself must be aimed only at properties of four or five dwellings.
 6. Consequently, whilst it would be entirely possible to reallocate two of the bedrooms in the appeal property to purposes ancillary or incidental to the use of a dwellinghouse, I can find no justification for requiring that within Policy H9 itself, its supporting text or the SPD.
 7. I therefore conclude that the breach of planning control does not result in the loss of a large family dwelling for the purposes Policy H9 of the Barnsley Local Plan, and therefore does not conflict with that policy.

Living conditions

8. It is clear from the representations received that some, but by no means all, of the occupiers of surrounding residential properties have experienced issues associated with the use of the appeal property as a commercial holiday lettings property. Those issues include noise disturbance from groups of young people under the influence of alcohol, including late into the evening and at night. There have been issues with indiscriminate parking along Lee Lane, and vehicles being driven along Lee Lane at high speed. There have also been issues with guests playing football on the pitch in the rear garden of the appeal property, and trespassing onto the neighbours property in order to retrieve footballs kicked over the boundary wall. The same neighbour reports litter being deposited in his garden, and recounts one occasion when a marquee erected in the rear garden of the appeal property was blown onto into his own garden by strong winds.

9. I do not diminish in any way the harm caused to the living conditions of the occupiers of surrounding residential properties in this respect: indeed, I find that harm to be unacceptable. However, it seems to me that the issues referred to in the representations stem primarily from the events of one weekend in July 2020. As the appellant explains, on that occasion the house was rented by a large group, the behaviour of which was unacceptable and caused the police to attend the property. I gather from the representations made by the occupiers of surrounding properties that there have been other examples of large group bookings causing disturbance but not to the extent caused by the group in July 2020.
10. It therefore appears to me that the impacts upon the living conditions of the occupiers of surrounding residential properties are essentially down to poor management of the appeal property. I have been provided with a copy of the UK Booking Terms and Conditions but, in my view, they do not go far enough in terms of preventing those unacceptable impacts. In particular, this appears to be a generic policy operated by Sykes Cottages Limited for booking a range of accommodation operated by that company rather than being tailored to the appeal property and its relationship with the adjoining dwellings.
11. In consideration of an appeal on ground (a), it is incumbent upon me to consider whether any harms resulting from the development could be overcome by the imposition of suitably worded conditions. In that context, it occurs to me that the adverse impacts described by the occupiers of surrounding residential properties could be controlled through adherence to a Management Plan for the appeal property itself. The Management Plan could be used to control those issues that have given rise to complaints from the occupiers of surrounding residential properties in the past: for example, the policy in relation to group bookings; the playing of music; and the hours during which the outside space may be used. I am satisfied that a suitable Management Plan could be secured through the imposition of a condition.
12. Because the imposition of such a condition had not been suggested by either of the parties, I sought their views as to whether a condition requiring the submission of and adherence to a Management Plan would be appropriate in this case. The appellant has no objection. The Council expressed concerns about the operation of a Management Plan as, in its view, the measures in such a plan could be interpreted differently by the Council and the appellant.
13. It seems to me, however, that the successful operation and enforcement of a Management Plan would depend upon the measures within it and the clarity with which those measures are expressed. If the Management Plan is drafted with sufficient clarity and precision, it would then be apparent should any of the measures within it not be adhered to. Given that any Management Plan would need to be approved by the Council prior to implementation, specifying the measures with the required clarity is entirely within the Council's control.
14. Furthermore, the condition that I am minded to impose requires that the commercial holiday lettings property shall only be operated in accordance with the approved Management Plan. Any failure to accord with the measures in the Management Plan would therefore constitute a breach of that condition, which could then be addressed by the issue of a Breach of Condition Notice under section 187(A) of the 1990 Act. I am therefore satisfied that a robustly worded Management Plan would be a workable solution.

15. Subject to the imposition of that condition, I conclude that the use of the appeal property as a commercial holiday lettings property would not unacceptably harm the living conditions of the occupiers of surrounding residential properties. I therefore conclude that the breach of planning control alleged does not conflict with Policies GD1 or Poll 1 of the Barnsley Local Plan. These policies indicate, amongst other things, that development will be permitted if there will be no significant adverse effect on the living conditions and residential amenity of existing and future residents.

Conclusion

16. For the reasons given above, I conclude that the appeal should succeed on ground (a). I shall grant planning permission for use of the appeal property as a commercial holiday lettings property as described in the notice. Accordingly, the appeal on ground (g) does not fall to be considered.

Formal Decision

17. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely use as a commercial holiday lettings property at Land at 12 Lee Lane, Millhouse Green, Sheffield S36 9LN (otherwise known as Hartcliffe View, Lee lane, Millhouse Green, Sheffield S36 9LN), as shown on the plan attached to the notice and subject to the following condition:

The commercial holiday lettings property shall only be operated in accordance with a Management Plan submitted to and approved in writing by the Local Planning Authority. Details of that Management Plan shall be submitted to the Local Planning Authority within 28 days of the date of this Decision. The Management Plan shall include, but not necessarily be limited to: the booking policy; hours during which the outside space may be used; noise management; and the procedure for dealing with any complaints from local residents as they arise.

Paul Freer
INSPECTOR