



Appeal Decisions

Site visit made on 25 July 2022

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an Inspector appointed by the Secretary of State

Decision date: 28 July 2022

Appeal A Ref: APP/P3040/C/21/3284007

Peacock Lodge, Cotgrave, Nottingham NG12 3HB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Hugh McHugh against an enforcement notice issued by Rushcliffe Borough Council.
 - The notice was issued on 2 September 2021.
 - The breach of planning control as alleged in the notice is the material change of use from a dwelling house to the commercial letting of the land for use as holiday accommodation.
 - The requirement of the notice is 1. Cease the commercial letting of the land as holiday accommodation.
 - The period for compliance with the requirement is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/P3040/W/21/3283031

Peacock Lodge, Cotgrave, Nottingham NG12 3HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Hugh McHugh against the decision of Rushcliffe Borough Council.
 - The application Ref 21/01588/FUL, dated 27 May 2021, was refused by notice dated 22 July 2021.
 - The development proposed is change of use from dwellinghouse (Use Class C3) to holiday let (Sui Generis) with parking.
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Decisions

1. The appeals are dismissed.

Reasons

The ground (c) appeal in Appeal A

2. Peacock Lodge is one of 21 dwellings that were created following the grant of planning permission in 1996 for the adaptation of former farm buildings. It is a large single storey dwelling with three double bedrooms and an extensive open plan living space, and a two storey annexe has two further double bedrooms. The property can accommodate twelve people; one of the bedrooms has a twin sofa bed. To the north-west of the dwelling is a garden area within which there is a hot tub under a canopy, and outdoor seating. The south-west boundary wall to the garden is, partly, the external wall of a neighbouring dwelling, Summer Place.

3. Peacock Lodge has been let for short stay holidays. The Council alleges that this commercial use has resulted in a material change of use of the property for which planning permission is required. In defence of his assertion that a change of use has not occurred the Appellant has referred to the case of *Moore v SSCLG & Suffolk Coastal D C [2012] EWCA Civ 2101*. The judgement in this case includes the statement 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 on the particular characteristics of the use as holiday accommodation".

4. The use of Peacock Lodge as holiday accommodation since the autumn of 2019 is well documented by residents of Summer Place and other nearby dwellings. These residents mention regular instances of loud music being played and shouting and shrieking into the early hours from the hot tub area, several instances of anti-social behaviour even during a single booking and many across multiple bookings, aggressive behaviour, and dogs barking incessantly. Many of the bookings recorded have been by all male or all female groups as opposed to family bookings though even this type of booking has resulted in excessive noise and disturbance and aggressive behaviour.

5. The behaviour of groups letting and using Peacock Lodge, and their response to neighbours when challenged on their behaviour, has certainly been uncharacteristic of what would normally be associated with use of the property as a dwellinghouse. The particular characteristics of the use of Peacock Lodge as holiday accommodation has, as a matter of fact and degree, resulted in a material change of use of the property. The material change of use that has occurred is not permitted development and planning permission has not been granted for the change of use. The ground (c) appeal thus fails.

Appeal B

6. The main issue is the effect of the change of use of Peacock Lodge from a dwellinghouse (Use Class C3) to a holiday let (*Sui Generis*) on living conditions at neighbouring residential properties and on the character of the area.

7. Summer Place has a small internal courtyard that is surrounded on three sides by elements of the dwelling, including main and guest bedrooms, and on the fourth side by a boundary wall to Peacock Lodge. Beyond the boundary wall is a wide pathway that provides access between the living area at Peacock Lodge and its small rear garden. Patio doors to two of its bedrooms open out onto the garden. The hot tub is between and close to these patio doors. A few metres away from the hot tub and in the west corner of the garden is an outdoor seating area comprising a table and chairs. This seating area is close to the boundary wall beyond which is the outdoor seating area in the garden to Summer Place.

8. Given the proximity of the two adjoining dwellings and the very close relationship between the two garden areas and between the access way and the internal courtyard, it is not surprising that the noisy behaviour of guests renting Peacock Lodge has caused such serious harm to the living conditions of residents of Summer Place. Noise and disturbance generated by guests has also caused harm to the living conditions of residents of other dwellings nearby, such as Cowslip Cottage. Boundary walls and hedgerows around the garden at Peacock Lodge clearly do not provide adequate noise attenuation and enhancements, as suggested in the Appellant's appeal statement, would not alter this.

9. The residential complex of 21 dwellings is surrounded by The Nottinghamshire Golf and Country Club and it has been suggested that holiday use of Peacock Lodge would seek to capitalise on this location and "...would be marketed for golfers and family gatherings". It has also been suggested that "...Peacock Lodge would not be marketed for loud celebrations such as parties and stage and hen celebrations". This may be the intention but such marketing would not prevent groups booking for other purposes such as stag and hen celebrations. These type of celebrations are, almost by definition, one off events and those organising such events are unlikely to be dissuaded from booking Peacock Lodge, if it suited there locational and other requirements, by marketing.

10. The Appellant has suggested that conditions could be imposed to control a holiday letting use of Peacock Lodge. In particular he has suggested a condition that would require the prior approval of a Noise Management Plan before the first commercial let and maintenance of the premises thereafter in accordance with the plan. He suggests that "The Noise Management Plan would act as a reminder and a strong deterrent as well as incorporating actual noise mitigation measures" and "...would impose greater restrictions on the property than exist now (such as time limiting the use of the hot tub)". He has also suggested that a temporary one year permission could be granted in the first instance.

11. The Noise Management Policies in the draft Noise Management Plan submitted with the Appellant's appeal documentation are vague and unenforceable. In this regard 'requesting' guests not to play loud music or to engage in particularly noisy activity, to keep noise to a minimum, and to respect neighbours, are all vague; 'minimum' being imprecise. Furthermore, stating that the hot tub must not be used after a specified time is inherently unenforceable. Other provisions of the draft plan are also unenforceable, such as the need to keep the hot tub at its lowest setting and to keep sun room and living room windows closed outside of daytime hours. This latter provision is also environmentally unsustainable.

12. The provisions of the Noise Management Plan suggested by the Appellant are unenforceable and imposition of the aforementioned condition would not prevent noise and disturbance being caused at neighbouring properties. Peacock Lodge is simply too close to these neighbouring properties for any continuation of its use for holiday letting purposes, even for a temporary period of one year. The group of 21 dwellings is a relatively dense residential development set amidst a quiet golf complex. Permanent residents of the development will be respectful of their immediate surroundings and of the character of the area. Temporary residents of Peacock Lodge have not been so respectful and would be unlikely to be so in the future to the detriment of the character of the area.

13. The change of use of Peacock lodge from a dwellinghouse (Use Class C3) to a holiday let (Sui Generis) would have a significant adverse effect on living conditions at neighbouring residential properties and would be detrimental to the character of the area. The proposed use thus conflicts with policy 10 of the Rushcliffe Local Plan Part 1: Core Strategy and with policy 1 of the Rushcliffe Local Plan Part 2: Land and Planning Policies. Planning permission must therefore be withheld and the planning appeal thus fails.

The ground (f) in Appeal A

14. Peacock Lodge has been used for commercial letting purposes and it has been found that this use has resulted in a material change of use of the property. The only possible remedy to the breach of planning control is the cessation of the

use for commercial letting purposes. The requirement of the enforcement notice is not therefore excessive.

15. The requirement of the notice does not state that Peacock Lodge shall not be used in the future "...for commercial holiday lettings at any time or to any extent". The notice, in this respect, does not prevent the property from being let in the future for any use or purpose that does not result in a material change of use.

John Braithwaite

Inspector