



Appeal Decision

Site visit made on 27 September 2022

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 October 2022

Appeal Ref: APP/T4210/C/22/3293202

18 Meade Hill Road, Prestwich, Manchester M25 0DJ

- 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 Austin Mbawa against an enforcement notice issued by Bury Metropolitan Borough Council.
 - The enforcement notice was issued on 13 January 2022.
 - The breach of planning control as alleged in the notice is as follows:
Change of use of the dwelling within Use Class C3 to short term lets (Sui Generis).
 - The requirements of the notice are as follows:
Cease the use of the property on the site as short term let accommodation.
 - The period for compliance with the requirements is 30 days.
 - The appeal is proceeding on ground (a) only, as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed. See formal decision below.

Background information

2. The appeal building is a two storey semi-detached dwelling on the southern side of the road, in this predominantly residential part of Prestwich. There is a driveway to the front of sufficient size to park one vehicle, a detached garage and a rear garden. The house is bounded to the rear by the Metrolink line and is close to one of the stations providing regular tram services into Manchester Piccadilly and beyond.
3. In July 2021 the Council received a complaint that a change of use had occurred and that the dwellinghouse was being used as short term let holiday accommodation. Following a Land Registry check the appellant (the leaseholder) and the owner of the house were contacted and, after further complaints, a Planning Contravention Notice (PCN) was served on the appellant on 5 October 2021. The appellant was given an extension of time for completion of the PCN which was e-mailed to the Council on 17 December 2021. However, a paper copy was not returned to the Council.
4. Following a request from the Council, the complainants kept a log to record activities at the property so that the nature of the use could be assessed. This is set out in Appendix A to the Council's appeal statement. The Council was not satisfied with the answers in the PCN and, having liaised further with the complainants and having checked the website being used to market the property (named as 'Heat-On House'), the Council considered it expedient to serve the enforcement notice on both the appellant and the owner of the house.

5. The property is still being used solely as short-term let accommodation. It has 4 double bedrooms, a kitchen with a dishwasher and a microwave, a flat-screen TV, a seating area and 1 bathroom fitted with a shower. Off-road parking space for one car is provided to the front. It is rented out via online travel agencies, which describe the property as a holiday home being able to accommodate a maximum of 13 guests (9 adults and 4 children).

The appeal on ground (a)

6. In effect, the appeal on ground (a) seeks retrospective planning permission for a change of use of the land from dwelling house within Use Class C3 of The Town and Country Planning (Use Classes) Order 1987 (as amended), to short term let accommodation (Sui Generis use).

Main issue

7. The main issue is the effect of the short term let accommodation on the living conditions of nearby residents by reason of noise and disturbance and anti-social behaviour. There is no issue regarding the principle of the use (see below) since the Borough aims to extend the range of visitor accommodation. However, this is subject to the effect of any proposal with regard to such matters as the impacts on the character of a locality, parking and residential amenities.

Relevant Policy

8. The development plan is the Bury Unitary Development Plan BUDP and the most relevant policies are EC4/1 (Small Businesses); EC6/1 (New Business, Industrial and Commercial Development); EN7/2 (Noise Pollution); H3/1 (Assessing non-conforming uses) and RT4/3 (Visitor Accommodation). The National Planning Policy Framework (NPPF) is a major material planning consideration. In particular it states that the planning system, should support strong, vibrant and healthy communities and that decisions should play an active role in guiding development towards sustainable solutions by taking local circumstances into account, to reflect the character, needs and opportunities of each area.

9. The Council also refers to Section 17 of the *Crime and Disorder Act 1998* which imposes a duty on it to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the environment).

The gist of the case for the appellant.

10. The change of use is considered to comply with Policies EC4/1, H2/5, H3/1, EN7/2 and RT4/3 of the BUDP. It is stressed that the house provides high quality short term let accommodation for visitors to the Borough and that it also provides employment opportunities for local people. It is acknowledged that, on occasions, the change of use of the property could lead to an increase in the number of persons visiting the property compared to its use as a single dwelling (Use Class C3). However, it is indicated that it previously housed a large family and is located on a busy local residential road directly to the north of the Metrolink line.

11. The change in use is not considered to result in any materially different or unacceptable levels of additional noise, above what may be expected from a single family occupying the house. An analysis of the booking data recorded over the past seven months is considered to show that this is the case. It is also stressed that the

principle of the conversion of an existing building to provide visitor accommodation in the Borough is supported by Local Policy and that the principle of such a change is acceptable. It is also indicated that the LPA does not have any specific policy limiting the loss of residential dwelling houses to other uses.

12. It is indicated that, although available for occupation seven days a week, it remains unoccupied for the majority of the time. It is also indicated that booking records demonstrate that the property is most likely occupied during the weekend, with peak bookings taken on Friday and Saturday evenings.

13. References are made to the NPPF including the emphasis that the government places on ensuring that the planning system should help create conditions in which businesses can invest, expand and adapt the need to support economic growth and productivity, the need promotion of healthy communities; the need promotion of sustainable transport; and the need to achieve well-designed places. The above BUDP policies are also referred to and in particular RT4/3 (Visitor Accommodation) which, amongst other things states that *'extensions to existing accommodation and conversion of existing buildings to provide further bedspaces will be viewed favourably, where other development criteria are met.'*

14. Turning to the Council's contention that the short term let accommodation is deemed to conflict with the NPPF and the above policies of the BUDP, it is contended that if the property reverted to its lawful use as a single family sized residential dwelling it would be occupied on a daily basis. In contrast booking records of 'Heat-On House' which have been maintained by the appellant since its launch in July 2021 demonstrate that its combined average vacancy from July 2021 to January 2022 (inclusive) amounts to only 49%. Thus it is essentially vacant for half of the time.

15. During the same period, the mean group size extended to 5.16 people which is broadly consistent with the number of inhabitants that could reasonably be expected to reside in the property if it was occupied as a family sized dwelling.

16. It is indicated that this pattern of occupancy is unlikely to change in the future given that the majority of visitors to the property are seeking accommodation to provide a base from which to explore the cultural attractions of Greater Manchester during weekends, thus supporting the local economy. The Council's unsubstantiated assertion that the property is now subject to increased comings and goings when compared to its lawful residential use, is not accepted.

17. Neither is it accepted that the property creates disturbance as a result of increased vehicle movements by way of visitors to the property as well as from cleaning staff. It is contended that the bookings records and pattern of occupancy table indicate that there is likely to be a reduction in the number of vehicle movements that could reasonably be associated with the use of the property as a family sized dwelling. The occupancy data also shows that cleaners only need to visit the site on an average of two to three times per week.

18. Irrespective of the reduced number of vehicle movements associated with the site, it is argued that there will be no discernible noise impact in the context of the hundreds of vehicle movements which take place within the immediate streetscene on a weekly basis and that the appellant has taken all reasonable steps to ensure that visitors to 'Heat-On House' do not cause any unacceptable noise or disturbance to occupiers of neighbouring properties on Meade Hill Road.

19. Reference is made to the submitted 'House Rules' document and it is contended that this provides a clear framework by which all guests need to adhere to (or risk financial penalty). This is considered to mitigate the potential for adverse noise or anti-social behaviour and it is indicated that the rules, which are reinforced by CCTV cameras, are enforced by the appellant who essentially acts as manager for the property. In addition, bookings can only be made by those over the age of 21.

20. With regard to noise monitoring it is confirmed that the house is fitted with noise monitoring software known as 'Minut' which records any sounds within and around the property in decibels and live recordings which are linked in real time to the appellant's mobile phone by way of graphs. An example is submitted with the appellant's appeal statement.

21. In the unlikely event of there being any noise over and above the set level of 70db for 10 minutes, messages and an alarm are automatically sent to the appellant to enable action to be taken. This is an effective tool to prevent potential noise disturbance from guests such as loud music or parties and reflects the considered approach taken by the appellant to ensure that the use of the property as short term let accommodation does not result in any unacceptable impacts upon the amenity of occupiers of neighbouring properties.

22. It is stressed that further evidence of the appellant's careful approach to the management of the property is demonstrated by the overwhelmingly positive reviews which have been uploaded to the one of the booking websites. This indicates that from a total of 26 reviews, an average score of 8.5 out of 10 (classified by the website as 'Very Good') has been registered. Several of the comments refer to the appellant as being a proactive and helpful host and the 'House Rules' being enforced as appropriate.

23. It is indicated that the appellant's agent is experienced in dealing with issues relating to noise and disturbance within planning applications and appeals and that potential for adverse impacts upon neighbouring amenity usually arises from a change of use of a property to a fundamentally different use which would be potentially incompatible within an established residential area (such as a hot food takeaway).

24. This is on the basis of: fundamentally different patterns of comings and goings when compared to the surrounding area (ie at different times of the day or late into the evening where the potential for adverse noise impacts is exacerbated); a significant increase in the number of comings or goings to the property; potential for people to congregate near to the property that would result in the potential for adverse noise impacts and increased car/vehicle/delivery movements.

25. It is argued that none of the above issues apply to the scheme and therefore that the development accords with Policies EN7/2, RT4/3 and H2/5 of the Bury Unitary Development Plan and should be considered acceptable.

The gist of the case for the Council

26. The Council contends that the retention of the short-term let accommodation use would continue to be seriously detrimental to the residential amenities of the nearby residents, by reason of the noise, anti-social behaviour and disturbance. It is stressed, therefore that the use conflicts with the NPPF and Policies EC4/1 (Small Businesses); EC6/1 (New Business, Industrial and Commercial Development); EN7/2 (Noise Pollution) and H3/1 (Assessing Non-conforming Uses). Given the provisions of

Policy RT4/3, the Council accepts that the principle of development is acceptable in general terms But that clearly the impacts on amenity need to be considered.

27. The Council stresses that, in normal circumstances, the use of a Class C3 dwelling would be expected to be occupied by a family (given that it is a three bed semi-detached dwelling) or group of up to 6 people. However, in this case the proposed use of the property would allow for occupation by up to 13 individuals (as advertised) which is more than double the number of occupants one may reasonably expect to be residing at the property.

28. The figures relating to the booking record are referred to and that the average vacancy rate of the appeal site amounts to 49% and that the mean group size is 5.16 people. The Council also notes that the house rules require respectful behaviour; that there is noise monitoring equipment and external CCTV. It is also acknowledged that, the property might be subject to fewer comings and goings than may be the case than with a permanently occupied dwelling.

29. However, it is stressed that the impact noted in the reasons for issuing the Enforcement Notice refers to noise, anti-social behaviour and disturbance. Reference is again made to the 'booking record' which demonstrates that groups of between 7 and 10 people regularly occupy the premises (largely at weekends).

30. The Council refers to the two formal '*Notice of Anti-Social Behaviour Formal Warnings*' issued on 03/12/2021 and 09/02/2022, which were issued in response to multiple complaints of anti-social behaviour by guests at the property (set out Appendix B to the Council's appeal statement). It is indicated that these occurrences of anti-social behaviour tend to correlate with weekend parties of larger groups, although not exclusively so.

31. The Council stresses that the reported anti-social behaviour includes '*loud swearing and screaming, banging, playing of loud music, verbal abuse and threatening language (towards neighbours), altercations on the street, sexual liaisons in the garden, drug and alcohol misuse*'. It is indicated that the Police have had to be called to attend various incidents.

32. The Council acknowledges that occupation of the property by a family or group of up to six people living together does not guarantee that such behaviour would not occur. However, the Council indicates that it is clear that there has been a high incidence of anti-social behaviour related to the unsupervised occupation of the property by groups and parties of adults using the property on short term lets.

33. It is argued that the transient nature and frequency of the short term occupiers tends to mean that they have little connection to the area and hence are less inclined to respect the surrounding area and its existing residents. It is suggested therefore that such visitors have fewer concerns or realisation of causing noise and disturbance. It is accepted that the house rules, noise monitoring and CCTV, can encourage considerate behaviour.

34. However it is argued that these cannot provide assurances that short term visitors will not engage in anti-social behaviour. The repeated reports and complaints are considered to be firm evidence that the attempted controls are insufficient to prevent some visitors for behaving anti-socially. Although guest reviews have been submitted it is indicated that these merely provide satisfaction reports from visitors and do not in themselves provide evidence of careful management.

35. Given the unacceptable and harmful impacts demonstrated on neighbouring amenity of the unauthorised use, the proposal is contrary to the above stated UDP policies and the NPPF. No planning conditions are considered capable of overcoming the unacceptable harmful impacts identified.

My assessment

36. I agree with the Council and the appellant that the principle of the proposed change of use is acceptable and that certain local plan and NPPF policies could support such a use in this part of the Borough. However, the policies in favour of such a use need to be considered and balanced against other policies which seek to safeguard residential amenity and to ensure that the developments proposed are sustainable in terms of all economic, social and environmental factors.

37. The complaints made in the first instance to the Council are substantial and have continued since the enforcement notice was issued. Furthermore, the log kept by the complainants at the Council's request confirms, in my view, that the activities of some visitors has caused significant undue noise and disturbance for the residents. There is also considerable evidence from neighbours and interested persons, some of whom outline the history of the appellant's use of the property, from when he first took over the lease of the property.

38. The courts have held that whether or not a change of use has occurred must depend on the particular circumstances of each case and as a matter of fact and degree. The basic test is to compare the lawful use of the land or property with the use being carried out and to assess whether the use alters the character of usage of the property to such an extent that a material change has taken place.

39. There is no appeal on ground (c); that a contravention has taken place. However, on behalf of the appellant it is contended that, with regard to the comings and goings, noise and disturbance and the general pattern of usage of the property there is no material difference to its use as a dwellinghouse in Class C3. I disagree with this contention. In my view the use as a short term holiday let property is fundamentally and materially different to its use as a family house, or even a small House in Multiple Occupation (HMO) in Class C4.

40. Whilst accepting that bookings records indicate an occupancy level overall of around 49%, when in use as a holiday let, the evidence indicates that the main comings and goings are over the weekend periods and that, as well as some visitors arriving by car, so too do the cleaning staff. On average the records indicate that occupancy levels at the weekend are between 7 and 10 people. However, there is the potential to accommodate 13 people and the main reason for the issue of the enforcement notice relates to noise, anti-social behaviour and disturbance.

41. Two formal '*Notice of Anti-Social Behaviour Formal Warnings*' were issued in response to multiple complaints of the guests' behaviour at the property and these occurrences of anti-social behaviour tend to correlate with weekend parties of larger groups, although, as indicated by the Council, not exclusively so. I acknowledge that in some communities there are certain families who also behave anti-socially. However, in my view, the potential for disturbance by up to 13 people (or different groups of up to that number) regularly congregating inside and outside of the property for celebrations or parties mainly at weekends, is substantially greater than any use by a family group.

42. I accept that the appellant has put in place various mitigation measures including the 'Minut' programme and that there is also a set of 'House Rules' in place. However, it is clear from the complaints of neighbours (both before and after the issuing of the enforcement notice) that these have not been working in relation to all visitors. The anti-social behaviour has continued and the living conditions of the people who live close by have been severely disrupted. In my view the 'House Rules' cannot possibly be expected to be followed by 100% of visitors, 100% of the times of occupancy. I consider that it is too optimistic of the appellant to expect, that when on holiday and/or having some form of celebration, visitors will behave perfectly and with full consideration for the nearby residents in this part of Prestwich.

43. Whilst accepting that not all visitors will, or have behaved, in an anti-social manner, unfortunately the recorded '*loud swearing and screaming, banging, playing of loud music, verbal abuse and threatening language (towards neighbours), altercations on the street, sexual liaisons in the garden, drug and alcohol misuse*' of some visitors has caused undue and unacceptable disturbance for neighbouring residents. The log kept by complainants as well as their individual submissions all clearly outline the unacceptable activities (some seemingly illegal) of some guests.

44. The need for the police to be involved at various times reinforces my view that the use of the property as a short term holiday let property has caused major material planning concerns and that the character of usage as such (no matter how low the overall occupation) has been significantly different to use as a dwellinghouse for a normal family.

45. Based on the evidence before me and as a matter of fact and degree, I consider that there has been an unacceptable change of use from a single dwellinghouse to a Sui Generis use as a property being let for short term holiday let accommodation. It follows that I agree with the Council that the use is contrary to the BUDP policies referred to above, as well as to the basic policies set out in the NPPF.

46. On this latter point I consider that a continued use of the property for short term lets would be socially and environmentally unacceptable. The NPPF seeks to ensure that developments are sustainable and create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

47. There is clear evidence that the short term holiday let use of the dwelling has had severe anti-social consequences. There has also been clear environmental harm caused due to the levels and frequency of noise and disturbance caused by visitors. I consider that the use has clearly undermined the quality of life for neighbouring residents and that there have been clear conflicts caused within this residential community. I do not consider that the current measures in place to control or monitor the behaviour of some guests can mitigate against the reported activities. Nor do I consider that any further mitigation measures could improve the situation and the harmful effects on the living conditions of neighbours.

48. In summary I do not consider that planning permission ought to be granted for the continued use of the property as short term let holiday accommodation. It follows that the appeal must fail on ground (a).

Other Matters

49. In reaching my conclusions I have taken into account all of the other matters raised on behalf of the appellant, by the Council and by others. These include the initial submissions, all of the statements and appendices, all of the complainants and interested persons' submissions, the photographic evidence and any final submissions.

50. However, none of these carries sufficient weight to alter my conclusion that planning permission should not be granted for this use and nor is any other factor of such significance so as to change my decision.

Formal Decision

51. The appeal is dismissed and the enforcement notice is upheld. The application deemed to have been made under section 177(5) is refused.

Anthony J Wharton

Inspector