



Appeal Decisions

Site visit made on 30 May 2023

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

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

Decision date: 27 July 2023

Appeal A: APP/M4320/C/22/3302856

Appeal B: APP/M4320/C/22/3302857

38 Waller Street, Bootle L20 4PU

- 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 Marek Zakurzewski and Ms Marika Slominska against an enforcement notice issued by Sefton Metropolitan Borough Council.
 - The enforcement notice was issued on 16 June 2022.
 - The breach of planning control as alleged in the notice is change of use from a dwellinghouse (C3) to a short term holiday let (Sui Generis).
 - The requirements of the notice are:
 1. Cease using the premises known as 38 Waller Street, Bootle shown cross hatched on the attached plan as a short-term holiday let.
 - The period for compliance with the requirements is 2 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C: APP/M4320/W/22/3302854

38 Waller Street, Bootle L20 4PU

- 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 Marika Slominska and Marek Zakurzewski against the decision of Sefton Council.
 - The application Ref DC/2021/02960, dated 21 December 2021, was refused by notice dated 8 April 2022.
 - The development proposed is change of use of C3 dwelling to short term let (sui generis).
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Decisions

1. Appeals A and B are allowed and the enforcement notice is quashed.
2. Appeal C is allowed and planning permission is granted for a change of use of C3 dwelling to short term let (sui generis) at 38 Waller Street, Bootle L20 4PU in accordance with the terms of the application, Ref DC/2021/02960, dated 21 December 2021 and the plans submitted with it.

Applications for costs

3. Applications for costs were made by Marika Slominska and Marek Zakurzewski against Sefton Council. These applications are the subject of separate Decisions.

The Appeal on ground (c)

4. The ground of appeal is that there has not been a breach of planning control. Holiday lets have been considered in many appeals and case law has confirmed that such a change may constitute a material change of use to a use falling within the definition of a 'sui generis' use as a commercial leisure business.
5. There is no definition of dwellinghouse in the Act, but in *Gravesham BC v SSE and O'Brien* [1983] JPL 306 it was accepted that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. A dwellinghouse did not lose that characteristic if it was occupied for only part of the year, or at infrequent intervals, or by a series of different persons. Consequently, a holiday cottage that meets the Gravesham test will usually be treated as a dwellinghouse for the purposes of applying planning policies and not as a commercial leisure use, even if its occupation is restricted by condition.
6. The primary case law¹ for establishing whether or not a material change of use has occurred in cases such as this confirms that whether the use of a dwellinghouse for commercial letting as holiday accommodation is very much a question of fact and degree in each case and the answer will depend on the particular characteristics of the use as holiday accommodation. Indeed, further case law² states that neither of the two extreme propositions – that using a dwellinghouse for commercial holiday lettings will always amount to a material change of use or that the use of a dwellinghouse for commercial holiday lettings can never amount to a material change of use – is correct.
7. There is no dispute that the property has been used as a short-term holiday let since 2018, but the appellants contend that the character of the use is no different to that of a residential let on a short-term basis. My understanding is that occupiers reside as a single household sharing facilities such as the bathroom, kitchen and living areas as well as the small outdoor private yard.
8. In the *Moore* case it was held that a material change of use had occurred because the property had been let to large party groups which could not be considered as a single household for the purposes of defining a dwellinghouse. It was also ruled that the traffic movements and frequency of movements to and from the property were greater than would be expected of a dwellinghouse. The harm identified was compounded by the proximity of other neighbouring residential properties.
9. In this case the property is a relatively small end of terrace house comprising of a small entrance hall area, living/dining room, kitchen, bathroom, two double bedrooms and a very small outdoor yard space. As a single holiday let it is unlikely that the level of occupancy would be materially different to a single dwellinghouse occupied by a single household. In addition, it is unlikely that the property would be let to anything other than a family or other similar group living as a single household. Given the likely levels of occupancy, I do not consider it likely that the traffic and other movements would be materially different to that of a single household.

¹ *Moore v SSCLG & Suffolk Coastal DC* [2012] EWCA Civ 2101

² *Blackpool BC v SSE & Keenan* [1980] JPL 527

10. The evidence before me indicates that the appeal property in this case is cleaned approximately twice a week by a designated cleaner and maintenance manager and the Council does not consider this to be a normal pattern for a dwellinghouse. However, the levels of activity and movement associated with cleaning and management are not materially significant for the purposes of determining whether the use amounts to a material change.
11. The Council has submitted evidence that the property has been brought into rating by the Valuation Office Agency on a commercial basis from December 2020. Whilst this indicates that a commercial use has occurred, it does not on its own indicate that in planning terms a material change of use has occurred.
12. Therefore, as a matter of fact and degree and based on the specific characteristics of this property, the use as a short-term holiday let does not amount to a material change of use. In accordance with established case law and on the assessment of the facts of this case there has been no breach of planning control. Therefore, the appeal on ground (c) succeeds.
13. Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Appeal C

Main Issues

14. Within the context of an appeal under section 78 of the Act it is not within my remit to formally determine whether the proposed development requires planning permission as claimed by the appellant. Therefore, although I have allowed Appeals B and C and concluded under ground (c) that there has not been a breach of planning control, there remains a planning appeal to be determined. The main issues are the effect on the living conditions of the occupants of neighbouring residential properties with reference to noise and disturbance and the effect on the character of the residential area.

Reasons

15. It is my understanding that the use of the property was drawn to the Council's attention because of complaints from neighbours about noise and disturbance, including late night parties and anti-social behaviour from guests staying there. In addition, irregular arrival and departure times and associated vehicle movements have generated noise and disturbance beyond levels that would normally be expected from a residential property. I do not dispute the concerns of residents regarding levels of activity including parties, however, in my judgement those may not be specifically attributed to any difference in the type of occupation that has occurred.
16. Short-term letting may be associated with increased noise and disturbance but as set out above I do not consider the levels of activity that are generated from the short term let are likely to be materially different to residential occupancy, given the size of the property and likely levels of occupancy. In my planning judgement, they are not materially different than if the property was let to a single household. I am not satisfied that in this case the type of occupancy is likely to give rise to more late night parties than any other single household,

nor do I consider it more likely that short term letting has made a direct contribution to increasing any levels of anti-social behaviour in the locality. It may be that complaints have only been received since short-term letting started, but that does not mean that the type of tenancy is directly responsible for any such issues.

17. An assessment has been undertaken and shows that music noise from a domestic sound system could adversely affect the existing residents of the adjoining dwelling with the existing separating wall construction. Therefore, enhancements to the existing separating wall have been suggested. I have noted that there was no environmental health objection to the proposal. I can understand why a recommendation has been made to mitigate the potential harm to the living conditions of neighbouring residential occupants with reference to noise from a domestic sound system, but in these circumstances the use of such a sound system is unlikely to be materially different between the use as a holiday let and a single dwellinghouse. Therefore, I do not consider a condition would be reasonable.
18. Therefore, I conclude that the development does not have a harmful effect on the living conditions of the occupants of neighbouring residential properties with reference to noise and disturbance. As such it is in accordance with Policy HC3 of a Local Plan for Sefton Adopted April 2017 (the LP) which relates to residential development and primary residential areas, stating that non-residential development will be permitted provided it can be demonstrated that the proposal will not have an unacceptable impact on the living conditions of neighbouring properties.
19. Given my conclusions with respect to living conditions, I do not consider there would be harm to the character of the area or undermine housing delivery objectives. As such there is no conflict with Policy HC3 or the Framework.

Conditions

20. I have considered whether planning conditions should be used to mitigate any potential effects associated with the material change of use for which permission has been sought. However, given my conclusions with respect to appeals A and B, that there has been no breach of planning control and that planning permission is not required for the change of use of this particular C3 dwelling to short term let, it would be unreasonable to impose any restrictions.

A A Phillips

INSPECTOR