



Appeal Decision

Site visit made on 11 December 2023

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 January 2024

Appeal Ref: APP/F0114/C/23/3325732

18 Raby Place, Bathwick, Bath, BA2 4EH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
- The appeal is made by Mr Matthew Slade of Vertex Investments Limited against an enforcement notice issued by Bath and North East Somerset Council.
- The notice was issued on 23 June 2023.
- The breach of planning control as alleged in the notice is, without the benefit of planning permission, the change of use from bed and breakfast accommodation (use class C1) to self-catering commercial holiday accommodation (use class Sui Generis).
- The requirement of the notice is to cease the use of the land as commercial holiday accommodation.
- The period for compliance with the requirement is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (g) of the Act.

Summary of Decision: The appeal succeeds in part only and the enforcement notice is upheld with corrections, and a variation in the period for compliance, as set out below in the Formal Decision.

Preliminary matters and planning history

1. The enforcement notice relates to 18 Raby Place which is an end of terrace building on a corner plot. The lawful use of the site, established under planning permission granted in February 2001 (ref 00/01633/FUL) is as a guest house/bed and breakfast accommodation. This falls within use class C1 (Hotels, boarding and guest houses) of the Town and Country Planning Use Classes Order 1987 (as amended) (the Order).
2. An application (ref 21/04202/FUL) for the change of use of the property from a guest house/bed and breakfast (C1) to a commercial holiday let for up to 25 people (Sui Generis), was refused in November 2021. A further application (ref 22/00723/FUL) reducing the number from 25 to 12 people was refused in April 2022. Both decisions were appealed, with the appeals being dismissed. Two planning contravention notices (PCN) have been served, the first was returned in May 2022 and the second in February 2023.
3. Matters raised in appeal submissions by the appellant and the Council regarding ground (b) and (c), overlapped to an extent. I have considered the matters under the ground to which I considered them to be most pertinent.

The notice

4. I have a duty to get the notice in order and s176(1) of the Act grants powers to (a) correct any defect, error or misdescription in the enforcement notice, and/or (b) vary the terms of the notice, provided it would not result in injustice to the appellant or the Council.

5. Section 55 of the act defines 'development' and this includes the making of any 'material change in the use' of any buildings or other land. Therefore, for a change of use to be development, it needs to be a material change. The wording of the notice refers to a 'change of use' rather than a 'material change of use'. However, it is evident from the submissions that both parties understood the allegation to relate to a change of use which would constitute development. The notice would therefore be more precise if it was corrected to specify a 'material change of use' not a 'change of use'.
6. The allegation refers to 'self-catering commercial holiday accommodation' and the requirements refer to ceasing the use of the land as 'commercial holiday accommodation'. The key issue raised in the appeal submissions relates to whether rooms are let individually, with an on-site manager, as would be expected of a bed and breakfast, or whether the house is let in its entirety to a single group of guests, without an on-site manager. Therefore, it would improve precision and clarity if the wording in both the allegation and requirements was corrected to refer to 'a single unit of self-catering commercial holiday accommodation'. It seems evident from the appeal submissions that both parties understood this to be the issue in question. In both cases, I am satisfied that I can correct the wording of the notice accordingly, as set out in the formal decision, without causing injustice to either party.

The appeal on ground (b)

7. An appeal on ground (b) is that the matters stated in the notice have not occurred. To succeed on this ground, the onus is on the appellant to demonstrate, on the balance of probabilities, that the allegation has not occurred, as a matter of fact. S174(2)(b) of the Act is worded in the past tense, so the question is whether the breach *had* occurred by the date of issue of the notice. If the alleged use had taken place on the site, an appeal on ground (b) cannot succeed simply on the basis that the use had subsequently stopped. The breach will have occurred prior to the issue of the notice, as a matter of fact.
8. The May 2022 PCN completed and returned by the appellant confirmed that the site was used for large groups of up to 25 unrelated people, for events including weddings, birthdays and hen breaks, with an average of 4 holiday bookings a month. In the subsequent February 2023 PCN return, the appellant stated the current use was C1, which commenced on 24th February 2023, with the previous use being 'sui generis accommodation which was refused planning permission on appeal'.
9. From the PCN returns, it is clear that the appellant acknowledges that a change of use to a Sui Generis use had taken place prior to the issuing of the notice. Therefore, as a matter of fact, the matters stated in the notice have occurred. Accordingly, the appeal on ground (b) fails. Whether the change of use is a material change of use will be considered under the appeal on ground (c).

The appeal on ground (c)

10. An appeal on ground (c) is that the matters alleged, if they occurred, do not constitute a breach of planning control. The burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.

11. The matter alleged (as corrected) is the material change of use from bed and breakfast accommodation (use class C1) to a single unit of self-catering commercial holiday accommodation (use class Sui Generis). S174(2)(c) of the Act is worded in the present tense, so an appellant may rely upon matters which have taken place since the date the notice was issued.
12. The meaning of 'use' is provided in s336(1) of the Act, but the concept of a 'material change of use' is not defined in statute. As established by case law, the basic approach is that, for a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously. The assessment is a matter of fact and degree, for the decision maker to determine on the available evidence.
13. The planning unit consists of the entirety of the building and its existing authorised use is as a guest house/bed and breakfast, which falls within use class C1. In accordance with the Act and the Order, the issue for consideration is whether the use of the site could be said to remain within use class C1, and if not, whether the character of the activities of the changed use are significantly different so as to constitute a material change of use.
14. The appellant asserts that the use of the site remains within use class C1, as authorised. They claim rooms can be booked individually by unrelated guests and that guests are reliant on the presence of an on-site concierge/manager to check people in/out and oversee their stay. The appellant also states that the manager lives on site during periods of guest occupation, and has their own private space and cooking facilities, separate to the guests. In addition, they say there is a 'welcome table' in the hallway to facilitate management tasks and provide guests with a means of contact with management. However, the appellant has not provided evidence to support any of these claims.
15. The Council and third parties have provided evidence from a number of websites, showing the site advertised for rental on a short term basis as a whole house. While the house may at times have been rented to smaller groups (ie less than the full capacity of the house), I have seen no evidence that individuals or small groups have rented rooms at the same time as other unconnected individuals or groups.
16. Information from the Council and 3rd parties, including former guests, indicates that there has been no manager living on site while guests are in occupation. Instead, it has been stated that guest access is provided via a keypad with contact details given for off-site management if needed. During my site visit, the rooms on the third floor, where the on-site manager is meant to be able to live, at least during guest occupation, did not appear to be set up for what might reasonably be expected for a person performing an on-site manager function. One room contained 3 single beds taking up most of the floor space. The other room contained 2 single beds and a large quantity of quilts, other linen and some black bags, which seemed to be stored there. This room did contain a small table with a microwave and a few items of tableware, but there was no sink, meaning any dishes, or getting water, would need to be done in the small bathroom on the landing. I saw no evidence that the room had actually been used by a live in on-site manager or was about to be used as such. While only a minor matter, I also noted during my site visit that there was no 'welcome table' in the hallway.

17. The appellant has not presented substantive evidence which would lead me to conclude that rooms are, or can be, booked on an individual basis, or that, as a matter of course, a manager lives on site while guests are in residence.
18. The appellant states that only 4 guest rooms are available to book and the remaining rooms are used as communal guest facilities. The Council have provided evidence that in May of 2023, the bedrooms, including those at third floor, were set up with multiple beds in a cramped arrangement, including bunk beds. At the time of my site visit, only 4 rooms were set up as functional guest bedrooms (one at first floor and 3 at second floor) each with a double bed. There was a communal dining room and kitchen at ground floor and a large lounge at first floor. None of the 4 guest bedrooms have an en-suite toilet or shower, though one does have a bath. There are shared guest bathroom facilities on each floor. This set up means that if rooms were able to be booked on an individual basis, guests would need to enter communal hallways to access bathroom facilities and share them with other unconnected guests. This lack of en-suite facilities is not, in and of itself, a conclusive factor, but it does seem unusual, particularly in a property finished to a high specification. By contrast, a property which is booked in its entirety, by people connected to each other, might commonly share bathroom facilities between guests in different rooms. The layout of the bedrooms and bathrooms, with a lack of on-suite facilities, is more indicative of a single unit of self-catering commercial holiday accommodation than it is of a modern hotel, guest house or bed and breakfast.
19. In addition to the above, most hotels, guest houses and bed and breakfasts offer at least an element of hospitality in terms of the provision of food. That is not the case here. No food is provided by on-site management but adverts state arrangements can be made to bring meals or a chef in. Guests have full access to the kitchen to make their own food. This set up is more characteristic of self-contained, self-catering units, or a hostel, than of a use falling in use class C1.
20. I acknowledge that hotels and bed and breakfast accommodation are capable of operating on a range of formats, not just individual rooms, and some offer larger guest suites. Notwithstanding this, accommodation within use class C1 would characteristically have rooms bookable on an individual basis, some form of on-site management, and some provision of food for guests, even if only breakfast. The appeal site does not seem to have this, which is uncharacteristic of a C1 use.
21. Surrounding properties are predominantly individual dwellings, with other uses including hotels, shops, and student accommodation nearby. Typically, in a bed and breakfast use, which is the authorised use, rooms would be booked separately by people with no connection. It is likely that people would then have consideration for fellow guests in the same property, who they did not know, and keep noise and disturbance to an acceptable level. Presence of on-site management would mean that any issues could be identified and dealt with immediately. By contrast, use of the site by a single group of people, generally connected in some way and known to each other, particularly for celebrations and events, is much more likely to generate a significant level of noise and disturbance. This would be exacerbated by the lack of on-site management, meaning there is nobody to deter excessive noise and disturbance or deal promptly with issues.

22. Even if a manager did live on site, it is still likely that noise and disturbance would be greater from a whole group booking, as the way in which the site would be used is fundamentally different than for individual bookings.
23. An increase in noise and disturbance at the site, associated with its use as a single unit of self-catering commercial holiday accommodation, is supported by a range of ongoing complaints from neighbours. They report additional and excessive noise and disturbance, starting from mid-2021, around the time when the site was first used for large group bookings of the site as a whole, without an on-site manager. The increase in noise and disturbance has caused significant harm to the residential amenity of neighbouring occupiers, contrary to Policy D6 of the Bath and North East Somerset Placemaking Plan.
24. Having undertaken a site visit and considered all of the submitted evidence, including reference to case law¹, I conclude that on the balance of probability, the site is used as a single unit of self-catering commercial holiday accommodation. I consider this to be most appropriately classed as a Sui Generis use. Therefore, the use is no longer within use class C1. This change of use involves activities the character of which are significantly different to the activities that went on previously when the site was used as a guest house/bed and breakfast.
25. Consequently, as a matter of fact and degree, on the evidence before me, I conclude that a change of use has taken place from bed and breakfast accommodation (use class C1) to a single unit of self-catering commercial holiday accommodation (use class Sui Generis), and that it is a material change of use. This material change of use is development for which there are no permitted development rights and no planning permission has been granted. Therefore, those matters alleged in the notice have occurred and constitute a breach of planning control.
26. The appellant has not demonstrated, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

The appeal on ground (g)

27. The appeal on ground (g) is that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The notice specifies a time for compliance of 3 months after the notice takes effect.
28. The appellant has requested an extension to at least 4 months to allow adjustments and arrangements, including changing marketing and/or bookings made. While a prompt resolution is desirable, given the matters set out above, a bit of extra time would help ensure that people who may already have booked to stay at the site have time to make alternative arrangements.
29. I conclude that the period for compliance with the notice falls short of what is reasonable. It would be reasonable to extend the compliance period to 4 months and the appeal on ground (g) succeeds to this extent. I shall uphold the notice but exercise my powers under s176(1)(b) of the Act to vary the notice accordingly, as set out below in the formal decision.

¹ Panayi v Secretary of State for the Environment and Hackney LBC [(1985) 50 P&CR 109]

Conclusion

30. For the reasons given, I conclude that the appeal on grounds (b) and (c) should not succeed. However, the appeal on ground (g) succeeds to the extent that the period for compliance is extended to 4 months. Therefore, I shall uphold the enforcement notice, with corrections and a variation.

Formal decision

31. It is directed that the enforcement notice is corrected as follows:

- In section 3, which sets out the matters which appear to constitute the breach of planning control, insert the word 'material' before the word 'change'; and insert the words 'a single unit of' before the words 'self-catering commercial holiday accommodation';
- In section 5, which sets out the requirements, insert the words 'a single unit of self-catering' before the words 'commercial holiday accommodation'.

32. It is also directed that the enforcement notice is varied as follows:

- In section 6, which sets out the time for compliance, delete the words 'Three Months' and substitute the words 'Four Months'.

33. Subject to these corrections and variation the appeal is dismissed and the enforcement notice is upheld.

H Davies

INSPECTOR