

Appeal Decision

Site visit made on 12 February 2024

by **Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP**

an Inspector appointed by the Secretary of State

Decision date: 13th February 2024

Appeal Ref: APP/B1930/C/22/3307768

14 Glenlyn Avenue, St Albans, Hertfordshire AL1 5PF (shown edged red on the plan attached to the notice)

- 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 Mrs Gwenneth Cooper against an enforcement notice issued by St Albans City & District Council on 17 August 2022.
- The breach of planning control as alleged in the notice is change of use from residential (C3) or licenced house in multiple occupation (C4) to use as short term commercial letting as Air B&B (sui generis).
- The requirements of the notice are to cease the use of the site for short term commercial letting as Air B&B and resume the authorised use of the site for residential (C3) or licensed house in multiple occupation (C4).
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) (e) (f) of the Town and Country Planning Act 1990 as amended (the Act).

Decision

1. It is directed that the enforcement notice be corrected and varied by:
 - Adding (in Section 2) "and Land on the north-east side of 14 Glenlyn Avenue" after "14 Glenlyn Avenue";
 - Replacing (in Section 3) "Change of use from residential (C3) or licenced house in multiple occupation (C4) to use as short term commercial letting as Air B&B (sui generis)" with "Material change of use to use as short term commercial letting (sui generis)"; and
 - Replacing (in Section 5) "Cease the use of the site for short term commercial letting as Air B&B and resume the authorised use of the site for residential (C3) or licensed house in multiple occupation (C4)" with "Cease the use of the site for short term commercial letting".
2. Subject to these corrections and variations, in part due to success on ground (f), the appeal is otherwise dismissed and the enforcement notice is upheld.

Procedural Matters

Planning merits

3. As no ground (a) appeal has been made (or associated fee paid), there is no deemed planning application for me to consider seeking consent for a material change use of the property for short term commercial letting. Consequently, I cannot consider the merits (or demerits) of any such development when determining the appeal.

'Hidden' ground of appeal

4. I have a duty to be aware of all grounds of appeal within an appellant's submissions, and to deal with them where possible. This includes those implicitly made and which may not have been explicitly connected to a particular ground of appeal. I consider that the appellant's submissions include a ground (b) appeal – that matters stated in the notice have not in fact occurred – and therefore I will deal with that argument as a 'hidden' ground.

The enforcement notice

5. The appeal site comprises 2 parcels of land (titles HD256361 and HD0600871) which are registered respectively as '14 Glenlyn Avenue' and 'Land on the north-east side of 14 Glenlyn Avenue'. I am correcting Section 2 to provide a more accurate description of the site. This causes no injustice to any party as the land subject to enforcement action is clearly identified by a red line in the enforcement plan attached to the notice which was issued.
6. The Council has introduced uncertainty into the notice in Section 3 by stating two different possible uses of the land in existence before the alleged change of use took place. I am however satisfied that the appellant has not been prejudiced as she is best placed to know the existing use before the alleged change of use (which she identifies as a house in multiple occupation (HMO) – Class C4¹) and has been able to make appeal submissions on that basis. I am nevertheless using my powers to correct the notice to reduce uncertainty, without injustice to any party, by simply referring to the resultant use of the land². I am also correcting the allegation to make clear that it is a *material* change of use which is the alleged breach of planning control, being alleged development without the benefit of planning permission (as understood by the parties, albeit the appellant disputes that a material change of use has occurred – being the subject of the ground (c) appeal). Further, I am removing reference to Air B&B as it is not a use of itself and its mention is superfluous.
7. I am also making variations to the requirements in Section 5 of the notice, to which I refer in my reasoning on ground (f) below.

Ground (e)

8. For an appeal to succeed on this ground, I must be satisfied on the balance of probabilities that that copies of the enforcement notice were not served as required by section 172 of the Act. That section requires service upon the owner and occupier of the land to which it relates and upon any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
9. I have seen evidence within the papers that the Council properly complied with the above requirements by delivering a copy of the notice by hand to the owner (the appellant, who has obviously been able to exercise full rights of appeal upon receipt), by sending a copy of the notice by recorded delivery to the mortgage lender (having an interest in the land) and by attaching a copy of the notice to the land addressed to the occupiers. All these are proper methods of service under section 329 of the Act.

¹ Class C4 of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO) - Use of a dwellinghouse by not more than 6 residents as a "house in multiple occupation" (HMO).

² *Westminster CC v SSE & Aboro* [1983] JPL 602, *Ferris v SSE* [1998] JPL 777

10. While the appellant highlights the sub-division of the appeal site, I have seen the relevant land registry official copies of register (issued on 10 August 2022, shortly before the issue of the notice) which show her as the owner of both parcels of land comprising the appeal site. She has not provided evidence otherwise.
 11. For all of the above reasons, ground (e) does not succeed.
- 'Hidden' ground (b)**
12. For an appeal to succeed on this ground, the burden of proof is upon the appellant to demonstrate on the balance of probabilities that the matters stated in the notice said to constitute the breach of planning control have not in fact occurred.
 13. In essence, the appellant claims as part of her submissions that use of the appeal property has not changed from C4 use notwithstanding use of Air B&B as an online intermediary to secure lets.
 14. For the purposes of class C4, an HMO has the same meaning as in section 254 of the Housing Act 2004³. In order to meet the 'standard test' of being an HMO, the living accommodation must be occupied by persons as their only or main residence (or they are to be treated as so occupying it)⁴. The appellant, upon whom the burden of proof rests, has provided no substantive evidence to that effect. Indeed, her response to the Planning Contravention Notice (PCN) issued on 8 February 2022 did not identify any occupants using the property as their primary (main) residence when explicitly asked⁵ notwithstanding the supply of a long list of short term lets occurring before, upon and after the PCN date.
 15. Accordingly, the appellant has not demonstrated to the required standard of proof that a change of use from C4 to use for short term commercial letting has not occurred. Therefore, the ground (b) appeal fails.

Ground (c)

16. For success on this ground, the burden of proof is upon the appellant to demonstrate on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control.
17. There is no planning permission in place for use of the property for short term commercial letting. Planning permission is required for an act of development⁶ such as a *material* change of use.
18. The appellant's ground (c) case, in essence, is that there has been no material change of use since the targeted use has no greater impact upon the amenity of neighbours than would be commensurate with the property being operated continually as a 6-bedroom 6-household Class C4 HMO.
19. Having considered all of the evidence, it seems to me as a matter of fact and degree that the character of use associated with the frequent turnover of groups of guests (using the property for the purpose of short stays away from their main home) – as evidenced in the appellant's PCN responses⁷ – is

³ But does not include a converted block of flats to which section 257 of the Housing Act 2004 applies.

⁴ Section 254(2)(c) of the Housing Act 2004.

⁵ Section 4(5).

⁶ Section 55 of the Act.

⁷ PCNs dated 8 February 2022 and 13 August 2021.

materially different than use by, inherently more settled and less transient, residents as a main home under Class C4 use. For instance, the number of short term guests recorded by the appellant as staying at the property in the period 10 May 2021 to 30 August 2021 (PCN issued on 13 August 2021) was 109, with 23 lets in less than 4 months. Similarly, the number of short term guests recorded by the appellant as staying at the property in the period 4 September 2021 to 18 February 2022 (PCN issued on 8 February 2022) was up to 90, with 19 lets in 5 and a half months. I also note from these records that the dates of bookings did not necessarily entail guests arriving and leaving on the same date, meaning a greater number of days when there were either guests coming or going from the property located in a small residential cul-de-sac. While the appellant asserts that the targeted use in her experience results in fewer vehicular movements than the pre-existing C4 use, she has not provided any substantive evidence in support of that statement, and the above PCN data together with third party representations as to disturbance does not persuade me as to her case.

20. For these reasons, the appellant has not demonstrated on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control. Accordingly, ground (c) does not succeed.

Ground (f)

21. For success under this ground, I must be satisfied that the requirements of the notice are excessive in achieving its purpose.
22. It is clear to me that the purpose of the notice is to remedy the breach of planning control. While it attempts to do so by properly requiring cessation of the unauthorised use – which is short term commercial letting – it is excessive (and unnecessary) to refer to the company Air B&B in the requirement since it is not a use of itself and its mention is superfluous. I am therefore varying the notice to remove such reference. Further, a notice may not require that land is used for a particular use – I am therefore varying the notice to remove the requirement for resumption of C3 or C4 use.
23. Ground (f) therefore succeeds.

Conclusion

24. For the reasons given above I conclude that the appeal should not succeed, except on ground (f). I shall uphold the enforcement notice with corrections and variations.

Andrew Walker

INSPECTOR