
Appeal Decision

Site visit made on 30 July 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 21 August 2024

Appeal Ref: APP/Q9495/C/24/3338306

Land at 1 Priory Mews, Priory Grange, Windermere LA22 1FG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Dean Wilson against an enforcement notice issued by Lake District National Park Authority.
 - The enforcement notice, numbered E/2023/0113, was issued on 13 December 2023.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of a dwellinghouse, falling in to Use Class C3, to a use as two separate units of short term letting accommodation and associated operational development consisting of the erection of a roofed building and a fence.
 - The requirements of the notice are:
 - (i) Discontinue the use of the Land otherwise as a single falling within Use Class C3 of the Town and Country Planning (Use Classes) Order, and
 - (ii) Remove the roofed building and fence from the Land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a),(c), (f) and (g) of the Town and Country Planning Act 1990 as amended. [Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act fall to be considered.
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Summary Decision: the appeal is allowed in part and planning permission is granted for that part in the terms set out in the Formal Decision below. In all other respects, the appeal is dismissed and the notice is upheld with corrections and a variation as set out in the Formal Decision

Procedural matters

1. At the time of my site visit, the space in the appeal property known as 'The Den' was occupied and I was not able to view inside it. However, detailed descriptions of that space are to be found at various places in the written evidence that is before me, and some photographs of that space are provided as part of the documentary evidence relied upon by the Authority. I am therefore satisfied that I have sufficient information on 'The Den' on which to base my decision.
2. The breach of planning control as alleged in the notice is, without planning permission, the material change of use of a dwellinghouse, falling in to Use Class C3, to a use as two separate units of short term letting accommodation and associated operational development consisting of the erection of a roofed building and a fence. A number of points arise.

3. The alleged breach of planning control makes reference to 'Use Class C3' but without stating where that term comes from. It appears that the appellant has understood that reference. Nevertheless, in the interest of precision and clarity, I will correct the notice by inserting the Town and Country Planning (Use Classes) Order 1987.
4. Insofar as it relates to the associated operational development, the notice alleges the erection of a roofed building and a fence. These are stated separately in the notice but, on my site visit, I noted that the roofed building and the fence are physically attached and combine to form one continuous structure. Moreover, the roofed building and the fence are contiguous with an open topped pergola running the full length of the property and the full width of the yard.
5. My view is that the roofed building, the fence and the open topped pergola should be regarded as one single structure and that the breach of planning control alleged in the notice should be corrected to reflect that. I wrote to the parties to seek their views on that point.
6. The appellant did not respond.
7. The local planning authority has no objection to the notice being amended as set out above, believing it to be a clarification that would not cause injustice. In that context, the local planning authority points out that the proposed wording is reflective of the assessment at paragraph 2.32 of their Compliance Report, a copy of which was provided with the appeal questionnaire.
8. I will therefore correct the notice to refer to the associated operational development as consisting of the erection of a single building that comprises a roofed structure, a fence and an open topped pergola. The requirements at paragraph 5 of the notice would then need to be varied to reflect the amended breach of planning control.
9. The requirement at paragraph 5(i) of the notice refers to Use Class C3 of the Town and Country Planning (Use Classes) Order but omits the date of that Order. I will correct that omission.

The appeal on ground (c)

10. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is one of the 'legal' grounds of appeal, in which 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 breach of planning control alleged in the notice includes a material change of use and associated operational development. It is necessary to consider these separately before drawing them together in a conclusion.

The alleged material change of use

12. The Town and Country Planning (Use Classes) Order 1987 (the UCO) sets out how dwellinghouses are defined for the purposes of the Order in Class C3. These are:

- Use as a dwellinghouse (whether or not as a sole or main residence) by
- (a) a single person or by people to be regarded as forming a single household
 - (b) not more than six residents living together as a single household where care is provided for residents
 - (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).
13. The courts have held that that the distinctive characteristic of a dwellinghouse is its ability to afford those who used it, the facilities required for day-to-day private domestic existence. It is settled case law that the limited use of a family home for holiday lettings would not necessarily be a material change of use of a dwellinghouse. In *Moore v SSCLG* [2012] EWCA Civ 1202, the Court of Appeal held that materiality in such cases will be a matter of fact and degree, with the answer depending on the characteristics of the use as holiday accommodation.
14. In *Moore*, a single dwelling was being used as a holiday let for up to 18 people with an additional 2 on a sofa-bed and was let generally for short periods of 3, 4 or 7 nights. The Court of Appeal concurred with the Inspector's assessment that this represented a material change of use. As part of his reasoning, the Inspector had highlighted the pattern of arrivals and departures, with associated traffic movements; the unlikelihood of occupation by family or household groups; the numbers of people constituting the visiting groups on many occasions; the likely frequency of party type activities, and the potential lack of consideration for neighbours. The Inspector concluded that the use was materially different to that of a dwelling, giving it a use class of its own (*Sui Generis*).
15. The Court of Appeal went on hold that:
- "... he (the Inspector) was not merely entitled to reach this conclusion; it was clearly, on the facts of this case, the correct conclusion. As a matter of common sense, this particular use for holiday letting is very far removed from the permitted use as a dwellinghouse and a material change of use has occurred."*
16. The facts in *Moore* are very different to the facts in this case: the house was considerably larger, being an 8-bed dwelling with a 20-person occupancy. This far exceeds the 4-bed dwelling with an 8-10 person occupancy of the appeal property. Nevertheless, the principle established in *Moore* remains relevant.
17. The appellant does not dispute that the appeal property (known as the Coach House, but also including the separate unit known as 'The Den') is used as a short-term holiday letting. The appellant describes the Coach House as containing 3-double bedrooms, a children's bunk bed and a lounge that contains a small sofa bed suited to 1 person for occasional use. The property is advertised as short-let accommodation suitable for 8 people, although the appellant concedes that the house can theoretically accommodate up to 10 people. It is the appellant's case that a material change of use has not taken place.

18. As per *Moore*, it is necessary to examine the characteristics of the use of the appeal property as holiday accommodation. Evidence of the characteristics of the use of appeal property as holiday lettings is to be found in the Planning Contravention Notice (PCN), the AirBB reviews and in third party representations.
19. The PCN confirmed that of the 15 bookings (between April and August 2023) for which details were provided the minimum stay was two nights and maximum stay was four nights, albeit the Authority has evidence to show that the property is available for one-night stays. The bookings were for between 4 and 8 persons. Two points flow from this.
20. Firstly, the turnover of occupants over that five-month period is significantly different to what might be expected of a typical family-sized dwelling. Secondly, on two occasions during that period the number of guests is recorded as being 8. I fully accept that an extended family comprising 8 or more individuals could constitute a single household for the purposes of Use Class C3 of the UCO. However, whilst I do not have all the details as to their composition, there is consistent reference in the evidence before me to the appeal property being occupied by large groups of apparently unrelated individuals (Stag parties, Hen parties, wedding parties, etc). I have great difficulty is reconciling the occupation of the appeal property by those large groups with the concept of a dwellinghouse as defined in Class C3 of the UCO.
21. The reviews on AirBB confirm a number of points. One review explicitly states that the stay was for one night only, whilst that much can be inferred from another. Two of the reviews indicate that the stay was for two nights. This is evidence of short-term lettings. The reviews are dated from January, February, March and May 2024 and, whilst this was no doubt due to the timing of the appeal (made in December 2023), this is nonetheless a clear indication that the use is not confined to the summer months.
22. But the most instructive comments made in the AirBB reviews relate to noise levels, all from people who stayed in 'The Den'. One review (March 2024) refers to "some noisy guests above us who were playing music/karaoke until the early hours of the morning", and another (January 2024) which commented that "there was a group of lads also staying who were playing music late". A third review (also March 2024) commented that "there were some issues with parking" and that "as a large party were staying in the accommodation above, it was very noisy at night (until 1am) due to loud music and shouting from neighbours..." One review from February 2024 describes a lack of privacy due the hot tub being overlooked from the balcony and from an upper floor window.
23. It is apparent from these reviews that (a) both 'The Den' and the accommodation above were occupied at the same time at some points during January and March: (b) some stays were of short duration: (c) there were issues with parking associated with the use: (d) the property was occupied by a single-sex group on at least one occasion and (e) noise levels emanating the use of the larger space was high enough to cause disturbance. All of these considerations go to the characteristics of the use.
24. But the most instructive evidence relating to the characteristics of the use are those made the neighbours to the appeal property, by which I mean the residents of Priory Grange as a whole. A total of 15 representations were received, all from residents of Priory Grange and all objecting to the use of the

appeal property for short-term letting accommodation. Some of the written evidence is supported by photographs, thereby lending further credence to that evidence.

25. I was immediately struck by the consistency of the evidence contained within these representations and the significant proportion of the households in Priory Grange that made representations. The latter indicates how widespread these characteristics are evident from within Priory Grange and are not just experienced by the occupiers of the dwellings adjoining the appeal site.
26. The points made in those representations are too numerous to list individually, but in summary the key points are:
- evenings disturbed by music being played in the outside area of 1 Priory Mews at 02.00 to 03.00 hours
 - excessive noise from the balcony and use of the hot tub
 - noise from visitors when outside the property i.e when moving to/from the outside hot-tub, or returning back from Windermere village, and from an outside bar area
 - loud music and loud conversation when the cleaners are present
 - much coming and going of cars to the premises at various times of the day and night
 - the number of vehicles associated with the use, described as always 3 or more, often larger SUV-type vehicles, and up to 6 vehicles on at least two occasions
 - many vehicles parked outside of neighbour's properties, with arrivals and departures causing disturbance
 - excessive and intrusive lighting of the gardens of 1 Priory Mews
 - regular visits of maintenance and cleaning teams, plus at least once a week a large waste removal lorry
 - large volumes of bottles and rubbish left outside the property
 - rubbish thrown over into a neighbour's garden from the balcony
27. The representations made by local residents also provide some details that assist in determining the scale of these characteristics. For example, several representations recount an incident that occurred on 18 May 2024, resulting in the police being called at 01:30 hours in response to what one local resident described as loud screaming, yelling and music emanating from the outside balcony at 1 Priory Mews due to a raucous Hen party of more than 10 young ladies (their words). This evidence is substantiated by quoting the Cumbrian Police incident report number which, whilst this does not tell me the outcome of the complaint, is good evidence that a complaint was made and tends to corroborate the local residents' version of events.
28. The appellant points out that there are obligations in place that people renting must sign and the owner can decline bookings which provides greater restriction than a permanent dwellinghouse. I am told that the Appellant places strict conditions regarding the type of groups that can rent the property

- and clearly states within their welcome pack that no events are allowed and guests should be respectful to surrounding properties: for example, within the house rules it clearly states that music should be turned off at 22:00.
29. The evidence in the third-party representations and the AirBB reviews clearly shows that these measures have been wholly ineffective. The incident that took place on 18 May 2024, and the three references to music being played late at night in the AirBB reviews, put to the sword the appellant's claim that music is turned off at 22:00. The description by local residents and in the AirBB reviews of occupation by large groups would also suggest that the appellant has not been particularly stringent in his vetting process or in enforcing the strict conditions to which renting the property is said to be subject. It also dispels the notion that the property is rented exclusively, or predominantly, to families: the large groups (sometimes single-sex) described by local residents could not reasonably be considered to constitute a 'household' for the purposes of section 258 of the Housing Act 2004.
30. It is apparent to me that in some details the representations by local residents may not be entirely accurate (for example, on the number of bedrooms in the property and the incident of the floor/ceiling collapsing). Nonetheless, on the whole, the evidence of local residents on the characteristics of the use is to be preferred.
31. I have read and understood the legal authorities and appeal decisions relied on by the appellant and the Authority. For the most part, those judgements and appeal decisions relate to situations in which the facts and circumstances are materially different to those before me in this case. For that reason, I do not find them to be of much assistance. In particular, the appeal decisions relied on the appellant are all in relation to cases where planning permission is being sought in an appeal under section 78 of the 1990 Act and are therefore not directly relevant to an appeal on ground (c).
32. I must, however, comment briefly on the appeal made against the decision of Test Valley Borough Council (APP/C1760/W/22/3290641) for a change of use [sic] from dwelling (C3) to short term holiday let (Sui Generis) in which the Inspector firstly questioned why planning permission had been sought for a change of use (thereby implying it was not required as both were Use Class C3). The Inspector stated at paragraph 3 of his decision that "The reason why planning permission is required to use the dwelling as a holiday let is unclear in this case, as neither party has directly addressed the matter."
33. The last part of that sentence is precisely the point. The appeal before the Inspector was made under section 78 of the 1990 Act against the refusal of planning permission. It was not made under section 174 of the 1990 Act against the issue of an enforcement notice, such that there was no appeal under on ground (c) as set out in section 174(2) of that Act. The question of whether the use before him required planning permission was therefore never a point to be decided by the Inspector. Moreover, whilst I have not seen the appeal papers for that case, I have no reason to believe that the Inspector had the benefit of all the relevant case law and arguments to enable him to make an informed comment as to whether planning permission was required or not. Consequently, I attach no weight to the comment made by the Inspector in that case.

34. I also concur with the Inspector in the appeal relating to a property in Lyncombe, Bath (APP/F0114/C/18/3217514) that even a family of only 4 or 5 people are more likely to occupy a dwelling in a different manner when they are on holiday than when they are at home, with a greater potential for comings and goings at anti-social hours and eating out in the garden and so on. In this case, the impact is made all the greater and the more likely by larger groups such as are accommodated here, combined with the facility of the large garden, balcony and hot tubs.
35. Taking all this together, and notwithstanding the differences in scale, the characteristic of the use of the appeal property use do seem quite similar to those in *Moore*. The key characteristics include the rapid turnover of occupants; the pattern of arrivals and departures, with associated traffic movements; the unlikelihood of occupation by family or household groups; the numbers of people constituting the visiting groups on many occasions; the likely frequency of party-type activities, and the potential lack of consideration for neighbours.
36. I therefore find that, as a matter of fact and degree, the use for holiday lettings of the appeal property has resulted in a use of quite different character from that of an ordinary dwellinghouse. There has been a definable change in the character of the use. This difference amounts to a material change of use.

Operational development

37. There is no dispute that the building that comprises a roofed structure, a fence and an open topped pergola constitutes development for purposes of section 55(1) of the 1990 Act. It is the appellant's case the building qualifies as the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such and is therefore permitted by Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). In the alternative, the appellant contends that the building would be permitted as the enlargement, improvement or other alteration of a dwellinghouse under Class A, Part 1, Schedule 2 of the GPDO.
38. I concur with the appellant that the space occupied by the building is within the curtilage of the appeal property. However, the difficulty is that I have no evidence as to when the building that comprises a roofed structure, a fence and an open topped pergola was constructed. If the building was substantially complete when the appeal property was still a dwellinghouse, then in principle the building could potentially have been permitted by either Class A or Class E of Part 1, Schedule 2 of the GPDO. In that scenario, it would have been lawful when the use of the appeal property as short-term letting accommodation subsequently commenced.
39. However, properties that are in use as short-term letting accommodation do not benefit from the provisions within Part 1, Schedule 2 of the GPDO. Consequently, if the building that comprises a roofed structure, a fence and an open topped pergola was only made substantially complete after the material change of use to two separate units of short-term letting accommodation, then it would not benefit from the provisions within Part 1, Schedule 2 of the GPDO. The Authority understands that the open-topped pergola, roofed building and fence were erected as a single operation as part of the

redevelopment/refurbishment of the Coach House. In that scenario, the building would constitute development for the purposes of section 55(1) of the Act for which no planning permission, deemed or otherwise, is in place.

40. With an appeal on ground (c), 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. The appellant has provided no evidence as to whether the building was substantially complete when the appeal property was a dwellinghouse. In the absence of that evidence, I am unable to determine whether the building that comprises a roofed structure, a fence and an open topped pergola would benefit from the provisions within Part 1, Schedule 2 of the GPDO.

Conclusion on ground (c)

41. I conclude that, on the balance of probability, that the matters alleged in the notice do constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

The appeal on ground (a) and the deemed planning application

42. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated three substantive reasons for issuing the enforcement notice, from which the following main issues are raised:

- whether the loss of the permanent residential dwelling is acceptable in policy terms, and
- the effect, if any, of the use the property as short-term letting accommodation on the living conditions of the occupiers of surrounding residential properties, specifically from noise disturbance, light pollution and general inconvenience.

Whether the loss of the permanent residential dwelling is acceptable in policy terms

43. Policy 15 of the Lake District National Park Local Plan (Local Plan) seeks to increase the supply of homes to meet local community need. Policy 18 of the Local Plan states, amongst other things, that proposals for the reuse of existing buildings (excluding guest houses) for short term holiday letting will only be supported where they would not utilise a building that is suitable for providing local housing need.
44. The direction of travel of these policies is clear: they both seek to secure permanent housing to meet local community need. Indeed, I note that in principle Policy 15 allows the change of use of guest houses to dwellinghouses. This is a clear indication of the priorities that underpin the Local Plan in terms of the balance between guest accommodation and permanent housing to meet local need.
45. Policy 18 indicates that proposals for short-term holiday letting will only be supported where they would not utilise a building that is suitable for providing local housing need. In this case, the appeal property was in use as a family-sized dwelling until sold in 2022. The property is located within the urban area

of Windemere, a key Rural Service Centre, within easy walking and cycling distance to local services in Windermere and Bowness. Consequently, the appeal property is eminently suitable to continuing to meet local housing need.

46. I fully recognise that the appeal property is an open market dwelling with no local occupancy clause attached. It follows that anyone is entitled to purchase the property and to live there, such that the dwelling would only ever be rented or sold at the market price. It would not be rented or sold at a reduced price which would be aligned to local need in terms of affordability. But that is the lawful use of the appeal property, and the use to which it would revert in any event if the appeal is dismissed and the notice upheld.
47. Moreover, Policy 15 of the Local Plan seeks achieve a better balance in the housing market. This requires a choice of house types, size and affordability. Moreover, Policies 15 and 18 of the Local Plan are weighted in favour of retaining permanent residential dwellings irrespective of their size, affordability and occupation restrictions.
48. For these reasons, I conclude that the loss of this dwelling to short-term holiday letting is contrary to Policies 15 and 18 of the Local Plan.

Living conditions

49. The representations from the residents of Priory Grange explain with compelling detail how the use of the appeal property for short-term holiday letting accommodation has adversely affected their living conditions. I have already documented the noise disturbance late at night in relation to the appeal on ground (c) above, and do not repeat that here. In addition, there is the repeated disturbance that arises from the regular arrival and departure of guests, in terms of car engines starting, car doors being shut and conversations as cars are being loaded/unloaded. That overall level of noise disturbance is both significant and unacceptable in a residential setting such as this.
50. The local residents also describe in detail the inconvenience that they experience from inconsiderate parking by guests at the appeal property. I do not underestimate the impact of that as a disruption to the living conditions that were previously enjoyed by the residents of Priory Grange. The same is true of the excessive rubbish that accrues from the use which, as evidenced in photographs provided with the representations, detracts markedly from the amenity of the area and therefore the living conditions of the residents.
51. I also have some sympathy with local residents in terms of levels of light pollution which, from the photographs provided within the evidence before me, does appear somewhat intrusive. Nevertheless, I am mindful that, however intrusive it might be, this lighting does not constitute development requiring planning permission and could be installed in association with the occupation of a family dwelling.
52. There is also a further consideration, insofar as there is potential for conflict between parties staying in the Coach House and The Den. To make use of the yard or access the extension or hot tub, occupiers of 'The Den' must walk past the bedroom windows of the Coach House, resulting in a loss of privacy, and potential noise disturbance. The use of the first-floor balcony, which provides the access from the Coach House to the garden area and their hot tub, as well

as use for socialising, is immediately above the only door to The Den, and overlooking the rear yard. This conflict creates noise and disturbance, as evidenced in the representations from local residents and the AirBB reviews.

53. I conclude that the use of the appeal property for short-term holiday letting accommodation unacceptably detracts from the living conditions of the occupiers of surrounding residential properties, specifically from noise disturbance and general inconvenience. The breach of planning control is therefore contrary to Policy 06 of the Local Plan which, amongst other things, requires that development does not have an unacceptable impact on the amenity of adjoining residents and users of the proposed development due to noise pollution or other adverse impact.

Other considerations

54. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the breach of planning control that has occurred fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
55. Policy 18 of the Local Plan, which is titled 'Sustainable Tourism and Holiday Accommodation', aims to support proposals which "enhance and improve the quality of visitor experiences; or increase the length of stay of overnight visitors; or encourage year-round sustainable tourism". The appellant points out that the appeal property is well-facilitated and is an attractive location which is open to visitors all-year round for the duration. I am also mindful that the site is within relatively proximity to the train station at Windermere, albeit the evidence suggests that travel to the property by car (or cars in the plural) is more typical.
56. The use of the appeal property for short-term holiday letting accommodation benefits local services, such as shops, restaurants, and bars through supporting tourism. In addition to providing a source of revenue in its own right, which could be re-invested in the local economy, the use of the appeal property for short-term holiday letting accommodation brings benefit to the local community and assist in delivering a prosperous local economy. In that context, the use would accord with Policy 18 of the Local Plan. Similarly, the use of the appeal property as for short-term holiday letting accommodation would accord with the National Planning Policy Framework (Framework), which looks to build a strong, responsive, and competitive economy.
57. There is, therefore, a tension within Policy 18 of the Local Plan between support for tourism and securing permanent housing to meet local need. However, that tension has already been resolved through the local plan adoption process. The development plan must be read as a whole. When taken together, Policies 15 and 18 of the Local Plan are clearly weighted in favour of retaining permanent residential dwellings over support for tourism. The expectation that determination must be in accordance with the development plan, which is re-stated in the Framework, overrides any benefit to the local economy set out in that guidance.

58. I have considered whether the harms identified above could be overcome through the imposition of suitably worded conditions. In particular, I note that the appellant would agree to a condition requiring that a management plan be submitted. I have not been provided with a copy of any proposed management plan, nor any details as to what that management plan might comprise. Moreover, I have been advised that there are already obligations in place that people renting must sign and the owner places strict conditions regarding the type of groups that can rent the property.
59. It is evident that these measures have been singularly ineffective in preventing the harms described by local residents and, from the evidence before me, I have no confidence that a management plan would be any more successful. Moreover, whilst a management plan secured by a planning condition would provide the Authority with an added level of control it would not overcome the policy objections. Consequently, overall, I am not persuaded that the imposition of conditions would be sufficient to make the use acceptable in planning terms.
60. The appellant is also willing to accept that 'The Den' could only be let as part of the Coach House letting to ensure all is let together. This would prevent it being occupied independently of the Coach House. However, it is evident that the use of the Coach House already gives rise to unacceptable harm at its current level of use. Substituting the space provided by 'The Den' would only exacerbate that harm, notwithstanding the 'The Den' would then not be used separately.
61. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan. Having weighed the factors in support of the development, I am not persuaded that there are any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan.

Part of the matters

62. Section 177(1) of the 1990 Act provides that planning permission may be granted in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates. It follows from the wording of section 177(1) that the deemed planning application can only relate to the matters stated in the notice.
63. In this case, the matters stated in the notice include the operational development associated with the material change of use. As indicated above, I will correct the notice to refer to that operational development as the building that comprises a roofed structure, a fence and an open topped pergola. Pursuant to section 177(1) of the 1990 Act, it is open to me to grant planning permission for that part of the matters stated in the notice.
64. The open-topped pergola element is a lightweight structure that is not readily visible beyond the boundaries of the property. The roofed building and the fence are contained within the 'yard' associated with the Coach House and do not in themselves give rise to any adverse impacts on the living conditions of the occupiers of the neighbouring properties. There is no harm to the character and appearance of site arising from any of these elements of the building.

65. It therefore seems to me that the harm caused by the building that comprises a roofed structure, a fence and an open topped pergola only arises in connection with the use of that building in association with the use of the appeal property for short-term holiday letting accommodation. Absent that use, and if used ancillary or incidental to a dwelling, it seems to me that no harm would arise from this building.
66. The balance therefore shifts when the building that comprises a roofed structure, a fence and an open topped pergola is considered solely in relation to the use of the Coach House as a dwelling. The development then accords with Policy 06 of the Local Plan, and there are no material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
67. I will therefore grant planning permission for the building that comprises a roofed structure, a fence and an open topped pergola. Given that to use the building for any purpose other than for purposes ancillary or incidental to a dwelling (to which the appeal property would revert upon compliance with the notice) would itself more likely than not constitute a material change of use that required planning permission, I am satisfied that there would no need for the imposition of any conditions on that permission.

Conclusion on the appeal on ground (a) and the deemed planning application

68. I conclude that planning permission ought not to be granted for the matters stated in the notice in full but also conclude that planning permission ought to be granted for the part of the matters stated in the notice, specifically the building that comprises a roofed structure, a fence and an open topped pergola. The appeal on ground (a) and the deemed planning application succeed to that extent.

The appeal on ground (f)

69. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach.
70. Given that planning permission will be granted for the operational development, in this case the requirements of notice will now only relate to the use as two separate units of short-term letting accommodation. The requirement in that respect is to discontinue (or, put another way, to cease) the use of the Land otherwise as a single falling within Use Class C3 of the UCO. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.
71. The appellant's case on this ground is that the use remains a C3 dwellinghouse, such that there is thus no need to discontinue the use. In the alternative, in the event that I find that that there has been a material change of use, the appellant's case is that there is no adverse impact on the surrounding area and

the use is appropriate for its setting, such that it would be excessive to require the use to be discontinued.

72. The appellant's case in both respects is misconceived. Whether or not there has been a material change in the use of the land, such that it constitutes a breach of planning control, has already been considered and determined in the appeal on ground (c). Even setting aside the policy objections, I have already concluded in the appeal on ground (a) that the material change of use has significant adverse impacts on the surrounding area and is not appropriate for its setting. This led to my conclusion that planning permission ought not be granted for the material change of use. Neither of those matters fall to be re-considered under this ground of appeal.
73. The appellant has not advanced any lesser steps that would remedy the breach of planning control that has occurred and achieve the purpose of the notice. I have considered whether there are any other steps that would overcome the planning difficulties with less cost or disruption to the appellant, but none are obvious to me. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

74. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is three months. Given that planning permission will be granted for the operational development, this ground of appeal now only relates to the use as two separate units of short-term letting accommodation. My task under this ground of appeal is to balance the public interest in the notice being complied with expeditiously against the private interests bound up in the development subject to the enforcement notice.
75. The appellant points out that the property is operating as a holiday let and (at the time the Statement of Case was written) had advanced bookings for the next 8 months. The appellant considers that he has obligations to honour lettings and that people who have booked their holidays have an expectation that the bookings will be honoured. The appellant says that he would need 12 months in order to remove the property from the letting sites and allow current bookings to be honoured in order to avoid resulting in fines from the booking platforms. This would, the appellant points out, also avoid reputational damage from cancelling existing bookings.
76. However, things have moved on since the Statement of Case was written in February 2024. The timetable for this appeal means that by the time my Decision will be issued and the three months compliance period then begins, some nine months or more will have elapsed since the notice was issued on 13 December 2023. The advanced bookings for the 8 months from when the Statement of Case was written in February 2024 will therefore all have been honoured by the time that the period of compliance specified in the notice comes to an end and the notice takes effect.
77. I fully recognise that the appellant is entitled to assume success on any ground of appeal and that the notice may be quashed. Equally, however, from the date the notice was issued on 13 December 2023 there was always a possibility (and I put it no higher than that) that the appeal might not succeed, that the notice might be upheld and the use required to cease. It follows that any bookings taken after that date were at the owners own risk. A three-month

compliance period would allow for any immediate bookings to be honoured and allow those guests with cancelled bookings time to make alternative arrangement. Any potential reputational damage or fines from booking platforms must be considered in that light.

78. Against that private interest, I must consider the public interest in the notice being complied with expeditiously. In this case, the 'public' interest is primarily the interests of the residents of Priory Grange. In an appeal on this ground, I must start from the position that the development causes whatever harm I have identified in my conclusions on ground (a). The residents of Priory Grange have been experiencing, some might say suffering, those harms for well in excess of a calendar year now. Those harms are significant in scale and intensity. The residents of Priory Grange have a legitimate expectation that with the dismissal of this appeal those harms will now cease.
79. In weighing that balance between public interest and private interests. I conclude that there is no justification for extending the period of compliance. I am satisfied that this would be a proportionate response to the breach of planning control that has occurred. Accordingly, the appeal on ground (g) fails.

Conclusion

80. For the reasons given above, I conclude that the appeal should be allowed in part and planning permission will be granted for the operational development, specifically for the building that comprises a roofed structure, a fence and an open topped pergola. I conclude that the appeal should not succeed in any other respect. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the material change of use of a dwellinghouse, falling in to Use Class C3, to a use as two separate units of short-term letting accommodation.
81. Section 180(1) of the 1990 Act as amended provides that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. It follows that the requirement at paragraphs 5(ii) of the notice (as I propose to vary it) will cease to have effect. Consequently, there is no reason for me to further vary the notice by deleting the requirement at paragraphs 5(ii) of the notice.

Formal Decision

82. It is directed that the notice is corrected by:
- in paragraph 3 of the notice, inserting the words 'of the Town and Country Planning (Use Classes) Order 1987' after the words 'Use Class C3'
 - in paragraph 3 of the notice, after the words 'associated operational development', deleting the words 'consisting of the erection of a roofed building and a fence' and substituting there the words 'consisting of the erection of a single building that comprises a roofed structure, a fence and an open topped pergola'
 - in paragraph 5(i) of the notice, inserting the words '1987' after the words 'Use Class C3 of the Town and Country Planning (Use Classes) Order'

83. It is directed that the notice is varied by:

- in paragraphs 5(ii) of the notice, deleting the words 'Remove the roofed building and fence from the Land' and substituting there 'Remove the single building that comprises a roofed structure, a fence and an open topped pergola from the land'

84. Subject to the corrections and variation, the appeal is allowed and planning permission is granted insofar only as it relates to the single building that comprises a roofed structure, a fence and an open topped pergola at Land at 1 Priory Mews, Priory Grange, Windermere LA22 1FG.

85. In all other respects, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer
INSPECTOR