



Appeal Decisions

Site visit made on 2 September 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: 24 September 2024

Appeal Refs: APP/Q9495/C/24/3336890 and 3336891 Land at Oakwood, Plantation Bridge LA8 9JA

- 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 Scott Jones (Appeal A) and Mr Gavin Jones (Appeal B) against an enforcement notice issued by Lake District National Park Authority.
 - The enforcement notice, numbered E/2020/0170, was issued on 4 December 2023.
 - The breach of planning control as alleged in the notice is, without planning permission, the making of a material change of use from a dwellinghouse, falling within Use Class C3 of the Town and Country (Use Classes) Order 1987 (as amended), to use as short-term letting accommodation.
 - The requirements of the notice are to discontinue the use of the land otherwise than as a dwellinghouse falling within Use Class C3 of the Town and Country (Use Classes) Order 1987 (as amended).
 - The period for compliance with the requirements is three months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (c) and (g) of the Town and Country Planning Act 1990 as amended. In relation to Appeal B, since the prescribed fees have not 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 as amended has lapsed. This appeal is proceeding on grounds set out in section 174(2) (c) and (g) of the Town and Country Planning Act 1990 as amended.
-

Summary Decision: the appeals are dismissed and the enforcement notice is upheld with a correction as set out in the Formal Decision below

Procedural Matters

1. The site visit was conducted as an Access Required Site Visit, at which it is standard procedure that the local planning authority do not attend. The appellants were represented at the site visit by Mr Scott Jones. As part of that site visit, I was shown around the inside of the appeal property as well as the external areas.
2. The appeal property is identified in paragraph 2 of the notice as being called 'Oakwood'. I noted at the site visit that the property is also known as 'Plantation Lodge'. There is no doubt as to the land to which the notice relates: that is clearly identified on the plan attached to the notice. However, in the interests of clarity, I will correct the notice to include reference to 'Plantation Lodge'. I am satisfied the no injustice would be caused by so doing.

Appeals A and B: the appeals on ground (c)

3. 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 is 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.
4. 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).
5. 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 existence¹. 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 dwellinghouse². 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.
6. 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*).
7. The Court of Appeal went on hold that:
8. "... 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."

¹ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

² *Blackpool BC v SSE* [1980] JPL 527

9. The facts in *Moore* are not so very different to the facts in this case: the house was somewhat larger, being an 8-bed dwelling with a 20-person occupancy. The appeal property has 6 bedrooms with a maximum total of 16 bedspaces. Accordingly, the principle established in *Moore* remains relevant.
10. 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 response to the Planning Contravention Notice (PCN) and in third party representations.
11. The response to the PCN confirmed that of the 58 bookings between August 2022 and August 2023 for which details were provided the minimum stay was two nights and maximum stay was five nights, with an average of 2.4 nights. The bookings were for between 1 and 14 persons, with an average of 9.8 persons. An average of 0.6 were children and 0.2 were infants. Two points flow from this.
12. Firstly, some 95% of stays were for 3 nights or less and all stays were for less than a week. Consequently, there were more bookings in that period than weeks of the year, with occupants changing on 58 occasions. That means a change of occupants more than once every week on average. The turnover of occupants over that 12-month period is significantly different to what might be expected of a typical family-sized dwelling.
13. Secondly, the average figure of 9.8 persons for the number of guests staying disguises the true nature of that occupation. There was a total of 15 occasions when the number of guests staying was 10; 5 occasions when the number of guests staying was 11; 10 occasions when the number of guests staying was 12; 5 occasions when the number of guests staying was 13; plus a single occasion when the number of guests staying was 14. That is a total of 36 occasions in a calendar year when the number of guests staying at the appeal property exceeded 10, which equates to some 62% (or, to put it another way, nearly two-thirds).
14. I fully accept that an extended family comprising 10 or more individuals could constitute a single household for the purposes of Use Class C3 of the UCO. However, whilst I do not have any 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. Moreover, it is highly unlikely that the 36 different groups of 10 or more individuals recorded in the PCN response were all, or even mostly, comprised of single households. I therefore have great difficulty in 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.
15. 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 the small enclave of dwellings known as Plantation Bridge as a whole. A total of four representations were received, 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.
16. I was immediately struck by the consistency of the evidence contained within these representations and the location of the properties from which occupiers

made representations. This includes two properties on the other side of the railway line that runs to the rear of the appeal property, and one from the occupier of a property on the opposite side of the A591. These indicate how widespread these characteristics are evident throughout the residential enclave of Plantation Bridge, and are not just experienced by the occupiers of the dwelling adjoining the appeal site.

17. The points made in those representations are too numerous to list individually, but in summary the key points are:
 - noise disturbance from loud music, loud voices, screaming and shouting at all hours of the day and night including, on at least one occasion, 05:00 hours
 - use of the "Hot Tub" often goes on into the small hours of the morning
 - being forced to keep windows closed, even in warm weather, in an attempt to keep out the noise, resulting in sleep deprivation
 - guests at the appeal property trespassing on private property, having no respect for the privacy and respect for residents
 - continual all night light pollution
18. The appeal property is managed by the appellants, who I am advised have experience in managing properties and commercial business. The appellants provide a 24 hour contact and claim to quickly respond to any complaints when required. I am told that procedures are in place to control any anti-social behaviour, although I have not been advised what those procedures are. There is also a sign at the property that reminds the guests to be aware of the neighbours and keep noise to an acceptable level.
19. The evidence in the third-party representations clearly shows that these measures have been wholly ineffective. The description by local residents of occupation by large groups would also suggest that the appellants have not been particularly stringent in their vetting process or in enforcing the strict conditions to which renting the property is said to be subject.
20. Taking all this together, and notwithstanding the slight difference 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.
21. The appellant refers to the potential new use class for short-term lets (Use Class C5 of the UCO). This proposed changes to the UCO would, if enacted, provide a use class created for short-term lets not used as a sole or main home. Existing dedicated short-term lets would be automatically be reclassified into the new use class. The appellants contend that, if this provision is enacted the existing use would be lawful and the enforcement notice should be quashed. Two points flow from this.

22. Firstly, as I understand it and insofar as it relates to England, it is likely that the new Use Class C5 would only apply to a single person or by people to be regarded as forming a single household. For the purposes of Class C5, a "single household" would be construed in accordance with section 258 of the Housing Act 2004. It follows that the use of the appeal property as short-term letting accommodation would not meet that definition and would therefore not be permitted by Use Class C5 of the UCO when enacted.
23. Secondly, at the time this Decision was issued, the new Use Class C5 had not been enacted and did not form part of the UCO. It therefore has no force. I recognise that the new Use Class C5 indicates a potential direction of travel. However, at this time, it is a material consideration to which I attach limited weight.
24. 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.
25. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as including the making of any material change in the use of any building or other land. Section 57 of the 1990 Act states that planning permission is required for development. There is no planning permission in place, deemed or otherwise, for the matters stated in the notice.
26. I conclude that, on the balance of probability, the matters stated in the notice do constitute a breach of planning control. Accordingly, the appeals on ground (c) fail.

Appeal A: the appeal on ground (a) and the deemed planning application

27. 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 two 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 and light pollution.

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

28. 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.

29. 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.
30. Prior to the breach of planning control taking place, the appeal property was in use as a family-sized dwelling, having previously been occupied as a mixed dwelling and business use pursuant to a planning permission granted in March 2012 (Ref: 7/2012/5074). The property is located within a small enclave of residential properties known as Plantation Bridge, in part situated between commercial uses fronting the A591 and a railway line. There are bus stops nearby providing public transport links to Kendal, Staveley and Windermere, with railway stations at Staveley and Burneside both approximately 2Km away. Consequently, the appeal property is eminently suitable to continuing to meet local housing need.
31. 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 were the appeal to be dismissed and the notice upheld.
32. The appellant refers to a planning permission granted by the Authority in February 2024 for a development comprising 25 dwellings on a parcel of land to the south of Staveley (Ref: 7/2021/5448). The Officer report for that application highlighted that the focus was on the provision of smaller homes, with demand for more two-bedroom properties for affordable home ownership and one- and two-bedroom properties for affordable properties for rent. This leads the appellant to the conclusion that the appeal property within the building would not be suitable for affordable housing.
33. The appellant also refers to an appeal decision dated January 2024 in relation to a site opposite Plantation Filling Station, Plantation Bridge, Staveley (Ref: APP/Q9495/W/23/3328126). The development proposed in that case was the erection of two local occupancy dwellings. One of the main issues identified by the Inspector was whether the appeal site would be a suitable location for housing having regard to the development plan. As part of his reasoning on that main issue, the Inspector noted that being an undeveloped field, the proposal fails to utilise previously developed land. This in turn led the Inspector to consider whether there is a high housing need to justify the release of greenfield land.
34. The Inspector firstly identified that affordable housing is not the same as local occupancy housing, for which there is no specific figure of need identified. The Inspector then went on to find that there was insufficient evidence before him to demonstrate that there is a proportionally high or specific need for local occupancy housing in this location and importantly, that it requires the release of a greenfield site as an exception to meet this need. The Inspector ultimately concluded that that the proposal would not be a suitable location for housing.

35. But both the examples relied on by the appellant miss the point. I fully recognise that if the starting point is an undeveloped 'greenfield' site, such as those at Staveley referred to the appellant, it is entirely logical and proper to secure the most appropriate housing mix in a development scheme, as informed by housing need assessments. The provision of the optimum housing mix in a proposed scheme would then become an important material consideration in whether or not to grant planning permission for that development.
36. That is not the situation in this case. The enforcement notice cannot require the appellant to divide the appeal property into smaller units. The optimum housing mix, in terms of meeting local need, is therefore simply unattainable. The specific wording used in the reason for issuing the enforcement notice is 'permanent home': the notice is entirely silent about the size and type of permanent home because the notice can at most only require reversion to the condition of the land before the breach of planning control occurred. The question then becomes whether the loss of a *permanent home* is acceptable, that being the unrestricted dwelling that existed immediately prior to the notice being issued and was the previous lawful use of the land.
37. 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. There is no inherent reason why the appeal property would not be suitable as a permanent home: it is reasonable to conclude that there would be demand for a larger dwelling in this part of the Lake District National Park located, as it is, between the towns of Kendal and Windermere with good access to both. The appellant has provided no evidence to the contrary, in terms of the property having been robustly marketed and failed to attract interest. The loss of that permanent home would therefore not be acceptable in policy terms.
38. For these reasons, I conclude that the loss of this residential dwelling to short-term holiday letting is contrary to Policies 15 and 18 of the Local Plan.

Living conditions

39. The representations from the residents of Plantation Bridge 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.
40. I also have sympathy with the local resident who complains of light pollution which, from the photographs provided within the evidence before me, does appear somewhat intrusive. The appeal property has many windows, and local residents explain that lights inside the property can be left on all day as well as through the evening and night. This, as the resident explains, exacerbates the

pollution from the outside lights which are turned on so that the guests can use all the outside amenities, such as the hot tub.

41. I am mindful that this lighting does not constitute development requiring planning permission and could be installed in association with the occupation of a family dwelling. Nevertheless, the pattern of occupation, including the use of the hot tubs/outside space into the late evening/night, is a function of the use of the appeal property as short-term holiday letting accommodation. Consequently, the harm arising from the resultant light pollution can be distinguished from that arising from use of the property as a dwelling.
42. 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 light pollution. 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

43. 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.
44. 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, not just in terms of wider attractions of the Lake District but also to use the facilities that the property itself provides. I am also mindful that the site is within relatively proximity to the train stations at Staveley and Burneside, albeit the evidence suggests that travel to the property by car (or cars in the plural) is more typical.
45. 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, albeit the value to the local economy has not been quantified in any way. This limits the weight that I can attach to that benefit.
46. 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.

47. 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.
48. 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 which limits the outside use of the external space to certain times and areas, as well as a condition restricting the lighting of that outdoor space.
49. The appellants would also accept a condition requiring that a management plan be submitted and approved by the local planning authority. 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 guests arriving at the property are already given strict rules when checking in, which are also documented internally.
50. It is evident that these measures, and with the existing boundary screening in place, have been singularly ineffective in preventing the harms described by local residents. Given the proximity of the adjoining properties, I have no confidence that a management plan and/or additional boundary screening 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 objection. Consequently, overall, I am not persuaded that the imposition of conditions would be sufficient to make the use acceptable in planning terms, which are intrinsic to the breach of planning control that has taken place.

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

51. 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. I therefore conclude that planning permission ought not to be granted for the matters stated in the notice.

Appeals A and B: the appeals on ground (g)

52. 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.
53. The appellants point out that the property has been used as short-term letting accommodation for nearly two years now and consider that it would only be

appropriate to allow time to market and find an occupier for the house. A period of compliance of six months is sought.

54. The purpose of an appeal on ground (g) is to ensure that the period for compliance specified in the notice does not fall short of what should reasonably be allowed to achieve *the steps required by the notice*. In this case, the step required to achieve compliance with the notice is simply to discontinue the use of the land otherwise than as a dwellinghouse falling within Use Class C3 of the UCO. There is no requirement to resume use of the building as a dwelling, nor could there be: the use of the property would automatically revert to that of a dwelling within Use Class C3 of the UCO (the previous lawful use) on compliance with the notice.
55. I fully appreciate that it may take some time to market the property and to find an occupier (owner or rented). But that is different to resuming the use of the property as a dwelling. There are no physical works required to cease the use alleged in the notice: it is simply a matter of ceasing the use as short-term letting accommodation. There is no reason why that could not be achieved well within the three months specified in the notice.
56. 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 appeals on ground (g) fail.

Conclusion

57. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Formal Decision

58. It is directed that the notice is corrected by:
- in paragraph 2 of the notice, after the word 'Oakwood', inserting the words '(also known as Plantation Lodge)'
59. Subject to the correction, 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