



Appeal Decision

Site visit made on 20 August 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2024

Appeal Ref: APP/J2373/C/23/3328145

7 Webster Avenue, Blackpool FY4 3LJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Lorraine Kirkland Smith against an enforcement notice issued by Blackpool Council.
 - The notice was issued on 24 July 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of 7 Webster Avenue from a single private dwelling-house, to a self-contained holiday let.
 - The requirements of the notice are to: Cease the use of 7 Webster Avenue as a self-contained holiday let.
 - The period for compliance with the requirement is: One month.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

2. Notwithstanding the name given on the appeal form, it has been confirmed in writing that the appeal is proceeding in the name of Mrs Lorraine Kirkland Smith.
3. An appeal under ground (b) is made on the basis that the matters stated in the notice as constituting a breach of planning control have not occurred. Although the appellant has appealed under ground (b), which is that the breach of planning control has not occurred, the appellant does not dispute that the property has been used as self-contained holiday let.
4. There are two elements to the appellant's case: Firstly, that the use of the property as a holiday let has not occurred because it is used both as someone's primary residence and for short term letting. The second part of the appellant's case is that a material change of use has not occurred. This is a matter which should be considered under ground (c), which is that those matters, if they occurred, do not constitute a breach of planning control. Since the Council has addressed this in its statement of case, dealing with this would not cause either party injustice.
5. In legal grounds of appeal, such as (b) and (c), the onus is firmly on the appellant to make out their case to the standard of the balance of probabilities. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

Grounds (b) and (c)

6. The appeal property is a modest, semi-detached property located in a generally residential area. There are three types of C3 dwellinghouses: a) a single person or by people to be regarded as forming a single household¹; b) not more than six residents living together as a single household where care is provided for residents; or c) not more than six residents living together as a single household where no care is provided to residents. A dwellinghouse for the purposes of use class C3 need not be used as the sole or main residence and so may include second or holiday homes.
7. The appellant states that the appeal property has been occupied by an individual, whom I shall refer to as 'MH', and has done so since 2007. For health reasons, MH is stated to require periods of respite, however, the appeal property is stated to remain their principal place of residence. In support of their case, the appellant has provided a statutory declaration which states their tenant (MH) has occupied the appeal property continuously since 2007 and that any alternative uses are as a secondary activity.
8. However, the appellant has provided a breakdown of bookings, which show the property has had multiple bookings between January 2023 and July 2023. From the appellant's own evidence, therefore, it appears that MH has not resided at the premises continuously. Furthermore, a neighbouring occupant advises they last saw MH at the property in around March 2022. The appellant has not provided any substantive evidence to show that the interested party is wrong in this regard, nor have they detailed the length of any respite care MH has received, or its frequency.
9. The appellant has provided me with a utility bill, which shows that MH was charged for energy between 1 July 2023 and 7 July 2023. However, this of itself does not show that MH actually occupied the property during this period. Council tax banding similarly does not show how the property has been used. Moreover, the Council advise that its records show that the property has had a "Second Home – Class B" exemption since 6 October 2022, suggesting that it does not have anyone living in it as their main home.
10. The appellant asserts that the property is only capable of accommodating 6 people. However, while the property is advertised as offering 5 beds, this does not necessarily equate to occupancy, since a double bed could accommodate 2 people. Although the appellant has provided a breakdown of the number of bookings by month between January 2023 and July 2023, the appellant does not identify how many individuals the property was booked out by.
11. I have been provided a log by an interested party which indicates the number of occupants has exceeded 6 on a number of occasions. Guests are suggested to include families, as well as groups of males and females, and female only groups. While the use of the property by families would be akin to occupation by a single household, groups of adults are unlikely to occupy the property as "single households" and so would not comprise a C3 use.
12. Given the above, I find, on the balance of probabilities, that the use of the appeal property as a holiday let has occurred, as a matter of fact and so the appeal under ground (b) must fail.

¹ There is no limit to the number of people who may live together as a single household in a C3(a) dwellinghouse. However, the term 'single household' is to be construed in accordance with section 258 of the Housing Act.

13. As held in *Moore v SSCLG* [2012] EWCA Civ 2012, whether the use of a family home as a holiday let is a material change of use will be a matter of fact and degree, depending on the characteristics of the use as holiday accommodation.
14. The interested party sets out their observations within their log, including the impact on them/neighbours. Issues such as odour from cannabis, sleep disturbance due to shouting, screaming and the playing of loud music and problems with parking are all identified by the interested party. The interested party identifies impacts on them such as sleep disturbance, inconvenience, and anxiety/stress/fear. The Council has also provided information regarding complaints it has received, which reflect the concerns raised by the interested party.
15. The appellant has drawn my attention to a Council scrutiny report regarding Short Term Lettings. I note the Council appears to be trialling an approach for addressing short term lettings through the use of planning enforcement notices. While the Council appears to be looking to address short term holiday lets on a Blackpool-wide basis, it has provided evidence which relates specifically to the use of the appeal property in support of this appeal.
16. Although no detail regarding the users of the holiday let have been provided by the appellant, it seems likely they would have chosen to book the property due to its proximity to the leisure uses Blackpool has to offer. Users of the property are likely to be in high spirits while on holiday and the appellant appears to have laid out the property to facilitate this, providing a hot tub and seating in the rear garden. Indeed, I note a number of the concerns raised by the interested party relate to noise generated by occupants using the rear garden, including the hot tub.
17. The appellant suggests they are aware of the 'incidents' itemised in a letter from the Council to them dated 18 July 2023 and suggest that, whilst regrettable, they do not amount to anything more than what may otherwise arise from a family living in the property on a permanent basis. While I have not been provided with a copy of this letter, it seems likely it included details which have been included within the Council's statement of case.
18. Although noise, odour and vehicular movements may also be generated by a family, I consider a typical family is less likely to generate significant noise in the early hours of the morning. Moreover, the comparison should be between the new use and the old use as it took place, rather than a notional use or level of occupation that might be within the use class. The appellant has provided no evidence to show that their tenant, MH, generated noise, odour or vehicular movements which are similar to the holiday let use.
19. I consider it very unlikely that a single tenant would have generated the level of noise which has been generated by the holiday let use. The number of individuals using the property as a holiday let is likely to be significantly greater. Furthermore, users of the holiday let are unlikely to have formed any sort of relationship with neighbouring occupants and so may be less considerate (or indeed aware) of the likely impact than a resident who lives there on a permanent basis.
20. The comings and goings associated with the holiday let are also likely to be materially different compared with the previous use. The arrival and departure

of occupants at different times, including early hours of the morning, late at night or at weekends, and the comings and goings generated by cleaners visiting the site between bookings are likely to have generated noise and disturbance which is uncharacteristic of the previous use.

21. Thus, I find, as a matter of fact and degree, that there is a significant difference in the character of the use as a holiday let compared with its previous use as a single private dwelling-house and so a material change of use has occurred. Consequently, the appeal under ground (c) must fail.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

M Savage

INSPECTOR