



Appeal Decision

Site visit made on 23 October 2024

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 November 2024

Appeal Ref: APP/C2741/C/23/3319791

3 Gladstone Court, Gladstone Street, York YO31 8AA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Richard Harrison of Richard Harrison Limited against an enforcement notice issued by City of York Council.
- The notice was issued on 23 February 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change in the use of the Land from dwellinghouse within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to short-term let accommodation (*sui generis* use).
- The requirement of the notice is cease the unauthorised use of the Property as short-term let accommodation of under 3 months.
- The period for compliance with the requirement is 'Step 5 (i), (ii) and (iii)' 6 (six) months after the date on which this notice takes effect.
- 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 an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Applications for costs

An application for costs was made by Mr Richard Harrison of Richard Harrison Limited against the City of York Council. This application is the subject of a separate Decision.

Matters Concerning the Enforcement Notice

1. An enforcement notice must enable the recipient to know what the matters alleged are. Thus, an enforcement notice may be null because the allegation is too unclear. The appropriate test is whether the enforcement notice is hopelessly ambiguous and uncertain, either as regards the description of the planning breach, or the necessary remedial steps, as set out by Upjohn LJ in *Miller-Mead v MHLG* [1963] 2 WLR 225.
2. This enforcement notice (the notice) alleges there has been a material change of use from a 'dwellinghouse within Use Class C3' to 'short-term let accommodation (*sui generis* use)'. There is no planning definition of 'short-term let accommodation' in the 1990 Act¹. The ordinary meaning of these words would suggest that the 'accommodation', presumably the dwellinghouse, is being leased for short periods of time.

¹ Town and Country Planning Act 1990 as amended

3. The only limitation on whether use as a dwellinghouse falls within Use Class C3. Dwellinghouses of the UCO² (class C3) is that the occupiers are living together as a family or single household. There is nothing in the class C3 definition to suggest that the length of time that a dwellinghouse is occupied would prevent a class C3 use. It seems, more likely than not, that it is who and why the property is being occupied that no longer meets the class C3 definition. The description '*short-term let accommodation*' is therefore imprecise and unclear as it fails to recognise that the use of the building remains a dwellinghouse but that it is who and why it is being occupied that no longer falls within class C3.
4. The reasons for issuing the notice refer to the activities that are considered to cause harm to the living environment of local residents, including it being '*advertised as accommodation for large groups of up to 10 occupiers*', as well as '*the transient nature and frequent turnover of occupants*', that '*Parking and vehicle movement in the area is intensified by the increased number of vehicles arriving and leaving the property*', and the '*increased comings and goings to the property beyond what would normally be expected with a dwellinghouse use*'. The reasons therefore show that it is who and why the dwellinghouse is being occupied that has changed.
5. The activities described above and the reference to short-term lets would suggest the dwellinghouse is being used by paying visitors, who's occupation of the property is a means to facilitate their enjoyment of leisure or business trips. While not found in the notice, the appellant's and Council's cases support this interpretation as they both refer to the property being used for short-term holiday lets.
6. For the reasons given above I find the allegation to be imprecise but capable of correction without causing injustice. I shall correct the allegation to clarify that it is the way the dwellinghouse is occupied and by who that has brought about the alleged material change of use. While the main appeal parties refer to '*holiday lets*', the evidence suggests that not all paying guests are on holiday and I therefore find '*visitor accommodation*' to be more precise.
7. For clarity, the amended description shall be '*Without planning permission, a material change of use from a dwellinghouse within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a dwellinghouse in use as short-term visitor accommodation for paying guests (sui generis use)*'. I shall proceed on this basis.
8. The steps to be taken require the use of the property as '*short-term let accommodation of under 3 months*' to cease. This does not correlate with the allegation as written or corrected. Furthermore, no explanation or justification for the 3 months period specified is provided within the notice. The purpose of the requirement is to remedy the breach of planning control and that can be achieved by the cessation of the use alleged. The requirement shall be varied accordingly.
9. The time for compliance identifies that '*Step 5 (i), (ii) and (iii) are*' to be completed within the specified time. This is an administrative error as there is only a single step to be complied with. The wording of the notice shall be varied so as to cite '*Step 5*' only.

² Town and Country Planning (Use Classes) Order 1987 as amended

Appeal on ground (c)

10. An appeal on this ground is that, if the corrected matter alleged has occurred, it does not constitute a breach of planning control. It is for the appellant to show, on the balance of probability, that the change to a dwellinghouse in use as short-term visitor accommodation for paying guests (*sui generis* use) does not constitute a material change of use.
11. The National Planning Practice Guidance (the PPG) confirms there is no statutory definition of 'material change of use'. The PPG advises that generally, this type of development is linked to the significance of the change and the resulting impact on the use of land and buildings. There must be some significant difference in the character of the activities from what has gone on previously. Whether a material change of use has taken place is a matter of fact and degree, determined on the individual merits of a case.
12. Further, the courts have held that an essential consideration is whether there has been a material change in the definable character of the use of the land, as opposed to a change in the particular purpose of a particular occupier. Off-site impacts are relevant, as well as the extent to which an existing use fulfils a planning purpose and the planning consequence(s) of the loss of an existing use.
13. More particularly, the use of a dwellinghouse for commercial holiday lettings will not always amount to a material change of use, nor is it the case that such a use can never amount to a material change of use³. The same principles apply in this appeal where the dwellinghouse provides short-term visitor accommodation for paying guests. To establish whether a material change of use has occurred a comparison between the actual previous use and the current use needs to be made, as opposed to considering a hypothetical range of activities.
14. The fact that a single dwellinghouse would remain in class C3 if occupied by a very large family would be relevant as a fallback position under the ground (a) appeal. The ground (c) appeal is however concerned solely with whether, on the facts, the change from the pre-existing to the current use would be material. No account can therefore be taken of the extent to which the pre-existing use could alter without the need for planning permission.
15. The appellant states the property '*is part of a development of 4 adjoining town houses and was purchased at the beginning of 2017...as a new build with flood damage and with a clause in the deeds to allow it to be used as a business premises.*' and '*Due to the flood damage and risk the property had been on the market for three years before it was purchased.*'⁴ From this it is reasonable to conclude that the dwellinghouse had not been occupied before it was first used as short-term visitor accommodation for paying guests.
16. The pre-existing use of the property would have generated no occupants, although estate agents, other professionals associated with selling and maintaining the property, and prospective purchasers may have visited occasionally. It is unlikely that refuse would have been generated. Vehicle

³ *Moore v Secretary of State for Communities and Local Government* [2012] EWCA Civ 2101

⁴ Paragraph 3.1.1.1 of 'Enforcement Notice Appeal 3 Gladstone Court dated 23 February 2023 on behalf of Richard Harrison Limited (Appendices Attached)'

movements would also have been infrequent and anyone visiting the property would, most likely, have called during normal working hours.

17. The property is advertised as accommodating up to 10 guests, although the appellant refers to the average occupation as being '7.94'. The evidence suggests that the number of residents associated with the current use can and does fluctuate. The property is claimed to be served by private refuse collection arrangements. While guests could travel by public transport to the city, there is nothing to prevent them arriving by car. There is conflicting information as to whether every party of guests is met on arrival, but if they are, this could add to vehicular movements and activity associated with the property. The nature of the business would also result in periods when the property is unoccupied.
18. The differences between these two uses include: times and duration of people visiting the property, the number of persons occupying the property, arrival and departure times from the property, visitors' local knowledge and visitors' awareness of parking arrangements. The differences in nature and level of activity associated with an empty dwellinghouse being advertised for sale and one being used as short-term visitor accommodation for paying guests is demonstrative of their significantly different characters. In my judgement, those differences in character amount to a material change in how the dwellinghouse has been used.
19. For the reason given above, the appellant has failed to show, on the balance of probability, that a material change in the use of the dwellinghouse has not occurred. I find a material change of use from a dwellinghouse within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a dwellinghouse in use as short-term visitor accommodation for paying guests (sui generis use) has occurred. The appeal on ground (c) fails.

Appeal on ground (a)

20. An appeal on this ground is that planning permission should be granted for the corrected matters alleged. The **main issue** is the effect of the development on the living conditions of neighbouring residents with regards to noise and disturbance.

Reasons

21. The appeal property is a mid-terraced property in a block of 4 dwellinghouses. While the living accommodation provided in each dwelling is substantial, private garden space for the neighbouring properties appears limited and the appeal property has none⁵. There is a shared paved courtyard, which accommodates a block of garages, parking facilities and limited landscaping. Each property in the block benefits from 2 car parking spaces (1 of which is a garage space). A high wall separates this terraced block from adjacent residential developments.
22. The development is located within a predominantly residential area, in easy walking distance of the city centre and many tourist attractions. Public transport facilities are close at hand on the surrounding road network. The principle of a dwellinghouse occupying the land is not a matter before me as it was established through the original grant of planning permission by the Council.

⁵ Paragraph 3.1.1.2 of the appellant's grounds of appeal document

23. I am told the adjacent dwellings each have 4 bedrooms and the appeal property has 5 bedrooms, I have been provided with no evidence to support this claim. While the appeal property is advertised as being able to accommodate up to 10 people, it is not clear whether this would utilise the use of sofa beds in a lounge, as can often be the case with visitor accommodation for paying guests. However, regardless of the number of bedrooms or sleeping arrangements, I find that all four properties have the appearance of large family homes.
24. The appeal property has been occupied by a variety groups, including but not limited to several generations of a family, extended families, and friends with similar interests. The dynamic of visitor groups is such that they have included a wide range of ages. There is no doubt that some groups/individuals have caused a nuisance to neighbouring residents and those in the wider area through noise and other disturbance resulting from rowdy and drunken behaviour. The appellant has 'house rules' in place, and based on the submissions received from former visitors, those house rules are adhered to in the main. There have however clearly been exceptions based on the submissions from nearby residents.
25. As a family home, the appeal property could be occupied by a large family, perhaps including grown up children as well as younger ones, and perhaps elderly relatives too. Residents would have little option but to congregate outside the property and make use of balconies given the lack of private garden space. There would also be nothing to prevent occupation by a large family having more than two cars. The behaviour of residents of a family home may not be conducive to having good relations with neighbours either. There would also be no restriction on the comings and goings of residents of a family home.
26. Unlike a traditional terrace, the appeal property and its adjoining neighbours wrap around their communal courtyard and there is no through route for vehicles or foot traffic. As such, any activity taking place within the courtyard is, more likely than not, going to be perceived as being more intrusive by neighbouring residents. There may also be a perceived threat or negative perception of activities carried out by visitors if they are observed by permanent residents, based upon their previous experiences of some paying guests' behaviour.
27. It would not be unreasonable to find that paying guests staying in the property do not have the same community investment as full time residents would have, due to the nature of their reasons for visiting. Occupants may also be less likely to adhere to social norms around 'neighbourliness' or have less regard to the amenity of nearby residents or those in the wider locality. However, those traits could just as easily apply to residents occupying the property as their home.
28. Occupation of the property by some visitor groups has and will no doubt continue to adversely affect the amenity of neighbouring residents and those in the wider locality. That harm to amenity could however just as readily arise from occupation by a large family, given the constraints of the property and its immediate surroundings. In my judgement, there would be little difference between noise and disturbance arising from occupation by a rowdy or unruly large family and occupation by an occasional rowdy or unruly group of paying

guests. However, neighbouring residents' expectations of the property being occupied by rowdy and unruly people would, no doubt, be greater if it is occupied by paying guests as opposed to a large family. While there is no evidence to show this would be the case, as the property has not been occupied as a family home, this perceived and experienced harm to neighbouring residents' amenity is significant.

Conditions

29. While I do not consider the development to be unacceptable in principle, some inconsiderate paying guest behaviour does cause anxiety and frustrations for permanent residents. The appellant has tried to remedy and combat this through the introduction of house rules, penalties, and provision of monitoring and security measures. The appellant's remedies are not however regulated or enforceable in a form that would alleviate neighbouring residents' concerns.
30. An approved 'Management Plan' could however control matters such as: bookings, use of outside spaces, waste and refuse collection, car parking and noise. Having an agreed Management Plan would provide a mechanism for regulated occupation by paying guests. This would provide neighbouring residents with a form of redress beyond the appellant's control, which is open and transparent. The imposition of a suitably worded condition is therefore necessary to preserve the amenity of neighbouring residents and would meet the tests set out in the National Planning Policy Framework.

Other matters

31. While not identified as a reason for issuing the notice, highway safety concerns have been raised. It would be reasonable to assume the garage was granted planning permission as part of the wider development. Similarly, the configuration of the parking spaces must have been found appropriate for a large family home. Issues arising from the size and number of vehicles associated with the occupation of the property by paying guests could just as readily result from a large family occupying it. However, parking issues arising from occupation of the property by a large family would be for an indefinite duration, whereas parking issues arising from occupation by paying guests would be resolved in a short space of time. The development is therefore acceptable in terms of parking provision.
32. As regards congestion of the surrounding road network, there is nothing to preclude any property in the immediate locality having more than 2 vehicles or to restrict the frequency of residents' traffic movements. There is therefore no empirical evidence to show that occupation of the property by paying guests would cause more congestion than occupation by permanent residents. The development is acceptable in terms of highway safety.
33. The misuse of refuse bins and recycling boxes is most likely a matter that arises because paying guests are unfamiliar with collections and facilities for the property. While the appellant may provide guidance on this for paying guests, I do not doubt that when problems occur, it generates frustration and anxiety for permanent residents. This matter would however be addressed through the Management Plan condition already identified as being necessary.

Conclusion on ground (a)

34. For these reasons, the development will not cause any significant harm to the living conditions of neighbouring residents and accords with policies DP3: Sustainable Communities and HW7: Healthy Places of the City of York Local Plan – Publication Draft (February 2018) (the CYLP), which set out the overarching development principles aimed at delivering sustainable communities and ensuring that buildings are adaptable to the changing needs of residents, amongst other things.

Overall Conclusion

35. For the reasons given above, I conclude that the appeal succeeds on ground (a) and I shall grant planning permission for the use in the notice. The enforcement notice will be corrected and quashed.
36. In these circumstances the appeals on grounds (f) and (g) do not fall to be considered.

Formal Decision

37. It is directed that the enforcement notice is corrected by:

In section 4. THE MATTER WHICH APPEARS TO CONSTITUTE THE BREACH OF PLANNING CONTROL, the deletion of all the words and their substitution with the words "Without planning permission, a material change of use from a dwellinghouse within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a dwellinghouse in use as short-term visitor accommodation for paying guests (sui generis use)."

In section 5. WHAT YOU ARE REQUIRED TO DO, delete all the words after 'Cease the unauthorised use.'

In section 6. TIME FOR COMPLIANCE, '(i), (ii) and (iii) are' shall be deleted and substituted by the word 'is'.

38. Subject to the correction, the appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely a dwellinghouse in use as short-term visitor accommodation for paying guests (sui generis use) at 3 Gladstone Court, Gladstone Street, York YO31 8AA as shown on the plan attached to the notice and subject to the following condition:

- (1) The use as short-term visitor accommodation for paying guests shall cease within 28 Days of the failure to meet any one of the requirements set out in (i) to (iv) below:
- (i) Within 1 month of the date of this decision a Management Plan (including details of, but not necessarily limited to, bookings, use of outside spaces, waste and refuse collection, car parking and noise) shall have been submitted for the written approval of the local planning authority and it shall include a timetable for its implementation.
 - (ii) If within 3 months of the date of this decision the local planning authority refuse to approve the Management Plan or

fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by the Secretary of State.

- (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Management Plan shall have been approved by the Secretary of State.
- (iv) The approved Management Plan shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved Management Plan specified in this condition, that Management Plan shall thereafter be maintained/ remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

M Madge

INSPECTOR