



Appeal Decisions

Site visit made on 14 January 2025

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 6 February 2025

Appeal A Ref: APP/D4635/C/23/3325105

Appeal B Ref: APP/D4635/C/23/3325106

Flat 2, Richmere Court, Wolverhampton WV6 8UQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr Ravinder Singh Cheema and Appeal B is made by Mrs Gurjinder Kaur Cheema against an enforcement notice issued by Wolverhampton City Council.
 - The notice was issued on 31 May 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the property from a residential flat to short stay visitor accommodation.
 - The requirements of the notice are to: 1. Cease the use of the property as short stay visitor accommodation. 2. Remove the property from any short term let hosting websites.
 - The period for compliance with the requirements is one (1) month.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected:

In part 1 by deleting the wording and substituting it with '*This notice is issued by the Council because it appears to them that there has been a breach of planning control within paragraph (a) of Section 171 A (1) of the above Act, at the land described below. It considers that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations.*'

In part 3 by deleting the wording of the alleged breach of planning control and by substituting it with the words '*Without planning permission, the material change of use of the property from use as a residential flat to use as short-stay accommodation for paying visitors.*'

In part 5 by:

- i. deleting the wording of step 1. and substituting it with '*Permanently cease the use of the property as short-stay accommodation for paying visitors.*'
 - ii. deleting step 2.
2. It is directed that part 6 is varied by deleting the word and figure 'one (1) month' and substituting it with 'two (2) months'.

3. The appeals succeed to a limited degree on ground (g) only and the notice is varied accordingly. Otherwise, the appeals are dismissed and the enforcement notice is upheld as corrected.

Matters concerning the notice

4. The requirements as to the content of an enforcement notice are set out at section 173 of the Town and Country Planning Act 1990 (as amended) (the Act) and in Regulation 4 of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002.
5. Section 173(1)(a) of the Act requires an enforcement notice to state the matters which appear to the Council to constitute the breach of planning control. Established case law in *Miller-Mead v Ministry of Housing and Local Government* [1963] 1 All ER 4592 says that a notice must tell a recipient fairly what has been done wrong and what must be done to remedy the breach. A notice which is 'defective on its face' may be 'null' (without legal effect), but whether a defect in a notice renders it null in any given instance is a matter of judgment. However, it is not desirable for a notice to be declared a nullity on the basis of minor technical flaws. If the defect is not material and its proposed correction would not cause any injustice, then the powers available to an Inspector to remedy the notice should be used. By implication, if the defect is material it would render the notice a nullity.
6. Section 173(1)(b) of the Act requires an enforcement notice to state the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls. The enforcement notice states in part 1 that it is issued "under section 172 of the Town and Country Planning Act 1990". Section 172(1) of the Act provides that a Local Planning Authority may issue a notice when it appears that there has been a breach of planning control, and it is expedient to do so. Although it is apparent by the wording of the allegation that the breach falls within s171A(1)(a), this is not stated in the notice. Nevertheless, I consider this to be a minor technical flaw and one that can be corrected without injustice to the parties.
7. The statutory purpose behind the enforcement notice is to remedy the breach of planning control, that is the use of the property as short-stay accommodation by paying visitors. However, the allegation set out in part 3 of the notice, omits any reference to paying visitors. To ensure that the notice is framed appropriately to correspond with the reasons for its issue, the allegation should be corrected to clarify whom the notice is targeting, that is, 'paying visitors'. Accordingly, requirement 1. should also be corrected to refer to 'paying visitors'.
8. Furthermore, the first requirement, as amended, to cease the unauthorised use, would alone remedy the breach. The second requirement goes further and requires the removal of any online advertisements in connection with the alleged use. If the use were to cease, then there would be no reason for the property to be advertised in any event. This requirement goes beyond what is necessary to remedy the breach and is therefore excessive and should be deleted.
9. Having regard to s176(1) of the 1990 Act, I am satisfied no injustice would be caused by these corrections as they do not expand the scope of the notice or

make the requirements of the notice any more onerous than first issued. I shall therefore correct the notice accordingly.

The appeals on ground (c)

10. In an appeal on this legal ground the burden of proof rests with the appellants to show that, on the balance of probabilities, the matters alleged, if they occurred, do not constitute a breach of planning control.
11. The appellants do not deny that the appeal property is in use as short-stay accommodation for paying visitors. However, they do dispute that the use as such constitutes a material change of use from the property's undisputed lawful residential use as a dwellinghouse, as set out by Use Class C3 of the Town and Country Planning (use Classes) Order 1987 (as amended) (the UCO).'
12. The appeal property has a floor area of 57sqm, and provides two bedrooms, a bathroom and a lounge/kitchen. It is said to be occupied by paying visitors who are either a small family, a couple or two couples who know each other. In this respect, the appellants consider that the property is occupied by less than six individuals living together as a single household for the duration of their stay as defined by the UCO. They claim the use of the property for paying visitors on a short-stay basis is indistinguishable in terms of its characteristics of usage from Use Class C3 residential dwellings.
13. The appeal property is laid out with all the normal facilities for day-to-day living. In physical terms, therefore, it has all the characteristics of a C3 dwellinghouse as set out by established case law found in *Gravesham*¹. That does not, however, show that the use of the property has not changed. As the judgement in *Moore*² says, 'While *Gravesham* is authority for the proposition that a dwellinghouse can be so described even if it is not occupied throughout the year as a permanent home, it is not authority for the proposition that any use of a dwellinghouse for holiday lettings will not amount to a material change of use'. The Government has consulted³ on amending the UCO to introduce a new use Class C5, applicable to short-term lets. The necessary legislation to formalise such a new use class has not however been progressed. It is not therefore determinative to this case.
14. Determining whether or not short-term letting of a property has resulted in a material change of use is a matter of fact and degree based on the particular circumstances of the case. When considering whether a material change of use has taken place, a comparison should be made between the character of the activities associated with the existing use and those associated with the former use.
15. Consideration of materiality can cover a variety of factors including: the character of the property and the relationship to its neighbours; the nature of the surrounding area; the frequency of arrivals and departures; the duration of stays; the likely frequency of lettings; the number of people staying; movements associated with changeovers; short-term resident use of communal areas and the potential for noise or otherwise unsocial activities

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

² *Moore v SSCLG & Suffolk Coastal DC* [2012] EWCA Civ 2101

³ Introduction of a use class for short term lets and associated permitted development rights consultation 12 April 2023 to 7 June 2023)

impacting on residential amenity. It is also necessary to consider both what happened on the land and its impact off the land when deciding whether the character of the use has changed.

16. The appeal property is located on a crossroads in a suburban area. The area is mostly residential but there are a few commercial uses close by. The property is a ground floor flat within a three-storey block of self-contained flats with three flats on each floor. Access is via the main entrance door to the block from Church Road which leads to a modest-sized communal hallway with entrance doors to the three individual flats on the ground floor and stairs leading up to the further two floors. A secondary door to the side leads to the private parking area. The property benefits from one designated car parking space which is made available for use by visitors. Further parking is available along the surrounding roads which are mostly free of parking restrictions.
17. The property is marketed on accommodation websites and is managed by the appellants. Forming part of the terms and conditions for short-stay rental, the property is restricted to a maximum of four guests and ID verification is required. Check-in is between 3pm and 10pm, or earlier by arrangement, and is fully automated using a smart lock system and an app which allows visitors to access the property themselves. These features are also said to assure the security of the property. Visitors are expected to vacate the property by 11am.
18. The occupation of the property is monitored via the Ring doorbell which enables the appellants to check that the number of occupants is not exceeded. A Minut device inside the apartment provides constant noise monitoring. It is set to alert the appellants if noise levels exceed 75 decibels, which is equivalent to noise generated by a domestic vacuum cleaner. The Minut device is also said to serve as a party-prevention tool and to identify instances of crowding within the property. If noise alerts are triggered, visitors are requested to reduce the noise level or risk losing their deposits. They are reminded of the no noise policy by text prior to their arrival and by the terms and conditions of their stay.
19. The appellant has provided details of occupancy between 1 January 2022 and 31 December 2022. These show the occupancy rate was 68% and that the property was occupied for 248 nights by 206 visitors staying on average 8.6 nights. Between 1 January 2023 and 31 December 2023, the details show the occupancy rate was 42% and that the property was occupied for 152 nights by 134 visitors staying on average 6.5 nights. A breakdown of the data between 13 May 2023 and 30 June 2023 shows an occupancy rate of 48% and that the property was occupied for 33 nights by 30 visitors. The length of stay ranges from 1 to 8 nights, averaging at 3.3 nights per stay. 40% of the stays were recorded as being work related. The data shows that there are a significant number of different visitors using the space for a mixture of business and leisure.
20. It seems to me that, although the accommodation is modest in size and visitors are limited to a maximum of four, being situated in a block of flats with front doors to the other two ground floor flats within close proximity, it is probable that disturbance from comings and goings will be magnified. This is not limited to the movement of visitors but also the additional comings and goings from staff employed to clean and change bed linen. Although the annual occupancy rates provided show an average stay to be 8.6 nights in

2022 and 6.5 nights in 2023, the breakdown figures for mid-2023 recorded stays ranging from 1 night to 8 nights.

21. A flat within a block containing residential properties forms a different context given that it has shared circulation and amenity spaces, and horizontal as well as vertical separation. It is likely that residents will be familiar with their neighbours who they may see in passing, or otherwise, on a regular basis. The use of the appeal property for short-stay accommodation, therefore, has the potential to result in conflict with the mainstream residential use of the block through a regular influx of different temporary residents as well as increased pressure on infrastructure and shared space.
22. There are no minimum stay conditions, and this could, in theory, result in new visitors arriving daily with the consequential additional comings and goings generated by the requirement for change-over cleaning which would naturally be considerably greater than if the property was occupied by permanent residents or those on a shorthold tenancy agreement. I appreciate that Use Class C3 does not specify any minimum stay period or any requirement for the property to be a sole or main residence. However, it is clear from *Moore* that a material change can nevertheless occur as a result of the particular way short-stay accommodation is used, depending on the facts of the case.
23. Although there is noise monitoring in place within the property, there is nothing to prevent noise within the communal hallway and outdoor space. While noise may well be created by residents themselves, it is likely that those who live in the block would be more conscious of their neighbours and be particularly aware of how noise can travel in such a space. It is also probable that visitors could generate disturbance by arriving or departing at unsocial hours, particularly those who are staying for leisure, when enjoying nights out and those who are staying for work purposes who may leave early in the morning. This would likely have an impact upon both the neighbouring residents and the immediate surroundings. Although I accept that this could be the same for some permanent residents, the potential for such issues being caused by the transitory nature of short-stay occupants is, in my view, much higher. Moreover, the harm identified would be compounded by the proximity of other neighbouring properties within the block.
24. While I appreciate the measures the appellant has gone to in order to minimise disturbance to neighbours, they do not reside at the property, and they do not have complete control over the behaviour of visitors and cannot prevent noise and disturbance from occurring. Submissions from some residents in the block refer to disturbance and nuisance caused by some visitors. One resident describes the flats at Richmere Court as mostly singularly occupied by retirees who enjoy the peace and tranquillity of the space. Although there is no evidence to demonstrate how the property was used prior to its current use, in my view, and as a matter of fact and degree, the introduction of short-stay accommodation in this situation and the variable nature of the transient use of the property has resulted in a distinctly different character usage from that of a Class C3 use. The use is one which I consider to be beyond what would reasonably be expected in a mainstream domestic context. It follows from this that a material change of use has taken place and, since planning permission was not secured, a breach of planning control has occurred.

25. Accordingly, the appeals on ground (c) must fail.

The appeals on ground (g)

26. An appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The period for compliance with the notice is one month.
27. The appellants consider that the period for compliance of one month falls considerably short of what should be reasonably allowed. It does not provide for the administrative implications of ceasing the use of the property as short-stay accommodation and fails to take into account existing bookings for the property which are often booked in advance. The appellants also consider more time is required to remove the property listing from a variety of third-party websites. The appellants therefore consider that the period for compliance should be extended to at least 12 months.
28. I do not doubt that stays are sometimes booked way in advance, however, I have not been provided with any details as to how far in advance some bookings are made. I also have no information concerning fees that may be incurred for cancelling such bookings. While I accept that a period of 1 month falls short of what should reasonably be allowed as a compliance period, I am not persuaded that 12 months would be required, particularly as requirement 2 has been deleted from the notice.
29. I shall extend the period for compliance to cease the unauthorised use of the property to 2 months. Future booking commitments for stays after the 2 month compliance period must be cancelled and bookings refunded or costs paid if necessary, according to any terms and conditions of booking. This may inconvenience some people, but in the absence of evidence to the contrary, the scale of cancellation would be relatively modest. It would still give future occupants the time and opportunity to find alternative accommodation.
30. Therefore, there is partial success on the appeals made on ground (g)

Conclusion

31. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice as amended.

S A Hanson

INSPECTOR