



Appeal Decisions

Site visit made on 18 February 2025

by **R Merrett Bsc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 March 2025

Appeal A: APP/C2741/C/23/3322133

Appeal B: APP/C2741/C/23/3322684

Land at 70 Huntington Road, York YO31 8RN

- 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 Richard Harrison (Appeal A) and Mrs Isabel Harrison (Appeal B) against an enforcement notice issued by City of York Council.
- The enforcement notice was issued on 6 April 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 requirements of the notice are Cease the unauthorised use of the Property as short-term let accommodation of under three (3) months.
- The period for compliance with the requirements is six months.
- The appeals are proceeding on the grounds set out in section 174(2) (a) (Appeal A only), (c) and (f) 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 appeals are dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Mr & Mrs Richard and Isabel Harrison against City of York Council. This application is the subject of a separate Decision.

Preliminary Matters

2. My attention has been drawn to a recent appeal decision concerning a nearby property at 3 Gladstone Court, also in the appellant's ownership, which was the subject of the same type of development as is proposed in this case¹.
3. In terms of the description of the alleged unauthorised use, the Inspector in that case found that there was no definition of 'short term let' accommodation in the 1990 Act. They identified that the only limitation on whether the use of a dwellinghouse would fall within Use Class C3 of the UCO², is that the occupiers are living together as a family or single household. Hence the reference to short-term letting, in itself, did not sufficiently distinguish the unauthorised use.

¹ Appeal ref APP/C2741/C/23/3319791

² the Town and Country Planning (Use Classes) Order 1987.

4. I concur that the description of development could be made more precise by describing the proposed use as 'short-term visitor accommodation for paying guests (*sui generis* use)'. I am satisfied that this correction may be made without resulting in injustice to the parties.
5. I acknowledge that since the enforcement notice was issued, the Council has now adopted the City of York Local Plan. I have taken this document into account, as part of my reasoning below.

The appeals on ground (c)

6. The appeals on ground (c) are that there has not been a breach of planning control. The onus rests with the appellants to demonstrate their case, on the balance of probability.
7. The appeal site comprises a large two-storey, end of terrace, Victorian villa with five bedrooms. In considering whether the use of the dwelling as visitor accommodation would result in a material change of use, I have had regard to relevant case law, as referenced in the appellants' evidence³.
8. The *Moore* case considered the question of whether there had been a material change of use of a dwelling to commercial holiday lettings. The Inspector had applied various criteria to test the proposition, including the pattern of arrivals and departures including traffic movements; the unlikelihood of occupation by family or household groups; the number of guests and the likely frequency of 'party type activities' and the potential lack of consideration for neighbours. The Court of Appeal held that whether there was a material change of use would depend upon the specific circumstances of the case.
9. Having regard to the evidence, including guest reviews and my visit, it appears the property could be occupied by up to 16 persons at any one time (although the appellants state this number is rarely accommodated, with average occupancy in 2022 amounting to some 12 guests). Visitor groups appear to be diverse and may include extended families seeking a break, friends or work colleagues catching up; also single sex groups intending to celebrate an event, such as a forthcoming wedding. Often the visitor groups are attracted by the proximity of the city and its leisure offer. The letting periods are said to be usually between three to four days and two weeks. The appellants live elsewhere in the York area, and accordingly occupation of the property is entirely by visiting persons.
10. Because the property is sometimes let to more than six guests who are not a single household, by definition, it could not be described as falling within the C3 Use Class. Nevertheless, it remains important to consider the characteristics of the proposed use in order to determine whether, on the balance of probability, a material change of use has occurred.
11. In my judgment, whilst not inevitable, if left unchecked the occurrence of many of the aforementioned sorts of social gatherings would very likely attract party and celebratory type activities. I am in no doubt that such events would be significantly more likely to occur as a result of purposely arranged, transient social gatherings, when compared to the dwelling being occupied by the same group of people on a longer term basis. Such activities have the potential to generate anti-social

³ *Moore v SSCLG [2012] EWCA Civ 1202*

- behaviour and disturbance, resulting from the congregation of people in high spirits, holding loud conversations and playing loud music.
12. The transient nature of the visitors means they would probably be far less likely, than longer term residents, to feel a sense of a stake in the local community. It follows, in my view, that many, though not all, visitors would lack a sufficient sense of responsibility towards and respect for the living conditions of other nearby residents.
 13. The letting of the property in this way would also be likely, in my view, to generate a greater frequency of noisier comings and goings associated with the arrival and departure of guests, whether in vehicles or on foot, and potentially in larger groups and during unsociable hours, than may otherwise be the case if in use by a single household.
 14. This would reflect factors such as the duration of visitor journey times to and from York, meaning that late arrival or early departure would sometimes be inevitable; visitors, unfamiliar with the area, simply marshalling their arrival at and departure from the property in a way that permanent residents would not need or tend to do; and groups being in high spirits in anticipation of or resulting from a night on the town. In what is a densely populated area, this would have the potential to add to the levels of noise and disturbance effecting local residents. However, irrespective of whether there would be harm, I consider the difference in the character of comings and goings, is likely to be noticeable and therefore material.
 15. I accept that because an occupier is a permanent resident does not mean they are incapable of disturbing their neighbours. However, drawing the above considerations together, including that the number of visitors may be up to 16 persons at a time, in my judgment, without sufficient control measures in place, disturbances are far more likely to arise more frequently, if the property were occupied for repeated short-term periods by groups of visitors.
 16. The appellants have set out how various measures are utilised with a view to controlling and managing the behaviour of their guests, in the interests of safeguarding the living conditions of local residents. Firstly, they describe a rigorous vetting procedure, prior to the booking being confirmed, whereby the purpose of the visit is established and the standards of behaviour expected of guests, respectful of other residents, are clearly set out and agreed to; with these standards being reiterated at a meeting on arrival.
 17. Secondly guests are advised that a noise monitoring system, which measures levels both inside and outside the dwelling, is in operation. In the event that threshold levels are breached⁴, this may trigger warning texts advising the party and appellant of such, and the risk of a security deposit payment being lost and in extreme cases eviction by a security company. It is also possible to monitor the behaviour of visitors in real time, from images recorded on CCTV cameras situated on the front and rear elevations. I also noted during my visit that notices are displayed within the dwelling, reminding guests to moderate noise levels and to respect the peace and privacy of neighbours; with no noise permitted outside after 9pm.

⁴ Information from the supplier states that monitors are calibrated in accordance with industry standards, with the acceptable threshold level being under 70db (see appellants' final comments appendix 5b). The appellant confirms that a trigger is activated if internal noise averages 75db for 10 minutes (see appellants' statement on legal grounds appendix 2).

18. The appellants' letting business is operated in conjunction with the booking website, Airbnb, and guests are also reminded that poor behaviour will be recorded and cited in reviews by the host on that website. This information would be accessible by potential future hosts, therefore potentially preventing badly behaved guests from securing future bookings.
19. All of the above steps, which in the appellant's own words are 'oppressive', are intended to deter unacceptable behaviour, with the objective of satisfactorily integrating the use within the community. Indeed, the appellant has referred to some groups not going ahead with booking due to being put off by the strict rules.
20. It seems to me the very need to deploy such a rigorous system of management measures is indicative that the use has the potential not to be suited to a residential location. However, even with the measures applied, and effective in controlling guest behaviour to a high degree, as I have no reason to doubt, disturbances would not be prevented from occurring, and the patterns of likely visitor comings and goings, would be little changed, even if more considerate overall.
21. I am not persuaded, on the balance of probability, that noise disturbance to local residents and the patterns and intensity of visitor activity associated with the development would be indistinguishable from that of a dwelling occupied by a family or single household, within Use Class C3. Rather there would be a significant difference in the character of the activities, as a matter of fact and degree, with the visitor use being the more intrusive. A breach of planning control has occurred. The appeals on ground (c) therefore fail.

Appeal A on ground (a)

Main Issue

22. The appeal on ground (a) is that planning permission ought to be granted. The main issue is the effect of the development on the living conditions of local residents, having particular regard to noise and disturbance.

Reasons

23. The appeal property is an end of terrace dwelling, with a relatively small gap separating it from No 72 Huntington Road, which marks the beginning of the adjacent terrace. No 72, also owned by the appellant, is the subject of a different appeal for the same type of development. There is a residential terrace on the opposite side of Huntington Road, set back from the highway. The appeal site is also close to several residential properties, sited between the rear elevation of the dwelling and the River Foss beyond.
24. Objections to the development, which has been in operation since 2017, have been received from neighbouring and nearby residents, describing how they are frequently disturbed by noisy, high-spirited guests and rowdy behaviour. The Council states that retrospective action taken by the owner, once the disturbance has occurred, is ineffective because its impact cannot be undone. I acknowledge and sympathise regarding the harm that can be caused by inconsiderate behaviour to the wellbeing of residents who simply want to enjoy the peace and quiet of their home.
25. Aside from objections made in response to the enforcement notice appeal, it is evident from the Council's submissions that it received a number of direct

- complaints in relation to this matter in the period shortly before and after the notice was issued. Much of this correspondence is heavily redacted, such that it is not possible to obtain a clear picture of the nature and severity of the alleged incidents.
26. From the evidence it would appear the aforementioned noise monitoring equipment and associated text reminders have been effective in terms of guests responding quickly to moderate their behaviour⁵. The Council does not dispute the information provided by the monitoring equipment company, or challenge the point that the equipment has been calibrated to follow industry standards.
27. However, the Council does not accept the use of monitors can be relied on to confirm amenity will not be adversely affected. This is a reasonable and indeed key point because any sanctions are retrospective, and the degree of tolerance to a specific level of noise and disturbance will vary from person to person. I have no reason to dispute that the system of management measures deployed by the appellants have been effective in controlling guest behaviour to a high degree. Indeed, a number of supporting representations received from previous users of the accommodation have set out how these measures, which they were happy to abide by, were explained in advance of their arrival.
28. However, I am also mindful these protocols cannot guarantee there will be no disturbance, and even though an effective deterrent, I concur with the point that once someone has been disturbed, the experience is likely to leave them feeling irritated, unsettled and anxious over when and how they might next be disturbed, no matter what sanctions are in place against the perpetrators. Not every case of disturbance and loss of amenity will result in a complaint to the Council. It is also important to recognise that disturbance may be harmful to the enjoyment of a neighbour's property, without it reaching the threshold of a statutory nuisance.
29. Clearly, the occupation of a property for permanent residential use does not provide a guarantee of considerate behaviour and an absence of disturbance, given the potential would remain for regular social gatherings and excitable children playing, for example. There is also some merit in the point that such circumstances could not be subject to a similar management plan. However, I am firmly of the view that poor behaviour is more likely to arise from transient social gatherings, where, notwithstanding the use of local facilities, a sense of integration with and responsibility towards the local community is more likely to be missing.
30. To my mind the potential for harm arising from noise and disturbance would be exacerbated by the potentially large numbers of visitors at any one time (on average 12 and potentially up to 16 guests). Whilst this will not be an issue in every case, the management of certain groups is likely to be complicated, notwithstanding the system of monitoring and sanctions in place, because the greater the number of people, the higher the risk will be of non-adherence to the 'house rules', and expected standards of behaviour.
31. In my view, the visitor capacity in this case is much higher than if the property were to be occupied by even a large single family. I acknowledge the Inspector in allowing the aforementioned appeal, at 3 Gladstone Court, found that harm to amenity could just as readily arise from a large family, given the constraints of the property (including lack of garden space) and immediate surroundings. The

⁵ See for example the appellants' final comments Appendix 5b. The equipment supplier refers to "...occasional triggering of the level 1 warning to guests, but this has been followed by a reduction in noise levels to within acceptable levels (under 70db)."

property there also contained five bedrooms, as in this case. However, by contrast, the visitor capacity would be lower at Gladstone Court. The circumstances of that case may therefore be distinguished, and do not dictate that I must make a similar decision, with each case to be decided on its individual merits.

32. I have also given consideration to the concerns expressed regarding disturbance from vehicular activity. General on-street car parking is tightly controlled in this location, and apart from short periods that would allow visitors to drop off and collect luggage, would be limited to resident permit holders only. The appellant confirms they do not make such permits available to visitors. I also acknowledge the site is within walking distance of the train station and that as such not all visitors will be car dependant.
33. However, in my judgment, vehicular comings and goings would be more noticeable in relation to the proposed visitor use, compared to a permanent residential use, because of the natural tendency for conversations and chatter, as visitors marshal their arrival and departure. In addition, the very nature of travel means that many arrivals and departures are likely to be at more noise sensitive times. I am in no doubt that such patterns of comings and goings, even if undertaken relatively quietly, may still cause disturbance through neighbours being aware of sudden increased activity. Furthermore, given the capacity for larger groups, the amount of vehicular activity associated with dropping off and picking up will at times be intensified.
34. I am not persuaded that the periodic cleaning of the property, likely to be during daytime hours, would result in undue disturbance. However, it is likely there would be an increase in comings and goings on foot, and at more noise sensitive times, as visitors seek to use the city centre attractions. I recognise that many visitors will not be inconsiderate, and could be reasonably expected not to cause disturbance, even at quieter times of day and night. However, in my judgment there remains a high probability of disturbance being caused to neighbours from boisterous and disorderly comings and goings, even if relatively fleeting. I conclude significant harm would be likely to arise from comings and goings in general.
35. I have considered the possibility of imposing a planning condition to require a noise management plan, with a view to regulating guest behaviour. I recognise that the appellants have tried hard to operate the business, with consideration for neighbours, whilst living away from the premises. From the representations received I am also reasonably confident that the 'house rules' would be rigorously applied, and any necessary interventions taken swiftly.
36. However, drawing all the above considerations together, in my judgment this would not overcome the potential for regular fleeting disturbances from comings and goings, raised voices and excitable behaviour. I consider the cumulative impact of such patterns of activity, within what is a dense residential setting, with neighbours very close by, would cause significant harm to living conditions. Aside from this position I am not persuaded that fleeting disturbances, harmful to amenity, could only be said to occur if average noise thresholds over a ten minute period are exceeded, as referred to in the evidence before me.
37. Having reached this conclusion, I have also taken into account the aforementioned successful appeal in relation to the similar use at 3 Gladstone Court, nearby. I consider the sites to be sufficiently close to one another that the granting of

permission in the present case would result in significant 'in-combination' impacts from disturbances. This is in addition to the harm I have already found resulting from the operation of the proposed use alone.

38. I have also considered the appellants' point that the property is likely to be suitable as a House in Multiple Occupation (HMO), against the Council's criteria, which would not be subject to the same level of management control. However, an HMO use would require planning permission, which is not a certain outcome. Accordingly, this does not carry weight as a robust fall-back position.
39. Reference has been made to the previous use of the property for up to eight residents as a HMO. For the avoidance of doubt there is no evidence to persuade me that this would have constituted the lawful use of the property, or that its use as such constitutes a fallback position that weighs in favour of the current proposed development.
40. I therefore conclude the development would be in conflict with Policy DP3 of the City of York Local Plan 2025 (LP) and the National Planning Policy Framework (the Framework), which collectively set out the overarching development principles aimed at delivering sustainable communities, including by supporting health and social well-being and protecting the living conditions of residents. I do not consider Policy HW7, which is concerned with major residential development, to be applicable in this case.
41. The appellants have drawn my attention to previous correspondence with the Council in late 2016, in which the Council appeared to raise no objection to the holiday let proposal. However, this correspondence is brief and informal, and can in no way be taken as confirming the definitive lawful status of the visitor accommodation, currently being enforced against. It would have been open to the appellants to have applied for a certificate of lawfulness of any proposed use at the time.
42. The appellants have also referred to the house rules operated as being consistent with guidance issued by the Council to owners of holiday lets, regarding managing noise, such as by withholding deposits. However, this does not mean the Council is then duty bound to grant planning permission.

Other Considerations

43. I have considered the appellants' representations regarding the benefits the development would bring in terms of visitor spend in the local economy. I also have no reason to dispute the development would help to address an identified huge growth in demand for, and shortfall in the provision of, self-catering accommodation for larger groups of people in York. There have also been several very positive representations made in support of the development from previous guests who have cited its convenience, flexibility, affordability, comfort and quiet location. These considerations accord with the objective of Policy EC4 of the LP to maintain and improve the choice and quality of visitor accommodation. However, there is no suggestion such accommodation must be provided in this specific location, and the considerations therefore attract moderate weight in the planning balance.
44. The property is also situated within a high-risk flood zone and was the subject of a flooding incident in 2015. However, the area is understood to be protected by flood

defences, and whilst there is some merit in the argument that visitors are less likely to be adversely affected by a flood incident than permanent residents, I consider this point attracts only very limited weight.

45. The appeal site lies within the Heworth / Heworth Green / East Parade / Huntington Road Conservation Area (CA). In accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 I have a statutory duty under Section 72(1) to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
46. The Council notes that the Huntington Road area is characterised by substantial urban villas, the most important of which is Groves Terrace, built in 1824. The proposed development does not involve any physical alterations being made to the building and I am satisfied that the development would not result in harm to the character or appearance of the CA.
47. Concern was expressed that parking controls outside the property would lead to parking pressure from the use, being transferred to locations further away from the site, where available space is already scarce. However, from the evidence presented, I am not persuaded that this would result in material harm.

Conclusion regarding ground (a) appeal

48. I have found conflict with the Council's development plan, and the Framework, in terms of harm to living conditions, in relation to which I attach significant weight. The weighting would remain significant even if considering the harm without the added in-combination impact of 3 Gladstone Court. The benefits the development would bring to the local economy, and in terms of avoiding impact on permanent residents due to flood risk, would in my view not be sufficient to outweigh the policy conflict I have identified. I have not found harm in terms of impact on the CA or parking pressure, however this lack of harm is neutral in the planning balance.
49. I therefore conclude there would be conflict with the development plan, when read as a whole, and that it would not be appropriate to grant planning permission for the visitor accommodation targeted by the notice. The ground (a) appeal therefore fails.

The appeals on ground (f)

50. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the 1990 Act and include remedying the breach of planning control (s173(4)(a)). The 1990 Act sets out that the breach may be remedied by making the development comply with the terms of any planning permission granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
51. With regard to the unauthorised development, the objectives of the notice are to discontinue its use as short term let accommodation of under 3 months. It follows that the purpose of the notice is to remedy the breach of planning control.
52. I have set out above that the description of development ought to be made more precise by correcting it to 'short-term visitor accommodation for paying guests (sui generis use)'. The corresponding requirement could be corrected to require the unauthorised use of the land to cease. I consider these amendments could be made without causing injustice to the parties. The purpose of the notice to remedy

the breach of planning control would be maintained, and to require that much does not, therefore, exceed what is necessary.

53. The appellants' ground (f) appeal is specifically that the original requirement would prevent the property being used for short term let purposes within Use Class C3. Such a requirement would be excessive considering the property has a legitimate C3 use. However, the correction to the notice will be such that it will ensure the property may revert to a use within Class C3. The ground (f) appeals therefore succeed to this limited extent.

Conclusion

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

Formal Decision

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

The deletion of the wording, describing the breach of planning control, within Section 3 in its entirety and its substitution with the following wording instead:

“ Without planning permission, the material change in the use of the Land 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).”; and

The deletion of the wording, describing the requirements, within Section 5 in its entirety and its substitution with the following wording instead:

“Cease the unauthorised use of the Land as a dwellinghouse in use as short-term visitor accommodation for paying guests (sui generis use).”

56. Subject to the corrections, the appeals are 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.

R Merrett

INSPECTOR