



Appeal Decisions

Site visit made on 30 September 2025

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 October 2025

Appeal A Ref: APP/Q1445/C/24/3349007

Appeal B Ref: APP/Q1445/C/24/3349008

Flat 14, Thomas House Clifton Hill, Brighton BN1 3EN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
 - Appeal A is made by Mr Marcus Hannah and Appeal B is made by Ms Karen Hannah both against an enforcement notice issued by Brighton and Hove City Council.
 - The notice was issued on 25 June 2024.
 - The breach of planning control as alleged in the notice is *without planning permission, the material change of use to short term visitor accommodation (sui generis)*.
 - The requirements of the notice are:
 - 1 Cease the use as short term visitor accommodation (sui generis)
 - The period for compliance with the requirement is: 2 (two) months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the 1990 Act (as amended).
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Formal Decisions

1. The appeals A and B are allowed, and the enforcement notice (EN) is quashed.

Preliminary Matters

2. It would be appropriate to detail the planning history associated with the site. Thomas House is a contemporary designed purpose-built apartment block containing 18 flats. The appellants purchased the property (Flat 14) in 2017. An enforcement investigation¹ took place following reports of an alleged breach in planning control involving a material change of use from a dwellinghouse (C3) to use as short term visitor accommodation (sui generis).
3. A Planning Contravention Notice (PCN) was issued at the property, where the appellants indicated that the flat was not their primary residence, as they resided in London and thus the appeal site had been subject to several short and long term lets, since they purchased the property. The appellant further indicated that between October 2022 and March 2024 the use had predominantly been for short term visitor accommodation, although the appellants also used it for infrequent family getaways at weekends when it was available. The Council considered it expedient to serve an EN at the site in order to remedy the alleged breach of planning control.
4. The appellants exercised their right of appeal under ground (b) only; however a significant proportion of the appellants representations are based on the argument that the use of the property for short-term visitor accommodation does not amount to a material change of use and therefore is not a breach of planning control. This

¹ Brighton & Hove Planning Ref: ENF2023/00501

issue should be correctly addressed under a ground (c) appeal, and I have referred to both parties of my intention to consider the appeal under this ground. Consequently, neither party has been prejudiced by this approach.

5. Representations have also been made by both parties in respect of disturbance from noise, impacts on amenity and whether the use would adhere to policy DM2 of the Brighton & Hove City Councils Development Plan Part Two (BHDP2), adopted April 2020, which seeks to resist the loss of the existing housing stock. However, as the appellant has not appealed on ground (a), nor paid the relevant fee, there is not a deemed planning application for me to consider. As a result, the planning merits of the case are not before me in this appeal.

Appeals A and B on ground (b)

6. An appeal on this ground is that the matters alleged in the EN, have not occurred. In order to succeed on this ground, the appellant must demonstrate that, on the balance of probability², the matters stated in the EN have not occurred as a matter of fact.
7. The alleged breach of planning control is a material change of use of the land to short-term visitor accommodation (sui generis). The appellant has confirmed that guests have stayed at the property having booked the accommodation through websites such as Airbnb, Vrbo and Airhomelets. They have also indicated that they instructed a local Brighton letting agency to manage the property and advertise it both for tenants on Assured Shorthold Tenancy (AST) agreements and also for shorter term occupancy. Information provided on the PCN highlights that the average occupancy period has been approximately 5 days.
8. Based on the evidence provided, and on the balance of probability, the property is, and has been, available as short-term visitor accommodation, and not a C3 residential use. Whilst I would acknowledge that some tenancies have been for considerably longer periods (student lets during term time) these guests are nonetheless transient occupants rather than long-term residents. Consequently, the alleged breach of planning control has occurred as a matter of fact.
9. The appeals on ground (b) must therefore fail.

Appeals A and B on ground (c)

10. An appeal on this ground is made on the basis that the matters stated in the EN (if they occurred) do not constitute a breach of planning control. As with ground (b) above, the burden of proof is again firmly on the appellant to make their case, on the balance of probabilities.
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 therefore a matter of fact and degree, determined on the individual merits of a case.

² *Thrasivoulou v SSE & Hackney LBC* (No 1) [1984] JPL 732

12. In order for these appeals to succeed the appellants need to show that the use of the property for short-term visitor accommodation does not require planning permission as the use is not development or, planning permission is not required for its continuation., i.e. whether there has been a significant change in character to the previous use. From the information before me, the original use at the appeal site was as a C3 dwellinghouse (flat) within Thomas House. The appeal site consists of a bedroom, a bathroom and an open plan kitchen/lounge/diner, a hall and a balcony. During my site observations I noted the appeal site contains a double bed and sofa bed, toilet, personal washing conveniences, and cooking and laundry facilities which could accommodate a maximum of four persons at any one time. Thus, the unit is capable of independent accommodation.
13. Caselaw³ highlights that the limited use of a family home for holiday lettings may not necessarily be a material change of use, however it has also been held that materiality in such cases will be a matter of fact and degree⁴, with the answer depending on the characteristics of the use as holiday accommodation. The same approach should apply to short term visitor accommodation. The *Moore* case includes various criteria to assess whether there had been a material change of use, which includes 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 any occasions, the likely frequency of party type activities, and the potential lack of consideration for neighbours.
14. As stated, the appeal site is located within a purpose built block of 18 flats, and consequently there are communal areas such as the entrance (accessed via a shared fob), stairwells, a lift and corridors. The existing property would therefore be subject to movement and access throughout the day, as occupants go about their daily business, including travelling to work, school, and/or undertaking recreational activities etc. Arrivals and departures associated with any short-term visitor accommodation would coincide with these daily movements within Thomas House. It is unlikely that these activities would be conspicuous or out of the ordinary, given the modest size of the appeal site, and the ability to accommodate a maximum of only four persons at one time.
15. The modest nature and layout of the appeal site would also lend credence to its occupation by individuals, smaller groups and families as it would be unsuitable to accommodate bigger groups of unrelated occupants. This use would be akin to the existing use of Thomas House as a block of flats for single households. Furthermore, the appellants indicate that when the property is unoccupied, they use the property as a second home for weekends away in Brighton, given its convenient location to the town centre. Consequently, as a result of the use it is unlikely that the internal characteristics of Flat 14 or Thomas House would result in a material change.
16. During my site observations, I also noted that Clifton Hill and most of the surrounding streets have double yellow lines in operation, alongside controlled parking zones prohibiting on-street parking, and there are several bus services and a train station locally, supporting the use of sustainable transport. The appellants highlight that the appeal site has no allocated parking. Furthermore,

³ Blackpool BC v SSE [1980] JPL 527

⁴ Moore v SSCLG [2012] EWCA Civ 1202

short term visitors are not provided with visitor parking permits and as a result cannot use the visitor parking bays. Therefore, in the absence of clear evidence of a local parking issue, I do not consider that the short term visitor accommodation would result in significant additional traffic or an increase in parking issues in this particular location.

17. The appellant has stated that all short term visitors are “vetted” by the management agent prior to booking, in order to minimise noise and disturbance, as a result of the short term visitor accommodation. No persons under the age of 21 are allowed, and parties and events like stag and hen dos are specifically not permitted. The appellants also highlight that whether short or long term lets, the occupiers agree to the property being cleaned following their departure. I note the Councils concerns in respect to noise and disruption caused by cleaners through the regular turnover of visitors to the site, however I do not find that this would be over and above regular disturbances from a more fastidious resident within an existing flat.
18. Drawing the above considerations together, the current use of the appeal site for short term visitor accommodation would not alter the characteristics of Flat 14 or Thomas House either internally or externally, to the point where it would be considered that a material change in use has occurred. The modest size of the appeal site would lend itself to occupation by individuals and family or household groups, who are vetted to minimise potential disturbance. Whilst there may be small disturbances during periods of visitor change over, and cleaning, these are generally infrequent and would only be for a short period of time.
19. Overall, I find that there is not a significant difference in the character of the activities resulting in a material change of use of the land from a dwelling to short term visitor accommodation. Consequently, I am satisfied that the appellant has demonstrated, on the balance of probabilities, that a material change of use has not taken place as a matter of fact and degree.
20. Accordingly, the appeal on ground (c) succeeds.

Conclusion

21. For the reasons given above, I conclude that appeals A and B should succeed on ground (c) and the enforcement notice will be quashed.

Robert Naylor

INSPECTOR