



Appeal Decision

Site visit made on 22 October 2025

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 20th November 2025

Appeal Ref: APP/A1530/C/23/3323932

11 The Nook, Wivenhoe, Colchester CO7 9NH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Vikrant Kanwar against an enforcement notice issued by Colchester Borough Council.
- The notice was issued on 17 May 2023.
- The breach of planning control as alleged in the notice is 'Without the benefit of planning permission, the change of use of a dwellinghouse (C3) to stand- alone short- term holiday let Airbnb (Sui Generis)("The Activity")'
The requirement of the notice is 'Cease the use of the dwellinghouse known as 11 The Nook for short term holiday lets (Airbnb)'
- The period for compliance with the requirements is 30 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 (the Act) (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.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - (i) Deletion of the allegation in full and replacing it with "Without planning permission, the material change of use of a dwelling house (C3) to use as short term holiday lets (Sui Generis)."
 - (ii) Deletion of the requirement in full and replacing it with "'Cease the use of the appeal property for short term holiday lets (Sui Generis)'"
 - (iii) Deletion of the words of 30 days as the period for compliance and its replacement with "3 months."
2. Subject to the corrections and variations, the appeal is 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.

Preliminary Matters

3. The grounds of appeal are (a) (f) and (g). The appellant is not disputing that a material change of use to short term holiday lets has occurred as there is no appeal under ground (b) or (c)¹.

¹ Paragraph 4 Statement of Case

The Notice

4. It is the duty of the Inspector to put the notice in order irrespective of the grounds of appeal. The allegation refers to 'Without the benefit of planning permission, the change of use of a dwellinghouse (C3) to stand- alone short- term holiday let Air bnb (sui generis)("The Activity")'. Whilst the appellant has understood what is alleged, a change of use should be described as a 'material' change of use. The references to 'Airbnb,' 'stand-alone' and 'the Activity' are superfluous. I will amend the allegation to "Without planning permission, the material change of use of a dwelling house (C3) to use as short term holiday lets (Sui Generis)."
5. The requirement should flow from the notice. The requirement is to 'Cease the use of the dwellinghouse known as 11 the Nook for short term holiday lets (Airbnb)'. However when the allegation refers to use as a dwellinghouse, a requirement to 'Cease the use of the appeal property for short term holiday lets (Sui Generis)' provides clarity and flows from the allegation. The amendments do not cause injustice to either party as they provide clarity but do not make the allegation or the requirement more onerous.

The appeal under ground (a) and the Deemed Planning Application (DPA)

Main Issues

6. The main issues are (i) the effect of the development upon the living conditions of neighbouring occupiers with particular regard to noise and disturbance and (ii) the effect of the development upon highway safety.

Reasons

Living Conditions

7. The Nook is a cul de sac which includes two blocks of residential terraced properties as well as some semi-detached properties. The appeal property is a two storey terraced house which is located towards the middle of a block which overlook an area of public green space. There is a block of communal car parking spaces to the other side of the open space.
8. The internal layout of the appeal property includes 4 bedrooms. The garden area to the rear includes a paved area with a hot tub, barbeque, patio heater, table and chairs and outdoor lights as well as a raised grassed area. Prior to June 2023, the appeal property had been advertised as an Airbnb let for 14 months as being suitable for 11 occupants.
9. There have been issues regarding noise and disturbance and a noise abatement notice was served on 24 May 2023 with regard to nuisance arising from raised voices and amplified sound. The appellant was offering a party package during that period. There were complaints with regard to drunken behaviour and noise disturbance into the early hours of the morning. The information provided by the Council includes noise disturbance up to July 2023.
10. Each group of visitors will be different but people who live alongside each other are more likely to maintain neighbourly relations than groups of people who are staying for a short period usually for a holiday who want to socialise and make use of outside facilities. There is likely to be late night use and more concentrated use of outdoor facilities over a short period of time by groups in comparison to

occupation by a single family. Use by persons who are away for a holiday or special occasion is therefore likely to result in more intensive use than occupation by a single family on a permanent basis. Complaints include the use of the outdoor facilities particularly the hot tub generating noise levels which are unacceptable for neighbouring properties particularly late at night and in the early hours of the morning.

11. One of the house rules relates to not disturbing neighbours by not making noise between the hours of 11pm and 7a.m. However, it is not clear how or when the rule has been enforced in the past or how it would be enforced in the event of a grant of permanent planning permission. Once disturbance has started, it has already affected those who are disturbed. There is also the practical issue of the appellant being available to receive messages about any disruption after 11pm. The development is also not comparable to a hotel or a guesthouse where a manager is usually on site to address any disturbances or issues immediately. It is also likely to be difficult for the appellant to ask a large group of guests to leave before the end of their break.
12. Details have been provided of the number of nights of occupation over a 12 month period since September 2022. The appellant considers that 40% occupation for that period has a bearing on the likelihood of disturbance. However, periods of non-occupation do not alter the issues arising from noise and disturbance by groups of guests when there is occupation. In any event, the grant of permanent planning permission would allow all year round occupation. The way in which the appeal property is used is of a different character to occupation of it by a single family as their permanent home. This appeal relates to the use of this property in this specific location rather than comparisons with the average household size in the UK or the average number of occupants over any given period.
13. For the reasons given, I do find that there is harm to the living conditions of neighbouring properties with particular regard to noise and disturbance.
14. The appellant proposes that any finding of harm could be overcome with a condition restricting the number of occupants to 8. He considers that the self-imposed limit of occupants and the withdrawal of party packages has removed the likelihood of future disturbances. The appellant relies upon the case of Moore² to support the view that accommodation of up to 6 – 8 people occupied by family groups who constitute a single household is likely to fall within Use Class C3. However, whether or not a material change of use has taken place is a question of fact and degree and, in this case, requires an assessment of the particular characteristics of the holiday use.
15. There would still be up to 8 occupants within a terraced house who are more likely to be friends than family and who are attracted by the outdoor facilities which are highlighted as a feature in the advertising. They want to socialise and expect to be able to do so late in the evening particularly if celebrating an occasion. I do not therefore agree that a condition limiting the number of occupants to 8 is sufficient to control the harm that I have found.
16. For the above reasons, I conclude that the development does harm the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. It is contrary to Policies DM5, DM13 and DM15 of the Colchester

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

Borough Local Plan 2017 -2033 which, collectively refers to development protecting residential amenity with regard to noise and disturbance.

Highway Safety

17. Paragraph 111 of the National Planning Policy Framework (the Framework) refers to refusing development if there would be unacceptable impact on highway safety and Paragraph 112 of the Framework refers to minimising scope for conflict between highway users.
18. The reason for issuing the notice relating to highway matters is taken from the planning refusal as it refers to 'proposed' parking resulting in awkward parking. However, I have limited information as to what was proposed or what is meant by 'awkward parking.'
19. The appellant states that most guests travel by train and taxi and sometimes bring their own car and there are rarely more than two cars. There is unlikely to be a pattern in terms of how a group of people who do not necessarily live in close proximity to each other will travel. However, whilst there is no parking directly outside the property, there is communal parking nearby and unrestricted road parking on nearby streets. Whilst the delegated report states that more individuals means more cars which could cause an access and highway hazard, I have limited evidence to support that view. The Highway Authority did not object to the planning application and have not provided comments for this appeal.
20. On the evidence before me, I do not find that the development causes harm due to highway safety. It is therefore not in conflict with Policies 111 and 112 of the Framework which collectively address highway safety.

Other matters

21. The appellant has referred to the presence of other Airbnb's in Colchester that operate without any issues. However, I have no information to show that any of those properties are comparable to the appeal property in terms of the type of property, the number of guests, the proximity to nearby dwellings or the range of outdoor facilities provided.

Conclusion on ground (a)

22. I have not found on the evidence before me that the development causes harm to highway safety. However, I have found that the development does harm the living conditions of neighbouring occupiers with particular regard to noise and disturbance. The development, therefore, conflicts with the development plan as a whole and there are no material considerations to indicate a decision should be made other than in accordance with the development plan. The appeal under ground (a) therefore fails.

The appeal under ground (f)

23. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

24. An appeal under ground (f) is limited to consideration of whether the requirements of the notice exceed what is necessary having regard to the purpose of the notice. As the amended requirement is to cease the use of the dwellinghouse for short term holiday lets (*Sui Generis*) the purpose of the notice is to remedy the breach.
25. Under this ground, the appellant has referred to a planning condition being imposed to restrict the numbers of occupiers to 8. However, I have addressed this matter as part of the ground (a) appeal as it relates to the planning merits rather than the purpose of the notice. The requirement of the notice is not excessive when the purpose of the notice is to remedy the breach of planning control. The appeal under ground (f) fails.

The appeal under ground (g)

26. An appeal under ground (g) relates to the period for compliance which is 30 days . The appellant has asked for a period of 6 months due to a number of advanced bookings. There is public interest in ensuring that the use ceases but 30 days is a short period to cancel future bookings whilst 6 months seems unnecessarily long. The Council has referred to a period of 3 months being appropriate as part of the appeal and I do consider that 3 months is a reasonable period. It would strike a proportionate balance in allowing those affected by cancellations to make alternative arrangements in terms of bookings whilst securing compliance. The appeal under ground (g) succeeds to that extent and I shall vary the notice accordingly.

Conclusion

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

E Griffin

INSPECTOR