

Appeal Decision

Site visit made on 16 March 2026

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th May 2026

Appeal Ref: APP/M4510/C/24/3354201

Land at 204 Jesmond Dene Road, Newcastle Upon Tyne NE2 2NL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
 - The appeal is made by Mr John Falkenstein against an enforcement notice issued by Newcastle Upon Tyne City Council.
 - The notice was issued on 2 October 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use from residential dwelling house (Class C3) to a property use for short term let (Sui Generis).
 - The requirements of the notice are to cease the use of the property as a short term let.
 - The period for compliance with the requirement is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (e) and (f) of the Act.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

2. The appeal was lodged on the grounds (b), (e) and (f) only. However, part of the appellants case is also that the change of use described in the notice is not material. I consider that this argument properly falls to be considered as an appeal under ground (c); that there has not been a breach of planning control. The Council have responded to this matter in their statement of case. It would not therefore prejudice the Council's case for me to also consider the appeal on ground (c).

Appeal on ground (e)

3. An appeal on ground (e) is a claim that a copy of the enforcement notice was not properly served as required by section 172(2) of the Act.
4. Section 172(2) provides that a copy of the notice shall be served on the owner and occupier of the land to which it relates, and any other person having an interest in the land which, in the opinion of the Council, is materially affected. It is for the Council to decide who is materially affected by the notice, but it runs the risk of the notice being quashed if it exercises its discretion incorrectly.
5. The Council stated that they served enforcement notices by post to the appellant at multiple addresses including at the appeal property and other properties in Newcastle, Cape Town and Tuscany, as well as via email. In addition, enforcement notices were also served by hand to the occupier of the appeal property, and by post to G&J Properties at an address in Rotherham and to the National Westminster Bank plc.
6. The appellant states that he was told that G&J Property Limited have not been served a notice. That the addresses that the enforcement notices were served at were no

longer occupied by the appellant and that due to a misspelling of his surname, any mail re-directs would not have operated. The appellant also describes that he had no right to occupy or be involved in the activities alleged in the notice at the appeal property, and is therefore substantially prejudiced.

7. Having regard to the submitted evidence, even if I were to find that the appellant was not properly served the enforcement notice as required by section 172 of the Act, it is evident from this appeal that the appellant received a copy of the notice and made a valid appeal. Therefore, in accordance with the provisions in section 176(5) of the Act, I find that the appellant has not been substantially prejudiced.
8. The appeal on ground (e) therefore fails.

Appeal on ground (b)

9. An appeal on ground (b) is a claim that the matters stated in the notice (which may give rise to the breach of planning control) have not occurred as a matter of fact. The onus of proof in ground (b) appeals is on the appellant and the test of the evidence is on the balance of probability.
10. The issue under this ground (b) is whether the appeal property has been used as a short term let as a matter of fact. The existence and change to a short term let and whether such a change was material will be considered under ground (c) appeal.
11. The appellant states that he entered into a Company Let Agreement with a company, G&J Property Limited, trading as Willow Homestays. The appellant continues and states that *"it was Willow Homestays that advertised, contracted with the guests, and it was Willow Homestays that ran accommodation as a short stay arrangement"*.
12. In response to a Planning Contravention Notice (PCN), the company G&J Property Ltd confirmed that the property was being used as a short term let that commenced on 13 October 2023. The PCN detailed that the property was advertised on websites¹ as single booking stays and that multiple bookings were not supported. The PCN also stated that a lockbox with key inside was used to allow visitors to gain access to the property. A list of bookings from October to September was provided. These bookings detailed the number of guests which ranged from three up to 12 guests, and also the length of the stays ranging from two nights up to 14 nights. In addition to the PCN, screenshots² from multiple websites have been provided that indicates that the appeal property has been advertised as short term let accommodation.
13. On the balance of probability and from the evidence before me, I am satisfied that the appeal property has been used as a short term let. The appellant has failed to demonstrate that at the date the notice was issued the matters alleged had not occurred, and the appeal on ground (b) must fail.

Appeal on ground (c)

14. An appeal on ground (c) is that the matters alleged in the notice, if they occurred, do not constitute a breach of planning control. The onus of proof in ground (c) appeals is on the appellant and the test of the evidence is on the balance of probability. Ground (c) is a legal ground of appeal, distinct from any planning merits. In order for the

¹ AirBnB; booking.com and willowhomestays.com

² Appendix 3 of the Council's Statement of Case

appeal to succeed on this ground, it has to be shown that the matters alleged in the notice do not constitute a breach of planning control.

15. Details from Council Tax³ and representations from local residents indicate that the appeal property is a dwellinghouse that was occupied by persons of less than three. The Council contend that the property's lawful use is a dwellinghouse falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) and the appellant does not dispute this matter. I therefore consider the lawful use of the appeal property to be a Class C3 dwellinghouse.
16. For a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. The *Moore* judgment⁴ also found that whether the use of a dwellinghouse for commercial letting as holiday accommodation amounts to a material change of use is a question of fact and degree in each case, and the answer will depend on the particular characteristics of the use as holiday accommodation.
17. The appellant identifies the central issues as being whether the short term letting of a Class C3 dwellinghouse can ever be a material change in the definable character of the use of the land; and if it is, then whether those changes must always take the use outside of the definition of a Class C3 dwellinghouse. The appellant has provided a range of evidence including information on housing tenures in Jesmond, details on Willow Homestays, intensification of use and effects on neighbouring residents.
18. In relation to housing tenures in the area, the appellant contends that short term lets are a significant part of that character and mix in both the immediate neighbourhood as well as Jesmond as a whole. It is explained that the adjoining property, 75 Cavendish Road, has been subdivided and let to individuals on short term arrangements. Property 202 Jesmond Dene Road (No 202), prior to its current occupants, was let to young professionals and students. It is also described that the property adjacent to No 202 is advertised on short term weekly stays. The appellant states that the private rental sector makes up 64.1% of all properties in the ward and that Airbnb indicates over 1,000 places available for short term rental in Jesmond Dene. The appellant refers to census records suggesting that 80% of the population of Jesmond live in private rented sector and/or short term lets. There is an implication that those who buy properties in which to live in Jesmond do so because they are buying into a particular type of community and lifestyle with reference to the concentration of licenced establishments, the average age of the people in Jesmond being low including a substantial student and young professional population. The evidence provided gives an overview of the character of the area surrounding the appeal property, although there is minimal information identifying the ratio split between properties being privately rented and those that are short term lets, as well as the actual difference in character between these two types of properties. There is also minimal evidence in terms of the character of the immediate area beyond the several properties directly adjacent to the appeal site. The evidence provided in terms of housing tenure does not provide any clarification as to whether the activities undertaken at the appeal property, as a short term let use, are significantly different in character to those activities undergone as a Class C3 dwellinghouse.
19. The appellant explains some of the contractual agreements with Willow Homestays as well as how Willow Homestays organised the sub-letting and that they did not

³ Appendix 1 of the Council's Statement of Case

⁴ *Moore v SSCLG & Suffolk Coastal DC* [2012] EWCA Civ 2101

change the fabric of the property and that it was professionally cleaned regularly. It is accepted that there was a failure to adjust the Airbnb advertisement, restricting single bookings to six people or less until the beginning of 2024 when this matter was corrected. The appellant considers that the Council's primary reliance is only on a period of 77 nights (between 13 October 2023 and 29 December 2023) where only five bookings exceeded six persons. It is claimed that there were significant periods when the property was not let and was vacant for considerable periods. There is minimal evidence which details how long the property was vacant. The Council's evidence⁵ shows that the property was advertised as a short term let on websites other than Airbnb as accommodation for over six persons. It is clear that the property was let on a short term basis between October 2023 and December 2023 to parties of over six persons. There is no convincing information before me to suggest that the property was not let on short term basis to parties of over six people after the date of December 2023.

20. The appellant accepts that there was an incident on 3 February 2024 of a person causing a disturbance from the property and that this was an exception. The appellant further states that anti-social behaviour (ASB) is a general issue and has no single cause, explaining that ASB is not related to a specific housing tenure type, with examples given of the property at 75 Cavendish Road where noise and ASB had been a problem. Nevertheless, there are reports from neighbouring residents of multiple occurrences of ASB at the appeal property. The Council have also indicated reports of numerous complaints regarding noise and ASB from the appeal property. These complaints have resulted in the issuing of a Community Protection Warning (CPW) dated 7 February 2024. The appellant claims that noise monitors were fitted in each of the rooms of the appeal property with no adverse noise findings. No data or noise readings from these noise monitors have been submitted to verify the claims.
21. Properties in short term lets would generally have increased activities in terms of comings and goings of different groups of people which in turn can lead to noise levels being notably different from that of a Class C3 dwellinghouse. The submitted evidence is clear that the property has been let out to multiple groups of people on short term basis up to a maximum period of 14 nights. On occasions, the appeal property has been let to groups with more than six persons and it is clear that the property has been advertised on multiple websites as a property that can accommodate more than six persons. Given the reports of noise and ASB complaints relating to the property, and notably the issuing of a CPW, I do not consider this to be a usual situation that you would find at a typical Class C3 dwellinghouse. Whilst I accept there have been no major physical alterations to the property, the type and increase in activities associated with the site including the people visiting and the noise and ASB generated is significantly different in character to that of a Class C3 dwellinghouse and a material change of use has occurred.
22. On the balance of probability and from the evidence before me, I am satisfied that a material change of use has occurred from a residential Class C3 dwellinghouse to a short term let use. The change of use is materially different in character and effect from its previous use as a Class C3 dwellinghouse. The change of use from one to the other is therefore a "material change of use" and constitutes "development" as defined at Section 55 of the Act.

⁵ Appendix 3 of the Council's Statement of Case

23. Planning permission is required for the development. However, there are no permitted development rights to make such a change within the Town and Country Planning (General Permitted Development) Order 2015 as amended, and no planning permission has been granted by the Council.
24. Therefore, the making of a material change of use from residential Class C3 dwellinghouse to a short term let use amounts to “development”. Since the development has been carried out without the required planning permission it thereby constitutes a breach of planning control. The appeal on ground (c) therefore fails.

Appeal on ground (f)

25. An appeal on ground (f) is that requirements of the notice exceed what is necessary in order to remedy the breach of planning control or, as the case may be, the injury to amenity that is caused by the breach. The notice requires the cessation of the short term let use, and therefore the purpose is to remedy the breach of planning control.
26. The appellant argues that the requirement is a measure restricting activities that are lawful and is therefore disproportionate if not beyond the powers of the local authority. I have found that the short term let does constitute a breach of planning control and therefore the requirement in the notice to cease this use is not excessive.
27. The requirement to cease the use of the property as a short term let goes no further than remedying the breach of planning control. For these reasons, the appeal on ground (f) fails.

Conclusion

28. For the reasons given above, I conclude that the appeal should fail on grounds (b), (c), (e) and (f), and therefore the appeal is dismissed, and the enforcement notice should be upheld.

Chris Baxter

INSPECTOR