



Appeal Decision

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 19th June 2026

Appeal Ref: APP/N5090/C/24/3350049

15 Glebe Crescent, London NW4 1BT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Leslie Golding against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 10 July 2024.
- The breach of planning control as alleged in the notice is 'Without planning permission, the material change of use of the property to use as short term letting accommodation.'
- The requirement of the notice is 'Cease the use of property as short term letting accommodation.'
- The period for compliance with the requirement is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 (as amended).

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - (i) Deleting the allegation in full and replacing it with 'Without planning permission, the use of the Property as temporary sleeping accommodation for more than 90 nights per calendar year in breach of Section 25 A(2)(a) and (b) of the Greater London Council (General Powers) Act 1973.
 - (ii) Deleting the requirement in full and replacing it with 'Discontinue the use of the property as temporary sleeping accommodation as defined in Section 25 of the Greater London Council (General Powers) Act 1973 except to the extent allowed by Section 25(1) of that Act which permits the use subject to Conditions including conditions set out at Section 25(2)(a) and (b) which limit use as temporary sleeping accommodation to a maximum of 90 nights in any one calendar year.
2. Subject to the correction and variation, the appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

3. The appeal was lodged on the limited grounds of (c) and (f). I am satisfied that I can proceed to determine the appeal based upon the evidence before me without a site visit. No comments were received from the parties when they were asked if a site visit was necessary.
4. There is no appeal under ground (a) which would have included an application for planning permission and I am not therefore able to consider the planning merits of any use of the appeal property as part of this appeal.

The Notice

5. It is the duty of the Inspector to put the notice in order irrespective of the grounds of appeal. The allegation refers to 'Without planning permission, the material change of use of the property to use as short term letting accommodation.'
6. However, the Council's delegated report and the appellant's evidence deal specifically with the provisions of Section 25(1) of the Greater London (General Powers) Act 1925 (the GLGPA Act) which states that use as temporary sleeping accommodation is a material change of use subject to exceptions. The exceptions include not using the appeal property for temporary sleeping accommodation for more than 90 nights in the same calendar year. Changing the allegation and requirement to refer specifically refer to the GLGP Act would therefore provide clarity without causing injustice to any party.
7. There is no requirement in a material change of use notice to specify what the lawful use of a property is. However, as the provisions of the GLGP Act apply to residential property only, I need to be satisfied that they are relevant to the appeal property. A planning appeal for a change of use for the appeal property from C3 to C1 (Bed and Breakfast) was dismissed on the 5 September 2024 after the issue of the enforcement notice.¹ The appeal decision refers to the lawful use of the appeal property as Class C3 (dwellinghouses).
8. One of the Council's reasons for issuing the notice include the loss of a single family dwelling which is Class C3 (dwellinghouses) not Class C4(HMO). The appellant has referred to lawful use as a House in Multiple Occupation (HMO) which is Class C4 (HMO) not Class C3 (dwellinghouses). The existence of a licensing agreement with the Council is not evidence of a lawful planning use.
9. The delegated report referred to the Council requesting evidence to support lawful HMO use. During the appeal process, the Council has indicated that the lawful use of the property is as a Class C4 (HMO). I have no information as to why the Council has now changed its position. However, irrespective of whether it has a lawful use as C3 (dwellinghouses) or Class 4 (HMO use), I am satisfied that the appeal property is a residential property for the purposes of the Greater London Act.
10. In the event of the notice being upheld, the requirement should flow from the allegation and would therefore be a requirement to cease short term letting other than in accordance with the relevant provisions of the relevant Act. I do not consider that amending the allegation and the requirement cause injustice to either party as the allegation and requirements are not being widened and the parties are in agreement with the proposed amendments. I will amend the wording of the allegation and the requirement in the notice.

The appeal under ground (c)

11. An appeal under ground (c) is that the matter alleged in the notice does not constitute to a breach of planning control. The burden of proof is on the appellant and the relevant test is the balance of probabilities. The appellant maintains that that a material change of use has not occurred as the short term letting that has occurred falls within the exception which allows letting not exceeding 90 days.

¹ APP/N5090/W/24/3336988

12. Section 25A(1) of the GLGP Act (as inserted by the Deregulation Act 2015) states that, despite the wording of S25(1), the use as temporary sleeping accommodation of any residential premises in Greater London does not involve a material change of use if two conditions are met. They are set out in S25A(2) and S25A(3). The first is that the sum of: (a) the number of nights of use as temporary sleeping accommodation; and (b) the number of nights of each previous use of the premises as temporary sleeping accommodation in the same calendar year, does not exceed 90.
13. The second is that, in respect of each night which falls to be counted under S25A(2)(a): (a) the person who provided the sleeping accommodation for the night was liable to pay council tax in respect of the premises, or (b) where more than one person providing the sleeping accommodation for the night, at least one of those persons was liable to pay council tax in respect of the premises.
14. The appellant maintains that a breach of planning control has not occurred as the exception contained in Section 25A(1) applies. The dispute between the parties is limited to whether the property has been used as temporary sleeping accommodation for more than 90 nights in a calendar year. I have not been pointed to any written definition of what constitutes 'a calendar year' within the relevant statute but I see no reason why the common interpretation should not be used in which a year would run from 1 January to 31 December.
15. The delegated report refers to a breach occurring between the period June 2023 to May 2024 stating, 'Considering that the property was advertised on 2no. short-term letting websites for a number of months following November 2023, officers can reasonably conclude that the number of nights under this use has exceeded 90 between June 2023 and May 2024, in absence of planning permission.' The notice was issued on 10 July 2024. There is no explanation as to why the Council has chosen the period from June 2023 to May 2024 rather than the calendar year.
16. The appellant's case is that during 2023, the use of the appeal property changed from a 6 bedroomed House in Multiple Occupation (HMO) to include an element of short term letting of some rooms after HMO tenants vacated. The Council served a Planning Contravention Notice (PCN) in November 2023 after receiving complaints in April 2023 about comings and goings.
17. The replies to the PCN indicated that 12 people had stayed in the appeal property in 2023 up to 23 November 2023 with stays of between 1 night and 20 nights. Any short term letting occupiers shared the appeal property with existing HMO tenants and tenancy agreements have been provided. The number of rooms available on a short term basis was said to be 3. The total number of nights of short term letting in the last 12 months was said to be 85. The Council also asked about the number of nights of short term letting per calendar year to which the answer was a 'maximum of 90 days.' The appellant referred to the 90 day limit on 3 separate occasions in the PCN replies.
18. The appellant provided evidence to show that the appeal property was closed on the booking.com website as of 23 November 2023 and short term letting had ceased. The delegated report acknowledged the closure stating, 'On 23rd November 2023, the owner stated that they closed their account on Booking.com, following which officers noted the listing was no longer available, and there were no other noted listings at the property'.

19. The appellant refers to the appeal property being vacant at the beginning of 2024 and has provided information about letting from 14 January 2024 up until July 2024. The evidence of short term letting consists of a list of names and arrival and departure dates from 14 January 2024 to 15 March 2024 with a total of 11 nights of occupation. There are also invoices from 'Perfect Host' for April, May, June and July which refer to a 5 bedroom home.
20. A site visit took place on 12 January 2024. There were 6 bedrooms, 2 of which had no personal belongings and the Council assessed these rooms to be made up for short term letting but not occupied. 2 further bedrooms were considered to be in long term use by remaining HMO tenants due to the presence of substantial personal belongings. 2 rooms had some personal belongings but no evidence of long term occupation. No further investigations with regard to the nature of the occupation and use of the appeal property were carried out by the Council after the site visit in January 2024.

Assessment of the evidence

21. The onus of proof rests with the appellant, on the balance of probabilities, to show that the breach of planning control alleged has not occurred. The allegation is that the number of nights of short term letting exceeded 90 between June 2023 and May 2024 due to advertising the property after November 2023.
22. There was a change in the way that the appeal property was used and occupied during 2023 with the introduction of some short term letting of some of the rooms suggesting that a mixed use was taking place. The nature of occupation altered again in April 2024 with the appellant letting out the appeal property as a 5 bedroom home on short term lettings. The appellant maintains that the number of nights of short term letting did not exceed 90 days during 2024 but, in any event, that is not what is alleged.
23. The Council assumes that letting continued after November 2023 and has concluded that it is reasonable to assume that a breach occurred over a 12 month period from June 2023 to May 2024 when a 90 day limit was exceeded. I do not consider on the evidence before me on, the balance of probabilities, that use did continue after the return of the PCN in November 2023. The appellant treated 2023 and 2024 as separate years and referred to the 90 day limit on 3 separate occasions in his response to a PCN.
24. There is no explanation as to why the Council has chosen to add together the 85 nights from 2023 to what lettings it assumes took place in 2024. The number of nights of short term lettings would easily exceed 90 days over the 12 month period chosen by the Council. However, the legislation provides the methodology as to how that limit is calculated which refers specifically to calendar years not just any 12 month period.
25. For the reasons given, I find that the matter alleged is not a material change of use having regard to the wording of the statutory provision relied upon and a breach of planning control has not therefore occurred. I am unable to correct the allegation to relate to a different period as to do so would cause injustice when different evidence and grounds of appeal are very likely to have been submitted.

26. The appeal on ground (c) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control.

Other matters

27. There are third party comments from local residents. However, the comments relate to reasons why planning permission should not be granted for short term letting. There is no application for planning permission as part of this appeal. Any issues relating to previous grants of planning permission for the appeal property need to be directed to the Council. The lawful use of the appeal property is also a matter for the parties to resolve.

Conclusion

28. For the reasons given, I conclude that the appeal should succeed on ground (c). The enforcement notice will be corrected and quashed. In these circumstances, the appeal on ground (f) does not need to be considered.

E Griffin

INSPECTOR