



Appeal Decision

Site visit made on 30 July 2026

by **V Goldberg BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 August 2026

Appeal Ref: APP/Q1445/C/24/3356977

8 Queens Gardens, Brighton BN1 4AR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mrs Laura Newell (nee Webster) against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 5 November 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 to: Cease the use as short term visitor accommodation.
- The period for compliance with the requirement is: 2 months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) 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 Decision: The appeal succeeds to the extent that the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

The Ground (c) appeal

1. An appeal on this ground is that the matter alleged, if it has occurred, does not constitute a breach of planning control. It is for the appellant to show, on the balance of probability, that the change of use to short term visitor accommodation is not development.
2. S55(1) of the Act defines development' as 'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land'.
3. The concept of a material change of use is not defined in statute. However, it is well established through case law that, for a material change of use to have occurred, there must be a material change in the definable character of the activities taking place when compared with the previous use. This is a matter to be determined on the facts and circumstances of each case, and as a matter of fact and degree.
4. The Court of Appeal in *Moore v Secretary of State for Communities and Local Government* [2012] EWCA Civ 1202 held that whether the use of a dwelling for short-term holiday accommodation remains within Use Class C3, or amounts to a material change of use, is a matter of fact and degree. The Court emphasised that the decision-maker must assess the character of the use in its circumstances, including the pattern of occupation and whether the use retains the essential characteristics of a dwellinghouse. Relevant considerations include the frequency of turnover of occupiers, occupation by unrelated groups rather than a single household, the commercial nature of the activity, and any effects on neighbouring residents.

5. In addition to Moore, the appellant refers to several matters arising from both the case law and the related enforcement appeal decision that may assist in determining whether a material change of use has occurred. These include the layout and size of the property; its potential occupancy; the frequency and duration of holiday-let use; whether the owner resides at the property; whether occupiers comprise a single household; the pattern of arrivals and departures and associated traffic movements; the frequency of party-type activity; and the effect of the use on neighbouring occupiers. Whilst none of these factors is individually determinative, they provide a useful framework for assessing, as a matter of fact and degree, whether the character of the use differs materially from that of a dwellinghouse. I consider each of these matters below.
6. The layout of the property is consistent with that of a dwellinghouse. It comprises two double bedrooms, a bathroom, a kitchen with an open-plan living area, and a small external courtyard. There is no evidence that the property has been physically altered or laid out in a manner that would distinguish it from a typical residential dwelling. The accommodation provides the facilities ordinarily required for day-to-day living and, in this respect, retains the characteristics of a dwellinghouse.
7. The property is advertised as accommodating between two and four people. The appellant states that parties larger than four are not permitted and that the property is typically let to families, couples, or colleagues travelling together. However, there would be nothing to prevent the property from being occupied by up to four unrelated individuals. Colleagues travelling together are themselves unrelated individuals, and there is nothing to prevent such guests arriving or departing individually rather than as a group. The ability of unrelated individuals to occupy the property, and to arrive and depart separately, reflects a level of flexibility in occupation that differs from the pattern typically associated with a single household occupying a dwellinghouse. Whilst occupation by a family would be consistent with use as a dwellinghouse, the relevant test is whether there has been a material change in the definable character of the activities taking place when compared with the previous use.
8. Whilst the appellant has provided limited evidence of the property's previous occupation, the Council has provided evidence from the 2021 Census indicating that, within the St Peter's and North Laine ward in which the site is located, one and two-person households occupy approximately 83% of two-bedroom properties. This is likely to reflect the relatively modest size of such accommodation.
9. Accordingly, the evidence before me suggests that both the appeal property and the surrounding area are predominantly characterised by one and two-person households rather than larger family groups. In that context, occupation of the property by up to four people has the potential to give rise to a pattern of occupation that differs from that typically associated with the property's former use. Whilst this factor is not determinative, it is a relevant consideration in assessing whether the character of the use remains within Class C3 or has changed materially.
10. The Council alleges that the property is available to let through holiday-letting websites, including Booking.com, Airbnb and AirHomeLets, with a minimum stay of one night. Whilst the appellant states that bookings are generally made on a

Friday-to-Friday basis, it is not disputed that the property can be let for a single night. The appellant further states that the property is occupied for approximately 35 to 40 weeks or weekends each year. Even on that basis, the property is used for commercial short-term accommodation for a substantial proportion of the year. The potential for single-night stays and the regular turnover of occupiers are characteristics that differ from the more settled pattern of occupation ordinarily associated with a dwellinghouse occupied by a single household. As such, the frequency and nature of the lettings weigh in favour of the use having a character distinct from that of a Class C3 dwelling.

11. The appellant states that the property is a second home and it is used by the owner and their family when it is not occupied as short-term holiday accommodation. Based on the appellant's evidence that the property is let for approximately 35 to 40 weeks or weekends each year, it follows that the owner and their family occupy the property for around 12 weeks of the year. Whilst such occupation indicates that the property retains some characteristics of a dwellinghouse and is not used exclusively for holiday letting, the evidence nevertheless suggests that commercial short-term accommodation is the predominant use. The extent of the owner's occupation must therefore be considered in the context of the overall pattern of use throughout the year.
12. Whilst the appellant asserts that all visitors occupy the property as a single family unit, this is not consistent with the evidence that the property has been let to pairs of colleagues and couples. Although the property is self-catering, and occupiers may therefore be likely to cook, eat and spend time together, this cannot be assumed in every case. There is no guarantee that those staying at the property will constitute a single household or group in the same way as occupiers of a dwellinghouse. Equally, there is no assurance that occupiers will arrive, depart, travel or undertake activities together. The potential for occupation by unrelated individuals is therefore a relevant consideration and lends support to the position that the pattern of occupation differs from that typically associated with use as a dwellinghouse occupied by a single household.
13. In relation to the pattern of arrivals and associated traffic movements, third-party representations refer to visitors parking on the pavement while loading and unloading luggage. Concerns are also raised regarding cleaners and other maintenance vehicles parking on the pavement opposite the property, allegedly obstructing pedestrian movement and access by emergency vehicles, as well as causing damage to the pavement. The appellant, however, states that most bookings run from Friday to Friday and that guests typically arrive and depart on a weekly basis. The appellant further advises that a maximum of two cars is associated with the property and contends that visitors are more likely to arrive by public transport given the property's location and accessibility. Nevertheless, the changeover of guests and associated servicing requirements can generate traffic movements and activity that would not ordinarily arise from the occupation of the property by a single household. These are therefore relevant considerations in assessing the overall character of the use.
14. Turning to the likelihood of party-type activities, I accept that the property is relatively modest in size and does not contain large communal or entertainment spaces of the kind often associated with venues used for gatherings or celebrations. Moreover, no evidence has been provided to demonstrate that party-type activities have occurred at the property. Whilst the absence of such facilities

would not necessarily prevent social gatherings from taking place, the evidence before me does not indicate that the use of the property has resulted in activities of that nature.

15. Finally, in relation to the effect on neighbouring occupiers, third-party representations and photographs illustrate cleaning vehicles parking on the pavement, as well as guests stopping on double yellow lines while loading and unloading luggage. Representations also describe disturbance associated with guest arrivals and departures, including the use of a video doorbell and key safe, late-night conversations, engine noise, and takeaway deliveries. Concerns have further been raised regarding traffic congestion, obstruction of the pavement and the cumulative effect of the regular turnover of visitors on the character and amenity of the area. Whilst some of these activities could occur in connection with a dwellinghouse occupied by a single household, the frequency with which they are said to arise reflects the commercial nature of the use and supports the view that the property functions differently from a typical Class C3 dwelling.
16. Whilst the appellant does not dispute that there has been a change in the way the dwelling is occupied, it is asserted that this does not amount to a material change of use. The appellant argues that the property remains within the same use class and that movement between different forms of residential occupation can occur without the need for planning permission. Accordingly, it is contended that the use of the property for short-term holiday accommodation has not altered its planning character to such an extent that a material change of use has occurred.
17. However, the issue is whether, as a matter of fact and degree, the use of the property now differs materially from its former use as a dwellinghouse. Although the property retains the physical appearance and layout of a dwellinghouse, the evidence indicates that it operates predominantly as commercial short-term visitor accommodation. It is available to a succession of unrelated visitors throughout the year, can be booked for periods as short as a single night and is occupied in that manner for a substantial proportion of the year. These characteristics are not ordinarily associated with occupation by a single household.
18. I have also had regard to the evidence concerning effects on neighbouring occupiers. Whilst individual activities such as arrivals, departures, luggage movements and deliveries may occur at a dwellinghouse, the evidence suggests that their frequency is driven by the commercial letting of the property to successive short-term visitors. This results in a level of comings and goings that is materially different from that associated with the property's former residential occupation.
19. Drawing these matters together, I find that the use has acquired a distinct commercial character which goes beyond its former use as a Class C3 dwellinghouse. Applying the principles set out in *Moore v SSCLG* [2012] EWCA Civ 1202, the cumulative evidence demonstrates a material change in the character of the use.
20. Consequently, the appellant has failed to demonstrate, on the balance of probabilities, that the matter alleged in the enforcement notice does not constitute a breach of planning control. For these reasons, the appeal on ground (c) fails.

Appeal on Ground (a) and the Deemed Application for Planning Permission

21. An appeal under ground (a) is that planning permission should be granted for the matter alleged. The **main issue** is whether the development has resulted in the loss of residential accommodation.

Reasons

22. Policy DM2 of the Brighton & Hove City Plan Part Two seeks to resist any net loss of existing residential accommodation (Use Class C3) within the city. The policy goes on to stipulate that applications resulting in the loss of residential accommodation will not be permitted unless one or more of the exceptions set out within the policy apply.
23. The appellant asserts that there is no conflict with Policy DM2, as the dwelling is retained as the appellant's second home. It is argued that the use of the property for short-term visitor accommodation is intermittent and does not result in the loss of the dwelling for residential use by the appellant and their family. However, the evidence before me indicates that short-term visitor accommodation is the main use of the property.
24. Policy DM2 seeks to resist the net loss of existing residential accommodation and as explained in the supporting text, is intended to ensure that measures aimed at delivering additional housing are not undermined through losses to existing housing stock. Furthermore, paragraph 2.17 of the supporting text expressly recognises that the policy may be used for enforcement purposes where there has been a material change of use from a residential use, as may be the case for some holiday lets. In this instance, I have found that the appeal property is used predominantly as commercial short-term visitor accommodation and that a material change of use has occurred. Consequently, notwithstanding the appellant's continued use of the property as a second home, it can no longer be regarded as making the same contribution to the city's housing stock as a dwellinghouse. I therefore find the development to be contrary to Policy DM2 of the Local Plan.
25. I have had regard to Policy CP6 of the Brighton & Hove City Plan Part One, the Brighton & Hove Visitor Economy Strategy (2018-2023), and the Visitor Accommodation Study Update (2018). Collectively, these documents recognise the importance of tourism to the local economy and support the provision of an appropriate range of visitor accommodation. However, none of these documents indicate that such accommodation should be provided at the expense of existing residential accommodation, nor do they override the protections afforded by Policy DM2 of the City Plan Part Two.
26. Whilst the use of the appeal property may make a modest contribution to the city's visitor economy, the evidence before me relates to a single property and its continued use as short-term visitor accommodation would be unlikely to make a significant contribution towards meeting visitor accommodation needs within the city. By contrast, the development has resulted in the loss of a dwelling from the residential housing stock through a material change of use, thereby undermining the objective of Policy DM2 to protect existing residential accommodation.
27. I have weighed the economic benefits arising from the use of the appeal property as visitor accommodation, including its contribution to the tourism sector. However, for the reasons set out above, I find that these benefits attract only limited weight

in the circumstances of this case. They do not outweigh the conflict with Policy DM2 of the City Plan Part Two, which seeks to protect the city's existing stock of residential accommodation. For the above reasons, the development results in the loss of residential accommodation. It therefore conflicts with Policy DM2 of the Brighton & Hove City Plan Part Two.

Other Matters

28. Reference is made to Circular 05/2010. However, that Circular has been withdrawn and is no longer in force.

Conclusion on ground (a)

29. For the reasons given above, I conclude that the development is contrary to the development plan, and material considerations do not indicate that the appeal should be determined otherwise than in accordance with that plan. The appeal under ground (a) therefore fails.

The Ground (g) appeal

30. An appeal on ground (g) is brought on the grounds that the period specified for compliance falls short of what is reasonable. Specifically, the appellant seeks an extension from two to six months to utilise the building for existing bookings and not face any financial or contractual penalties.
31. Whilst the appellant claims that a compliance period of six months is required, there is no evidence before me of any current bookings or the associated contractual arrangements. Moreover, the Council indicates that one of the relevant booking platforms provides for cancellations with three months' notice. Given the absence of evidence demonstrating why a longer period would be necessary, I am not satisfied that a compliance period of six months is justified.
32. Given the three-month cancellation period referred to by the Council, I consider that a slightly longer compliance period of three months is reasonable and proportionate. This would provide adequate time to address any existing booking commitments whilst ensuring that the breach does not continue for longer than necessary.
33. For the reasons above, I conclude that a reasonable period for compliance would be three months. The appeal under ground (g) succeeds to this extent.

Overall Conclusion

34. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall correct and vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Formal Decision

35. It is directed that the Enforcement Notice is varied by:
- the substitution of “**2 months from the date the notice takes effect**” for “**3 months from the date the notice takes effect**” in section 6.

34. Subject to the variation, 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.

V Goldberg

INSPECTOR