



Appeal Decisions

Hearing Held on 19 October 2017

Site visit made on 19 October 2017

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 November 2017

Appeal Ref: APP/M4320/C/17/3166632

The Windmill, Moor Lane, Crosby, Liverpool L23 2SH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Vicky Holmstock against an enforcement notice issued by Sefton Metropolitan Borough Council.
 - The enforcement notice was issued on 7 December 2016.
 - The breach of planning control as alleged in the notice is the change of use of the premises from (Class C3) residential to a mixed use comprising (Class C3) residential and short term holiday lets (Sui-generis).
 - The requirements of the notice are cease using the premises for holiday lets.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/M4320/C/17/3166648

The Windmill, Moor Lane, Crosby, Liverpool L23 2SH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Vicky Holmstock against an enforcement notice issued by Sefton Metropolitan Borough Council.
 - The enforcement notice was issued on 6 December 2016.
 - The breach of planning control as alleged in the notice is the installation of an external staircase to the side of the building.
 - The requirements of the notice are remove the external staircase from the side of the building and remove all resultant materials.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/M4320/F/17/3166665

The Windmill, Moor Lane, Crosby, Liverpool L23 2SH

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Vicky Holmstock against a listed building enforcement notice issued by Sefton Metropolitan Borough Council.
 - The enforcement notice was issued on 7 December 2016.
 - The contravention of listed building control alleged in the notice is the installation of an external staircase to the side of the building.
 - The requirements of the notice are remove the external staircase from the side of the building and remove resultant materials.
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- The period for compliance with the requirements is 28 days.
 - The appeal is made on the grounds set out in section 39(1)(d), (e) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decisions

Appeal Ref: APP/M4320/C/17/3166632

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal Ref: APP/M4320/C/17/3166648

2. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the installation of an external staircase to the side of the building at The Windmill, Moor Lane, Crosby, Liverpool.

Appeal Ref: APP/M4320/F/17/3166665

3. The appeal is allowed, the listed building enforcement notice is quashed, and listed building consent is granted for the installation of an external staircase to the side of the building at The Windmill, Moor Lane, Crosby, Liverpool.

Reasons

Appeal Ref: APP/M4320/C/17/3166632

The ground (c) appeal

4. The appeal property is a former windmill that has been converted and extended to create residential accommodation. The Appellant occupies the building as her dwelling, on occasions and when she is not working abroad, but has, since October 2014, also let the property for short term periods. The property is advertised as sleeping up to 12 people and letting periods have mainly occurred at weekends. The Appellant maintains, under this ground of appeal, that letting of the property is a Class C3 use and that there has not been a change of use or, consequently, a breach of planning control. Alternatively, she maintains that if there has been a change of use it does not constitute a material change of use.

5. The main parties agree that the principal legal authority is *Moore v Secretary of State for Communities and Local Government and Another [2012] EWCA Civ 1202*. The judgement in this case, by Sullivan LJ who reviewed other previous authorities, confirmed that whether holiday accommodation lies within Class C3 is a matter of fact and degree. This principle must also be applied to whether the change of use, if there has been one, is material or not.

6. The property has, typically, been let to single sex groups coming together to celebrate a specific occasion such as a forthcoming wedding. It is generally occupied at weekends, though occasionally midweek, and groups tend to use the property as a base for going out and, evidence indicates, for partying. Occupation by such a group, who are unlikely to be from one family, and for short weekend visits and for such purposes, is wholly different to a normal holiday let situation where a single family holidays together for a week or two away from their normal home. This type of holiday let situation might be regarded to be similar to a Class

C3 residential use, but the holiday let use of The Windmill that has occurred in recent years is not typical of, or similar to, a Class C3 residential use.

7. The fact that the property has "...all the characteristics and facilities of a dwellinghouse..." is not relevant, nor is the management agreement that has been agreed with the Council. It is the use to which the property has been put that is relevant. Taking all evidence into account the change of use of the property alleged in the enforcement notice has, as a matter of fact and degree, occurred, and is, also as a matter of fact and degree, a material change of use. Planning permission has not been granted for the change of use of the property alleged in the notice and it is not permitted development. The ground (c) appeal thus fails.

The ground (a) appeal

8. The main issue is the effect of the change of use of The Windmill on the amenities of neighbouring residents.

9. The Windmill has been extended at ground floor level on its east and south sides. The element of the extension on the south side is a large kitchen/dining room which has patio doors that open onto a gravel sitting out area. Patio doors to the main living room in the ground floor of the original part of the building also open out onto this sitting out area, which is bounded to the south by a boundary fence to the neighbouring property, 165 Moor Lane, owned by Mr and Mrs Clague. This dwelling is a dormer bungalow with a private amenity area on its north-west side. The driveway leading to a garage at the bungalow is alongside the driveway leading to The Windmill. To the north-east of the appeal property is the rear garden of 167 Moor Lane.

10. In August 2016 a retrospective planning application was submitted by the Appellant for the 'continuation of the property as short term holiday lets'. Six objections were made to the application, including one by the Council's Environmental Health Department. Prior to the application being submitted the Council's Anti-Social Behaviour Unit (ASBU) had issued the Appellant with a Community Protection Notice relating to noise and disturbance being caused at the property and resulting from complaints made to them by residents of the neighbourhood. Further complaints by a resident resulted in the issue of a Community Protection Warning in July 2016 and as a result of non-compliance with the warning a Community Protection Notice (CPN) was served in September 2016.

11. The CPN was withdrawn following a meeting between the Appellant, her representatives and Officers of the Council. In a letter dated 7 February 2017 to the Appellant from P Conley, a Senior Lawyer of the Council, it is stated that "...the Council will not pursue the current application for a Closure Order...on the grounds that Victoria Holmstock has agreed to undertake the following:...". The letter then sets out management procedures and practices which the Appellant maintains have been adhered to since and which have resulted in there being no further complaints made to the Council about holiday letting activity at the appeal property. She maintains that the contents of the letter could be the basis of a management agreement, to be agreed between herself and the Council, that could be required by a condition attached to a planning permission. It was agreed at the Hearing that such a condition, and the adoption of a formal management agreement, would be fundamental to the grant of permission.

12. No attempt was made by the Appellant to draft a management agreement for consideration by the Council prior to the Hearing and nothing other than the

above-mentioned letter was put forward for discussion. Whilst the letter includes some appropriate principles to be followed, such as the outside area not being used for congregating after 2230 hours and before 0700 hours, it is vague and imprecise in other respects. For instance, whilst it establishes a booking deposit of £1000 it only states that the deposit will be lost if there is a 'substantive' breach of the house rules. Substantive is an imprecise term and the letter gives no indication of how or who would determine whether the house rules had been breached. The letter also states that 'The new house rules shall include terms in broad compliance with the following principles' but 'broad compliance' is vague and there is no obligation to have the rules approved or displayed.

13. Several of the principles are unenforceable, such as 'Under no circumstances may anybody else be invited into the property' and 'You may only smoke in the designated area of the garden'. Another principle seeks to prevent parking on the pavement to Moor Lane outside the property and blocking of adjoining gateways but the roadway is outside the site so such a principle is also unenforceable. One of the principles in the letter is 'Guests must keep noise to a minimum when departing or arriving in taxis' but 'minimum' is not defined. The letter requires the Appellant to maintain an installed CCTV system and to provide a live feed to a designated premises manager when there is a booking but does not specify what action that manager, who lives remote from the property, is required to take if any principles or house rules are contravened.

14. The letter states that all guests will be made aware that Delta Taxis are the recommended taxi service and that the Appellant shall contact them to inform them that when attending the property they shall endeavour to use the drive and shall abide the relevant road markings. Delta Taxis may not always be a business, endeavour is a vague term, and taxi drivers could ignore those endeavours. The letter also states that 'If a complaint is received it shall be investigated as soon as practicable by the designated premises manager for the booking or an appropriate agent'. There is no indication of who 'an appropriate agent' is or could be, and there is nothing in the letter that indicates how the investigation would be carried out and what action would be taken if the complaint was proven to be justified. The letter only requires that the manager 'shall have access to the live feed' and does not indicate that the manager shall be observing activity. Furthermore, the manager lives remote from the property and would not, under the terms of the letter, have any responsibility to intervene if activity at the property during a booking was causing disturbance to neighbours.

15. The Appellant maintains that since the meeting and the sending of the letter that the measures she has introduced has resulted in no further complaints by neighbours. But this does not justify a conclusion that there has been no activity that could have caused complaint, and neighbours, since the meeting, will have known that enforcement action was pending. Furthermore, uncontested evidence indicates that the closest neighbours, Mr and Mrs Clague, have resorted to being elsewhere than their home at weekends to prevent being made anxious by disturbance caused by noise at The Windmill. It is likely, given the history of recorded disturbance, that the fear of being disturbed is causing anxiety to neighbours. Fear is a material consideration but only if the fear is real. In this case the history of disturbance is documented and the fear of possible future disturbance is real for neighbours and will be causing anxiety.

16. The situation regarding the management of the property is an important factor, particularly as it is entirely unclear what the responsibilities of the premises

manager are or would be. The letter is not a management agreement and, given that it is vague and imprecise for all the aforementioned reasons, does not form the basis for an agreement that would provide certainty that future use of The Windmill for short term holiday lets would not result in further serious disturbance to neighbours. It is not certain that a management agreement could be agreed between the Appellant and the Council and it is certainty that is required to ensure that neighbours of the property, if planning permission is granted, even subject to a condition, would not be disturbed by activity at The Windmill resulting from its continuing use for short term holiday lets.

17. The sitting out area at The Windmill is in very close proximity to the private amenity area at 165 Moor Lane. It is this relationship, above all else, which results in a conclusion that it cannot be certain that the imposition of a condition to require the introduction of a management agreement would result in there being no disturbance at the neighbouring property from activity at The Windmill. Continuing use of The Windmill for short term holiday lets would not protect neighbouring residents from disturbance and from a significant loss of amenity, contrary to policies HC3 and EQ4 of the Sefton Local Plan (LP), which was adopted on 20 April 2017 and which has replaced the Unitary Development Plan that was referred to in the reasons for issue of the enforcement notice. The ground (a) appeal thus fails.

Appeal Refs: APP/M4320/C/17/3166648 and APP/M4320/F/17/3166665

The ground (d) listed building enforcement appeal

18. The external staircase, which provides access to the ground from a second floor doorway on the west side of The Windmill, is only required because of the internal arrangement of the building. If it was configured differently, with a protected internal staircase to provide egress in the event of fire, an external staircase would not be necessary. It cannot therefore be claimed that the staircase was urgently needed in the interests of safety. The ground (d) appeal thus fails.

The ground (a) planning appeal and the ground (e) listed building appeal

19. From the black painted metal staircase there are views southwards towards the rear elevation and amenity area of 165 Moor Lane. Evidence indicates that holiday guests of The Windmill have used the staircase other than for emergency purposes and that this use has resulted in overlooking of the neighbouring property and a loss of privacy and amenity for its residents. However, planning permission has been withheld for the continued holiday let use of The Windmill and, in any event, use of the staircase other than for emergency purposes could be prevented by imposition of a condition that would require works to install a one way gate at the base of the staircase and restricted use of the door only in the event of a fire.

20. The main issue in the ground (a) planning appeal and the ground (e) listed building appeal is the effect of the staircase on the architectural and historic interest and significance of The Windmill, a Grade II listed building, and on the character and appearance of the Moor Park Conservation Area (MPCA) within which The Windmill is situated.

21. The Windmill is a distinctive round and tall building, albeit now without its original sails, and is a prominent feature of the MPCA, though it is worth noting that it can only be glimpsed, given the built up nature and many mature trees of the area, from Moor Lane, Poplar Avenue to the west and other public vantage points. The metal staircase is a utilitarian feature but it is slender and is of no

more bulk than it needs to be. It does not compete with, or detract from the substantial scale of the listed building and does not compromise its architectural and historic interest or significance. Furthermore, the staircase is not prominent or obtrusive in views within the MPCA and does not undermine the positive contribution of The Windmill to the character and appearance of the area.

22. The external staircase does not harm the architectural and historic interest and significance of The Windmill or the character and appearance of the Moor Park Conservation Area. The staircase does not conflict with LP policies NH10 and NH11. The ground (a) planning appeal and the ground (e) listed building appeal thus succeed and planning permission and listed building consent have been granted for the installation of an external staircase to the side of the building at The Windmill, Moor Lane, Crosby, Liverpool.

23. The ground (g) planning appeal and the ground (h) listed building appeal do not therefore need to be considered.

John Braithwaite

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr S Richardson	Solicitor
Ms V Holmstock	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr A Gill	Barrister
Ms J Tunney BA(Hons) MSc MRTPI	Conservation Officer

INTERESTED PERSONS:

Mr P Stephens	Local resident
Mr and Mrs Clague	Local residents

DOCUMENTS

- 1 Letter of notification of the hearing and list of those notified.
- 2 Objections by Mr and Mrs Clague.
- 3 Letter to the Appellant from Mr P Conley dated 7 February 2017.
- 4 HMOs: Persons not forming a single household.
- 5 Moor Park Conservation Area Appraisal: March 2008.