Neutral Citation Number: [2012] EWCA Civ 1202

Case No: Cl/2012/0873

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
FRANCES PATTERSON QC
(SITTING AS A DEPUTY HIGH COURT JUDGE)
CQ/8793/2011

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 18/09/2012

Before:

MASTER OF THE ROLLS
LORD JUSTICE LONGMORE
and
LORD JUSTICE SULLIVAN

- - - - - - - - - - - - - -

Between:

SHEILA MOORE **Appellant**
- and -
SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (1)
SUFFOLK COASTAL DISTRICT COUNCIL (2) **Respondents**

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Mr. A Alesbury (instructed by **Gotelees)** for the **Appellant**
Mr. G Lewis (instructed by **Treasury Solicitor)** for the First **Respondent**

Hearing date: 16th July 2012

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Judgment

Lord Justice Sullivan:

1. This is the judgment of the Court.

Introduction

2. This is an appeal against the Order dated 27th March 2012 of Frances Patterson QC (sitting as a Deputy High Court Judge) dismissing the Appellant's appeal under section 289 of the Town and Country Planning Act 1990 ("the Act") against a decision of an Inspector appointed by the First Respondent dismissing the Appellant's appeal under section 174 of the Act against an enforcement notice issued by the Second Respondent. The Inspector's decision is dated 15th August 2011.

3. The breach of planning control alleged in the notice was a change of use without planning permission of the Appellant's property, St Audry's House, Melton, Woodbridge, Suffolk ("the property"), "from a C3 dwelling to use as commercial leisure accommodation which does not fall within Class C3(a)-(c), and which therefore constitutes a sui generis use". The requirements of the notice were to cease the use of the property as commercial leisure accommodation.

4. It is common ground that the reference to Class C3 is a reference to Class C3 in Schedule 1 to the Town and Country Planning (Use Classes) Order 1987, as amended ("the Order"). Class C3 reads as follows:

> **"Class C3. Dwellinghouses**
>
> Use as a dwellinghouse (whether or not as a sole or main residence) by -
>
> (a) a single person or by people to be regarded as forming a single household;
>
> (b) not more than six residents living together as a single household where care is provided for residents; or
>
> (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4)."

5. The Appellant appealed against the notice on grounds (a), (b), (c) and (f) in section 174(2) of the Act. The Inspector dismissed the appeal on all four grounds and upheld the notice as issued. There is no appeal against the Inspector's decision to dismiss the appeal on ground (a).

Factual background

6. The factual background is set out in some detail in the judgment below: [2012] EWHC 1092 (Admin). St Audry's at Melton was an extensive hospital complex. The hospital closed and outline planning permission was granted for part conversion and part redevelopment of the hospital site for a mix of uses, including residential.

7. In May 1999 approval was granted for the conversion of the property to an eight bedroomed dwelling (in fact there are nine bedrooms - a studio is used as an additional bedroom, but nothing turns on this). Conversion works were carried out, and from 1999-2007 the property was occupied as a dwelling by a family. Since May 2008 it has been let by the Appellant, through her company, Prestige Holiday Lettings, for short term holiday lets.

The Inspector's Decision

8. The material parts of the Inspector's decision are set out in paragraph 6 of the judgment

below. Under ground (b) the Appellant argued that the alleged breach of planning control had not occurred because the allegation that there had been a change of use to "commercial leisure accommodation" was "misconceived and practically unintelligible and cannot be regarded as describing any recognised land use for planning purposes." Having said that there was ample evidence to support the contention (which was not disputed by the Appellant) that the property was being commercially let, the Inspector said in paragraphs 6-8 of the decision:

> "6. I accept that the description 'leisure accommodation' might encompass a wide range of different forms of occupation of the property, some of which may constitute a material change of use, and others not. However, I consider holiday accommodation is one such purpose, since holidays are clearly leisure time.
>
> 7. I also accept that the allegation might be framed in a number of ways - and it is quite reasonably suggested for the appellant that it might be described as a 'use as a holiday dwelling'.
>
> However, the formulation used is clear, it covers the particular use to which the property is put, and it is obviously understood by the appellant whose business it is.
>
> 8. I do not find the formulation used in the notice either misconceived or unintelligible. The alleged breach has occurred as a matter of fact, and the appeal on ground (b) therefore fails."

9. Under ground (c) the Appellant contended that there had been no breach of planning control because the use of the property for holiday letting was not materially different in character from the lawful use as a dwelling house. The Inspector said that there was no dispute that the property fell

> "within the particular kind of building that should be described as a 'dwelling house' - that is, following the test set out in the case of Gravesham Borough Council v Secretary of State for the Environment [1984] P & CR 142 - it ordinarily affords the facilities required for day-to-day existence."

10. There was also no dispute that the use of the property from 1999 until 2007 had been as a dwelling house occupied by people living together as a family. As the Inspector said in paragraph 10 of the decision:

> "Such use falls squarely within the definition of Use Class C3(a)."

11. The cornerstone of the Appellant's appeal under ground (c) was the decision of this Court in Moore v Secretary of State for the Environment [1998] 2 PLR 65 (see paragraphs 20-24 below). The Inspector said that Moore was of limited relevance. Having noted the Appellant's argument that a planning permission for the construction of dwellings did not preclude a use for purposes other than as family dwellinghouses, the Inspector said in paragraph 12 of the decision:

> "....in determining whether a material change of use has taken place it is necessary to look at and compare the character of the current allegedly unlawful use with that of the actual previous lawful use."

12. The Inspector described the characteristics of the current use of the property in paragraphs 13-16 of the decision.

> "13. As now used the house is advertised as accommodating up to 18 people with an additional 2 on a sofa-bed. It is let generally for short periods of 3, 4 or 7 nights, and it is apparent that there have been quite regular bookings in each of the years from 2008 to 2010, with occupation on as many as about 175 nights per year. In 2009 there were slightly over 40 separate bookings. I note that many of these are 3-night bookings over weekends.
>
> 14. I accept that if the building is only occupied for short periods it is not disqualified from being a dwellinghouse. Furthermore, even if as large a group as 20 people occupy it, they could conceivably be a family or regarded as a single household.
>
> 15. The appellant says that residents come to the house as a pre-formed group for a pre-determined period, and have a family or other relationship which pre-disposes them to occupy the house as a single household. While it is possible that large family gatherings take place at the appeal property, there is no specific evidence to support the frequency of this, and I would expect such events to be rare. From what I have read, particularly from occupiers of nearby dwellings, numerous different groups visit the property for various reasons. There has been a yoga group of some 15 people, and a cycling group of some 20 people. There are probably many who come for countryside holiday activities, and it appears there are also many who come for reunions, parties, or celebrations of one sort or another. Such reasons for coming together largely arise from participants' shared interests, but do not establish these groups as single households.
>
> 16. A result of the current use is that new groups arrive at, and leave the property relatively frequently, often arriving on a Friday and leaving on a Monday. A new group may then arrive on a Monday and leave on a Friday, presumably with cleaners arriving at the changeover. Furthermore, it appears that groups often travel in a number of separate vehicles, as shown by a number of photographs and in third parties' written statements."

13. Having considered the differences between the current use of the property and its use by a family/household, the Inspector summarised his findings and overall conclusion in paragraphs 21 and 25 of the decision.

> "21. In summary, I consider there are a number of distinct differences between the current use and use of the appeal property as a family dwellinghouse. Notably, the pattern of arrivals and departures, with associated traffic movements; the unlikelihood of occupation by family or household groups; the numbers of people constituting the visiting groups on many occasions; the likely frequency of party type activities, and the potential lack of consideration for neighbours.
>
> 25. Overall, as a matter of fact and degree, I consider the use of the property as part of the appellant's holiday letting business results in a use of the dwellinghouse that is quite different in character from that of a private family dwellinghouse. I consider this change in character has resulted in a material change of use of the property that is development requiring planning permission under the provisions of

> Section 55(1) of the Act. No planning permission has been obtained, nor is this any form of permitted development. There has therefore been a breach of planning control, and the appeal on ground (c) must fail."

14. Under ground (f) the Appellant contended that the cessation of the use was unnecessary, and that any adverse effects on the amenity of nearby residential properties could be lessened by limiting the numbers of people using the property at any time, and by a noise management plan. The Inspector was not impressed by these unparticularised suggestions, and dismissed the ground (f) appeal saying that lesser steps would not overcome the objections to the current use.

Use as a dwellinghouse - the authorities

15. There are three relevant authorities. In Blackpool Borough Council v Secretary of State for the Environment (1980) 40 P & CR 104 (to which the Inspector was not referred) a house was used by the owner as a second home for holidays by himself and his family, by members of his office staff, and by "family groups" who paid rent. There were lettings at a rent for 10 out of 18 weeks in the four month holiday season; for the remainder of the year the premises were left empty. The local planning authority served an enforcement notice alleging a material change of use from use as a private dwelling house to use for holiday lettings on a commercial basis. On appeal, the Inspector concluded that there had. been no material change of use. The Secretary of State adopted the Inspector's conclusions and allowed the owner's appeal against the enforcement notice. The local planning authority's appeal was dismissed by the Divisional Court.

16. It was submitted on behalf of the local planning authority that the Inspector had erroneously approached the matter on the basis that "if the house is occupied by one family, the house is residential and *therefore* in accordance with the permitted use as a dwelling-house." Ackner LJ said (p.111):

> "I would agree that, if that is what the Inspector is saying, it would be wrong, because not every residential use is necessarily a use as a private dwelling-house. To my mind, however, what is said reads quite clearly as being merely a double description. If the house is occupied by one family, etc., the use is residential *and* in accordance with permitted use as a private dwelling-house. In my judgment, what was being found as fact here was that the character of the user from the planning point of view had not been changed by the fact that the premises were being occupied not only by the owner and his family but also by his friends or by members of his office staff or by paying tenants during the periods that I have indicated.
>
> If that is right, it is a finding of fact, and all that this court has to ask itself is: was it a finding of fact that could reasonably have been made on the evidence before the inspector. It is common ground, as I understand it, that the question for determination in the context of this appeal is whether the character of the use of this dwelling-house as a private residence has been changed so substantially as to amount to a material change of use. It is a question of fact and degree. It is a decision that is based on the particular facts of this case that I have recited. This is not a case that lays down, as I see it, any principle. The Inspector was not dealing with a house that was constantly being let in short holiday lettings. She was dealing with a house that was being occupied by the owner, by the owner's friends and by the owner's staff on a non-paying basis, with, superadded to that, a

> period in the aggregate of 10 weeks in the year during which it was let as a rent to single households. I think that she was wholly entitled to reach the conclusion that the character of this dwelling-house and its use was not materially changed by the succession of occupiers over the period that I have mentioned in the categories that I have described. As I have said, I do not consider that she was seeking to propound any proposition of law in her paragraph 42.She was making the legitimate findings of fact on which to base her conclusion that there had been no material change of use."

17. Jupp J agreed with Ackner LJ "that not every residential use is necessarily a use as a private dwelling house", and added:

> "I also agree that the method of taking the evidence in this case has left some matters of fact unclear that might have come out and turned out very differently from the way they did had they been open to further probing and questioning. It is not to be thought that, in a case like this where the lettings had a different character from that concluded by the Inspector here, there would not be a material change of sue. It depends entirely on the facts, as Diplock LJ said in Wilson v West Sussex County Council: 'Considerations which are relevant are planning considerations....' and these vary from case to case."

18. In Gravesham (above) the question was whether a building which had been erected pursuant to a planning permission for a "weekend and holiday chalet" subject to conditions that prohibited its use for human habitation between November 1st and February 28th each year was a "dwelling-house" for the purpose of Class I of Schedule 1 to the Town and Country Planning General Development Order 1977. On reconsideration, the Secretary of State concluded that the building was a dwelling- house. The local planning authority's appeal was dismissed by McCullough J.

19. McCullough J said that whether a building is or is not a dwelling-house is a question of fact. Having considered a number of situations where buildings would still be dwelling-houses even though they were not occupied throughout the year - second homes, houses left empty pending sale, houses unoccupied because they are flooded or undergoing extensive repair - McCullough J said at p.146:

> "Suppose that a London-based company requires a succession of employees to be based one at a time for four months in a location far distant from London. Suppose that the company buys a house and makes it available to each employee and his family for his tour of duty. It would still be a dwelling-house. Take a holiday cottage subject to time-share with a number of owners each enjoying the right to occupy it for two particular weeks each year. That would still be a dwelling-house.
>
> What have these examples in common? All are buildings that ordinarily afford the facilities required for day-to-day private domestic existence."

20. In Moore (no relation to the Appellant in this case) the outbuildings of a large country house had been converted into ten single self-contained units of residential accommodation for the purpose of holiday lettings. Nine of the units were in use by May 1991. In May 1995 the local planning authority issued an enforcement notice alleging a material change of use from residential to mixed use of residential and as ten units of holiday accommodation. If the

change of use of each of the units was a change of use to a single dwelling-house the enforcement notice was not served within the four year time-limit in section 171B(2) of the Act.

21. The material facts as found by the Inspector were as follows (see p.67):

> "The units are all self-contained, with no apparent connection between them, and each is supplied with the facilities necessary for daily life, including living, sleeping and eating space, kitchens, bathrooms and WC's. Each unit has a small area of open air amenity space defined by hedges or fences, usually at the front. There is a communal car park for the 10 units, apart from which there are no communal areas. Council tax is charged on the property by four separate assessments, one of which covers the main house and the 10 units. The units are available to the public on short lets, including weekend and mid-week breaks, with the longest letting being for three or four months. They are managed as one entity, the income being deposited in one account. Cleaning is provided at changeovers and a maid can be employed at an extra charge for cleaning on an hourly basis. Linen, including towels, is provided. Breakfast hampers are provided for guests at an extra charge, but other than that no meals area provided. None of the units is used for staff accommodation."

22. The Inspector concluded in paragraph 106 of his report (see p. 68):

> "The "cottages", apartments or whatever description is applied to them certainly have the physical attributes of self-contained dwellings now. However, they are not used in the normal sense as independent residential units. Their use for holiday accommodation is, in my opinion, materially different to a use of premises by a household as the long term home of the person or persons comprising that household. Put in simple terms, no one lives in these cottages and has not done so since 1985. This requires no definition of legal principle; it is a common sense conclusion derived from the facts of this case..."

23. The Secretary of State accepted the Inspector's conclusion and rejected the Appellant's contention that the four-year time limit applied. The High Court dismissed the Appellant's appeal under section 289 of the Act. On appeal to this Court Mr. Alesbury, who appeared on behalf of the Appellant in Moore, relied on the decision in Gravesham and submitted that the Inspector had erred in paragraph 106 of his report (paragraph 22 above) in concluding that the units were not dwelling- houses, even though they had the physical attributes of self-contained dwellings, because their use as holiday accommodation was "materially different to a use of premises by a household as the long term house of the person or persons comprising that household." The Divisional Court's decision in Blackpool was not referred to.

24. The appeal was allowed. Nourse LJ, with whom Pill and Thorpe LJJ agreed, said (at page 71):

> "In my judgment, McCullough J's approach to the meaning of "dwellinghouse" was entirely correct. Although we were not referred to any of the many other decisions on the meaning of that word in other areas of the law, I am confident that an examination of them would reveal no requirement that before a building can be so described it must be occupied as the permanent home of one or more

> persons or the like. Nor do 10 self-contained units of residential accommodation which would otherwise be properly described as 10 single dwelling houses cease to be used as such because they are managed as a whole for the commercial purpose of holiday or other temporary lettings. Accordingly, I am satisfied that the Secretary of State applied an incorrect test in this case and that if he had applied the correct test, he could only have properly concluded that the 10 units are being used as 10 single dwellinghouses within section 171B(2) of the Act."

The grounds of appeal

25. Mr. Alesbury challenged the Inspector's decision on two grounds. In his Skeleton Argument he submitted that where there is a permitted use as a "dwelling" or "dwellinghouse" (it is common ground that they are synonymous) that use lawfully includes not only occupation by an individual or family as a permanent home but also the use of the dwelling for holiday or temporary occupation, whether or not that occupation is as a result of a commercial letting. That proposition was, he submitted, the ratio of the Court's decision in Moore, a decision which the Inspector wrongly dismissed as being of only limited relevance. The Inspector should not have asked himself whether there was any material difference between the present use - for commercial short-term holiday lets - and the previous use of the property as a "family dwelling" or "private family dwelling house", but should instead have asked the question: is there any material difference between the present use and the use that the Court of Appeal has said in Moore is within the scope of a planning permission to use a building as a dwelling?

26. Secondly, Mr. Alesbury submitted that, if the present use is a breach of planning control, the description of the use in the notice as "commercial leisure accommodation" was neither an accurate nor an adequate description of what is actually taking place in the property. The Inspector had accepted that the Appellant's suggestion that the present use might be described as "use as a holiday dwelling" was reasonable, (see paragraph 7 of the decision), and he had also accepted that the description "leisure accommodation" might encompass a wide range of different forms of occupation of the property, some of which may not constitute a material change of use (see paragraph 6 of the decision). In these circumstances the Inspector should have allowed the appeal under ground (b), or varied the notice so as to define its requirements with greater particularity under ground (f). Mr. Alesbury submitted that it was of vital importance to the Appellant, who will face criminal penalties if she fails to comply with the requirements of the notice, to know precisely what it is that the notice prohibits. As issued and upheld by the Inspector the notice closes down her business in its entirety, even though the Inspector's decision acknowledges that using the property for some forms of "leisure accommodation" may not amount to a material change of use.

Discussion

Ground 1

27. Starting from first principles, without the assistance of any authority, whether the use of a dwellinghouse for commercial letting as holiday accommodation amounts to a material change of use will be a question of fact and degree in each case, and the answer will depend upon the particular characteristics of the use as holiday accommodation. Neither of the two extreme propositions - that using a dwellinghouse for commercial holiday lettings will always amount to a material change of use, or that use of a dwellinghouse for commercial holiday lettings can never amount to a change of use - is correct.

28. The Divisional Court's decision in Blackpool supports this approach: the Court concluded that the Inspector would have erred if she had approached the matter on the basis that there

could be no material change of use if the house was in some form of residential use - "not every use is necessarily a use as a private dwelling-house" - but she was entitled to conclude that the character of the dwelling-house was not materially changed by the particular pattern of holiday lettings in that case.

29. In Gravesham the Court was concerned with a different issue: whether it was an essential characteristic of a dwelling-house that it should be occupied residentially throughout the year. McCullough J rejected that proposition. McCullough J did not have to consider whether some forms of commercial letting for holiday purposes throughout the year might be capable of amounting to a material change of use. Blackpool was not relevant to that issue, and was not cited.

30. Nourse LJ's conclusion in Moore that the Secretary of State had applied an incorrect test is consistent with the approach of the Divisional Court in Blackpool. In Moore the Inspector had adopted an extreme position: that any use of premises as holiday accommodation was materially different to a use as a single dwellinghouse because it was not a use of the premises as "the long term home" of persons comprising a household. The Inspector did not consider whether the particular characteristics of the use of the ten units as holiday accommodation amounted to a change of use.

31. The only possible basis for the contention that the use of a dwelling-house for commercial holiday lettings can never amount to a change of use is Nourse LJ's final conclusion that if the Secretary of State had applied the correct test "he could only have properly concluded that the 10 units are being used as 10 single dwelling houses.... " (emphasis added). The ten units were being used for short-term holiday lets: see paragraph 21 above. The Court was not referred to Blackpool, and it applied Gravesham. While Gravesham is authority for the proposition that a dwellinghouse can be so described even if it is not occupied throughout the year as a permanent home, it is not authority for the proposition that any use of a dwellinghouse for holiday lettings will not amount to a material change of use.

32. There is no discussion in Moore of the characteristics of the holiday lettings in that case. It appears that the Secretary of State defended the lawfulness of his decision on a point of principle: use as holiday accommodation was not a use as a single dwelling-house within section 171B(2) because it was not a use as a "long term home". Once this point of principle was rejected by the Court, it seem that nothing else was put forward by the Secretary of State to support the proposition that the ten units were not being used as single dwelling-houses. The Court accepted that whether the ten units were being used as single dwelling-houses was a question of fact and degree for the Secretary of State (see page 70B-C of the judgment of Nourse LJ), but in the absence of any argument, other than the erroneous point of principle, that there had been a material change of use, the Court felt that it was able to conclude that there was only one conclusion properly open to the Secretary of State.

33. For these reasons, we do not consider that Moore is authority for the extreme proposition: that the use of a dwelling-house for commercial holiday lettings can never amount to a material change of use. In his oral submissions Mr. Alesbury readily accepted that Moore was not authority for that extreme position, and made it clear that he did not submit that any kind of holiday letting was within the permitted use of the property as a dwelling-house. However, he submitted that the Inspector had erred in treating Moore as being of limited relevance. He should have approached the question whether there had been a material change of use on the basis that a dwelling-house could lawfully be used for some degree of holiday letting without there being a material change of use, and then asked whether there was anything about the particular characteristics of the holiday lettings in the present case which amounted to such a change.

34. In our judgment, this was the Inspector's approach. It is true that the Inspector refers to the differences between the current use and the use of the property "as a family dwellinghouse"

(paragraph 21 of the decision) or "private family dwellinghouse" (paragraph 25 of the decision), but the decision must be read as a whole. In paragraph 12 of the decision the Inspector noted the Appellant's argument that a permitted use as a dwellinghouse did not preclude use for purposes other than as a family dwellinghouse. He did not reject that proposition. Had he done so, that would have been the end of the ground (c) appeal and the decision would have been much shorter. Instead, he reminded himself that he had to compare the character of the current use with that of the previous lawful use, and he then proceeded to examine in some detail the particular characteristics of the current use in paragraphs 13-20 of the decision.

35. In this context, paragraph 15 of the decision is of particular significance. The Inspector rejected the Appellant's contention that those who occupied the property did so in pre-formed groups so that their occupation was akin to occupation by a single household. One of the factors which had persuaded the Inspector in the Blackpool case that there had been no material change of use was the fact that when the house was being let out for rent it was let to "family groups", or "single households": see paragraph 16 (above). In the present case, the Inspector concluded that the large groups (the property can accommodate up to 20 people, see paragraph 13 of the decision) who occupied the property came together largely as a result of their shared interests (yoga, cycling etc.) but they did not occupy the property as "single households".

36. In our judgment the Inspector adopted the correct approach. Although he was not referred to Blackpool he did not fall into the error of assuming that any use for holiday letting amounted to a material change of use. He carefully examined the characteristics of the lettings in the present case and concluded that, as a matter of fact and degree, they were a material change of use from the permitted use as a dwelling- house. In our judgment, he was not merely entitled to reach this conclusion; it was clearly, on the facts of this case, the correct conclusion. As a matter of common sense, this particular use for holiday lettings is very far removed from the permitted use as a dwellinghouse and a material change of use has occurred.

Ground 2

37. The Inspector rightly dismissed the appeal on ground (b). Even if the description of the breach of planning control was too wide it was neither "misconceived" nor "practically unintelligible." For the reasons given by the Inspector the description of the current use as "commercial leisure accommodation" covered the particular use to which the property was being put. Holiday accommodation is a form of leisure accommodation. If the Appellant has a valid complaint, it is not that the alleged breach of planning control did not occur, it is that the requirements of the notice are excessive, not least because the Inspector concluded that "leisure accommodation" might encompass a wide range of different forms of occupation of the property, some of which may not constitute a material change of use. Moreover, the authorities make it clear (see above) that not all forms of commercial holiday letting amount to a material change of use of a dwellinghouse.

38. On behalf of the First Respondent Mr. Lewis submitted that this complaint should have been made in the appeal under ground (f), and it was not. In her appeal under ground (f) the Appellant did not suggest that the description of the prohibited use should be narrowed down, she submitted that any adverse impact on residential amenity could be ameliorated by a limitation on the numbers using the property and by a noise management plan: see paragraph 14 above.

39. Mr. Lewis referred us to a number of authorities, including Tapecrown Ltd v First Secretary of State [2006] EWCA Civ 1744 and Taylor and Sons (Farms) v Secretary of State [2001] EWCA Civ 1254, which establish the proposition that an appellant under ground (f) should state his "fall back" position because the Inspector's primary duty is to consider the proposals

which have been put before him, and he is not under any duty "to search around for solutions."

40. We readily accept that it is not the duty of an Inspector to make an appellant's case for him (see paragraph 46 of Tapecrown per Carnwath LJ as he then was), but in the present case the appellant had made her case, albeit that she made it under ground (b) rather than ground (f), that the alleged use in breach of planning control, which the notice required her to cease, was too wide. As Carnwath LJ observed in Tapecrown "the enforcement procedure is intended to be remedial rather than punitive" (paragraph 46). We accept Mr. Alesbury's submission that the mere fact that this issue was raised under ground (b) rather than ground (f) is not fatal to this ground of appeal. If there was "an obvious alternative which would overcome the planning difficulties, at less cost and disruption than total [cessation]" the Inspector should have considered it: Tapecrown (ibid).

41. Was there an "obvious alternative" which the Inspector should have considered? In this respect he was not assisted by the procedure - the appeal was decided by written representations - or by the parties. The Second Respondent's written representations to the Inspector did not engage with this issue, and it has played no part in the section 289 appeal. Although the Appellant had argued that a more appropriate description of the current use would be "use as a holiday dwelling", she was contending that such a use was "not materially different in character from the lawful use as a dwellinghouse." Thus, there was no "obvious alternative" on the material before the Inspector. The Appellant now accepts that using a dwellinghouse for commercial holiday lettings may amount to a material change of use, but given the need for clarity as to the requirements of an enforcement notice (breach of the requirements is a criminal offence) it would be wholly inappropriate to require the Appellant to cease the "commercial holiday letting use of the property insofar as it amounts to a material change of use from a dwellinghouse." That would be a recipe for endless disputes before the Magistrates.

42. Before the Inspector there was no attempt to define when a use for commercial holiday letting might amount to a material change of use of the property, or even to suggest any criteria which might be relevant for the purpose of drafting such a definition. The Second Respondent contented itself with the proposition that there had been a material change of use, and the Appellant denied that such a use could amount to a material change of use of a dwellinghouse. In these circumstances we are not able to conclude that the Inspector erred in law in deciding to uphold the notice in the terms in which it was issued. He was not presented with any viable alternative which would have secured the cessation of the breach of planning control which he found to have occurred. It is not without significance that in pursuing his second ground of appeal Mr. Alesbury was not able to suggest any modification to the "excessive" requirement in the notice which would cut back the requirement whilst ensuring that the property is not used in breach of planning control. The notice is not perfect, but no better alternative has been suggested.

Conclusion

43. For these reasons the appeal must be dismissed.