Southwold Neighbourhood Development Plan

Southwold Town Council's response to the Independent Examiner's Clarification Note

Examiner's Question:

Policy SWD5

Does the second criterion relate to residential amenity in general and to the issues included in paragraph 4.46 of the Plan in particular?

Southwold Town Council's Response:

Yes, the second criterion relates to both. Our intention is for this policy to give effect to Appeal Ref: APP/Q0505/C/18/3193261, 17 Richmond Road, Cambridge CB4 3PP, especially Paragraphs 30-31 of this appeal, in which the Inspector applied *Moore v SSCLG and Suffolk Coastal District Council* [2012] EWCA Civ 1202 to a 3 bedroom terraced house in Cambridge which was intensively let for holiday purposes. The inspector's decision, which found change of use, was based not only the direct impact on neighbour amenity but also the cumulative and indirect impacts of extensive holiday letting on the wider community. We have attached the decision.

Examiner's Comment:

Policy SWD6

The policy takes a distinctive and positive approach to this increasingly-important national issue. It helpfully incorporates the National Design Guide's characteristics of well-designed buildings and places. It carefully overlaps with earlier work undertaken on the Conservation Area Character Appraisal and the associated Management Plan. In addition, the policy is very well-developed in the way in which it addresses the character areas identified in the Character Area Appraisal.

Examiner's Question:

Policy SWD8

I saw the mix of national and independent retail uses in the town centre during the visit. As such the intention of the policy is self-evident.

I understand the context to the policy as set out in paragraph 7.6. Nevertheless:

Does the Town Council have any direct evidence on the extent to which extended retail premises are beyond the reach of independent traders?

Southwold Town Council's Response:

No – our only evidence is anecdotal. We are, however, aware that independent retailers may need larger premises because they are successful businesses which would like to expand. We do not want to discourage this.

Examiners Question:

What would be regarded as a 'material' increase in the size of a retail unit?

Southwold Town Council's Response:

With regard to Policy SWD8, in response to the Examiner's question of what amount of increase would be material, we suggest an increase of 40% or more. In the period 2012 – 2017, three small shops were expanded by a developer with the purpose of bringing in national chains (Costa, Crew Clothing, Joules); their areas were increased by 41%, 134% and 192%, respectively. It is these types of extensions, which resulted in the reduction of the small shop space required by independent businesses, that SWD8 seeks to manage.

Examiner's Question:

Would it be reasonable for a planning policy to prevent or delay an extension to a retail unit where it was necessary to ensure the operational efficiencies of the existing retailer?

Southwold Town Council's Response:

On reflection, no.

Examiner's Question:

Is the marketing exercise in Appendix 4 of the Local Plan directly applicable to the circumstances anticipated by this policy?

Southwold Town Council's Response:

On reflection, no. But we could ask for a business case from the existing retailer to support their request for expansion. What we are trying to prevent is the speculative acquisition of commercial premises and their expansion to a size that is attractive to national chains, reducing the supply of small shops with lower rents.

Examiner's Question:

To what extent is the submitted policy in general conformity with the final section of Policy WLP8.19 of the Local Plan?

Southwold Town Council's Response:

We believe it is consistent with this policy whose purpose is to promote vitality of town centres. The last section allows Neighbourhood Plans to set their own requirements for the mix and use of units. A range of different sized units enables a wider variety of mixes and uses. We note that larger spaces are occupied by both independents and national chains but some independents only require and can only afford small units.

Examiner's Question:

Policy SWD9

The reference in the policy to B1 uses will need to be modified to reflect the changes made to the Use Classes Order in 2020.

Does the Town Council have any comments on the implications of the Use Classes Order 2020 in general, and the introduction of the new Class E in particular, on the submitted policy?

Southwold Town Council's Response:

We believe the creation of Class E, with its flexibility, is beneficial to the town. We had intended to change B1 in this policy to Class E and our omission was an error. The same error was made in Policy SWD16 where Section A ii should also be changed to Class E.

Examiner's Comment:

Policy SWD13

This policy is well-developed and is locally-distinctive. The proposed Local Green Spaces have been carefully selected to reflect the criteria for such designations in the NPPF.

Examiner's Question:

Policy SWD14

I am minded to recommend a modification to the first part of the policy so that the criteria would apply as relevant to the scale, nature and location of development within the neighbourhood area. As submitted the policy would apply to all development proposals, most of which will be minor or domestic in nature and would not trigger the need for such an approach.

Does the Town Council have any comments on this proposition?

Southwold Town Council's Response:

We agree with your approach.

Examiner's Comment:

Policy SWD16

The policy is written in a robust and compelling fashion and is underpinned by the associated supporting text. The incorporation of the Ingleton Wood Design Framework work into the policy is best practice. This approach will supplement the wider approach on design in Policy SWD6.

Examiner's Question:

Maps

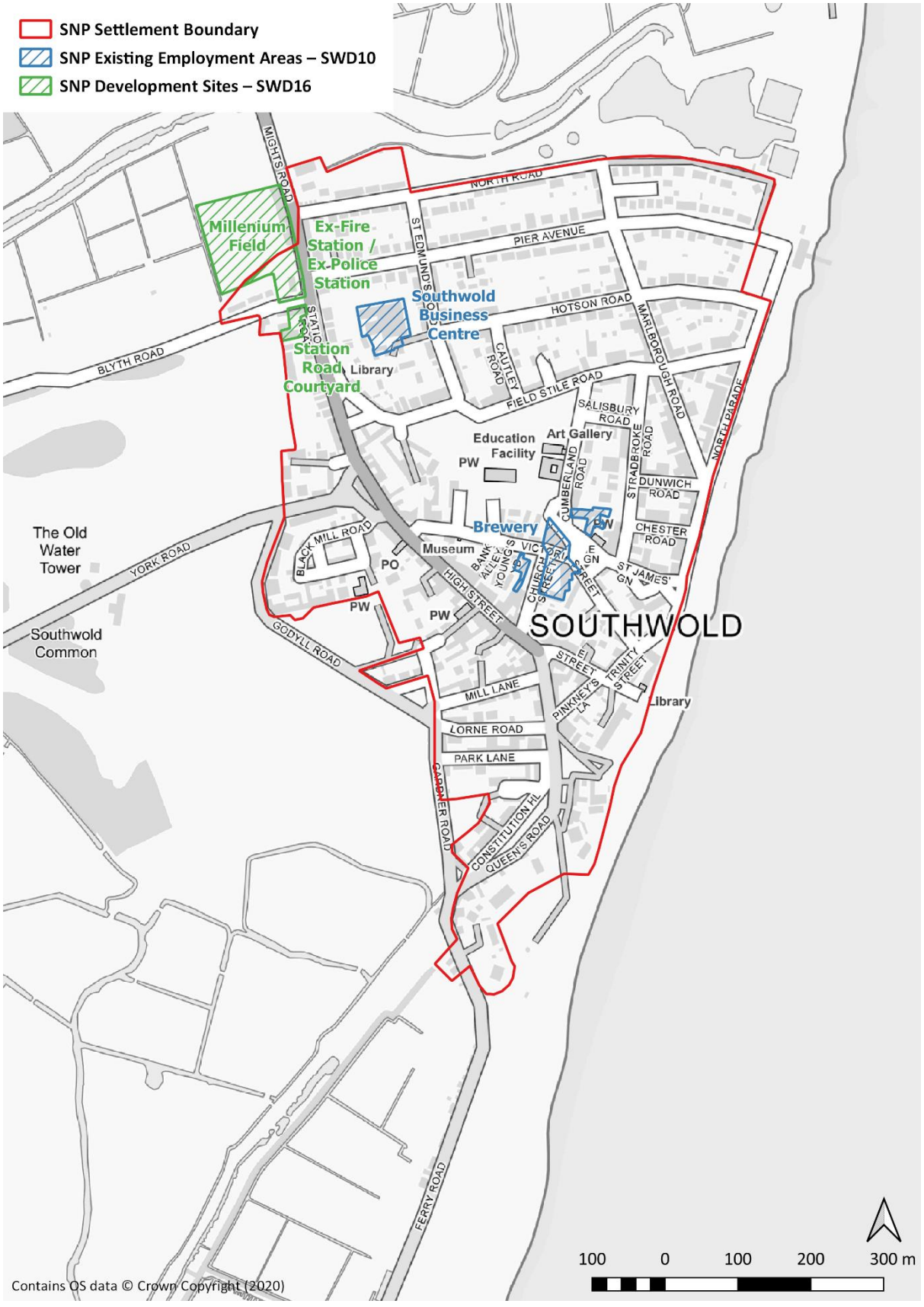
In the map labelled as 15.2 (Policy Areas SWD 10 and SWD 16) on page 86 of the Plan the key at the top of the map refers to policies SWD14 and SDW8. In addition, the red outline indicating the Southwold settlement boundary is slightly different to settlement boundary in the Waveney Local Plan. The map in the neighbourhood plan indicates that the settlement boundary has been extended to include the Millennium Field.

Please can the Town Council explain its thinking on these matters?

Southwold Town Council's Response:

The settlement boundary will be that set out in the Local Plan Policies Map for Southwold and Reydon and changes will be made to the key.

Revised Map 15.2



Examiner's Comment:

Non-Policy Actions

The Plan follows national advice in distinguishing the non-policy actions from the land use policies. In addition, the Actions are locally-distinctive. In several cases they would complement the land-use policies in the Plan.

Examiner's Question:

Does the Town Council wish to comment on any of the representations received on the Plan?

In particular does it wish to comment on the representations from:

- East Suffolk Council;
- Mr and Mrs Fletcher (via Artisan Planning and Property Services); and
- Mr Peter Cronin.

Southwold Town Council's Response:

Yes. Our comments are set out below.

East Suffolk Council

SWD11 It won't be possible for all developments to deliver net gains for biodiversity. This would include most signs and fences/walls, and many extensions and porches. The policy wording should be amended to reflect this. The policy could exclude advertisement and householder applications, or say 'All development proposals should where feasible…'.

Household applications for extensions are the primary form of development in Southwold so we would not want these applications to be excluded from net gains in biodiversity. A driving force for this policy is 'convenience' out door amenity space associated with holiday letting and some 2nd homes, which results in the paving over of gardens, and the loss of this well-recognised source of biodiversity. Therefore, we would very reluctant to water down this policy with respect to extensions although we agree that signs and fences/walls could be excluded but not porches because some applicants will claim that a large rear extension is a 'porch'. We would oppose adding 'where feasible' as this will act as a get-out clause that will effectively neuter the policy.

Peter Cronin

Our evidence base shows that holiday lets attract more car parking demand for on-street car parking than ordinary residential use, and that this has an impact on residential amenity. Therefore this section of the policy is reasonable.

On-street parking remains available to C3 holiday lets unless there is evidence that the C3 use has changed to Sui Generis.

This policy requires a case by case analysis as prescribed by the Court of Appeal in *Moore.* If a change of use has occurred (or is proposed), and is not appropriate under *Moore*, then the property can be used as a principal residence (by the landowner or a tenant) or a second home – both uses will generate less demand for on street parking.

SWD 12 permits development of ancillary office or study space in gardens.

The NP is forward thinking. It supports the provision of modern working space through the redevelopment of part of the Old Hospital (Field Stile Road) as a co-working space (opening January 2022), and flexible working space at Station Yard (anticipated to be coming on stream in 2023). Both will provide super-fast broadband and other facilities to meet the needs of the post-Covid 21st century rural economy. If further provision is required, this is enabled on the police and fire station sites by Policy SWD16.

Mr. and Mrs. Fletcher

There will always be speculation about the impact of a principal residence policy, and its enforceability, with people arguing the pros and cons. However, the High Court has accepted this as a legitimate policy capable of enforcement and other NPs have adopted this policy.

There is a review mechanism for our housing policies in the NP.

Mr and Mrs Fletcher argue that the principal residence policy will reduce the amount of short term assured tenancies. We would be very concerned if this were to happen but, in fact, the policy applies to all forms of tenancy that are newly built (except one for one replacements) whether occupied by the landowner or a tenant.

In an earlier draft of the NP, we had included text on the type of evidence that could be used to prove the occupant was a principal resident. This was dropped at the behest of East Suffolk DC, who advised that enforcement provisions would be developed and implemented by the LPA.

The Consultation Statement fully sets out the consultation with business owners. We supplemented the questionnaire sent to all businesses with in-depth interviews of 9 business owners who are considered leaders of the business community. This consisted of 8 small independent businesses and the CEO of Adnams Plc, our largest business.

The Planning Inspectorate

Appeal Decision

Site visit made on 30 October 2018

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2018

Appeal Ref: APP/Q0505/C/18/3193261

17 Richmond Road, Cambridge CB4 3PP

- 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 Mr I Bramwell against an enforcement notice issued by Cambridge City Council.
- The enforcement notice was issued on 12 December 2017.
- The breach of planning control as alleged in the notice is the material change of use of the premises to from a Class C3 dwellinghouse to short-term visitor accommodation.
- The requirements of the notice are:
  (i) Permanently cease the use of the premises for short-term let visitor accommodation of less than 90 days duration provided for paying occupants.
  (ii) Permanently cease and remove all forms of advertising the entire premises for let in relation to short–term let visitor use.
- The period for compliance with the requirements is 2 months.
- 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.

Summary of Decision: The appeal is dismissed and the notice is upheld.

Preliminary Matters

Grounds of Appeal

1. On the appeal form the boxes for grounds (a), (c) and (g) have been ticked. The accompanying statement of case, however, refers to grounds (a), (c) and (f). Notwithstanding this, the submissions in the part of the statement headed ground (f) are more appropriate to ground (g). It seems to me therefore that the appellant's references to ground (f) are erroneous. In the light of this, and mindful that the Council's statement addresses ground (g), I will determine the appeal on the basis of the grounds of appeal as indicated shown on the appeal form.

Application for Costs

2. An application for costs was made by Mr I Bramwell against Cambridge City Council. This application is the subject of a separate Decision.

Development Plan and the National Planning Policy Framework (The Framework)

3. The reasons for issuing the notice cite a number of policies in the Council's Local Plan, adopted in 2006. However, since the appeal was lodged, a new Local Plan was adopted in 2018. As the 2006 plan is no longer extant, the

current (2018) Plan is now the relevant development plan for the purposes of assessing the planning merits of the appeal.

4. The revised Framework also came into force after the appeal was lodged. Both parties have made submissions in respect of it and I have had regard to these in coming to my decision.

The Enforcement Notice

5. At my behest, the Inspectorate wrote to the parties on 9 November 2018 seeking views on a number of matters, including the wording of the allegation and the requirements of the notice. The allegation is somewhat imprecise in that the actual nature of the short-term visitor accommodation is not elaborated upon. In response, the Council have drawn my attention to a document entitled 'Short-term Visitor Accommodation: Officer Guidance Note'. This provides some insight into the Council's stance, and contains what is termed a 'working definition', but I do not consider it offers much assistance insofar as putting the allegation into sharper focus is concerned. Moreover, as the document appears to be no more than an internal note, I share the appellant's reservations about its status. Accordingly, therefore, I am not inclined to attach much weight to it.

6. In the light of the foregoing, despite the somewhat general manner in which the allegation is framed, the appellant does not appear to have been misled by it and has been able to respond to it fully via the appeal. As a result, I am not satisfied that there is a need for me to exercise my power of correction.

7. Arguably, requirement (ii) could appear to relate to matters outside the ambit of planning control in that it is not a device that helps facilitate the use in the physical sense. But, taking the appellant's point that if the notice is upheld, there would be nothing to advertise I do not therefore propose to take any action in respect of this matter.

8. While requirement (i) is clear on its face, it points to an element of under-enforcement. Instead of requiring the complete cessation of the use in question, it is only directed at short-term lets of less than 90 days. It may be that this reflects the 'working definition' in the Council's guidance note. However, mindful of the provisions of section 173(11) of the 1990 Act, compliance with the notice could give rise to something that, despite the Council's definition, could well be interpreted as another form of relatively short-term residency. Given the second reason for issuing the notice, this is something that the Council appear to be seeking to avoid.

9. The potential problem I have identified could have been resolved by correcting the notice by deleting the reference to 'of less than 90 days duration' from requirement (i). However, I am not satisfied that it would be appropriate for me to do so in this instance. As I see it, such a step would cause the appellant injustice as in this respect it would leave him worse off than would have been the case had he not lodged the appeal.

Appeal on Ground (c)

10. In order for the appeal on this ground to succeed it has to be shown that there has not been a breach of planning control. Ground (c) is a legal ground of appeal, distinct from any planning merits. In particular, the Courts have held that the onus of proving it lies with the appellant.

11. In essence, the premise underlying the appeal is that the use of the premises as what the appellant terms 'serviced accommodation/short-term holiday let' does not amount to a material change of use.

12. The appeal property is a 3 storey terrace house which, according to the appellant has 3 bedrooms and is let out for a maximum of 5 guests. Citing the Court of Appeal judgement in *Moore v Secretary of State for Communities and Local Government [2012] EWCA Civ 1202*, and pointing out that the appeal property is let out as a whole entity as opposed to separate parties at the same time, the appellant contends that it is still used as a permanent dwelling. It is submitted that the occupation of the dwelling by single households, whose comings and goings would differ little from the use of the house by a family, is the same as for a Class C3 dwelling. No change of use has occurred.

13. In terms of the size of the appeal property and the number of guests involved, the scale of the use in question is more modest than was the case in *Moore*. Nevertheless, as the judgement in *Moore* made clear, whether the use in question amounts to material change of use is a matter of fact and degree. In the light of this, the Council's 'working definition' offers scant assistance.

14. In terms of the numbers of guests at any one time, the information contained in the appellant's log, which spans a period from 21 January 2017 to 2 January 2018, has not been questioned. As the majority of the entries concern 4 or 5 people, this is probably not dissimilar from the numbers to be found in many of the family houses in the area. However, while it is claimed that the occupancies display the characteristics of single households, the log only records the number of guests, when they stayed, and for how long. It may well be that a proportion at least of the guests are single families, but this is not clear from the log. Similarly, while mention is made of 'household groups' whether these comprise individuals who have come together as groups, or some other relationship or common interest or purpose is involved, has not been made clear either.

15. What is clearer though, is that the log records 60 separate stays during the 12 month period it covers. These include 9 stays in one month (June 2017) and 7 apiece in 2 other months (April 2017 and October 2017). The 60 figure is rather less than the 72 logged by a complainant mentioned in the Council's planning enforcement report. Nevertheless, even the appellant's lower figure points to a very frequent turnover of occupants, a trait that is apparent throughout the year. To my mind, the number of recorded stays points to a markedly transient pattern of occupancy. This somewhat striking characteristic which, as the log notes, is only based upon a 45% occupancy rate, is not something I would normally associate with a dwellinghouse, or even a house in multiple occupation.

16. The transient nature of the use also tends to be borne out by the recorded duration of stays. Although the appellant's log includes individual stays of 11, 13 and 20 nights, for the most part, the stays are for less than 5 nights; indeed, the appellant calculates their average length to be 2.7 nights. I regard the consistently short periods of residency, together with the frequency of the associated comings and goings as occupants arrive and depart, as another feature that distinguishes the nature of the use in question from the more settled pattern of occupancy generally found at a house.

17. There is nothing to indicate that, in terms of its facilities, the appeal property is anything other than a house in the physical sense. However, the evidence indicates that the character of the use in question, in particular the notably transient pattern of occupancy, together with the pattern of related arrivals and departures, is significantly different from that normally associated with a house. The difference is such that, as a matter of fact and degree, I consider it amounts to a material change of use. In the apparent absence of any relevant planning permission for the use in question, I find there has been a breach of planning control. Accordingly, therefore, the appeal on ground (c) fails.

Appeal on Ground (a) and the Deemed Application

18. I consider there are 2 main issues. Firstly whether there would be adverse consequences for the city's stock of housing. And secondly, whether the living conditions of the occupiers of the nearby dwellings would be adversely affected.

19. As noted in paragraph 3 above, planning policies for the area are contained in the Council's 2018 Local Plan. Unlike the 2006 Plan cited in the reasons for issuing the notice, there is no policy that deals exclusively with the loss of housing. However, Policy 3, headed 'Spatial strategy for the location of residential development' indicates, amongst other things, that in order to maintain housing provision, planning permission to change housing to other uses will only be supported in exceptional circumstances.

24. Although the Local Plan contains no policy expressly directed at the type of use in contention here, Policy 77 deals with concerns the development and expansion of visitor accommodation. In addition, the main thrust of Policy 78, headed 'Redevelopment or Loss of Visitor Accommodation', is to prevent the loss of such accommodation. Policy 35 is headed 'Protection of Human Health and Quality of Life from Noise and Vibration'. Amongst other things, it indicates that development will be permitted where it is demonstrated that, amongst other things, it will not lead to significant adverse effects on the quality of life from noise.

20. On the first issue, it seems to me that the change in the pattern of occupancy of the appeal property associated with use has led to a reduction of the city's stock of permanent living accommodation. I therefore find the use in question contrary to Policy 3. Although, perhaps self-evidently, the reduction would not amount to much, there would be adverse consequences for the stock of housing nonetheless.

21. I accept that, by providing a base for people visiting the city, the use in question contributes to the city's visitor economy. I am also mindful that the 2018 Local Plan is generally supportive insofar as the provision and safeguarding of visitor accommodation is concerned. However, noting that Policy 77 and paragraphs 8.53 and 8.54 of the supporting text focus primarily on the city centre, I do not consider that any benefit insofar as the visitor economy is concerned amounts to an exceptional circumstance sufficient to justify the use in question.

22. Notwithstanding the above points, I have had regard to the possible scenario that compliance with the notice, as discussed in paragraphs 8 and 9, could give rise to. In particular, the possibility that some form of what could well be regarded as short–term visitor accommodation, despite the definition contained

in the Officer guidance note, could ensue. This tends to diminish the weight to be attached to my conclusion on first issue somewhat.

23. Turning to the second issue, Richmond Road lies within an established residential area, characterised by a fairly tight-knit pattern of housing, the appeal property being in the middle of a short terrace of 3 houses. As a result, activity associated with the use of the appeal property, such as comings and goings by guests, is likely to be apparent to, and to affect, the occupiers of the nearby dwellings.

24. I acknowledge that ordinary families are capable of generating a good deal of activity. Be that as it may, the pattern of comings and goings by visitors, who may wish to take full advantage of the attractions the city has to offer, in the evenings as well as the daytime, could well be very different from the lifestyles pursued by the more settled populace. And, such activity may well occur at times when most residents ought reasonably to be able to expect periods of relative peace and quiet.

25. That said, there is nothing that shows that activity inside the property has given rise to serious problems to date. The appellant notes that no action has been taken under environmental protection legislation, and the Council acknowledge that there is generally an acceptable noise level within the premises. I am also mindful that the occupier of one of the adjoining properties in the terrace has indicated that she has never experienced any issues in this respect. A similar view has been expressed by another neighbour.

26. On the face of it, the contents of the preceding paragraph appear to provide persuasive reasons for viewing the use in question in a favourable light. However, appended to the submissions made by the local Residents' Association is a reference to late night 'revelries' during a particular weekend. Neither this, nor the references to instances of loud voices and car doors slamming, have been challenged by the appellant.

27. The 'house rules' for the property that have been drawn my attention appear to reflect a genuine desire on the part of the appellant to ensure that neighbours are not inconvenienced. But, as the supervision of the property only appears to extend to meeting guests when they arrive, and cleaning in between lets, ensuring that the rules are adhered to appears to be very much down to individual guests. And, even if there is only one complainant, as the appellant claims, this does not necessarily mean that the reported problems should be disregarded or should carry little weight. On the contrary, if anything, these matters strongly suggest that the Council's concerns are well-founded.

28. As recorded occupancy rate is only 45%, it is not inconceivable that a greater number of stays, together with associated activity could ensue. This, in turn, could well increase the potential for further disturbance to the neighbours. Likewise, the possibility that the ownership of the property could change at some stage in the future, and a future owner may have less regard for the well-being of the neighbours, cannot be discounted. These are all longer term matters that I have to have regard to.

29. In my view, good neighbourliness is an important yardstick for assessing a use such as this. Even though there is no evidence of a statutory nuisance, activity associated with people entering or leaving the accommodation, even if this amounted to no more than good natured conversation, together with vehicles

stopping and starting, and the closing of car doors, could well be disturbing to the neighbours whose living conditions would be adversely affected to a significant degree. Accordingly, therefore, I consider the use in question is contrary to Local Plan Policy 35.

30. A further factor referred to by the Residents Association is the claimed non-participation in events at the local Community Centre by occupants of the property. This is perhaps understandable, as guests using the property may well have other priorities during their generally brief stays, but it is probably a reflection of the highly transient nature of the occupancy of the appeal property.

31. While other aspects of the city's economy may well benefit from fresh influxes of short-term visitors, it seems to me that that the non–participation described is likely to extend to other community institutions such as libraries, schools and the like. The consequences attributable to one property in this respect would probably not amount to much. But, were this to be repeated elsewhere, far from helping to create a sustainable community, the cohesion of the local community could well be eroded. This, in turn, could well make the area a less pleasant place in which to live and would be at odds with the social objective to support strong vibrant and healthy communities contained in The Framework[1]. Nor would it be consistent with the promotion of social interaction advocated in The Framework[2]. I see all this as a further disadvantage which adds to my concern. I am not satisfied that this concern could be overcome by conditions, including that suggested by the Council.

32. I appreciate that the scenario referred to above could be said to apply to the sort of letting pattern that may result from compliance with the notice. I am not inclined to attach much weight to this though, as it is reasonable to assume that occupants staying for longer would be more likely to be encouraged to engage with the local community.

33. In the light of the foregoing, the appeal on ground (a) fails. I find the use in question contrary to the provisions of the development plan when read as a whole. Accordingly, therefore, in accordance with the development plan, the deemed application should be refused. Other considerations, including The Framework, do not indicate otherwise.

Appeal on Ground (g)

34. Pointing out that bookings are taken some time in advance when Airbnb requires up-front payments, the appellant seeks what is described as a 'compromise' compliance period of 4 months.

35. I accept that extending the compliance period as sought would help the appellant meet his outstanding obligations. I also appreciate that this would probably mean that fewer of those who have made advance bookings would be inconvenienced. However, while I accept that some people who have made bookings, doubtless in good faith, may encounter some difficulties, I am not satisfied that either of these factors is sufficiently compelling to show that the time given to comply with the notice is too short or that a longer compliance period is warranted in this instance.

[1] National Planning Policy Framework: paragraph 8 b).
[2] Ibid: paragraph 91 a).

36. The appeal on ground (g) therefore fails.

Other Matters

37. I have taken into account all the other matters raised. None, however, are sufficient to outweigh the considerations that have led me to my conclusions.

Formal Decision

38. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

D H Brier

Inspector