

Appeal Decision

Site visit made on 1 November 2016

by R J Perrins MA MCMI ND Arbor TechArborA

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

Decision date: 23 November 2016

Appeal Ref: APP/X5990/X/16/3146626

122 Quadrangle Tower, Cambridge Square, London W2 2PL.

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Azlina Baharom (I & P Group Berhad) against the decision of City of Westminster Council.
 - The application Ref 15/05391/CLEUD, dated 16 June 2015, was refused by notice dated 15 December 2015.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as, this is an apartment owned by I & P Berhad, Malaysia and is used solely for the Directors and senior members of that company when they are visiting London on business.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issue in this case is whether the Council's decision to refuse to grant a lawful development certificate was well-founded, that is to say, has the use of the apartment for short term residential letting accommodation gained a lawful status through the passage of time. In this case this is a period of 10 years up to the date of the application for an LDC. The burden of proof in such an appeal lies with the appellant.

Reasons

3. The appeal premises consist of a two bedroom apartment with kitchen, living area and bathrooms situated in a serviced high rise block within the residential development The Quadrangle. I could see the apartment was well laid out and tidy without the normal domestic paraphernalia one would normally expect to find in a residential property.
 4. S.25 of the Greater London Council (General Powers) Act 1973 as amended (s.25) provides that for the purposes of s.55(1) of the 1990 Act the use as temporary sleeping accommodation of any residential premises in Greater London involves a material change of use of the premises and of each part thereof which is so used.
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5. S.25(2) provides at (a) that 'use as temporary sleeping accommodation' means use as sleeping accommodation which is occupied by the same person for less than 90 consecutive nights and which is provided (with or without other services) for a consideration arising either (i) by way of trade for money or money's worth; or (ii) by reason of the employment of the occupant; whether or not the relationship of landlord and tenant is thereby created; and at (b) that "residential premises' means a building or any part of a building, which was previously used, or was designed or constructed for use, as one or more permanent residences'.
6. The appellant's case is that the apartment is owned by a property development company based in Malaysia. The premises were acquired in 1990 for the exclusive use of that company, related companies and their guests for business and leisure. Those guests stay between 2 to 14 days and no rent is charged save for a nominal fee to help with maintenance and upkeep. There is a registration process for guests which is managed by a local Estate Agent.
7. There is no dispute that the apartment has been used for temporary sleeping accommodation as defined above. That is clear from the evidence submitted and from the representations of neighbours. Therefore the question that needs to be answered is whether or not that use has subsisted without material interruption for a period of ten years or more.
8. There is no dispute that the appellants have leased the premises since 2 October 1990 and it is evident that a process is in place for the registration of guests given the correspondence from Charles Russell LLP. However those letters are dated 2014 so carry little weight in favour of the use subsisting since 2005.
9. The appellants also seek to rely on their records of guests which start on 6 April 1998 and go through to the 31 December 2015. However, the Council have identified some undisputed gaps in those records which include a period in excess of three months where no guests are recorded at the apartment. The Council also produce undisputed evidence that there are inconsistencies in the record of guests submitted with the appeal and the evidence provided by the appellants to the Enforcement Department. Given those inconsistencies I must reduce the weight I give to the records of guests.
10. Furthermore there was no occupancy between 27 January 2009 and 31 December 2009 due to the company's merger process. It is not clear if 'no occupancy' means the apartment simply lay empty or if it were used and a residential use subsisted during that time or for any of the other gaps identified by the Council. Moreover there are no records for the period between 7 December 2003 and 16 February 2007, a period in excess of three years. That amounts to some 20 months at the start of the salient 10 year period where no records exist. The evidence says the records have been lost but there is no further information and the affidavit from Azlina Binti Baharom is unsigned and undated so little weight can be given to the information therein.
11. The Planning Practice Guidance sets out that where applications are made for an existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

12. Given the very significant gaps in the records currently available and the untested evidence submitted I must find that the evidence is not sufficiently precise or unambiguous. It has not been demonstrated that the apartment has been used for short term residential letting accommodation without material interruption for the requisite period.
13. Finally, I have taken note of all the neighbour representations however, given this is a lawful development appeal matters such as noise and the comings and goings to the apartment are not for my consideration.

Conclusion

14. Therefore, for the reasons given above and having considered all other matters raised I conclude, on the evidence now available, as a matter of fact and degree, and on the balance of probability, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the apartment for short term letting was well-founded and that the appeal should not succeed.

Richard Perrins.

Inspector