The Planning Inspectorate

Appeal Decisions

Hearing held on 7 February 2017

Site visit made on 7 February 2017

by Mr Keri Williams BA MA MRTPI

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

Decision date: 14 March 2017

Appeal A: APP/U2615/W/16/3151847
Southern Hotel, 46 Queens Road, Great Yarmouth, NR30 3JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Miss V Hunt against the decision of Great Yarmouth Borough Council.
- The application, ref:06/15/0710/F, was refused by notice dated 8 February 2016.
- The development proposed is a change of use from a hotel to a house in multiple occupation with managed accommodation.

Summary of Decision: The appeal is dismissed.

Appeal B: APP/U2615/C/16/3151866
The land at Southern Hotel, 46 Queens Road, Great Yarmouth, NR30 3JR

- The appeals are 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 Miss V Hunt against an enforcement notice issued by Great Yarmouth Borough Council.
- The Council's reference is U2615.
- The notice was issued on 11 May 2016.
- The breach of planning control as alleged is the material change of use of the land from C1 Hotel to the Sui Generis use of a house in multiple occupation.
- The requirement of the notice is to cease the use of the property as a house in multiple occupation.
- The period for compliance with the requirements is 6 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (b) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal does not succeed. The enforcement notice is varied to extend the period for compliance and is upheld.

Background

1. The Southern Hotel is a 3 storey, terraced building with a basement and attic. It is on the north side of Queens Road and within the Camperdown Conservation Area. Drawing 1049/1 was submitted with application 06/15/0710/F. It is a survey drawing, dated November 2015, and shows the layout on each floor. Drawing 1049/2 provides a proposed layout for each floor. A House in Multiple Occupation (HMO) licence is in place and is dated 25 May 2016. Appendix 2 of the licence lists 14 rooms, of which 13 are single occupancy and 1 is a double occupancy room. In addition to these rooms, part

of the building is used for manager's accommodation and for rooms occupied by the appellant's family members.

Ground (b) of Appeal B

2. To succeed on this ground it is for the appellant to show, on the balance of probabilities, that the alleged material change of use from a hotel to an HMO has not occurred as a matter of fact. It is consistent with Planning Practice Guidance that the appellant's case should be accepted if there is no evidence to contradict or otherwise make her version of events less than probable, provided that her evidence is sufficiently precise and unambiguous.

3. The granting of an HMO licence is not conclusive of a material change of use. The appellant contends that considerable change can occur without a use falling outside use as a hotel for planning purposes. Reference is made to Circular 03/2005, Changes of Use of Buildings and Land – The Town and Country Planning (Use Classes) Order 1987 (UCO). The Circular referred to hotels as including "*not only hotels, but also motels, bed and breakfast premises, boarding and guest houses. These are premises which provide a room as temporary accommodation on a commercial, fee-paying basis, where meals can be provided but where residential care is not provided. In addition, short-term (i.e. purchased at a nightly rate with no deposit against damage being required) self-contained accommodation, sometimes called Apart-Hotels, will also fall into this class*."

4. It is also argued that some of those occupying the building would not comply with the definition of an HMO in section 254 of the Housing Act 2004. The test of residence in that section requires that the building is occupied by more than one household as their only or main residence. It is said that in this case at least some of the occupants have their main residence elsewhere. A list of those currently occupying the property is provided. 3 of the 11 residents on the list are said to return to a home elsewhere at weekends.

5. Hotels are in UCO Class C1, which covers use as a hotel or as a boarding or guest house where no significant element of care is provided. Class C4 covers HMO properties and refers to unrelated individuals who share basic amenities. The term "basic amenities" includes toilet facilities, personal washing facilities and cooking facilities. Class C4 is limited to those with no more than 6 residents so that it does not apply in this case.

6. Despite the withdrawal of Circular 03/2005 in 2014, its reference to a range of different types of premises falling within the hotel category remains pertinent. Amongst other things the Circular alludes to the provision of temporary accommodation and to the inclusion of nightly charged, self-contained accommodation, sometimes called Apart-Hotels. The provision of some services to clients is also characteristic of hotels. The submitted list of occupants is current rather than from May 2016, when the notice was issued. Some of those on the list are long-standing residents. The available evidence does not establish that, when the notice was issued, the premises were providing temporary accommodation. Nor has it been shown that the rooms were self-contained in the manner of an Apart-Hotel. At the time of my visit the bedrooms were behind lockable doors. While some had a kettle and a few had facilities such as a microwave or fridge, they did not have kitchen facilities and were not self-contained in respect of cooking facilities. The appellant's submitted evidence did not refer to any services provided to the

clients. Brief reference was made at the Hearing to the provision of clean sheets but it is not evident that such a service was in place when the notice was served.

7. The test of residence to which the appellant refers is derived from housing legislation and is not a requirement of planning legislation or regulation. Although this property falls outside UCO Class C4, the matters of unrelated individuals and sharing of facilities remain relevant when considering larger HMO properties. In this case it is not suggested that the residents are related and, as I set out above, there is reliance on shared cooking facilities.

8. The distinction between a hotel or guest house use and an HMO use can be a fine one. As a matter of fact and degree I consider that in this case, there was a change of use from a hotel to a sui-generis use as an HMO. I have also considered whether this was sufficient to amount to a material change of use. There is little information on precisely how the hotel operated prior to its acquisition by the appellant in February 2015. The move to an HMO use is likely to have resulted in a significant change to the character of the use within the premises. There would be a more intensive use of the HMO rooms as they became the main place of residence for the occupiers. There would also be a shift towards the shared use of cooking facilities.

9. The appearance of the building has not materially changed. However, there would be some changes to external effects when compared with a hotel in a seaside resort such as Great Yarmouth, where hotel use is likely to be markedly seasonal. There would, for example, be more comings and goings on a year round basis. The pattern of vehicle movements related to the premises would also change. Vehicle movements related to deliveries and servicing of the hotel would cease but those related to residents would no longer be seasonal. Mr Buck is the landlord of neighbouring flats. His evidence at the Hearing was of his tenants being unable to find parking spaces nearby as they were taken by residents at the former hotel.

10. The Council provides no evidence of complaints arising from use of the premises as an HMO. Nevertheless, the appellant's evidence is not sufficiently precise and unambiguous to show, on the balance of probabilities, that the appeal should succeed on ground (b). I conclude that there was a change in the character of the use sufficient to amount to a material change of use as alleged in the notice.

Appeal A – The Planning Appeal. Ground (a) of Appeal B and the Deemed Planning Application

Main issues

11. The manager's accommodation was in place when the enforcement notice was served. I approach the development in both appeals as the material change of use of the premises from a hotel to an HMO with manager's accommodation. The main issues are:

i) The effect on the character and appearance of the area;

ii) The effect on the living conditions for the occupiers of nearby properties with regard to noise and disturbance;

iii) The adequacy of living conditions for the occupiers of the HMO accommodation;

iv) The risk of flooding.

Relevant Planning Policies

12. Policy HOU7 of the Great Yarmouth Borough Wide Local Plan, 2001 (LP) provides criteria for residential development which must be met. They include avoiding significant detriment to the form character and setting of the settlement. Development should also not be significantly detrimental to the residential amenities of neighbours. Policy HOU23 provides criteria for changes of use to multi-occupied units of residential accommodation. It also includes criteria concerning the effect on character and appearance and on neighbours. In addition, criterion (D) requires that clustering of properties in multiple occupation would not occur. Clustering is defined as 3 properties in multiple occupation forming a continuous group or 50% of the length of any continuous frontage or sharing common boundaries. It seems to me that the term "properties in multiple occupation" encompasses HMO properties. Policy CS6 of the Council's Core Strategy (CS) is aimed at supporting the local economy. Policy CS8 contains criteria to promote tourism, leisure and culture.

13. The policies of the National Planning Policy Framework, 2016 (The Framework) are a material consideration. The Framework contains relevant policies on the issue of flood risk. LP policy criteria concerning harm to residential amenity are consistent with the Framework's approach of seeking a good standard of amenity for existing and future occupiers of land and buildings. Framework paragraph 58 refers to the need for development to respond to local character.

The Effect on the Character and Appearance of the Area

14. The immediately surrounding area is predominantly residential in character. There are flats on either side of the appeal property and terraced houses nearby. The former Royal Naval Hospital and its grounds are on the other side of Queens Road. It is now in residential use. The change of use to an HMO does not entail any changes to the external appearance of the building. There would be some change in the pattern and intensity of comings and goings related to the building. Unlike the hotel use, movements are likely to be less seasonal. It is likely that if all 14 HMO rooms are in use there would be somewhat more comings and goings than when the hotel was in operation. There is no evidence to quantify the likely extent of that increase. The Council is concerned about the potential for HMO residents to congregate immediately outside the property. Reference was made at the Hearing to this occurring on some other streets in Great Yarmouth where there are a number of HMO properties and to this leading to harm to local amenity. However, no substantive documentary evidence of this is submitted, nor is there evidence of complaints since this HMO use began or of other HMO properties in close proximity to this site. The presence of an on-site manager would assist in addressing such matters should they arise.

15. The Council refers to other decisions dismissing appeals concerning changes of use to an HMO in Great Yarmouth. Decision APP/U2615/C/15/3129107 concerned a property on North Denes Road. In that case there were up to 17 rooms and there is no reference on-site manager's accommodation. Amongst

other things the Inspector was concerned about the disruption to a mixed character of hotels, guest houses and residential properties in that area. Decision APP/U2615/C/15/3011913 concerned a property on Wellesley Road. Unlike in this case, the prevailing character was one of mixed holiday accommodation, predominantly guest houses. The Inspector found that the HMO use would materially detract from the holiday accommodation character of the area and harm the local tourism industry. No reference is made to on-site manager's accommodation.

16. While I take these appeal decisions into account, as I set out above their circumstances are materially different to those in this appeal. I conclude that in this case the change of use would not result in material harm to the character and appearance of the area. It would not conflict with LP policies in that respect. The Conservation Area's character and its appearance would be maintained. The adjoining buildings contain flats and the requirement of policy HOU23 with regard to clustering would not be met.

The effect on the living conditions of the occupiers of nearby properties

17. With 14 rooms in HMO use it is likely that there would be some noise transmission between rooms and through the party walls with neighbouring properties. On the other hand, this would be likely to some extent with a hotel use and a degree of disturbance such as this is not unusual where neighbouring residential uses are in close proximity. There is also scope to reduce noise to some extent through noise mitigation measures, which could be required by condition. For the reasons set out above, I consider it unlikely that there would be significant harm from noise and disturbance in the surrounding area arising from HMO residents congregating outside the property. I conclude that the change of use would be acceptable with regard to its effect on the occupiers of neighbouring properties. It would not conflict with LP policies in that respect.

Living Conditions

18. For the most part the HMO rooms are of an adequate size and configuration. However, one room is very small, with a floor area of only $9m^2$. Another is poorly configured, with varying floor levels. Communal facilities in the basement are said not to be favoured by residents. A further kitchen intended for communal use has been put in place but it has not been shown that it provides adequate facilities for up an HMO of this size. The appellant refers to the scope to reconfigure some of the accommodation to overcome these problems. However, no further drawings or specific alternative proposals are submitted within the scope of these appeals. There are no room size standards specified in the LP. Nevertheless, it is a material consideration to have regard to whether adequate living conditions for the HMO residents would be provided. I conclude that there would not be such provision. There would not be compliance with the Framework's approach of ensuring a good standard of amenity for the occupiers of buildings.

Flood Risk

19. The approach set out in Framework paragraph 100 is to avoid inappropriate development in areas at risk from flooding by directing it away from areas of highest risk. Where development is necessary it should be made safe without

increasing flood risk elsewhere. Hotels and buildings used as dwelling houses are classified as "more vulnerable" uses.

20. The appellant has submitted a Flood Risk Assessment (FRA). It finds that the site is in present day Flood Zone 1 and future climate change Flood Zone 2 with regard to the tidal River Yare. It is in present day Flood Zone 1 and future climate change Flood Zone 3a with regard to the open coast. There is an actual and residual high risk of flooding from the River Yare only during a future climate change 1 in 1000 year flood event. There is an actual and residual high risk of flooding from the open coast only during a future climate change in the 1 in 200 year and 1 in 1000 year flood events. The FRA also finds that there would be safe refuge across the ground and upper floors in all modelled flood events, other than a climate change 1 in 1000 year coastal flooding event.

21. The ground floor of the property is significantly elevated above street level. The FRA evidence is that there is a low residual risk of flooding other than in the most extreme flood events. Use of the basement for sleeping accommodation is not proposed. I conclude that, subject to a condition preventing use of the basement for that purpose, the change of use to an HMO would be acceptable with regard to flood risk.

Other Matters

22. The development would not conflict with policy CS6. A loss of tourist accommodation would not be consistent with one criteria of policy CS8. However, the site is not in a designated "prime holiday accommodation" area and this was not a reason for the Council's enforcement action. The Council's Environmental Health Officer supports the use of the property as an HMO, referring to the need for low cost rented accommodation in the Borough and the scope for control through the licensing system. While there may be some effect on the availability of parking spaces in the vicinity of the property, it would not be sufficient to weigh heavily against the HMO use.

Conclusion on Appeal A, Ground (a) of Appeal B and the Deemed Planning Application

23. I have concluded in favour of the appellant with regard to the effect on character and appearance, the living conditions of neighbours and flood risk. There would be conflict with policy HOU23 in respect of clustering but the need for HMO accommodation also weighs in the appellant's favour. However, the matters weighing in the appellant's favour are outweighed by my conclusion with regard to living conditions for the residents of the HMO. Appeal A and ground (a) of Appeal B should therefore not succeed and planning permission should not be granted.

Ground (g) of Appeal B

24. The appellant suggests that extending the period for compliance to at least 9 months would ensure sufficient time for residents of the HMO to find alternative accommodation. While no substantive evidence is submitted with regard to likely difficulties in securing such accommodation, it is likely that a longer period would assist that process. It would also give the appellant sufficient time to consider, prepare and submit alternative proposals should she choose to do so. I also take into account the effect on an extended period

in respect of the main issues as set out above with regard to any harm caused by a continuation of the use. I conclude that the 6 months compliance period is unreasonably short and should be extended to 9 months, as set out in the Formal Decision.

Overall Conclusion

25. Having regard to the above and to all other matters raised, Appeal A should not succeed. Appeal B should not succeed other than in respect of extending the period for compliance.

Formal Decisions
Appeal A: APP/U2615/W/16/3151847

26. I dismiss the appeal.

Appeal B: APP/U2615/C/16/3151866

27. I direct that the enforcement notice be varied at paragraph 7 by the replacement of the words "6 Calendar Months" with "9 Calendar Months". I dismiss the appeal and uphold the enforcement notice as varied.

K Williams

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr P Kratz BA(Hons), LMRTPI	Solicitor, Birketts LLP.

FOR THE LOCAL PLANNING AUTHORITY:

Ms G Manthorpe	Senior Planning Officer, Great Yarmouth Borough Council.
Mr M Whitton	Planning Enforcement Officer, Great Yarmouth Borough Council.
Ms J Williams	Community Protection Manager, Great Yarmouth Borough Council.
Mr Algar (Site visit only)	Community Protection Officer, Great Yarmouth Borough Council.

OTHER INTERESTED PERSONS:

Mr D Buck	Landlord of neighbouring property.

DOCUMENTS SUBMITTED AT THE HEARING:

1. Copies of drawings 1049/1 and 1049/2.
2. List of current occupiers of the Southern Hotel.
3. Map of Conservation Area No.1: Camperdown.
4. List of HMOs currently licensed by Great Yarmouth Borough Council, last updated 21 October 2015.
5. Copies of policies CS6 and CS8, Core Strategy, 2015.
6. Extract from property register showing ownership at 12 March 2015.
7. Copy of appellant’s Statement of Case in APP/U2615/W/16/3151847.
8. House in Multiple Occupation Licence, 25 May 2016.