



Appeal Decision

Site visit made on 9 January 2018

by Simon Hand MA

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

Decision date: 15 January 2018

Appeal Ref: APP/H5390/X/17/3180942

Hope and Anchor, 20 MacBeth Street, London, W6 9JJ

- 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 Mr Olivier Raab against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2017/00935/CLE, dated 7 March 2017, was refused by notice dated 8 May 2017.
 - 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 individual residential dwelling (use class C3) for the entire property at the former Hope and Anchor public house.
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Decision

1. The appeal is dismissed.

Reasons

2. The Hope and Anchor was a public house with two floors of residential accommodation above the bar area on the ground floor and the basement. The Council accept it is now being used entirely as a dwelling. The background to the appeal is that the appellant bought the building in February 2012 and let it to a tenant to operate as a pub. In July 2012 the tenant left and the appellant carried out repairs to the fabric of the building and it seems it was left empty for a while until 5 January 2013 when he and his family moved in. Although there would seem to be no dispute that the family have been living in the pub since then, I note that the gas bills were sent to an address in Holland Park Avenue and no explanation of what this address is used for has been provided. The issue is therefore, whether, on the balance of probabilities, the family have made continuous use of the ground floor and basement for domestic residential purposes since then.
3. The pub is grade II listed and the main historic interest would appear to lie in the survival of the 1930's interior, the plan form, fittings, bar counters, panelling, brewery advertisements, spittoon, seating and fireplaces. The need to retain these features obviously makes it difficult to successfully convert the ground floor into living accommodation as it will always look like a bar that is being lived in. I saw on my site visit that the appellant has retained all the interior fittings and added genuine 1940s bottles and posters etc to create a

very convincing World War II ambience. He also has added rugs and settees, chairs etc to one bar to use it as a living room and a dining table and chairs to the other bar which is used as a dining room. One result of the listed interior and the appellant's admirable desire to respect it is that, as he points out, the domestication of the interior has been largely cosmetic so that the usual process of removing the bar and fittings and installing new walls to create domestic rooms has not taken place. I shall bear in mind the fact that the pub interior remained intact throughout the period when assessing the evidence.

4. The appellant and his wife have both provided statutory declarations to the effect that since they moved in with their family in 2013 they have used the entire building as a single domestic property. Aside from them, six friends have also provided statutory declarations which all confirm that they and their families have regularly attended social gatherings at the pub since January 2013 and it seemed to them the ground floor was being used domestically. The most regular frequency of attendance is every 2-3 months. There are photographs of family parties being held in December 2012, 2013 and 2014, as well as March 2015 and May 2016.
5. In addition water, gas and electricity bills have been provided for the property. The water bills cover the period from 20 February 2013 to 20 December 2016 but they are incomplete. It is difficult to know what these show as if the family were resident in the pub in this time they would use water regardless of the use of the ground floor. Although incomplete the bills I do have appear to show that from 21 March to 19 June 2014 they were only charged £73.21 (for a 3 month period) whereas from then on the account was paid by direct debit of £139 a month, suggesting the bill was unusually low in the spring of 2014.
6. The gas bills are complete from 11 January 2013 to 15 October 2016. However they show no gas use at all between June 2013 and July 2015. Before that period a small amount of gas was used in Jan –April 2013 (84 units) and April–Jun 2013 (26 units). After July 2015 much larger amounts of gas have been consistently used, from 180 to 500 units a month depending on the time of year.
7. Two electricity prepayment statements have been provided. One for July 2012 to July 2013 and one for March 2015 to March 2016. Only the payment amounts have been included, so it is difficult to see how much electricity was used, but for the 2012/13 period payments totalling £1696 were made, whereas for the 2015/2016 period payments were £2413, a 43% increase.
8. If the statutory declarations are convincing and consistent there is no reason to doubt them unless there is contrary evidence. In this case the appellant's own utility bills appear to tell a different story. Water usage seemed to become much more expensive from June 2014 onwards. Either small amounts or no gas at all was used until July 2015 after which there seems to have been a significant increase in usage. Similarly with electricity, which seems to have been used much more in 2015/16 than in 2012/2013.
9. In addition the Council have pointed out a number of other issues. The pub was being marketed as a going concern from September 2012 to October 2014. During that period the ground floor was still set out as if for a pub use in order to entice would be buyers. The appellant argues that wouldn't deter low key domestic use such as sitting and reading, which may be true, but whether that would be sufficient to amount to a material change of use I shall comment

on below. The marketing details also suggested the pub had potential to be converted to a dwelling, implying it had not been at the time.

10. An application was made in 2015 to convert the building into a dwelling. The design and access statement mentioned that the pub was vacant, and the use was described as not yet having commenced. When the Council officer carried out a site visit, the downstairs was described as a vacant pub. Photographs provided show bar stools stacked in a corner and boards on the windows. A second visit was needed as the upstairs was not accessible because it was locked. At neither visit were there any signs of any domestic use at all. I also find it interesting that there was a clear separation between the upstairs and the ground floor, which would not suggest the pub area had been fully integrated into the living accommodation on the other floors.
11. One important aspect of the site visit report was the shuttering of the windows. A photograph from May 2013 and a google streetview image from 2014 also show the pub windows shuttered. Although I have not seen these latter two photographs they are not disputed. The appellant suggests the internal shutters were simply to deter would be patrons from trying to use the pub now it had closed, and there was light from doors and other smaller windows that would not prevent the use of the ground floor. However, I saw on my site visit that even without shutters the bars were gloomy and electric lights were needed. When shuttered the bar areas would not have had a pleasant domestic ambience.
12. Finally the ground floor has been used for filming over a number of years, sometimes for several days at a time; this again would entail the appearance of the ground floor as a pub and would preclude its domestic use.

Conclusions

13. For the appellant to be successful he needs to show not just that some use has been made of the ground floor for domestic residential purposes but that the use has been continuous. In other words the appeal will fail if there were periods when the Council could not have issued an enforcement notice alleging a material change of use. I accept that because the interior has been preserved the domestication of the pub area could have been limited to moving in furniture and domestic items, which could easily have been temporarily removed when filming was going on or the marketing was taking place. But the photographs show that on the days of the site visits in 2015 there was clearly not a domestic residential use taking place. That and the shuttering of the windows suggests quite strongly that the domestic use, if there was one, was intermittent and low key. It is not enough to occasionally sit and read in the bar with the lights on to establish a material change of use.
14. It is quite likely that as the statutory declarations say the bar was used for parties and socialising as that would be an obvious use for the vacant pub. But that is not the same as saying it was lived in. The fact that it was marketed as a pub and retained its pub-like appearance until October 2014 tends to fit in with the utility bill evidence that the much more energy was being used after that period, presumably because it was sometime after that that a much more permanent occupation of the downstairs began. I also note the claim in 2015 that the domestic use had not then begun; again suggesting that what use there was at that time was at best intermittent.

15. Taking this all together I do not think that the appellant has established that a domestic residential use was begun and continuously kept up for the requisite 4 years. The appeal also concerns the basement. I saw this was largely being used for storage of domestic items, many boxed up as if they had been removed from a previous house. I have no evidence at all about the intensity or timing of the basement use, but it is not unreasonable to assume that it followed the domestic use of the ground floor and so has also not been used residentially for the required period. I shall dismiss the appeal.

Simon Hand

Inspector