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## Appeal Decisions

Hearing held and site visit made on 20 February 2018

**by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 09 April 2018**

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### **Appeal A - Ref: APP/U4230/C/16/3165237**

#### **Weaste Hotel, Edward Avenue, Salford, M6 8DA**

- 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 1990 Act").
- The appeal is made by LAAJ Enterprises Limited against an Enforcement Notice issued by Salford City Council ("the Council").
- The Enforcement Notice, numbered 15/00326/WPP3, was issued on 9 December 2016.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission the change of use of the Land from a (A4) drinking establishment to a (C1) hotel.
- The requirements of the Enforcement Notice are to cease the use of the premises as a (C1) hotel.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the ground set out in Section 174(2)(a) of the 1990 Act.

**Summary of Decision:** The appeal is allowed, the Enforcement Notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

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### **Appeal B - Ref: APP/U4230/W/16/3162516**

#### **65 Edward Avenue, Salford, M6 8DA**

- The appeal is made under Section 78 of the 1990 Act against a refusal to grant planning permission.
- The appeal is made by Mohammed Tariq against the decision of the Council.
- The application Ref 15/67415/COU, dated 2 December 2015, was refused by notice dated 6 October 2016.
- The development proposed is a change of use from Drinking Establishment (A4) to 24-Bedroom Hotel (C1) (retrospective).

**Summary of Decision:** The appeal is allowed in the terms set out below in the Formal Decision.

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### **Procedural Matters – Appeals A & B**

1. I will refer to LAAJ Enterprises Limited and Mohammed Tariq as "the Appellants" in my Appeal Decisions.
2. When the Planning Application was submitted the site address details specified the address given in the heading for Appeal B above. 65 Edward Avenue and the Weaste Hotel are the same building and I will refer to them as the "Weaste Hotel" in my Appeal Decisions.
3. When the planning application was refused and when the Enforcement Notice was issued the Council were concerned that the use of the Weaste Hotel as a hotel was a main "Town Centre" use which was located in an "Out of Centre" location. No sequential assessment had been carried out by the Appellants to demonstrate that there was no sequentially preferable site to that at the Weaste Hotel.

4. Prior to the Hearing the Appellants contacted the Council to discuss the areas where the Council considered work should be undertaken to address the issue of the sequential assessment. An analysis of the areas identified by the Council was carried out by the Appellants. The Council accepts that there are no sequentially preferable sites and accordingly they did not maintain this issue as a matter of relevance at the appeal Hearing.

### **Policy**

5. The Development Plan for the area includes the City of Salford Unitary Development Plan 2004 – 2016 ("the UDP"). I was referred to various policies<sup>1</sup> of the UDP. However, it was agreed by the Appellants and the Council that the most relevant policies were ST1 and H6.
6. Policy ST1 explains that development will be required to contribute towards the creation and maintenance of sustainable urban neighbourhoods. A sustainable urban neighbourhood is a place where people want to live, work or visit. This will mean, amongst other things, an appropriate mix of uses and a safe environment.
7. Policy H6 explains that planning permission will be granted for residential, social and community uses subject of specified criteria being met. Paragraph 7.21 explains what residential, social and community uses are. In my assessment a genuine hotel use does not fall within this Policy definition whereas hostels, shelters and halfway houses do fall within it.
8. I was also referred to various paragraphs<sup>2</sup> of the National Planning Policy Framework and Paragraph 26-010-20140306 of the National Planning Practice Guidance to which I have had regard.

### **Main Issue – Appeals A & B**

9. I consider the main issue in this case is whether a hotel use of the Weaste Hotel by private paying guests would harm the quality of life for nearby residential occupiers?

### **Reasons**

10. The Council explained in their reasons for refusal of the planning application and their reasons for issuing the Enforcement Notice that whilst the Weaste Hotel was open for bookings from the general public the majority of the occupiers had been persons referred to the Weaste Hotel by local housing authorities. The persons referred by the housing authorities required emergency accommodation. I will refer to these occupiers of the Weaste Hotel as "the Local Housing Occupiers".
11. It was evident from the representations received by the Council when the planning application was being considered that the use of the Weaste Hotel by Local Housing Occupiers had caused considerable problems for local residents.

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<sup>1</sup> Policies ST4, ST9, ST15, CH8, MX1, A2, A6, A8, A10, DES1, DES7, DES8, DES10, EN17 and paragraph 7.21.

<sup>2</sup> Paragraphs 14, 17, 19, 23, 24, 27, 69, 70, 131, 132, 133, 134, 135, 187, 196 & 197

12. The representations by local residents were reinforced by evidence presented by the Greater Manchester Police Authority ("the Police") to the Council.
13. Shortly after the refusal of planning permission and the issuing of the Enforcement Notice the Appellants ceased to allow the Weaste Hotel to be occupied by the Local Housing Occupiers. The Appellants now only allow private paying guests to stay at the Weaste Hotel.
14. Further, the Appellants have installed CCTV which ensures that there is coverage of what happens at the front of the Weaste Hotel where the public and guests have access.
15. The Council accept that the Weaste Hotel is now being used as a conventional hotel and this was also the impression I formed when carrying out my site visit.
16. When assessing the evidence from the Police I was informed that since 2016 the recording of crimes/incidents had changed significantly and this has resulted in the crime figures appearing to be greater than they were prior to 2016.
17. The Police were represented at the Hearing and provided details of crimes/incidents where they had attended the Weaste Hotel. I consider the figures for the period following the cessation of the use of the Weaste Hotel by Local Housing Occupiers provides an insight as to how the hotel use now operates and its impact on local residents. The Police provided those figures for a period of about 63 weeks. During that period they came to the Hotel on about 15 separate occasions.
18. The details of the incidents provided by the Police were not comprehensive and therefore it was difficult to fully assess what had happened. In my assessment their attendance was required to deal with the following types of incidents:
  - a) Damage to the Hotel; racist comments made to the Manager of the Hotel and assault of the Manager (seven attendances).
  - b) A hotel guest who assaulted a Policeman (whilst being transported away from the Weaste Hotel) and another guest who had made homophobic remarks to a Policeman (two attendances).
  - c) Disputes between the Manager and a guest (1) and an employee (1) (two attendances).
  - d) Disputes between guests staying at the Hotel (two attendances).
  - e) Concern raised by a nearby resident following an incident involving fireworks being let off at the Weaste Hotel (one attendance).
  - f) A guest making inappropriate comments to a female child passing the Hotel (one attendance).
  - g) Under-age guests staying at Hotel (one attendance).
19. The Police were unable to advise me as to how many incidents they would be likely to attend over a similar period at other hotels in the area or the nature of the crimes/incidents that would be likely to occur at such other hotels. I was

informed in general terms that hotel uses do generate a high number of crimes/ incidents.

20. I am aware that having the Police attend to crimes/incidents at the Weaste Hotel may have some limited impact on residents who live in the area. However, as I have explained above the incidents have mainly involved crimes/incidents against the Weaste Hotel or its manager and very few incidents have involved private paying guests causing problems for local residents. However I do not dismiss lightly those incidents that impact negatively on local residents.
21. The Council are concerned that the hotel use of the Weaste Hotel results in a fear of crime for local residents. In this regard I was referred to the cases of *West Midlands Probation Committee v Secretary of State for the Environment 1998*<sup>3</sup> and *N. Smith v First Secretary of State / Mid-Bedfordshire District Council 2005*<sup>4</sup>.
22. On the basis of all the evidence and representations I heard or received I consider that:
- a) The use of the Weaste Hotel by private paying guests has resulted in a reduced level of anti-social behaviour/criminality than occurred when it was used by Local Housing Occupiers.
  - b) Anti-social behaviour is not intimately connected with the use of the Weaste Hotel as a hotel by private paying guests.
23. I do not accept:
- a) That a hotel use is a use which ordinarily would give rise to a fear of crime for persons living near a hotel, or
  - b) That a hotel use is likely of its very nature to produce other difficulties for neighbours.

It is clear from the evidence of the Police that Hotel uses do generate crimes/incidents but in general terms the crimes/incidents occur within the building or its curtilage and do not generally impact on surrounding users.

24. I am not convinced that the levels of crimes/incidents that have occurred at the Weaste Hotel since it has been used only by private paying guests are any greater than would occur at any other hotel. Further, the continued use of the Weaste Hotel by private paying guests is unlikely to harm the residential amenity enjoyed by nearby residents.
25. I am aware of claimed incidents that have occurred since the Weaste Hotel has only been open to private paying guests. Not all of these incidents are corroborated by Police records. Clearly, that could be because the incidents were not reported to the Police. I do not condone the conduct of some of the hotel residents and it seems to me that most of these incidents reflect the failure to manage the behaviour of some guests staying at the Weaste Hotel.

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<sup>3</sup> (1998) 76 P&CR

<sup>4</sup> [2005] EWCA Civ 859

The planning system cannot provide a mechanism for controlling the management of the guests who stay at the Weaste Hotel. I am aware that the Council have powers if the hotel use results in statutory nuisances for local residents but as far as I am aware no such action has ever been taken against the Appellants. There are many uses which are carried on in residential areas where the use has the potential to create unacceptable impacts on residential amenity if not properly managed.

26. I therefore conclude that a hotel use of the Weaste Hotel by private paying guests would not materially harm the quality of life of residents living in the area. Accordingly, the hotel use would be in accordance with the UDP when read as a whole as the hotel use would maintain the sustainable urban neighbourhood within which it is located.

#### Other Matters

27. I am aware that the Weaste Hotel has been included in a local list and is a non-designated heritage asset. However, there is no evidence before me that its use as a hotel harms its heritage value.
28. I also know that the community have raised concerns about the external painting of the Weaste Hotel and the installation of a "roller shutter door" in its main elevation. The Council confirmed that planning permission was required for the roller shutter door and no such permission had been granted. These appeal proposals do not seek permission for the roller shutter door although I note that reference is made on the plans to "roller shutter door". Any permission for the change of use of the Weaste Hotel does not include permission for the roller shutter door. Further, this is not a matter that weighs against either of the Appeals as the Council can deal with the unauthorised roller shutter door if they consider it is expedient so to do.
29. The Council and local residents explained that the Weaste Hotel had been included as an asset of community value and that this status would be lost if planning permission for a hotel use was granted. However, both the Council and Appellants confirmed that its status as an asset of community value was not a material consideration in the determination of these appeals.
30. I have given careful consideration to all the matters raised by local residents including:
- a) The submissions of Mr Heywood.
  - b) The Trip Advisor reviews of the Weaste Hotel by guests who have stayed there.
  - c) The visual presentation made by Mr Heywood at the Hearing.
  - d) The proximity of the Weaste Hotel to the local school.

Many of Mr Heywood's concerns relate to non-planning matters. I am aware that some residents believe that if planning permission is granted for the hotel use then the use of the Weaste Hotel will revert to a use by Local Housing Occupiers which caused them significant problems. However, the Council agreed that a condition restricting the use of the Weaste Hotel to private

paying guests only could be enforced and the Appellants agreed that they no longer wished to allow its use by Local Housing Occupiers.

### **Overall Conclusions – Appeal A**

31. For the reasons given above I conclude that the appeal should succeed on Ground (a) and planning permission will be granted.

### **Overall Conclusions – Appeal B**

32. For the reasons given above I conclude that the appeal should succeed.

### **Formal Decision – Appeal A**

33. The appeal is allowed, the Enforcement Notice is quashed and planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act for the development already carried out, namely the use of the land and buildings at Weaste Hotel, Edward Avenue, Salford, M6 8DA, as shown on the plan attached to the Enforcement Notice, for the change of use of the land and buildings from an (A4) drinking establishment to a (C1) hotel subject to the conditions set out in the Schedule of Conditions below.

### **Formal Decision – Appeal B**

34. The appeal is allowed and planning permission is granted for a change of use from a drinking establishment (A4) to a 24-bedroom hotel (C1) at Weaste Hotel, Edward Avenue, Salford, M6 8DA in accordance with the terms of the application, Ref 15/67415/COU, dated 2 December 2015, subject to the conditions set out in the Schedule of Conditions below.

*Tim Belcher*

**Inspector**

### **Schedule of Conditions**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
- a) Location Plan
  - b) TA-PP-01 – Existing Ground Floor dated 5 May 2014
  - c) TA-PP-01 – Ground Floor dated 30 November 2015
  - d) TA-PP-02 – First Floor dated 30 November 2015
  - e) TA-PP-03 – Existing First Floor dated 5 April 2014
  - f) TA-PP-03 – Existing Second Floor dated 30 November 2015
  - g) TA-PP-04 – Elevations (Front)
  - h) TA-PP-05 – Existing Second Floor dated 1 May 2014

- i) TA-PP-05 – Elevations – (West & East Sides)
- j) TA-PP-06 – Elevations (Rear & Section)
- k) TA-PP-07 – Existing Cellar

**Reason:** For the avoidance of doubt and in the interest of proper planning.

2) Notwithstanding Condition 1 above, within 3 months of the date of this Appeal Decision a scheme for parking (including three spaces for disabled users, two spaces for motorcycles and two spaces for cycles) shall be submitted to the local planning authority for approval in writing. The car park must be laid out in accordance with the agreed scheme and made available for use within 2 months of the scheme being agreed and shall be retained as such thereafter.

**Reason:** In the interest of highway safety and the free flow of traffic on adjoining roads.

3) The rating level (LAeq,T) from all commercial activities, including fixed plant and machinery associated with the development hereby approved, when operating simultaneously, shall not exceed a level 5dB below the background noise level (LA90,T) at any time when measured at the boundary of the nearest noise sensitive premises. Noise measurements and assessments shall be carried out according to BS 4142:2014 "Methods for rating and assessing industrial and commercial sound". 'T' refers to any 1 hour period between 07:00 hours and 23:00hrs and any 15 minute period between 23:00 hours and 07:00 hours.

**Reason:** In the interest of the amenity of residents.

4) None of the bedrooms within the Weaste Hotel shall be occupied at any time by persons who have been referred to the Weaste Hotel for accommodation by a local authority or other licenced public body or their agents. For the avoidance of doubt the bedrooms within the Weaste Hotel shall only be occupied by private paying guests.

**Reason:** In the interest of ensuring that the Weaste Hotel remains available for use by private paying guests at all times and thus avoid anti-social behaviour and to safeguard the amenity of residents living close to the Weaste Hotel.

## **APPEARANCES**

### **FOR THE APPELLANTS**

Zack Simons - Counsel for the Appellants.

Matthew Hard BA(Hons), MSc, MRTPI - Indigo Planning.

Tariq Aziz – Appellant.

### **FOR SALFORD CITY COUNCIL**

Adele Stewart MSc (Environmental Planning), MRTPI – Principal Planning Officer.

Anthony Stephenson MRTPI - Group Leader (Planning).

## **INTERESTED PERSONS**

PC Krys Urbaniak  
Lynne Weaver  
Lillian Crooks  
Samantha Fallows  
Councillor Stephen Hesling  
Councillor Paul Wilson  
Jill Cartwright  
Geoffrey Heywood

## **DOCUMENTS**

1. Crime Sheet – Periods 1 to 4 - Handed in by PC Urbaniak.
2. Statement - Geoffrey Heywood.
3. West Midlands Probations Committee –v- Secretary of State for the Environment.