



Appeal Decisions

Inquiry Held on 25 September 2021, 19 and 22 November 2021

Site visit made on 27 November 2021

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 11 January 2022

Appeals 1 - 24: APP/U5360 /C/20/3248773 and those listed below 104 - 108 Curtain Road, London EC2A 3AH

- 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 Timings Limited against enforcement notices issued by the Council of the London Borough of Hackney.
 - The enforcement notices were issued on 27 January 2020.
 - The breach of planning control as alleged in the notices is the material change of use from a residential dwelling(C3) to use as a serviced apartment(C1).
 - The requirements of the notices are to cease the use of the property as a 'serviced apartment'(C1).
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Procedural Matters

1. The building comprises 6 floors. The enforcement notices only relate to the first, second and third floors. There are 24 units, each served a separate enforcement notice, with the appeals numbered as follows. Flat 1 – 3248773 **(1)**, Flat 2 – 3248785 **(2)**, Flat 2A – 3248782 **(3)**, Flat 3 – 3248786 **(4)**, Flat 4 – 3248797 **(5)**, Flat 5 – 3248794 **(6)**, Flat 6 – 3248799 **(7)**, Flat 7 – 3248800 **(8)**, Flat 8 – 3248801 **(9)**, Flat 9 – 3248803 **(10)**, Flat 9A – 3248804 **(11)**, Flat 10 – 3248806 **(12)**, Flat 11 – 3248807 **(13)**, Flat 12 – 3248808 **(14)**, Flat 13 – 3248810 **(15)**, Flat 14 – 3248811 **(16)**, Flat 15 - 3248815 **(17)**, Flat 16 – 3248812 **(18)**, Flat 16A – 3248818 **(19)**, Flat 17 – 3248816 **(20)**, Flat 18 - 3248814 **(21)**, Flat 19 - 3248817 **(22)**, Flat 20 – 3248819 **(23)** and Flat 21 – 3248825 **(24)**.
2. There was discussion at the inquiry as to what the planning unit is. The argument is that matter the subject of appeal should either be considered as a single planning unit, including all the units in question or as individual planning units. In my view, the planning unit will, to a significant extent, relate to the outcome of the ground (b) appeal. If the whole is found to be providing serviced accommodation with units let on a nightly rate, the planning unit will likely be all the units, but if the units are found to have been used as separate residential units, then each should be considered a planning unit, even though the ownership remains the whole in either case.
3. The ground (d) appeal was withdrawn.

Decisions Notices 1 – 24

4. The appeals are allowed and the enforcement notices are quashed.

Application for costs

5. At the Inquiry an application for costs was made by Timings Limited against the Council of the London Borough of Hackney. This application is the subject of a separate decision.

Reasons

Ground (b)

6. There is no argument that the current use is serviced apartments and that is the allegation of the current use by the Council in the notices. The disagreement relates to previous use or uses.
7. There is a planning permission in 1994 granting use as a hostel. There was an argument presented that this permission had not been implemented, so could not be relied upon. The argument was subsequently withdrawn, on the basis that the Council was not able to show this was the case. It is clear on the balance of probability that the permission was implemented. There have been many applications to alter conditions associated with that permission and there is no suggestion these were not dealt with in the normal way by the Council. The Council said that submissions regarding discharge of conditions are missing from the file. However, so are many other documents that would be expected to be on the file, so this has little weight. I have also considered the drawings provided that the Council say related to that permission, but these are not those actually permitted and there is a letter indicating layouts were agreed to be altered. I conclude on the balance of probability that the 1994 permission was implemented.
8. The appellant's case is that there has been a change of use from the hostel permitted in 1994 to serviced apartments, but that the change is small and not a material change of use requiring planning permission. The Council claims that there has been an intervening residential use of individual units.
9. The evidence needs to relate to each enforcement notice. It includes Council Tax records, a 2013 planning application form, an email from Mr Hakimi of January 2020, electoral roll records and site visits in 2013.
10. In relation to Council tax there is an email from the Tax Office in November 2019 that identifies the appellant as ultimately responsible for tax, and it seems from this there were layers of responsibility with various sub leases. It also sets out some of the history of ownership, that included Oz Properties transferring ownership to Warrior Investments Ltd, but no record of the change from Warrior to Timings or Metro Property Group. It seems from the email that the Tax office considered Timings Ltd to be responsible overall, with any Council Tax not paid being the responsibility of Timings Ltd. In addition, the units have been used as serviced apartments at a time that Council Tax was being paid. So the tax situation is not reliable evidence on use, and adds little weight in terms of how each unit was actually used and is not a reliable indicator of use in this case.

11. The planning application form in 2013 was prepared by agents for an extension. The box for residential use was ticked on the application form, with an indication of 28 houses. This was strange as the house box was used and not the flats box as would have been more appropriate. The appellant's case is that since about 2011 the units were sub-let on assured shorthold tenancies and then these were sub-let on an AirBnB basis. The application form is not intended to root down to what would be a complex 'residential' type use, and the units have the appearance of residential units. I attach limited weight to this.
12. The email from Mr Hakimi is relied on by the Council. Timings Ltd note that Mr Hakimi is not the owner or a director of Timings, but works for a management company and was not authorised to write on behalf of the owners. The email was written on 15 January 2020, just before the enforcement notices were issued. So realistically their use would not be likely to change in such a short time, particularly as the Council Officer would have visited prior to the enforcement notices being served, i.e. at about the same time. Mr Hakimi also notes the sub-letting and AirBnB use. I attach little weight to this.
13. The electoral roll information is very limited and does not cover all the units, with little in terms of dates and length of occupation. It is simply a list of those registered in September 2021. Even if a person is registered that does not prevent sub-letting and use as serviced apartments, so adds little weight in terms of the residential use alleged.
14. A delegated report following a site visit in February 2013 relating to an application for a mansard roof etc, indicated that the last known lawful use was a hostel. However, it noted that the application form referred to the upper floors being in residential use (C3), 28 studio flats. Another site visit was undertaken in October 2013 and the following delegated report noted only that the use appeared to be residential on its upper floors, although this use appears to be unauthorised.
15. The difficulty is that the units do have the facilities to be classed as 'dwellinghouses' and be residential units (even now), albeit they are very small, and would not nearly conform to the Council's standards. So a brief inspection may suggest the residential use alleged, but could equally be the serviced apartment or AirBnB use identified by the appellant. At the site visit, the use of some units, agreed as serviced apartments, had some indication of a more lengthy stay, with letters addressed to the unit and some with more bits and pieces than others. Some just had a suitcase. So, while some of the factors above might suggest a residential use is occurring in some of the units, it is not sufficient on a balance of probability to cast significant doubt on the appellant's version of use. The evidence to overturn the balance of probability needs to be reasonably detailed. The units do have locks on the doors of the individual units, but these are an electronic type and controlled centrally, so can be changed at any time by the operator.
16. It is very difficult for the Council in this situation to obtain appropriate evidence of actual use, as basically most will be held by the appellant, such as tenancies, bills etc. The Council refers to the withdrawal of the ground (d) appeal, which if followed through would have required the appellant to prove the use on the balance of probability, and provide such evidence. However, it is for the appellant to decide its case and provide the evidence that it thinks relevant to

it. In addition, it would have been difficult to obtain the evidence as at the time it had not owned the property for 10 years and would have needed to obtain evidence it did not have.

17. It is the case that the appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If there is no evidence to contradict it or otherwise make the appellant's version of events less than probable, there is no good reason to find against him. In my opinion the Council's evidence is not sufficient to show the appellant's version of events is less than probable and that the use has changed after the hostel use.
18. I conclude that the use of the flats is serviced apartments and there has not been any other intervening use demonstrated. The appeal succeeds on ground (b).

Ground (c)

19. The change of use to be considered is that from a hostel to serviced apartments.
20. The factual findings of the Council officers on their site visits in October 2019 and January 2020 were short-term stays, advertised for availability on a nightly basis, hotel-type rooms with typical hotel fixtures and fittings and no personal effects, fixed check-out times, toiletries provided, linen and towels provided, no payments for utility bills, aimed at visitors / tourists and a laundry room to service the apartments with the presence of a cleaner and maintenance worker. The appellant does not disagree with this description. I generally would also agree, but I do not accept that these are hotel-type rooms with typical fixtures and fittings. The rooms have a small kitchen type arrangement and some have washing machines; in my view these are not typical of a hotel room.
21. If someone makes a booking they receive the key code for the door to the room. This can be changed at will, remotely.
22. A hostel use is not defined but the issue was considered in the case of Panayi where a series of characteristics were identified. These were not a list that had to be present, but a list of characteristics that may indicate such use.
23. Communal/shared facilities: There is a communal laundry that is available for occupiers' use and has no lock on the door. This has a number of washing machines and dryers, some of which were broken at the time of my visit. There is an information sheet in some rooms that identifies the laundry for use, although another information sheet in another room did not identify this. Another flat had a notice up that identified the laundry room. The laundry room is also used by the cleaner to wash bedding etc. I am satisfied that it is available for residents' use, but the need for it is reducing as rooms are provided with individual machines. I attach some weight to this.
24. Specific categories: A hostel may be provided for, say, the homeless, and this could be of any age or sex. It may be limited to, say, young people or old people. This accommodation is aimed at tourists and is well placed within the Central Activities Zone, but obviously anyone could rent a room by the night. I attach limited weight to this.

25. Provision of Services: Services are provided, including washing laundry, toiletries etc, cleaning rooms, maintenance and management. I attach considerable weight to this.
26. Payment on a nightly basis: Payment is on a nightly basis. So stays can be long or short. The Council argued that payment would not be each night. However, that is not a good argument and it would not be expected that it would be paid each night, just that the rate is per night, indicating the ability and expectation for short as well as long stays. I attach considerable weight to this.
27. Transient residents: The residents are transient in that they are using it as short term accommodation, in an AirBnB use. I attach some weight to this.
28. The Council also refers to the need for the accommodation to be relatively basic and inexpensive, but the Panayi judgement did not include this. However, from my own inspection of the building I would say the accommodation that is provided does meet that criteria. Access is through a relatively austere entrance, leading to a narrow staircase with fire doors at its head. There are plastic tiles on the floor. This leads to a narrow corridor and the rooms. While these are not unpleasant, they are of a modest nature.
29. The Council say the use is more akin to a hotel than a hostel. There are clearly some similarities in that its use includes short term stays. However, in my view it is materially different in that there is an expectation that residents use the room facilities for cooking. This is very different from a normal hotel where restaurants and bars are provided and other staff are likely to be there to assist customers.
30. It is not a hostel use and that is acknowledged by the appellants, so is unlikely to meet all the characteristics of the Panayi case. However, the characteristics are very similar in many aspects to hostel use. The comings and goings of occupiers are unlikely to significantly change, ownership remains central and there is no significant change to the layout, apart from some relatively minor improvements that might be expected over time. I do not think the character of the land and its use has moved over to a hotel use, but the AirBnB type use is somewhere in between, but not materially different. I therefore conclude, that, as the character of the use of the land has not changed, there has been no material change of use. The appeal succeeds on ground (c).
31. As the appeal has succeeded on ground (c) I do not need to look at the other grounds of appeal.

Graham Dudley

Planning Inspector