



Appeal Decision

Site visit made on 1 February 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2022

Appeal Ref: APP/K5600/C/21/3280739

Land at 42 Hornton Street, London, W8 4NT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Walt Property Ltd against an enforcement notice issued by Royal Borough of Kensington and Chelsea.
 - The notice was issued on 14 July 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of 10 self-contained residential units (Use Class C3) to a hotel (Use Class C1) comprising 10 serviced rooms.
 - The requirements of the notice are:
 - i) Cease the use of the whole property as a hotel (comprising 10 serviced apartments);
 - ii) Remove all instances of online advertisement of short-term holiday accommodation and booking for less than a 3 month duration from the internet.
 - The period for compliance with the requirements: One calendar month.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (f), (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

Grounds of appeal

2. An appeal on ground (a) was initially lodged but the appellant company has confirmed that it is not being pursued. I am therefore treating it and the deemed planning application as having been withdrawn.

Getting the notice in order

3. I have a duty to get a notice in order where I consider there are any defects, errors or misdescriptions that can be corrected without causing injustice to the Council or the appellant, under the provisions of s176(1)(a). It is important to do this even where the issues have not been explicitly raised because of any potential further legal proceedings if the notice is not complied with. If correcting would cause injustice, it would be necessary to quash the notice although that may not affect the Council's ability to take further action.
4. I saw at my site visit that there are currently 11 units within the building rather than the 10 referred to in the alleged breach of planning control and the requirements of the notice. It is not clear from the submissions and evidence whether there were 10 units when the notice was issued or 11 as there are now. However, the allegation relates to the use of the building as a hotel and it is not essential to set out what the previous use was or the numbers of

rooms within the alleged hotel. The allegation could more straightforwardly be described as 'the material change of use of the building to a hotel'. It is also unnecessary to refer to the number of units or rooms within the requirements. Requiring the cessation of the building as a hotel would be sufficient. Correcting the notice in these ways would not fundamentally change what the Council is alleging, nor would it affect potential grounds of appeal.

5. The second requirement at paragraph 5)ii) would necessitate actions beyond the discontinuing of the use. This requirement would also necessitate undertaking something that may not be entirely within the control of the owner or occupier of the property. For example, whilst removing online advertising may be attempted, a different person or organisation would be responsible for the online system such as the booking service provider. If the advertisement is not actually taken off-line it could complicate subsequent legal action for non-compliance. It is necessary for an enforcement notice to be precise and unambiguous but this requirement is neither of those things. It is also unnecessary to go beyond requiring the allegedly unauthorised use to cease. This requirement could be deleted in my view without causing injustice to the appellant or the Council.

The Appeal on ground (b)

6. To succeed on ground (b), it is incumbent on the appellant to demonstrate that the matters which are stated in the allegation, have not occurred, as a matter of fact.
7. There are 11 units of accommodation within the building which each contain all necessary facilities for independent occupation. There is no dispute that the lawful use of these units is as dwellings and the character of the building appears, in terms of its physical form and layout, as a block of apartments.
8. The alleged material change of use relates to the whole of the building. In order for the allegation of it being used as a hotel to be correct, it must relate to the whole building being in that use. In the normal sense of the term 'hotel', I would expect each room in the building to have attributes enabling a degree of independence, which may vary in particular instances, but with each room available for that purpose with some form of communal or overall managerial control. A hotel would also in my experience generally have a reception where people are greeted. There will often be a dining area and possibly a bar. Whilst the lack of such facilities or any individual element does not mean that this building is not a hotel, there is a distinct lack of any communal facilities in this instance. There is not even an area where management tasks are organised.
9. Although one of the third-party representations refers to a single "welcome table" in the hallway it is not suggested that there have been more substantial physical changes to the property to enable use as a hotel but which have been removed. I saw no obvious signage or other indications that there was some overall management of the building linking the units as one entity.
10. I accept however that this may not be the end of the matter and the nature of occupation and specific way of operating can also affect the character of a building and therefore its use. Modern technology has enabled various changes to the traditional way of doing things. It is a matter of fact and degree as to whether, despite the lack of obvious physical indications, this building was used

as a hotel when the notice was issued and if so whether all of it has been used as a part of that use.

11. There appears to be no dispute by the appellant that there has been some short-term letting of at least some rooms within the building. Furthermore, the appellant concedes that there may at times have been an exceedance of the 90 days allowance in London for the short-term letting of flats under the provisions of the Deregulation Act 2015. However, the Council refers to "at least 7 flats" being shown across various website references for short-term letting. Elsewhere within their representations they have referred to "most if not all" of the units having changed use or at least "ceased" as self-contained residential units. These are not absolute acceptance that the entire building has not been used in the way alleged but they do indicate the Council's own evidence is not clear on these matters. These factors along with the appearance and character of the building provide an indication that the whole building may not be in use entirely as a "hotel".
12. There is also a reliance upon on-line references particularly from the Council and I am not given print-outs of what is referred to. This can be problematic because such references are not static and can change. There is no guarantee, when such links are viewed, that the webpages will contain the same information as they did when viewed by the Council or appellant when preparing their evidence. Only 2 of the references provided by the Council on their statement allowed me to view any details at all. On those, it was not clear how many bedrooms are available within the building for booking or what the precise address is and so they do not help demonstrate what the Council has alleged has taken place.
13. In order for a material change of use to have occurred as alleged, there must be some significant difference in the character of the activities. That can include factors such as the incidents of noise and disturbance from the occupiers which neighbours have complained about. However, it is not clear that this has been the result of a change in the way the whole building has been occupied on those occasions or that it is a hotel. It can also be indicative that there is no effective management of the building as I would normally expect with a hotel. Even if the units of accommodation are used within the scope of still being dwellings such problems can occur and can come down to the attitude and of the occupants.
14. It is necessary for guests to make a telephone call to the management in order to check-into rooms and then to check-out. This is unusual in my experience but indicates a degree of management albeit based remotely rather than in the building. Commercial laundry services are also used. Some of these factors indicate that there has been some collective control over the letting out of at least some rooms. However there is an apparent lack of control over any guests or assistance for them whilst they are in occupation.
15. On the balance of probabilities, it is not clear that, as a matter of fact and degree, the material change of use as alleged has taken place. If any of the units of accommodation had remained as dwellings, the building as a whole could potentially have been in a mixed use rather than an overall individual primary-use as a hotel. Even if the short-term letting of some units has resulted in a material change of use of some kind, it is not clear that this has been as a hotel.

16. I cannot correct or vary the notice to describe the use in a different way because it is not precisely clear to me from the evidence provided what any alternative description should be if a material change of use has occurred in an alternative form. Furthermore, the appellant should be given an opportunity to comment on any alternative wording and it could affect the ability to enter other grounds of appeal. The appellant for instance would need to be given the opportunity to have a ground (a) appeal considered with the merits of the alternative case being potentially different from those of the current allegation. As such injustice would occur to the appellant if I were to try and correct these defects in the allegation and so I am not empowered to make such changes under the provisions of s176(1)(a) and (b) of the Act.

Conclusion

17. From the evidence before me, I conclude that the alleged breach of planning control set out on the notice has not occurred as a matter of fact. Given that I am quashing the notice, I will not make the corrections described within the preliminary matters section above.
18. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed. In these circumstances, the appeal on grounds (c), (f) and (g) do not fall to be considered.

Andy Harwood

INSPECTOR