



Appeal Decision

Site visit made on 12 April 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2023

Appeal Ref: APP/W5780/X/21/3286510

9 Cavendish Gardens, Cranbrook, Ilford, IG1 3EA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Park Hotel against the decision of London Borough of Redbridge.
 - The application ref 2047/21, dated 12 May 2021, was refused by notice dated 5 July 2021.
 - 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 described as '*existing Use – Hotel. Proposal is for certificate of lawfulness of use over 10 years of the use of the annex of Park Hotel*'.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Preliminary Matters

2. The application has been made under s191(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act). The use for which a certificate of lawful use or development (LDC) is sought is described on the application form as '*existing Use – Hotel. Proposal is for certificate of lawfulness of use over 10 years of the use of the annex of Park Hotel*'. However, the description in the Council's decision notice - '*Use of house as annex to Park Hotel*' – is clearer and more succinct. I shall therefore exercise my powers under s191(4) of the 1990 Act to modify the description accordingly.
3. Planning merits form no part of the assessment of an application for a LDC, which must be considered in the light of the facts and the law. The burden of proof lies with the appellant and the relevant test is 'the balance of probabilities' (that it is more probable than not). If there is no evidence to contradict or make the appellants' version of events less than probable and their evidence alone is sufficiently precise and unambiguous, that is enough.
4. I am aware of concerns regarding the release of photographs taken by the Council in 2017 but for the purposes of this appeal, I am satisfied that the appellant has had opportunity to comment on them.
5. I note that the appellant's concern that the Council is attempting to mislead me that the property is a house in multiple occupation (HMO) rather than a hotel annex. Nevertheless, that is a matter I would consider in the particular circumstances of this case.

6. The appellant's case refers to emails from the Council which were not submitted with the appeal. I therefore provided opportunity for those to be submitted. Upon receipt of the same I offered the Council opportunity to comment. No response was received.

Main Issue

7. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. From the evidence before me, that turns on whether the use of the two storey, mid-terrace appeal property changed to a hotel annex use at least ten years before the date of the LDC application (12 May 2011) and then continued without material interruption for a period of at least ten years thereafter, so as to meet the immunity period from enforcement action under s171B(3) of the 1990 Act.

Reasons

8. The appellant refers to the use of the appeal property as an hotel annex with accommodation of bedrooms and related facilities, but with no on-site provision of meals or lounge facilities. The main Park Hotel building is situated on Cranbrook Road so is physically unconnected.
9. The 'Design and Access and Planning Statement' asserts that the property has been used as an annex to the Park Hotel, without planning permission, since it was purchased in 2006. However, that is contradicted by the appellant's appeal statement which refers to a retrospective planning application for its use for four self-contained flats, which was refused in 2008¹. Moreover, an application for the conversion of the property into three flats was subsequently refused at appeal in November 2010². At the time of his site visit on 5 November 2010, the previous Inspector observed that the property comprised four unauthorised flats.
10. Consequently, to be immune from enforcement action the breach of planning control, comprising a change of use to hotel annex, must have occurred between the date of the previous Inspector site visit on 5 November 2010 and the material date of 12 May 2011. Indeed, the appellant submits that the use of the property for flats ceased after that appeal decision was made and that following minor internal works, it has been used, since April 2011, as a six bedroom aparthotel, related to the Park Hotel.
11. In response to concerns expressed by the Council as to the weight which could be attached to signed statements submitted with the application, two affidavits are provided in support of the appeal, one from the owner of the property and one from the Revenue Manager for the Park Hotel. Both have been witnessed by a solicitor and are therefore capable of attracting significant weight.
12. The affidavit of the site owner does states that for the past 10 years he has let the Park Hotel use the property as a commercial hotel annex in exchange for rental income. However, 10 years from the date of the affidavit is 7 October 2011, which is more recent than the material date of 12 May 2011.
13. The Revenue Manager's affidavit confirms that he has been in post since 5 March 2010 and that the appeal property has been in continuous use as a

¹ Reference 2877/08

² Appeal reference APP/W5780/A/10/2132826

hotel, as part of Park Hotel, for the past 10 years. Again however, ten years before the date of the affidavit (8 October 2021) is more recent than the material date.

14. A letter from the general manager of the Park Hotel dated 3 May 2021 does confirm that the appeal property has been used for hotel use for over 10 years.
15. The appellant has provided insurance policy cover documents for the 'Annex at No 9 Cavendish Gardens' for the business of 'Hotel', 'Hotel with occasional council referrals', or 'Commercial/Tourist Hotels with occasional Council/DSS/Asylum Seeker Tenant'. Those cover the period from November 2011 to November 2021. Although that evidence corroborates a continuous use over 10 years, the start date is again more recent than the material date.
16. A letter from a pest control firm explains that it has been working for the Park Hotel for approximately 12 years and that the appeal property was converted into a hotel sometime in 2010/2011. That, taken in isolation, is vague insofar as it could refer to a period more recent than the material date. Supporting that letter is a single call out report from June 2012 which refers to wasp activity at the Park Hotel, 9 Cavendish Gardens.
17. A letter from a civil engineer confirms he has been working for Park Hotel on various projects for 11 years and states that the appeal property is being used as a hotel annex. He states that he has carried out fire risk assessments and overseen maintenance and other works at the building for over 10 years. The date of that letter would take that timeline before the material date of 12 May 2011. However, there is ambiguity in those statements as he does not actually state that the appeal building was being used as a hotel annex for over 10 years.
18. A letter from an electrical company confirms that work has been carried out for the Park Hotel for approximately 15 years and that No 9 has been used as an annex to it for over 10 years. A fire detection and alarm system inspection and servicing report is provided in support of the letter, dated 25 March 2018. No other reports or invoices are provided.
19. A letter from an IT company for hotel business solutions confirms that the Park Hotel has been using the appeal property as an annex for over 10 years. Booking reports for one month per year for 10 years from April 2011 are provided, however, they refer to Park Hotel generally and do not specifically refer to the appeal building. No evidence is provided to show that the appeal property can be booked as an option instead of the main hotel building. Indeed, the Revenue Manager's affidavit explains the bookings shown come under the name of Park Hotel, not the appeal property, because there are 10 annex buildings to the main building.
20. The appellant has provided a Rooms Sold Report, which he states as being a full booking record for the appeal premises over the last 10 years. That does commence from before the material date although it is not explained where those figures are taken from.
21. The letter from an employment agency states that it has been providing staff for cleaning rooms at the appeal property since 2012 but that again is later than the material date.

22. A letter from the accountants for Park Hotel dated 4 May 2021 confirms that the appeal property has been used as part of Park Hotel 'from last 10 years' [sic]. Two sales reports are provided per year from 2011 to 2021. Whilst the first is prior to the material date (January 2011), none of the reports refer specifically to No 9; only the Park Hotel. Nevertheless, based on the above explanation, that could be one of the same.
23. The appellant states that the Register of Electors since April 2011 show that there have been no entries for the property, thereby indicating that no residents have lived in it over that period. However, evidence of such a search has not been provided.
24. The Council refer to an enforcement investigation into a hotel use of the property (as part of Park Hotel) in December 2017. That case was closed in February 2018. A summary of the closure report refers to the property comprising six bedrooms, each with an ensuite bathroom, and a shared kitchen. It is explained that only two of the bedrooms were available for inspection. One of which was unoccupied and may have been in use as part of the hotel given its twin configuration, whilst the second was in long term residential use. It was found, given the evidence available, that it would be hard to prove, on the balance of probabilities, that an unlawful change of use from a Class C4 HMO use to Class C1 Hotel use had occurred.
25. The Council also refer to a second investigation into the use of the property as a hotel and has produced a letter dated 4 May 2021 from its Housing Standards Enforcement team explaining that the Housing Authority had received complaints about it being an unlicensed HMO. Having investigated, the Authority was satisfied the property was a HMO and a declaration was served. However, a full formal inspection was required and a subsequent email from the same team confirms revocation of the HMO declaration.
26. Although undated, it is likely the Council's photographs are from 2017, given that year coincides with its enforcement investigation. The photograph showing a partial fire escape plan could equally show hotel room numbers or individual HMO rooms. In the photograph of room 1, the manner of the folded towels placed on made beds, matching the towels in the ensuite, along with the twin room configuration, point towards a hotel style room rather than a HMO type room.
27. That contrasts with the photograph of a pile of belongings in another room which does not suggest a typical hotel stay/use and appears more akin to longer HMO use, as does the picture of a shared kitchen. If, as suggested, the kitchen was not intended for use, I would question its provision. At the time of my site visit it was evidently being used. A number of rooms also had microwave ovens.
28. Although my site visit was after the date of the application, it is not suggested that the manner of use has subsequently changed. The photographs and my own observations do not therefore suggest that residents only go to the main hotel building for breakfast, lunch and dinner as stated.
29. Again, based on my own observations, there is little which distinguishes the property as a hotel annex in the conventional sense. There is no signage for instance and the property is laid out in the same way as a HMO. Moreover, all of the occupants I saw appeared to have been occupying their individual rooms

- on a long term basis, rather than a short stay, as normally associated with a hotel use. However, the Council's Housing Standards Enforcement team has evidently investigated its use as a HMO and revoked its declaration that it was being used as such. I attach significant weight to that finding.
30. Pulling the above together, it is evident that the appeal property was unlawfully subdivided into flats sometime before 2008 and that use continued until at least November 2010. Sometime after the use of the property for flats ceased and reconfiguration works created six ensuite bedrooms and a kitchen.
31. The affidavits in conjunction with the other evidence demonstrate that it is more likely than not, that the appeal property was used continuously as a hotel annex between October 2011 and the date of the application. However, there is less supporting evidence for the period from the material date to October 2011. In that regard, the signed letters, to which no sanctions apply, carry less weight than the affidavits. Nevertheless, taken together, they do support the appellant's version of events and there is little in terms of contradictory evidence.
32. Taken together, I find the appellant's evidence to be sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the breach of planning control, consisting of a material change of use of the property to a hotel annex, occurred more than ten years before the date of the application, and then continued without material interruption for a period of at least ten years thereafter, so as to meet the immunity period from enforcement action under s171B(3) of the 1990 Act.
33. Accordingly, I conclude, on the evidence now available, that the Council's refusal to grant a LDC was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Richard S Jones

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 12 May 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated, on the balance of probabilities, that the material change of use of the appeal property to a hotel annex had taken place for a period of more than ten years without material interruption by 12 May 2021, and so the time for taking enforcement action under s171B(3) of the Town and Country Planning Act 1990 as amended, had expired.

Signed

Richard S Jones

INSPECTOR

Date: [21 June 2023]

Reference: APP/W5780/X/21/3286510

First Schedule

Use of house as annex to Park Hotel

Second Schedule

9 Cavendish Gardens, Cranbrook, Ilford, IG1 3EA

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

by Richard S Jones BA(Hons), BTP, MRTPI

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Scale: Not to Scale

