



Appeal Decision

Site visit made on 12 June 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 July 2023

Appeal Ref: APP/T1410/C/21/3287430

The Strand Hotel, 35-42 Royal Parade, Eastbourne BN22 7AN

- 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 appeal is made by Mr Ankur Aggarwal on behalf of A.R. Hotels Ltd against an enforcement notice issued by Eastbourne Borough Council.
 - The enforcement notice was issued on 22 October 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change use of the land as an hotel (Class C1) to a use as a hostel (Sui Generis), classed as unauthorised development.
 - The requirements of the notice are:
 - (i) Cease the use of any part of the Land as a hostel (Sui Generis).
 - (ii) Revert the use of the Land solely as hotel use. (Class C1).
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - deletion of step (ii) under section 5 (What you are required to do) of the enforcement notice; and
 - deletion of the words "(ii) Six months from the date this notice takes effect" under section 6 (Time for compliance) of the enforcement notice.
2. Subject to these corrections, the appeal is dismissed, and the enforcement notice is upheld.

Application for costs

3. An application for costs was made by Mr Ankur Aggarwal on behalf of A.R. Hotels Ltd against Eastbourne Borough Council. This application will be the subject of a separate Decision.

Preliminary Matters

4. The requirements of the Notice are:
 - i) Cease the use of any part of the Land as a hostel (Sui Generis).

- ii) Revert the use of the Land solely as hotel use. (Class C1).
5. The second requirement goes too far in requiring a use to take place. Whilst it is generally acceptable for a notice to require that the land be returned to its condition prior to the breach, it should not require a previous use to be reinstated, which goes beyond remedying the breach. The alleged breach of planning control could be addressed through compliance with step 1. This would achieve the purpose of the notice which is to remedy the breach. I will therefore delete requirement ii). Varying the notice on this basis would cause no injustice to either party, as it would not make it more onerous. As such I will correct the Notice to remove this excessive requirement.

The appeal on ground (b)

6. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact.
7. The appellant considers that the alleged change of use from a hotel to a hostel, has not occurred as a matter of fact. In support of this the appellant refers to a redetermined appeal decision from Westminster (*Westminster decision*)¹ alleging a material change of use (MCU) to a mixed use as a hotel and hostel. The first Decision was challenged by the Council, firstly in the High Court and then the Court of Appeal (CoA) where the challenge succeeded. In the redetermined appeal, the Inspector considered the characteristics of both uses and the differences between them before concluding that there had been a change of use to a mixed hotel and hostel use. This ground of appeal turns on the question of whether the appeal site was being used as a hotel or hostel.
8. Class C1 (Hotels) of the Town and Country Planning (Use Classes) Order 1987 ("the UCO") comprises "*use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided*". Until 1994 use as a hostel was also included in the same use class. They were changed to a '*sui generis*' use following concerns that hotel accommodation was not being used for tourism purposes but was being used to house other groups such as benefit claimants, which could have an impact on the amenities of the surrounding area.
9. There is no clear planning definition of a 'hostel,' and therefore it is a matter of judgement, determined on a fact and degree basis. The Inspector in the *Westminster* decision considered the plethora of uses that a hostel can be put to which included housing for students or nurses, transient accommodation for those being re-housed elsewhere, shelter for those in need of a safe place to stay on a temporary basis or a tourist facility for those travelling on a budget and ready to accept a standard of accommodation lower than that generally found in a hotel. It is clear, that the use being enforced against relates to "shelter for those in need of a safe place to stay on a temporary basis."
10. In *Westminster CC v SSCLG & Oriol Badia and Property Investment (Development) Ltd [2015] EWCA Civ 482*, the CoA stated that if the Inspector had not made an error with regard to the legal nature of a mixed use, it would have been difficult to see how she could reasonably have reached any

¹ Appeal Ref: APP/X5990/C/11/2166636 dated 24 November 2016.

conclusion other than that there was a mixed hotel and hostel use. That was on the basis of the Inspector's findings that:-

- i) a number of rooms were in use as dormitories (with bunk beds for 4, 6 or 8 people) with shared bathroom facilities and there were communal cooking and laundry facilities;
- ii) the hotel was used by a specific category of people, young people travelling in groups;
- iii) The occupants had to perform some tasks which would normally be carried out by hotel staff as part of the services provided. In addition, the premises had to be supervised to address noise and disturbance caused to neighbours by the occupants.

11. In *Panayi v Secretary of State for the Environment* (1985) 50 P&CR 109 Kennedy J held that an Inspector had made no error of law in deciding that a change from four self-contained flats to a hostel used for homeless families involved a MCU. The Inspector had been entitled to rely upon:

- (i) the use of the premises to accommodate homeless families referred by a local authority,
- (ii) the premises were supervised and serviced,
- (iii) payment was made for the facility by the local authority on a nightly basis, and
- (iv) each family's stay was transient.

12. Those factors had been judged by the tribunal of fact to be significant in the context of a change from self-contained flats. They were not characteristics of a use as a dwelling. As the CoA pointed out in the *Westminster* case, the above is not a definitive checklist, and I also recognise that *Panayi* was intended to distinguish between use as a hostel and as self-contained flats.

13. *Carespec Limited v Wolverhampton City Council* [2016] EWHC 521 (Admin) involved a challenge to a temporary stop notice prohibiting a change from a hotel to a hostel or mixed hotel/hostel use. The judge rejected an irrationality challenge to the local authority's judgment that a MCU had taken place. The judge said that from established *case law* the following factors provided reasonable grounds for the local authority to conclude that the premises were being used as a hostel:-

"(a) There was going to be a significant and substantial usage by asylum seekers, who are conventionally housed in hostels;

(b) They would be sleeping two to a room, despite the fact that they were strangers, something that would not be countenanced in a hotel;

(c) They would reside there permanently, unlike people staying in a hotel;

(d) The Quality Hotel would be their home because they would have no other home to go to.

(e) The charges were modest (£35 per day for bed, breakfast, lunch, and an evening meal) which again was consistent with a hostel, not a hotel;

- (f) Payments were made by G4S as agents of a public body, an express indication of a hostel noted in Panayi;
- (g) Those accommodated at the Quality Hotel were transient, in that they were placed there until other accommodation became available or their asylum application was resolved against them. Again, that is not consistent with the use of the building as a hotel.
- (h) They had no connection or link with the area at all"
14. Again, the factors of *Carespec* are not prescriptive or exhaustive. In the *Westminster judgement*, the CoA stated that the distinction between hotel and the hostel use is fine one. The use of the Strand Hotel appears not to have involved any physical alteration, and bed and meals are provided to the occupants, similar to a hotel.
15. Nevertheless, the appellant acknowledges that the building has been used by homeless people referred by a local authority, since late 2020 and by asylum seekers since October 2021. This is further supported by an email provided by the Council's Housing Needs and Standards Department on 23 November 2021, who confirm that the Strand Hotel has been used to provide temporary accommodation for homeless people since at least January 2020 and in October 2021 the Strand Hotel entered into a contract with the Home Office to provide accommodation for Afghan refugees.
16. Indeed, the appellant states that The Strand Hotel has some 100 rooms and at the time the notice was served there were 36 asylum seekers, with the numbers fluctuating as applications are processed and refugees are moved on to more permanent accommodation. At the appeal statement stage there were some 95 asylum seekers residing at The Strand Hotel. In this respect, prior to the service of the notice, the appeal site appears to be occupied predominantly by people in "need of a safe place to stay on a temporary basis," namely homeless people and asylum seekers.
17. Asylum seekers at the Strand Hotel are accommodated in mainly single rooms with en-suites. They are also provided with pre-packaged meals supplied by contractors, and there are no communal facilities. Thus, the appellant argues that this form of accommodation is more akin to a budget hotel. However, the occupants are placed there by the Home Office (or a contractor acting on their behalf) with their accommodation being paid for by a public body. Furthermore, their length of stay may be far longer than most ordinary hotel guests. Indeed, the appellant indicates that The Home Office aims to move people into longer-term accommodation after 35 days, whereas the Council suggests the actual length of stay could be up to 6 months. Regardless of the precise length of stay, occupants of The Strand Hotel have no other home, and therefore The Strand Hotel is effectively their main residence until their application is resolved and they are rehomed.
18. Whilst the appellant states that rooms and bedding are changed weekly by hotel staff, this is not similar to the majority of hotels where rooms are cleaned daily. Indeed, from my own site inspection of the bedrooms which were occupied, most appeared untidy with little sign of them being regularly cleaned by hotel staff. The above factors are not consistent with a hotel but is more typical of a hostel type accommodation providing shelter for those in need of a safe place to stay on a temporary basis.

19. The appellant also states that The Strand Hotel offers basic short-term accommodation in the close season, which supports the viability of the hotel when occupancy rates are typically lower. They also state that the contract with the Home Office was for 3 to 4 months only and that it is not expected to extend into April 2022. However, my site inspection was carried out in mid-June 2023, which would usually be considered part of the 'high season' for hotels on the south coast of England. At this time, the hotel was solely occupied by asylum seekers, with no general visitors staying. This does not support the contention that the occupation by asylum seekers is temporary only to support the viability of the hotel during the 'close' season.
20. Nor was there any sign of general visitors staying, and I note there was no sign of the usual hotel cooked breakfasts being provided, with the main kitchen of the hotel not being in use. Indeed, it appeared that the kitchen had not been used for some considerable time. This is most unusual for a sea front hotel in a tourism destination on the south coast of England during the 'high' season. Furthermore, whilst the hotel bar was open during my site inspection between the hours of 1100 to 1140, there were no customers using this facility. This is in stark contrast with other sea front hotels in the locality, where I observed customers in hotel having a snack or drink and enjoying sea views from those respective hotel bars.
21. I acknowledge that The Strand Hotel does not share the characteristics, nor layout of a hostel type accommodation set out in the *Westminster* decision. However, that decision focused on the difference between a budget hotel and a back-packers hostel occupied by tourists which is different from the type of hostel alleged in the notice, which being a hostel, occupied by homeless people and asylum seekers housed by a local authority and the Home Office, respectively.
22. Therefore, the evidence does not support the appellant's contention that the premises is a Class C1 Hotel. Furthermore, the occupation of the Strand Hotel by firstly homeless people and then asylum seekers, given the extent of this use, does not appear ancillary or incidental to a Class C1 Hotel.
23. As such, having carefully considered all of the evidence before me, I conclude, on the balance of probabilities, as a matter of fact and degree, that a change of use to a hostel use, as alleged in the notice, had occurred when the notice was issued.
24. Accordingly, the appeal on ground (b) must fail.

The appeal on ground (c)

25. This ground of appeal is that the development enforced against did not constitute a breach of planning control. To succeed on this ground, it must be shown that the change of use is not material and planning permission would not, therefore, be required to authorise it. It is therefore necessary to compare any differences in the character of the use at The Strand Hotel at the time the Notice was issued with the lawful use of the building as a Class C1 hotel. The burden of providing relevant facts in this appeal rests with the appellant, and the test of the evidence is the balance of probability.
26. The concept of a MCU is not defined in statute or statutory instrument. The basic approach is that, for an MCU to have occurred, there must be some

- significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.
27. The appellant considers that the change of use is not material, and that there is no breach in policy since the occupation of the premises by homeless people and subsequently asylum seekers is temporary, during Covid-19 pandemic and 'close' season for hotels, respectively. However, I have found under the ground (b) appeal that based on the specific facts of this case, a change of use to a hostel (*sui generis*) had occurred when the notice was issued, and no compelling evidence has been submitted to indicate this the current use is temporary. Indeed, the Strand Hotel remains solely occupied by asylum seekers in June 2023 (the 'high' season) and therefore this use does not appear to be temporary or limited to the pandemic or the 'close' season for hotels.
28. Off-site effects may be highly relevant to whether there has been an MCU or not. In the *Westminster judgement*, the Inspector failed to have regard to the off-site effects of the actual use of the property, in particular the effects upon residential amenity, when considering whether a change from a hotel to a mixed hotel and hostel use amounted to a material change to the character of the use. The extent to which a particular use fulfils a legitimate or recognised planning purpose is relevant in deciding whether there has been an MCU. It is common ground that the policies of the development plan may be relevant to that issue.
29. The Council highlight that the tourism sector is particularly important to the local economy of Eastbourne. Of particular relevance is Policy T02 of the Eastbourne Borough Local Plan (2013) and Policy D3 of the Eastbourne Core Strategy Local Plan (2013) which together aim to resist the loss of tourist accommodation within tourist accommodation areas on Eastbourne's Proposals Map.
30. The Strand Hotel comprises some 100 hotel rooms and is located within Eastbourne's tourist accommodation area on the Eastbourne Proposals Map. This appears to be highly specific and important area for tourism and the Plan's Policies on tourism. It is also clear that the objectives for the tourism economy include enhancing the levels of accommodation where appropriate, given the importance this has on the local economy. This is dependent upon the hotels in the tourist accommodation area being available for occupation by visitors. Therefore, the Class C1 Hotel fulfils a legitimate and recognised planning purpose, supported by a strong and specific Local Plan policies.
31. Most overnight visitors to a Class C1 sea front hotel would make the most of local hospitality, retail and entertainment venues in a tourism resort thereby contributing considerably to the local economy. In contrast, The Strand Hotel occupied solely by homeless people and then asylum seekers, whose meals are predominantly provided for them on-site would usually be expected to make only a modest contribution to the local economy. Thus, The Strand Hotel occupied by homeless people and then asylum seekers have potentially harmful off-site effects on the local economy in comparison to a sea front hotel occupied by general visitors.
32. Indeed, the Strand Hotel appears to be block-booked for a substantial period of time solely for occupation by asylum seekers. The consequence of block-

booking the whole hotel is that that the hotel is unavailable for general members of the public and tourists.

33. Based on all the evidence before me and from what I saw during my site inspection, the character of the use has changed significantly since the previous C1 hotel use. In addition, when considered against the legitimate planning purpose and policy background outlined above which seek to maintain the stock of hotel accommodation in Eastbourne for their contribution to the tourism economy, I consider this change has the potential for significant planning consequences and is materially different from the previous Class C1 hotel use.
34. Therefore, on the balance of probability, it appears that the change from the Class C1 hotel to a hostel (*sui generis*), in this case, has been material. Planning permission is required for such a change of use. There is none in place and the change of use is not permitted development. There has therefore been a breach of planning control and the appellant has not discharged the onus on him to demonstrate otherwise.
35. Accordingly, the appeal fails on ground (c).

Conclusion

36. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

R Satheesan

INSPECTOR