The Planning Inspectorate

Appeal Decision

Site visit made on 6 February 2018

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2018

Appeal Ref: APP/T0355/X/17/3174405
Wraysbury Hall, 1 Ferry Lane, Staines TW19 6HG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Shadowgrade Developments Ltd against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
- The application Ref 17/00158 dated 19 December 2016, was refused by notice dated 23 February 2017.
- 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 use of five flats at ground floor and 6 flats at first floor (flat 12 part FF, part SF) as 11 x C3 dwellinghouses.

Summary of Decision: The appeal is dismissed.

Background and procedural matter

1. Wraysbury Hall is a large 3-storey detached property within extensive grounds to the north of the River Thames. Planning permission was granted in 1999 (the 1999 pp)[1] for the conversion and extension of the building to provide corporate apartments and letting rooms within Class C1 (Hotel) of the Town and Country Planning (Use Classes) Order 1987 (the UCO).

2. The approved plans show that the ground and first floors were divided into 12 separate suites or units[2]; part of unit 12 is located on the second floor. The remaining and principal part of the second floor was laid out as 10 en-suite rooms. This upper accommodation is not part of the appeal before me; however the evidence does refer to it and it is part of the context of the appeal. In this decision I shall use the neutral term 'units' to describe the accommodation.

3. At my site visit I was only given access to one unit, this was the ground floor combined suite labelled as Flats 4 and 5 on the submitted plans. I also saw the accommodation, referred to by the appellant as the 'Thames Suite' on the second floor.

4. An application for a Lawful Development Certificate (LDC) is determined on the basis of fact and law and considered against the appropriate legislation in force at the time the application was made. The onus of proof lies firmly on the appellant and to succeed the evidence submitted must be sufficiently precise

[1] Council reference 99/77674/FULL
[2] Units 4 and 5 were subsequently amalgamated.

and unambiguous. Consideration of the planning merits of the development is outside the scope of this appeal.

Main Issue

5. The main issue in this appeal is whether, at the date of the application any or all of the 11 units had been used for a period of not less than 4 years as single dwellinghouses (UCO Class C3).

Reasons

6. The appellant's evidence is that the 11 units are self-contained and there is "an in built bias" towards long term occupation. The management company, who are based in an adjacent building, provide under a letting licence day to day services including utilities, telephone rental and broadband, weekly cleaning and a linen service. Post to occupants is delivered centrally and then redistributed to each unit. A condition of the letting is that the units are not to be used as the guest's principal home.

7. In support of his application the appellant provided what is described as a data snap shot of long term occupiers. However this information is non-specific and whilst it seeks to demonstrate that some occupants may have stayed at Wraysbury for long periods of time this information is not helpful. It does not provide an unambiguous picture of the occupancy of each of the 11 units for the four year period commencing on 19 December 2012, or indeed for any other continuous period of 4 years. It also includes data for the Thames Suite (2nd floor accommodation) which is not part of the appeal before me.

8. In the appeal statement Table 2 provides some information about bookings for each of the 11 units; this information is derived from the company's electronic booking system. Taking 2014 as an example it appears that there was an average of 14 bookings for each unit in that year. The data provided suggests that an average booking would be for a period of between 2-4/5 weeks. The evidence also explains that there may be vacancies between bookings so that the average booking period may, in practice, be less. It is not clear why Table 2 is inconsistent with the other information (for example Appendix No.4) which says that in 2014 the average length of stay was 83 nights[3]. Part of the discrepancy may be because the data is not strictly comparable and is for different time periods but this does not provide sufficient explanation of the very wide disparity between the two sets of data. At best the supporting information is ambiguous.

9. Nor do I find that the judgment in *Gravesham BC v SSE* [1984] 47 P&CR 142 (*Gravesham*) helps the appellant's case. There is no doubt in my mind that the 11 units provide the ability to those who use them the facilities required for day to day existence, albeit that this is probably subject to the permission of the management company. But *Gravesham* also said that hotels, holiday camps, barracks and similar places where people eat and sleep would not comprise a dwelling house. It is common ground that the lawful use of Wraysbury Hall is as a hotel.

10. The 11 units are all owned and managed by a single management company, which has total control of the units and is responsible for all the services that support their occupation. That same company also manages and lets the 2nd

[3] Moreover this length of stay appears to exclude 'Long Term bookings'

floor of the building as hotel accommodation and these all appear to share the same external and access facilities including the parking arrangements, security provision and the extensive grounds. There is no evidence before me that the 11 units have changed or altered (other than the amalgamation of units 4 & 5) since the implementation of the 1999 pp for the use of Wraysbury Hall as a hotel (UCO C1). For these reasons Wraysbury Hall remains in a single planning unit.

11. Notwithstanding this, the appellant says that the use should be considered in the light of the case of *Moore v SSCLG* [2013] JPL 192 (*Moore*). There the question for the courts was whether a dwelling house used for commercial letting as holiday accommodation gave rise to a material change of use from UCO Class C3. The courts found that whether the use of a dwelling house for commercial letting amounted to a material change of use will be a question of fact and degree in each case. I find this case to be of limited relevance because what is before me is whether there has been a material change of use from the lawful C1 use to 11 C3 dwellings. As I have noted above, it seems to me that the Hall remains in a single planning unit and the appellant concedes that the 2nd floor remains in hotel use. Even if I were to find that the 11 units are now 11 single dwelling houses, the Hall as a whole would be in mixed use.

12. However, setting that aside and restricting my attention to the 11 units, I have carefully considered, as a matter of fact and degree, whether or not the units demonstrate the characteristics of C3 dwellings or hotel corporate lets.

13. I saw in the unit I was given access to that there was a 'welcome pack' including breakfast provisions and basic supplies in the fridge. The washrooms had complimentary toiletries. These, and the provision of the services outlined above, are typical of hotel type accommodation. The picture that emerges is that guests tend to stay about 2-4 weeks, they enjoy the facilities which are provided by the management and there is no long term commitment to their occupation of the units. The appellant also specifically states the occupants cannot use the units as their permanent home. Indeed from what I saw there is little difference between the 11 units and the en-suite facilities on the second floor other than the former are larger and have exclusive use of kitchen and laundry facilities during their stay.

14. The appellant suggests that the use of the 11 units does not resemble a hotel because there is no restaurant, bar, reception or similar facilities. I find this unconvincing, partly because this is an increasing practice in the hotel/serviced apartment sector. More critically in terms of this appeal, the lack of these facilities is also common to the 2nd floor Thames Suite rooms. The appellant concedes that the 2nd floor is in C1 (Hotel) use and also says that some of these rooms have historically been let for periods in excess of 1 year. Thus this assertion is inconsistent at best.

15. *Gravesham* specifically excluded 'hotels' from the definition of dwellinghouse. Moreover, I am not convinced that the occupation of the 11 units could be described as a private domestic existence. There appear to be no tenancy agreements, the pattern of occupation is transient and the accommodation is under the control of a management company who have rights of access to the accommodation and are responsible in turn for all the supporting services. It is common ground that the 11 units have not altered in terms of the facilities they provide for day to day use since the implementation of the 1999 pp.

16. For these reasons I consider, as a matter of fact and degree, that the 11 units retain the characteristics of C1 serviced accommodation which is advertised and booked online and is fully serviced and controlled by a management company. I find that there is no cogent evidence that any of the 11 units have become single dwelling houses and have been occupied other than in association with the lawful hotel use.

17. Furthermore the appellant has failed to discharge the onus of proof. He has not provided precise, consistent or unambiguous evidence to support the assertion that any of the 11 units was in C3 use for four years at the date of the application or indeed for any other continuous 4 year period.

Conclusion and formal decision

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use in respect of the use of five flats at ground floor and 6 flats at first floor (flat 12 part FF, part SF) as 11 x C3 dwellinghouses was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

19. The appeal is dismissed.

Sukie Tamplin

INSPECTOR