The Planning Inspectorate

Appeal Decision

Inquiry held on 27 November 2012

Site visit made on 27 November 2012

by Sara Morgan LLB (Hons) MA Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 December 2012

Appeal Ref: APP/X5990/X/12/2179860
74 Warwick Way London SW1V 1RZ

- 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 Mr Amin Merali, London Apart Hotels Ltd against the decision of City of Westminster Council.
- The application Ref 11/02374/CLEUD, dated 14 March 2011, was refused by notice dated 18 April 2012.
- 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 as short-term self-contained accommodation, the occupation of which is purchased at a nightly rate with no deposit against any damage being required (Use Class C1).

Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry an application for costs was made by Mr Amin Merali, London Apart Hotels Ltd against City of Westminster Council. This application is the subject of a separate Decision.

Preliminary

3. The description of the development for which an LDC is sought as set out in the application was "The continuing of the use of the premises at 74 Warwick Road London SW1V 1RZ as an hotel (Use Class C1)". The description of the development set out in the heading to this decision was subsequently agreed by the parties in the Statement of Common Ground. I shall deal with the appeal on the basis of this amended description.

4. There was no dispute between the Council and the appellant as to the factual background, and therefore no evidence was given orally at the Inquiry, which proceeded on the basis of legal submissions only.

Main Issues

5. The main issue is whether the use of 74 Warwick Way falls within Class C1 or Class C3 of the Town and Country Planning (Use Classes) Order 1987, as amended (UCO).

6. It is argued on behalf of the appellant that the use of the property falls within Use Class C1 *Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided.* The Council, on the other hand, argues that the use of the property falls within Use Class C3 *Use as a dwelling house (whether or not as a sole or main residence)…,* or in this case as a number of dwelling houses.

Reasons

The property layout as at the site visit

7. 74 Warwick Way is a terraced building. In 1988 the Council gave planning permission for the "construction of mansard roof to facilitate conversion into three self-contained flats and one maisonette".

8. The layout of the property as I saw it appears to be largely the same as that approved under the 1988 planning permission. The basement apartment is accessed through its own separate lockable door, and comprises a lobby, a small fitted kitchen provided with oven, hob, sink, work surface, cupboards, and a fridge, two living rooms and a bathroom with bath/shower, WC and washbasin.

9. The other apartments are all accessed via the main front door of the property, which leads to a corridor and stairs up to the upper floors. On the ground floor a lockable door leads to a flat with a living room with fitted kitchen in one corner, a bedroom and a bathroom with bath, WC and wash basin. The kitchen has an oven, hob, sink, work surface, cupboards, and a fridge.

10. On the first floor another lockable door leads to an apartment with one room divided by a partition into a sleeping area and a living area, a separate kitchen equipped with oven, hob, sink, work surface, cupboards, and a fridge, and a separate bathroom with bath, WC and wash basin[1].

11. A further lockable door leads to the maisonette, which occupies the top two floors of the building. On the lower floor is a large living room, which at the time of my visit contained two unfolded sofa beds, and a separate fitted kitchen with a small dining table and chairs. The kitchen, like the other kitchen areas in the building, has an oven, hob, sink, work surface, cupboards, and a fridge. On the top floor there were two bedrooms with ensuite bathrooms. These rooms had what appeared to be locks on the doors which might enable them to be let as separate rooms, but there is little or nothing in the written evidence submitted on behalf of the appellant to suggest that has in fact happened.

12. The door locks (apart from the locks on the two bedrooms on the top floor) were all operated with plastic key cards of the type commonly used for hotel rooms.

Evidence as to use

13. According to the statutory declaration of the previous owner of the appeal site, James McGoldrick, made in 2005, he converted the property in accordance with the 1988 planning consent and rented the flats and maisonette out on a short-term basis in conjunction with his hotel business at 17 Belgrave Road.

[1] The layout of this apartment at the time of my visit was slightly different from the drawing approved in 1988.

14. He stated "The flats and maisonette are self-contained with kitchen, bathroom and living rooms and they are furnished to a good standard. They look and function like self-contained flats and thus are different from standard hotel accommodation." He further stated that he had operated them as serviced apartments/temporary sleeping accommodation and had let them from single nights to a week at a time, and very occasionally for a month or so but generally for two to three days to a week. The property had been used in that way from 1992, when the conversion works were completed, for the following 13 years[2].

15. Mr Merali's statutory declaration says that he purchased No 74 from Mr McGoldrick in 2005 and since then it "has been used continuously as serviced apartments" ancillary to the operation of his two nearby hotels. He says they have been let from single nights, one week at a time or for whatever period the guest requires. According to Mr Merali, the management of No 74 is carried out from one of his hotels. All utilities bills for No 74 are paid for by his company London Apart Hotels Ltd.

16. The statement of common ground states that the premises are being used to provide temporary sleeping accommodation (from one night to 90 days) to paying guests. The guests pay for accommodation at a nightly rate and no deposit against damage is required from the guests. Daily maid service including linen and towels is provided to the guests. Guests have their own key to their accommodation and can access it at any time. There are no communal facilities available to the guests at No 74.

17. A condition attached to the 1988 planning permission prohibited the use of the premises as either (a) temporary sleeping accommodation as defined in section 25 of the Greater London Council (General Powers) Act 1973 as amended by the Greater London Council (General Powers) Act 1983; or (b) occupation for a holiday. The use described by Mr McGoldrick and Mr Merali would not comply with those conditions.

The case law

18. There is no relevant statutory definition of *dwelling house*. The meaning of *dwelling house* was considered in *Gravesham BC v SSE and Another*, where McCullough J. said that the distinctive characteristic of a dwelling house was "its ability to afford to those who use it the facilities required for day-to-day private domestic existence". That case involved a consideration of the meaning of "dwelling house" for the purposes of the Town and Country Planning General Development Order 1977, and whether the permitted development rights attaching to dwelling houses applied to a building erected as a "weekend and holiday chalet".

19. The definition of *dwelling-house* for the purposes of permitted development rights specifically excludes flats, and so the decision in *Gravesham* is not directly to the point in this case; but it was applied in *Moore v SOSE and New Forest DC*, which was concerned with whether holiday "cottages" each comprised a single dwelling house within the meaning of section 171B(2) of the Town and Country Planning Act 1990[3].

[2] In a second statutory declaration, made in 2006, he says he ran the property as serviced apartments from 1990, and the appended diary extracts indicate that the use had begun before 1992, but nothing turns on this.
[3] "Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house…"

20. In *Moore* the 10 self-contained units of residential accommodation, all equipped with sleeping and eating space, kitchens, bathrooms and WCs, and each with a small area of open air amenity space, were let out on short lets, including weekend and mid-week breaks, with the longest letting being for three or four months. Cleaning was provided at changeovers, and a maid could be employed at an extra charge for cleaning on an hourly basis. Linen, including towels, was provided. It was held by the Court of Appeal that McCullough J's approach to the meaning of "dwelling house" in *Gravesham* had been entirely correct. There was no requirement that before a building can be described as such it must be occupied as a permanent home.

Circular advice

21. ODPM Circular 03/2005 *Changes of Use of Buildings and Land* gives guidance on the interpretation of the UCO. It advises in paragraph 59 that "short-term (i.e. purchased at a nightly rate with no deposit against damage being required) self-contained accommodation, sometimes called Apart-Hotels" will fall into Class C1 of the Schedule to the UCO.

22. Paragraphs 69 et seq of the Circular advise, on the meaning of *dwelling house*, that the "common feature of all premises which can generally be described as dwelling houses is that they are buildings that ordinarily afford the facilities required for day to day private domestic existence". It goes on to advise that the criteria for determining whether the use of particular premises should be classified within the C3 use class include both the manner of the use and the physical condition of the premises.

23. It refers to three features which would lead to premises properly being regarded as dwelling houses: a single self-contained unit of accommodation, constituting a separate planning unit; which is designed or adapted for residential purposes, and containing the normal facilities for cooking, eating and sleeping associated with use as a dwelling house; and is used as a dwelling, whether permanently or temporarily.

Assessment

24. The four apartments at 74 Warwick Way are all self-contained. They are designed for residential purposes and contain the *facilities required for day-to-day private existence*, including the normal facilities for cooking, eating and sleeping associated with use as a dwelling house. They are typical of flats in a converted building – as Mr McGoldrick pointed out in his statutory declaration, they look and function as flats. Having regard to the wide variety of permanently occupied self-contained accommodation in London, they did not appear to be too small to enable permanent living, and indeed their layout broadly accords with the layouts shown in the 1988 planning permission for the conversion to flats and maisonette. The only communal areas are the hall and the lower stairs – typical features in buildings converted to flats. Each apartment is physically and functionally separate.

25. It has been argued by the appellant that the use of the appeal site could constitute a use that is part of or ancillary to the use of the appellant's nearby hotels. It is certainly the case that the appeal site is managed from those hotels, and that guests collect their key cards from one of the hotels before gaining access to their apartment. However, there is no physical connection between the appeal site and the hotels; the closest is several doors away, and

the other hotel is in a different road. There is no material difference between managing the apartments from one of the hotels and managing them from, say, an estate agents or other managing agents, as might be the case with apartments let on a long-term basis.

26. There is no evidence that the actual character of the use of this property as serviced apartments for short-term let has been materially different from the character of a use as non-serviced apartments on a long-term let. There is also no material difference in the layout of the building between what was approved under the 1988 planning permission and what is there now. Given the physical and functional separation of each apartment, I consider that each comprises a separate planning unit.

27. The only differences between these apartments and the holiday accommodation in *Moore* appear to be the provision of outdoor space in *Moore* and the daily cleaning at 74 Warwick Way. Outdoor space is not an essential element of a dwelling house, and would be absent in the case of most flats. As to the cleaning, that was only done as a matter of course at changeover in *Moore* but additional cleaning could be arranged and paid for by occupiers. Although it is not a usual feature of a dwelling that there is a daily maid service, many people employ cleaners to come into their homes, and such a service would not materially change the character of the property. As to the duration of letting, the appeal site is used to provide temporary sleeping accommodation from one to 90 days, whereas the units in *Moore* were let for short lets, including weekend and midweek breaks, up to three or four months.

28. My conclusion is that the apartments at the appeal site all have the ability to provide the facilities required for day to day private domestic existence. They appear to be on all fours with the situation in *Moore*, even taking account that they are serviced daily rather than weekly or at the changeover. There is no material difference between the current use of the apartments at the appeal site and any other dwelling. I therefore conclude that they are dwellings.

29. The apartments are purchased at a nightly rate, and no deposit against damage is required. Paragraph 59 of the Circular therefore suggests that the accommodation would fall into Class C1 of the UCO (hotels), although the UCO itself does not refer to this type of accommodation explicitly, referring only to "use as a hotel or as a boarding or guest house". No authority is given for that view, and as the Circular itself points out in paragraph 2, it is only guidance and not an authoritative interpretation.

30. It may be that there are other types of Apart-Hotels with different characteristics more commonly found in hotels, to which the advice is intended to refer. But because these particular apartments are entirely self-contained and no other communal facilities are provided at all in the building, and because the apartments have all of the characteristics of dwellings and none of the characteristics of hotels apart from being let on a nightly basis and daily servicing, I consider that the advice does not apply in this particular case. Consequently I conclude that the use of the apartments at 74 Warwick Way as short-term self-contained accommodation falls within Use Class C3 dwelling houses.

31. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of short-term self-contained accommodation, the occupation of which is purchased at a nightly rate with no

deposit against any damage being required (Use Class C1) was well-founded. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

32. The Council has indicated that a certificate could be issued stating that the existing use of the premises for short-term letting within Use Class C3 is lawful, as the use has continued in breach of condition for long enough to be immune from enforcement. However, it would not be appropriate for me to do that as it is a use which is quite different from that described in the application.

Sara Morgan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Charles Mynors	Of Counsel, instructed by Mr Sahib Kassim MSc, FRTPI, ASK Planning

FOR THE LOCAL PLANNING AUTHORITY:

Miss Rebecca Clutten	Of Counsel, Instructed by Mr Peter Large, Head of Legal and Democratic Services, Westminster City Council

DOCUMENTS

1 Council's letter of notification and list of persons notified
2 Summary of Case on behalf of the local planning authority, handed in by Miss Clutten
3 Bundle of legal authorities handed in by Miss Clutten:
Gravesham BC v SSE and Another (1984) 47 P.&C.R. 142
Moore v SOSE and New Forest DC (1999) 77 P.&C.R. 114
Bloomfield v SSETR and Another [1999] 2 PLR 79
Eagles v Minister for the Environment, Sustainability and Housing, Welsh Assembly Government [2009] EWHC 1028 (Admin)
R (on the application of Innovia Cellophane Ltd and Innovia Films Ltd) v Infrastructure Planning Commission and NNB Generation Company Ltd [2011] EWHC 2883 (Admin)