

Appeal Decisions

Hearing held on 17 May 2017

Site visit made on 17 May 2017

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 22 May 2017

Appeal A Ref: APP/J2373/X/16/3157153

3-5 Reads Avenue, Blackpool, FY1 4BW

- 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 Clarke & Co. against the decision of Blackpool Borough Council.
- The application Ref: 15/0772, dated 9 November 2015, was refused by notice dated 21 April 2016.
- The application was made under section 192(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 premises as 10 self-contained permanent flats.

Summary of Decision: The appeal is dismissed.

Appeal B Ref: APP/J2373/W/16/3157190

3-5 Reads Avenue, Blackpool, FY1 4BW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Clarke & Co. against the decision of Blackpool Borough Council.
- The application Ref: 15/0773, dated 9 November 2015, was refused by notice dated 21 April 2016.
- The application sought planning permission for construction of internal alterations and use of premises as altered as 3 holiday flats, 6 holiday flatlets and owners accommodation without complying with conditions attached to planning permission Ref: 80/0013, dated 19 February 1980.
- The conditions in dispute are Nos. 3 & 5 which state that:
 3. No person shall remain in residential occupation of the said holiday flatlets to which this permission relates for more than four weeks between first November in any one year and 31st March the following year.
 5. The said permanent flat on the ground floor shall be occupied by resident owner or caretaker
- The reasons given for the conditions are:
 3. The said holiday flatlets are unsuitable for permanent residential accommodation.
 - 5 To satisfy the Council's requirements to ensure adequate control of the said holiday accommodation in the interests of amenity.

Summary of Decision: The appeal is dismissed.

Appeal A

1. It was clarified that the term 'permanent' in the description of proposed development was not intended to be used as a temporal term but referred to non-holiday residential use.
2. Nos.3 and 5 Reads Avenue have, at all material times of relevance to the current appeals, been used as a single property. In 1980 planning permission was granted for "*construction of internal alterations and use of premises as altered as 3 holiday flats, 6 holiday flatlets and owners accommodation*" (Council's ref: 80/0013). It is not clear why the separate terms "flat" and "flatlet" were used. The plans forming part of the application are not entirely clear and "flatlet" may have either indicated a non-self-contained unit or simply a small flat. When Mr Geraghty, the owner, purchased the property in 2003, he stated in his statutory declaration that the top floor was laid out as 4 flatlets, which were not self-contained, and which he immediately converted to 2 self-contained flats. This appears to have re-established the property in its lawful form as provided for by the 1980 permission; it is not in dispute that this permission remains in effect.
3. It is common ground that, in general, use as a holiday flat and use as a flat for permanent occupation are both uses within Class C3 of the Town and Country Planning (Use Classes) Order 1987, as amended (UCO). The appellants submit that that would be the case here; this is a matter not agreed by the Council in the circumstances of this appeal. However, before considering whether I need to address that dispute, I first need to address the parties' disagreement as to the nature of the present lawful use of the appeal property.
4. What is in dispute is whether the present lawful use comprises a single planning unit or 10 separate planning units. My reading of the planning permission leads me to the view that the permitted use comprises a single business operation with a significant degree of support and supervision being provided by way of the owner's accommodation on site. The provision of this accommodation formed part of the 1980 application as submitted and was required by condition no.5 to be occupied by a resident owner or caretaker to ensure adequate control of the holiday accommodation; such on-site management continues today. At the hearing, it was not possible to establish the full range of services provided to customers, beyond booking in and cleaning. However, at my site visit, I saw that practical access to the refuse bin in the rear yard was only possible from the owner's flat and I observed irons and ironing boards in the communal part of the premises. Taking account also of the character of the units, and also the limited space in the smaller units, this does not indicate to me that the flats are occupied as separate planning units. As a matter of fact and degree, the lawful use appears to me to be a *sui generis* use, more akin to a flatlet guest house.
5. On this basis, the change of use of the premises from a *sui generis* use to a use as 10 self-contained permanent flats could not benefit from S.55(2) of the Act and, in turn, Class C3 of the UCO, as both uses do not fall within Class C3. However, whilst the introduction of the proposed use would represent a change of use, I need to go on to consider whether this would comprise development in the form of a *material* change of use. This would include consideration of whether there would be a change in the character of the land and whether there would be significant planning consequences.

6. It was submitted at the hearing that a comparison should be made between the *actual* use of the premises and the proposed use to assess the materiality of the change of use. This was based on the written evidence of Mr Geraghty that an element of non-holiday use had taken place over a number of years. However, Mr Geraghty's evidence indicated only a limited amount of short-term letting, which was not enough in my view to indicate a significant change in the predominantly holiday use character of the premises. Even had his evidence been compelling, in my view it would have indicated a mixed use of holiday and permanent residential units, also not falling within Class C3.
7. Although the appeal property is conveniently located for Blackpool's main tourist attractions, it is not within the defined South Town Centre Main Holiday Area, as are the properties on the opposite side of the road. There is therefore no applicable policy requiring the safeguarding of tourist accommodation. However, the use of the property clearly has a bearing on the attractiveness of the neighbouring holiday accommodation.
8. The property is within the Defined Inner Area (DIA) of Blackpool, which is one of the most deprived areas in the country. A decline in the tourist industry has resulted in many small businesses/guesthouses becoming poor quality bedsits, small flats or houses in multiple occupation. These types of accommodation are generally associated with high levels of deprivation and a transient population of residents, many of whom have health problems and/or exhibit anti-social behaviour, resulting in a significant burden on the Council and other agencies.
9. The Council's recently approved Core Strategy seeks to raise housing quality in this locality, redress the housing imbalance and create stable and sustainable communities. A key objective is to achieve housing densities that respect the local surroundings. Saved Policy HN5 of the Blackpool Local Plan 2001-2016 states that, within the DIA, proposals for conversion or sub-division for residential use will not be permitted which would further intensify the existing over-concentration of flat accommodation and conflict with the wider efforts for the comprehensive improvement of the neighbourhood as a balanced and healthy community. This appears consistent with the aim of the National Planning Policy Framework to create balanced and sustainable communities.
10. Given the location of the appeal premises in the DIA and the limited amenities and small size of the flats/flatlets, which are substantially below the Council's 2015 Technical Housing Standards, it appears highly likely that the units would attract residents whose lifestyle and behaviour would contrast sharply with that of holiday makers. Indeed, it is clear from the reason for imposing condition no.3 that the holiday flatlets were considered in 1980 to be unsuitable for permanent residential accommodation.
11. I agree with the Council that holiday flats are most likely to be occupied for short term stays by holiday makers or sometimes seasonal workers. They would generally use the accommodation mainly as a base to sleep and have a greater tendency to eat out. There is on-site management and therefore limited likelihood of disturbance to neighbours, with little likelihood of receiving visitors. There is an incentive for holiday flats to be well maintained to attract customers and repeat trade.
12. By way of contrast, local experience shows that small flats in this locality are likely to be occupied by transient people, typically on benefits or unemployed,

often with chaotic lifestyles and social problems. There is a tendency toward a pattern of negative behaviour, including noise, disturbance, anti-social behaviour and increased litter in the vicinity of the flats. The flats would be used intensively year round and there is little incentive to maintain the property in good condition. In the present case, the lack of a practical access to the rear yard would be likely to require refuse bins to be stored on the frontage, undermining the character of the area.

13. Accordingly, it is my view that there would be significant changes to the character of the property and its immediate surroundings, arising from the proposed use, which would have significant, adverse planning consequences, contrary to the aims of local and national policy. As a result, the proposed change of use would represent a material change of use requiring planning permission. Having come to this conclusion, I do not need to go on to consider the other matters raised.
14. I conclude that the decision of the Council to refuse the application for a certificate of lawful use or development was well-founded and that the appeal should fail.

Appeal B

Condition no.3

15. The reason given for imposing condition no.3 is to prevent the use as permanent residential accommodation due to the unsuitability of the flatlets for such use. From the nature of the permission, read as a whole, the underlying intention appears to be to limit the use to holiday use only. The Council explained that the condition appears to have been worded in this manner because, in the 1980s, it was almost inconceivable that holiday units would be let permanently during the holiday season and that they struggled to maintain full holiday occupancy in the 5 winter months specified in the condition.
16. In my consideration of Appeal A, I noted that the flats/flatlets fail to meet the Council's Technical Housing Standards for floorspace, which have increased since the 1980s. A number of the rooms have poor natural light and limited outlook. I also referred to local and national policy which seeks balanced and sustainable communities.
17. Whilst it is evident that the condition in question can only have effect in the winter months, nevertheless, it has a continuing useful planning purpose, supported by the development plan. It prevents the issue of year round tenancies, albeit that my conclusion on Appeal A would indicate that planning permission would, in any event, be required for permanent residential use. It remains enforceable.
18. The appellants' claim that the condition has been breached for over 10 years was not able to be properly scrutinised, due to the non-appearance of Mr Geraghty. In any event, that appears of little consequence for the present application.

Condition no.5

19. The presence of this condition was one of the factors that led me to conclude in Appeal A that the lawful use of the property is a *sui generis* use. It appears to have a continuing useful planning purpose to ensure effective management/

control of the holiday units. The appellants' case for its removal includes consideration of its need in the event that the flats/flatlets are used for permanent residential use. However, my conclusion is that planning permission would be needed for such a use and the need for the condition in those circumstances is not relevant at the present time.

Conclusion

20. I conclude that conditions nos. 3 and 5 both serve a continuing planning purpose and that the appeal should fail.

Formal Decision

Appeal A

21. The appeal is dismissed.

Appeal B

22. The appeal is dismissed

B.S.Rogers

Inspector

Appearances

For the appellants:

Mr S.Richardson - Planning and Law
Mr J.Clarke - Clarke and Co

For the Council:

Mr J Easton of Counsel - instructed by Blackpool B.C. Legal Services
Miss C.Johnson - Planning Officer, Blackpool B.C.
Mr G.Johnston - Head of Development Management, B.B.C.

Interested Person

Mr I.S.White - Central Blackpool Business Forum

Documents

1. Attendance list
2. Letter of notification of the hearing
3. Outline of case and a bundle of judgements, submitted by the Council.
4. Appeal statement and appendices, submitted by the appellants.