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Mr Charles Thuaire
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London Borough of Camden
5 Pancras Square
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1st July 2015

Dear Mr Thuaire
Section 192 application

2-6 Southampton Row & 118 -120 High Holborn, London, WC1B 4AA

Town & Country Planning Act 1990

On behalf of Havza Ltd, Planning Resolution Partnership enclose an application for a Certificate of Lawfulness under section 192 of the Town & Country Planning Act 1990 seeking confirmation that the approved *'hotel's bar and restaurant are considered 'ancillary' to the main hotel use, and that separate planning permission is not required for their intended use by non-residents.'*

Notwithstanding, that the description of development includes bar and restaurant use, the request for formal confirmation from the Council that separate planning permission is not required for the hotel's bar and restaurant stems from the hotel operators intended physical and operational use of the hotel's bar and restaurant / bar lounge area.

As a result of the hotel operator's requirements, it is the intention to use the approved restaurant area within the chapel area as a bar lounge area.

Due to the ancillary nature of this area to the hotel (as set out below) and on the basis that internal works to a building do not amount to development under the Planning Act 1990, we do not believe that separate planning permission is required for the intended use.

As part of the hotels offer, it is intended to provide a high end bar /bar lounge experience that will be available to both residents and non-residents alike. In regards to use by non-residents, there are no conditions attached to the planning permission restricting the use of the bar and restaurant solely to the residents of the hotel (and their guests), reflecting its location within the Central Activities Zone, in what is a Global City.

The operational management of the bar is subject to control by condition attached the planning permission, and is currently subject to an application to vary the condition. A management plan relating to this parallel application is currently being prepared and will be submitted to allow the Council to formally determine the S73 application.

This earlier S73 application is not directly related to this Certificate and should be treated as separate standalone applications.

Background

Planning Permission (ref. 2012/5592/P), and associated listed building consent (ref. 2012/55591/L) for the 'Reduction in the number of hotel rooms and various external alterations to the building, as amendments to planning permission ref 2007/5204/P dated 30/05/2008 for conversion and alterations of the former Baptist Church Headquarters to create 84 bedroom hotel (Class C1)', approved 8th November 2012.

Planning Permission (Ref. 2007/5204/P) for the 'Conversion and alterations of the former Baptist Church Headquarters to create 84 bedroom hotel (Class C1) with restaurant, conference room, meeting/banqueting room, bar, spa and gym', approved 16th November 2007.

Ancillary Use

In terms of ancillary uses the planning system allows a use to be classed as the primary use with fluctuation in the level of ancillary activity, the initiation of new ancillary uses and the abandonment of old ancillary uses, without planning permission. The protection of an ancillary use will, however, only remain so long as there is a link between the ancillary use and the primary use.

The test as to which uses may be considered ancillary to the primary use is a test of the functional relationship between the uses and not the extent of each use. The case of Main v Secretary of State for the Environment (1998) demonstrates that for a use to be considered as ancillary, the physical extent of the use does not have to be small.

Case for Certificate of Lawfulness

The starting point to considering whether the Bar and Restaurant can be regarded as ancillary to the hotel use is to establish the primary purpose of the building. This is a question of fact and degree, and depends on the main purpose of the use.

It is clear that the largest amount of floorspace is given over to hotel accommodation. The remaining uses occupy smaller floorspace at ground and first floor level. As a matter of common sense all the activities proposed are uses which one would ordinarily expect to find at large hotels in general and are either essential to the operation of the hotel (such as the restaurant, reception and lounge areas) or complimentary uses to the hotel (such as the Bar, banqueting room) and therefore have a functional and physical relationship to the use of the hotel.

The question of what constitutes "the planning unit" is critical in determining the primary purposes of the land. It can be difficult to define. The case of *Burdle v Secretary of State (1972) 1 WLR 1207* provides the following criteria to help to establish the planning unit:-

a) "*First, whenever it is possible to recognise a simple main purpose of the occupier's use of the land to* which secondary activities are incidental or ancillary, the whole unit of occupation should be considered". In this case the use of the building for hotel use is the recognisable main purpose.

b) *"Secondly, it may be equally apt to consider the entire unit of occupation even though the* occupier carries on a variety of activities and it is not possible to say that one is incidental to the other". In this case the activities are to be performed within the confines of the hotel building which are accessible to

residents and non-residents alike. The various activities proposed will, however, be seen as incidental to the main hotel use.

c) *"Thirdly, it may frequently occur that within a simple unit of occupation two or more physically separate and distinct areas are occupied for substantially different purposes. In such a case each area used for a different main purpose ought to be considered a separate planning unit"*. In this case the proposed activities are not physically separate and distinct. They are located within a composite building with physical access into the hotel and available and accessible to residents and non-residents alike.

For these reasons we consider that the primary purpose and planning unit is the whole of the building for hotel use. Accordingly we consider that the use of the Bar and Restaurant within the building is an ancillary use to the primary use as a hotel. We say this because:-

- the Bar and Restaurant are not separate and distinct to the hotel use;
- there is internal access to the Bar and Restaurant gained through the hotel;
- it is open to residents and non-residents alike;
- it is, in any event, a common place incidental use attached to a large hotel.

Case law

We have carried out a review of relevant case law and our view is supported by the following cases.

In *Emma Hotels Ltd v Secretary of State for the Environment (1979*) the Council served an enforcement notice on the owner of a hotel who had obtained a full publican's off-licence for a bar. The Secretary of State found on appeal that there had been a material change of use of the bar to a public house. The owner of the hotel appealed and the divisional court found that a public-house use did not mean that there was a material change of use. The Secretary of State once again found that the use was not ancillary to the hotel because; it was being run as a public house; only 25% of the customers were hotel guests; there were external advertisements for the bar; and the bar could be readily isolated from the rest of the hotel.

On appeal, the Judge commented on the Secretary of State's findings as follows:

a) In relation to it being run as a public house; "The fact that it is a free house may well attract customers in larger numbers than would be the case if it were a tied house, but it does not follow from that that it ceases to be a hotel or that the attracting of non-residents involves a separate composite use within the same planning unit as something in the nature of a public house"

b) In relation to the number of customers who were hotel guests; "Unless one has a very large number of bedrooms, or a very large number of people sleeping in those bedrooms, and in addition residents who are prone to make use of the drinking facilities to a very large extent, I really do not see why the Secretary of State should be in the least bit surprised that only 20 to 30 per cent. of the users of the public bar were residents".

c) In relation to external advertisements; "factors encouraging the general public to come in and drink seem to me all to be necessary incidents of having a non-residents' bar. There is no point in having a non-residents' bar if you do not invite people to use it."

d) In relation to the bar being readily isolated from the rest of the hotel: "it does not seem to me to be a relevant factor unless steps are taken to isolate it. That would be a different matter altogether, but, unless and until that is done, I cannot see on what basis the Secretary of State reached the conclusion that this was not an incident of use [as a hotel].

The case was considered in *Bradford City Metropolitan Council v Shellbridge Holdings (1986)* where the Council

served an enforcement notice alleging a material change of use of a large sixteenth century house to use as a public house without planning permission. The owners appealed. It was held that the introduction of a public bar into a hotel did not alter its planning use as a hotel, since the same amount of sleeping, restaurant, cafe and tea room facilities had not altered and the facts showed that although use of the premises had greatly intensified since 1983 the hotel use continued.

Emma Hotels Ltd was also considered in *East Dorset DC v Stribling (2004*) where it was stated that 'planning control permits fluctuations between primary and ancillary uses'. Just because an ancillary/incidental use becomes more prominent it does not automatically cease to be ancillary if the primary use remains unchanged.

Summary

For the reasons set out above we consider that the Bar and Restaurant would be ancillary to the use of the hotel. It is well established that ancillary uses are not development and do not require planning permission.

It can be seen from the case law above that a hotel bar has been considered to be an ancillary use to the primary use of a building as a hotel, albeit it is specifically included in the description of development.

This is supported by caselaw and on the facts of this case where the Bar clearly has a functional and physical relationship with the hotel use. In addition, the principle of a bar use within the hotel has already been established as part of the hotel by virtue of the description of development.

Ancillary uses, as explained above, do not need planning permission because they do not constitute development under section 55 (1) of the Town and Country Planning Act 1990.

A section 192 application is for a certificate to state that some future development would be lawful. The fee would be half what it would be necessary to pay if one were applying for planning permission to carry out whatever form of development is the subject of the certificate. If planning permission were required for a change of use, the fee would be £385, so the requisite fee is £192.50.

We enclose copies of the planning permission decision notices, approved ground and first floor drawings, and proposed ground and first floor drawings GA00-E and GA01-E.

We trust that the submission is sufficient to allow you to approve the Certificate of Lawfulness, with appended proposed drawings GA00-E and GA01-E. However please contact me if you wish to discuss any matters in the meantime.

Yours sincerely,

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