

TRAFFORD COUNCIL

Report to: Head of Planning and Development
Date: 24 January 2023
Report for: Decision
Report of: Planning Compliance and Trees Manager

Ashley Hotel, Ashley Road, Hale, WA15 9SF:

Alleged material change of use from hotel (Use Class C1) to a hostel (Sui Generis).

1.0 INTRODUCTION AND BACKGROUND

- 1.1 The Council were notified by the Home Office on 15 December 2022 that the Ashley Hotel in Hale had been identified as a potential site for accommodating up to 112 asylum seekers in initial accommodation (IA). The placement will be organised by Serco, while the hotel is owned and operated by the Britannia Hotels group.
- 1.2 Based on the information provided, and with reference to relevant case law, the Council took the view that there was no clear evidence that the proposed use would amount to development requiring planning permission.
- 1.3 Following a public meeting on 5 January 2023, the Council have received a large number of complaints alleging that the use of the hotel for initial accommodation would amount to a breach of planning control. Specifically, it is alleged that there would be a material change of use from a hotel to a hostel. The Council have been asked to take enforcement action to prevent the change of use.
- 1.4 A comprehensive discussion around the use of hotels as AI and the associated planning implications and considerations is contained within the recent judgment of Mr Justice Holgate dated 11 November 2022 (Appendix 1). Reference is made in the Judgment to another case involving an enforcement notice served by Westminster Council which was subject to legal challenge in the Court of Appeal (Appendix 2 and 3) with the notice subsequently upheld on a re-determined enforcement notice appeal.
- 1.5 The judgment of Mr. Justice Holgate relates to applications for injunctions by Ipswich Borough Council (IBC) and East Riding of Yorkshire Council (ERYC) against hotel operators and Home Office contracted service providers (including Serco) which were seeking to block book hotels in those Councils administrative areas; circumstances directly comparable to the proposed use of the Ashley Hotel.
- 1.6 The judgment also makes reference to another recent injunction application by Stoke-On-Trent City Council against Serco and the Britannia Hotel Group for a similar scheme to that proposed at the Ashley Hotel. Whilst an interim

injunction was initially granted in that case, the Council were ultimately unsuccessful in persuading the Court to continue the injunction.

- 1.7 The Council are also aware of another recent case where Great Yarmouth Council did succeed in having an interim injunction continued. This case related to a sea front hotel which was proposed to be used in a similar manner to the proposed use of the Ashley Hotel.
- 1.8 The Ashley Hotel is contained within the larger Century House building which contains retail units at ground floor as well as the hotel entrance and reception area. The hotel block does not share any party walls with neighbouring buildings. It is understood that no alterations are proposed to be made to the building, so enforcement action can only be taken if it is considered that the occupation of the building by asylum seekers would result in a material change of use and that that use would result in planning related harm.
- 1.9 The Council are guided in its approach to planning enforcement by the Governments Planning Practice Guidance on Enforcement and Post Permission Matters. Regard must also be had to the Councils own enforcement policy and to any relevant planning policies within the Councils Development Plan.

<https://www.gov.uk/guidance/ensuring-effective-enforcement>

<https://www.trafford.gov.uk/business/environmental-health/food-safety/docs/traffords-corporate-enforcement-policy-may-2012.pdf>

<https://www.trafford.gov.uk/planning/strategic-planning/local-plan/core-strategy.aspx>

2.0 PRE-EMPTIVE ACTION

- 2.1 The first cohort of residents are due to arrive on or after 15 January 2023. Consequently, the alleged breach of planning control being complained about is an anticipated rather than actual breach.
- 2.2 Among the complaints submitted following the public meeting on 5 January 2023 are requests for the Council to:
 - a) Issue a Temporary Stop Notice under Sec. 171 of the Town and Country Planning Act 1990 (The Act) and/or.
 - b) Seek Injunctive Relief to prevent the anticipated breach under Sec. 187B of the Act.
- 2.3 A Temporary Stop Notice requires that an activity which is a breach of planning control should stop immediately. It is necessary for the activity to have commenced before a notice can be issued and is therefore not a pre-emptive

option. Temporary Stop Notice powers will be discussed in more detail later in this report.

- 2.4 The only pre-emptive mechanism available to the Council is therefore an application to for an injunction. Before making an application the Council must be satisfied that there is **clear evidence that a breach of planning control is likely to occur**; that it is **expedient to take enforcement action in respect of that breach** and that **injunctive relief is a proportionate remedy** in the circumstances of the particular case.
- 2.5 The Council is greatly assisted in its consideration by the recent judgment of Mr. Justice Holgate (MJH). Two matters stand out as particularly important. The first is whether or not there has been a **material** change of use. Detailed discussion on how to approach this assessment is provided in paragraphs 72 to 83 of the Judgment and further guidance is contained in the Westminster Judgment and re-determined appeal decision. The second issue is that if there will be a material change of use, will that change result in substantial planning harm that would justify injunctive relief.
- 2.6 In respect of the first issue, it was recorded that the distinction between hotel use and hostel use is a fine one (para 78 Appendix 1). It is not enough to merely assert a change of use. It is necessary to consider what, if any, factors render that change to be material in planning terms. In the absence of a material change of use, there is no development and no breach of planning control to restrain. At paragraph 110 Mr Justice Holgate said:
- “In each case before this court there are factors pointing for and against the proposed use being a hostel use. Even if a hostel use would be involved, the key question still remains whether it would represent a material change of use. That would depend upon the planning consequences of the change. In each case that turns upon the planning harm identified by the claimant.”
- 2.7 Even if the Council takes the view that there will be development, it would be extremely difficult to convince the Court that there was clear evidence to demonstrate that our judgement was correct, especially if that conclusion is reached before the use has commenced. The issue is a matter of fact and degree which will require investigation.
- 2.8 MJH recorded that Serco were providing IA for 11,200 individuals in 84 Hotels in different parts of the country. A defendant in the related case was providing IA for 5000 individuals in 80 hotels. A third defendant was a hotel operator which was providing 13 hotels as IA under a sole use agreement. It is also understood that the Britannia Group have a long association with the scheme and are known to provide IA in neighbouring authorities including Stockport, Manchester and Wigan.

2.9 It is clear that the use of hotels to provide IA is a widespread and well established practice. There was no definitive authority presented by either IBC or EYRC to support the proposition that the practice, by default, amounts to development requiring planning permission. Neither was there a substantial body of evidence of individual cases where material changes of use had been established as a matter of fact and degree. On the contrary, the absence of supporting appeal decisions or case law indicates that most Local Planning Authorities with experience of the system are satisfied that the practice has not involved development, or that, if it has, they have not found it expedient to take enforcement action.

2.10 The Britannia Hotel in Standish, Wigan, is reported to have been hosting asylum seekers since at least 2015. Advice on Wigan Council's website states:

“Wigan Council has no control over the use of hotels or numbers... We have had discussions with Serco and the Home Office to make clear our concern about the use of hotels to temporarily host asylum seekers and to press for a date when it will end. At a Greater Manchester and North West level, Serco and the Home Office are being pressed for the hotel situation to be resolved.”

There is also no record of either Stockport or Manchester Councils having sought injunctive relief or taken any other enforcement action against the use of Britannia Hotels within their administrative areas (sites located at Offerton and Northenden respectively).

2.11 The second key issue is whether an injunction would be a proportionate remedy commensurate with the seriousness of the harm anticipated to be caused by the alleged breach. At paragraph 114, Mr. Justice Holgate endorsed the view advanced by Counsel for one of the defendants who observed that:

“The integrity of the planning system is not undermined by the normal enforcement regime, which allows an alleged breach of planning control to continue while the merits of an appeal are under consideration, unless of course a stop notice is served. The real question, therefore is, what is the strength of the public interest in an immediate injunction being granted before an alleged breach of planning control even begins. That depends on the nature and extent of the harm alleged.”

2.12 The applications by IBC and ERYC were both refused because, although the Councils had identified triable issues on the question of whether planning permission was actually required, they had not provided the Court with evidence of substantial planning harm that may be caused (paras 134 and 138).

2.13 In December 2022, Great Yarmouth Borough Council (GYBC) did succeed in obtaining a continuation of an interim Injunction relating to a sea front hotel in the town. A key difference in this case appears to have been the existence of

Core Strategy Development Plan Policies specifically aimed at preserving existing visitor accommodation for use by tourists, especially within designated holiday accommodation areas (Policy C8, Great Yarmouth Borough Council Local Plan Core Strategy).

- 2.14 Whilst GYBC have succeeded in identifying potentially substantial planning harm, the continuation of the interim injunction is not the end of the matter. It remains entirely possible that the hotel operator and service provider can demonstrate that a material change of use will not occur. That issue remains a matter of fact and degree which is yet to be determined.
- 2.15 The Council do not have a copy of the judgement from the GYBC case and are therefore unaware of the chronology of events that led up to the injunction applications. However, a detailed chronology of the IBC and ERYC cases is available within the 11 November Judgement. In those cases both Councils were criticised for the extent of their enforcement investigations (paras 56, 62, 100) and for the manner in which the Councils had communicated with the interested parties (paras 37, 43 & 66).
- 2.16 Trafford Council were made aware of the proposed use of the Ashley Hotel as IA on 15 December 2022. A meeting took place on 4 January 2022 with Serco to seek further details about how the cohort of residents will be accommodated, but limited information was provided; in part because the Home Office don't yet know who may arrive in the UK during the coming days and weeks.
- 2.17 The case law clearly indicates that whether or not a material change of use will occur is a matter of fact and degree and planning judgement. The interested parties have provided the Courts with reasonable cases that no breach of planning control is involved at other sites and the Council cannot form a conclusive view in this case prior to the use commencing.
- 2.18 In considering an injunction application the Council should also have regard to its own enforcement policy which is intended to:
- Ensure that we enforce the law in a fair, equitable and consistent manner
 - Assist business and others in meeting their legal obligations without unnecessary expense
 - Focus on prevention rather than cure
 - Take firm action against those who flout the law or act irresponsibly
 - Respect individuals Human Rights
- 2.19 The first cohort of residents are scheduled to arrive on or after 3 February 2023. An attempt to block that occupation by way of Injunction would result in the Council and the interested parties incurring significant expense and, if successful, would disrupt the placement in IA of large number of potentially destitute individuals.

- 2.20 An application for injunction cannot be supported by clear evidence that a breach will occur, nor, as will be discussed further in this report, by evidence that substantial planning harm will arise. An application for Injunction is therefore unlikely to succeed. It would also appear to be inconsistent with the principles of the Councils enforcement policy and at odds with the relevant planning practice guidance. A more consistent approach would be to seek to manage and mitigate any harmful impacts (if they arise) rather than seeking to prevent the use from commencing.
- 2.21 An application for injunctive relief is therefore not recommended.

3.0 ENFORCEMENT ACTION FOLLOWING OCCUPATION

- 3.1 Conventional enforcement powers (those that can be used at the Councils own discretion) can only be used when a breach of planning control has actually occurred. A **Temporary Stop Notice** could be issued as soon as residents move into the hotel, but service of a notice requires much the same consideration as seeking an injunction.
- 3.2 The Council must still be satisfied that there is a breach of planning control and that that the activity should be required to stop immediately. Compensation may be payable where a temporary stop notice has been issued, but a certificate of lawfulness (confirmation that permission was not required) is subsequently granted.
- 3.3 A temporary stop notice expires 28 days after the display of the notice on site (or any shorter period specified). At the end of the 28 days there is the risk of the activity resuming if an enforcement notice is not issued and a stop notice served.
- 3.4 The local planning authority should ensure that a temporary stop notice's requirements prohibit only what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area. The proposal does not involve any alterations to the building so there will be no harm to the built or physical environment.
- 3.5 Planning Practice Guidance advises that before deciding to serve a temporary stop notice, the local planning authority's representative may choose to discuss, whenever practicable, with the person carrying on the activity whether there is any alternative means of operation which would overcome the objections to it in an environmentally and legally acceptable way. It is clear that the Home Office, its contracted service providers and the associated hotel operators are satisfied that the hotels can be used as IA without requiring planning permission. The absence of supporting evidence in the IBC and ERYC cases indicate that these authorities are outliers in seeking to engage the most serious enforcement powers to restrain this particular type of use.

- 3.6 A Temporary Stop Notice issued immediately following occupation would therefore appear to be an irrational step where no prior warning has been given to the interested parties of the Councils intention to do so. The Council would suffer significant financial and reputational damage in the highly possible event of a certificate of lawfulness being granted. Furthermore, an attempt to displace vulnerable residents immediately following occupation, could be contrary to the Councils enforcement policy insofar as it seeks to respect individuals Human Rights.
- 3.7 As noted at paragraph 2.10 above, the normal enforcement regime involving the service of an enforcement notice under section 174 of the Act, would allow an alleged breach of planning control to continue while the merits of an appeal are under consideration. This procedure could be engaged without requiring the immediate displacement of vulnerable residents and would be more consistent with Government Guidance on enforcement and the Councils own policy. Once again, this procedure should only be engaged if it appears to the Council that there is a breach of planning control and that it is expedient to take action. That decision can only be taken following an investigation and an assessment of the nature of the use once it has commenced.

4.0 HOW WILL THE HOTEL BE USED

- 4.1 Limited information regarding the proposed use of the hotel as IA was provided to the Council in an email from the Home Office on 15 December 2022. The email advised that the hotel had been identified as a site for use as IA with a capacity of 112 bedspaces.
- 4.2 A meeting with Serco and the Britannia Hotel Group took place on 5 January 2023. It was confirmed that the target date for the hotel being stood up for use as IA was 15 January 2023 although, that did not mean that that was the date on which asylum seekers would actually be moved in; it could be anytime after that. Since then it has been confirmed that the move in date will now be no earlier than 3 February 2023. There was no further information on the cohort who will be moved in, but it was expected to be predominately single males.
- 4.3 Serco will arrange some limited diversionary activity within the hotel. The asylum seekers will receive three meals a day, but other than this are only provided with a small amount of money – around £9 per week. They will have access to free laundry facilities at the hotel, but they are not provided with any clothing by Serco.
- 4.4 The various cases referred to in appendix 1 have identified characteristics that decision makers have found to be material in distinguishing a hotel use from

a hostel. None of the authorities provide a definitive or exhaustive list. Each case must be considered on its individual facts and circumstances.

4.5 The Council have sought further information from Serco about the duration of the booking for use as IA, the extent to which the hotel will be used for that purpose, confirmation of the distribution of bedspaces, information about any shared occupancy, details of facilities and services provided to guests and the nature and extent of Serco's involvement in the management of the hotel while asylum seekers are in residence.

4.6 A site visit is also proposed to take place following occupation.

5.0 ANTICIPATED AND ALLEGED HARM

5.1 The Planning Compliance Team have received over 280 emails containing objections to the proposed use of the hotel as IA. The overwhelming theme running through the objections are concerns about public safety due to the characteristics of the cohort of asylum seekers which are reported to be accommodated.

5.2 Greater Manchester Police have advised they will maintain a fair and proportionate response to any incident involving residents at the hotel or any community response, but they have not provided any evidence to substantiate the concerns of residents. Behaviour of residents beyond the hotel grounds would be outside of the control of hotel management and cannot therefore amount to a material consideration in planning terms.

5.3 There is no proposal to increase the capacity of the hotel and it therefore appears unlikely that residents will notice any significant increase in comings and goings at the site compared with when it was operating as a conventional hotel. The case of Westminster (appendix 3) identified potential harm from organised groups of younger guests coming and going on masse with associated boisterous behaviour. It is considered unlikely that the proposed residents in this case will behave in a similar fashion due to the circumstances of their occupation and the limited means at their disposal to venture out. It is also anticipated that Serco will organise arrival at the site and provide an element of security which should provide an effective means of preventing noise from groups congregating on or around the hotel grounds.

5.4 Other matters which have been raised include increased demand on local services, inadequate living conditions for occupiers and loss of tourist income to local businesses.

5.5 In respect of access to services, the Council are obliged to provide access to healthcare when required. This will be through a private GP practice and residents will not be able to register with local NHS providers. It is therefore

considered there will be no significant impact of the delivery of local healthcare services.

- 5.6 The Council are also obliged to provide access to education for children, but the expected occupation by predominantly single adult males indicates there will be no significant increase in demand for school places. No children will be displaced from existing school places, although should the scheme be continuing into the next academic year children may be eligible for places in local schools. This is a matter which could point towards a material change of use, and should be kept under review following occupation.
- 5.7 It is expected that individual asylum seekers will be accommodated for relatively short periods of time. While it is acknowledged that hotels can be lawfully occupied by permanent residents, that is people who do not have a home elsewhere, the Council considers that this would usually only be a small proportion of a hotels guests and is unlikely to be prevalent within the budget hotel sector.
- 5.8 The duration of the stay and the conditions under which occupation takes place, could therefore point towards a material change of use and, in turn, give rise to concerns about the standard of accommodation being provided. Long term use and long term occupation by individuals would also raise considerations around the provision of housing types within the Borough.
- 5.9 The Councils housing needs assessment has not identified a need for dispersal accommodation for asylum seekers, but it is evident from the correspondence from the Home Office that such accommodation is urgently required. While the Home Office accepts that the use of hotels is unacceptable, unless alternative provision can be delivered, this particular need may end up being met by the Ashley Hotel on a long term basis.
- 5.10 Loss of existing tourist accommodation may have an impact on the economic viability of the village centre. However, it appears the hotel has catered for a range of guests including both visitors to the village and surrounding area, but also holidaymakers booked onto early morning flights from Manchester airport who are less likely to bring a significant economic benefit to neighbouring businesses. Unlike in Great Yarmouth, the Council does not have a development plan policy seeking the protection of tourist accommodation in this location or area. There are other large hotels in Altrincham Town Centre which is only 1 mile from Hale and there is no evidence to indicate that loss of this tourist provision would cause significant economic damage.
- 5.11 The IA scheme will result in the hotel resuming operations and will result in employment opportunities for residents as hotel staff.
- 5.12 The IA scheme will also assist in providing urgently required accommodation for potentially destitute asylum seekers.

6.0 RECOMMENDATIONS

- 6.1 No enforcement action is recommended to be taken in advance of the hotel being occupied as IA.
- 6.2 No immediate enforcement action is recommended to be taken following first occupation.
- 6.3 A detailed assessment of the alleged change of use will take place following receipt of further information from the interested parties and a site visit to review operations.
- 6.4 Should a material change of use be found, the Council will work with the interested parties to mitigate any harm being caused.
- 6.5 Enforcement action would be a last resort.



Planning Compliance Manager

24 January 2023

Date

7.0 Approval

- 7.1 The Head of Planning and Development accepts the recommendations set out in this report.



Head of Planning and Development

24 January 2023

Date

Background Papers

Appendix 1: IBC and EYRC Judgment

Appendix 2: Westminster Judgment

Appendix 3: Westminster re-determined enforcement notice appeal