The Planning Inspectorate

Appeal Decision

Site visit made on 9 March 2020

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 12 May 2020

Appeal Ref: APP/B4215/X/19/3241541

Gateway House, Piccadilly Station Approach, Manchester M1 2GH

- 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 Simon Marshall (Commercial Development Projects Limited) against the decision of Manchester City Council.
- The application Ref 121957/LP/2018, dated 22 November 2018, was refused by notice dated 26 April 2019.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
- The development for which an LDC is sought is to confirm that application ref no 106792/JO/2014/C2 (Permission A) has been implemented and that the remaining parts of the permission are extant.

Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing development which is considered to be lawful.

Reasons

2. Permission A (Ref. No. 106792/JO/2014/C2, granted on 17 November 2014) as referred to in the description of the development for which an LDC is sought, is for, in brief, the refurbishment of Gateway House to create a 182 suite apart hotel, and the erection of an 8 storey multi-use building and a three storey gym following demolition of an existing building. The application that resulted in Permission A was made under Section 73 of the Act to amend a permission granted in 2013. Permission B (Ref. No. 106793/FO/2014/C2, granted on 23 January 2015) as referred to in evidence is for, in brief, the refurbishment of Gateway House to create a 182 suite apart hotel and the laying out of an existing rear car park following demolition of an existing building. There is no difference between the two permissions in regard to the refurbishment and conversion of Gateway House to create a 182 suite apart hotel and the demolition of an existing building; these works having been completed. The key difference is that Permission A is also for the erection of two buildings whilst Permission B is for the laying out of a car park.

3. The main issue is whether Permission A has been commenced and whether the works completed by the date of the application are lawful.

4. Photographic and other evidence indicates that the land behind Gateway House was in use as a car park before the applications were submitted in 2014. Following demolition of the building the land was fully tarmacked. Condition 2 of

Permission B requires the development to be carried out in accordance with approved drawings. Approved drawing number M2860-101 Rev C shows the layout of the car park. The Council maintains that "…the car park has been laid out in accordance with the approved plans". This is incorrect.

5. The permitted layout would have six accesses off the roadway adjoining Gateway House leading to sections of either parallel or tandem parking spaces. The car park as laid out has two accesses off the roadway leading to sections of either parallel or in-line parking. There are other significant differences between the permitted and as laid out schemes. For instance, the five parking bays closest to the highway are immediately adjacent to the pavement to Ducie Street whereas in the permitted scheme they would be set back by about 2.5 metres. This change to the permitted scheme has facilitated an increase in the number of parallel bays in the first section of the car park adjacent to the boundary wall to the neighbouring property from 13 to 14.

6. The two accesses off the roadway, one in and one out, are barrier controlled to create a secure car park; a feature of the car park that is not included, or possible, in the permitted scheme. The permitted scheme is for 53 spaces, four of which would be disabled spaces. The car park as laid out has 56 spaces, three of which are disabled spaces that are at right angles to those in the permitted scheme. There is some similarity between the as laid out and permitted schemes close to Ducie Street but even here the schemes differ. Further away from the street there is no similarity between the schemes.

7. The car park as laid out on land behind Gateway House is not, as a matter of fact, in accordance with drawing number M2860-101 Rev C approved under Permission B. The use of the land as a car park must therefore be considered to be a continuation of this use of the land that existed, authorised or not, before the planning applications were submitted in 2014.

8. The Council maintains that seven pre-commencement conditions imposed on Permission A have not, either wholly or partially, been discharged, and that the conditions "…are at the heart of the development and thus the development… cannot have commenced" and "…is unlawful". Though Permission A is not a phased permission four of the seven conditions have been discharged in relation to the conversion of Gateway House. This factor notwithstanding, if any of the conditions truly is at the heart of the development then, for such a major development as the conversion of Gateway House, it could have been expected that the Council would have taken appropriate action sometime since the building was brought into use as an apart hotel. The Council has not taken any action against what they consider to be an unlawful development and has only sought to rely on this argument to resist the application for an LDC. Having considered all of the evidence in this case, and as a matter of planning judgement, none of the seven conditions go to the heart of the development. The development has been commenced under Permission A and is lawful.

9. Reference to Permission B, rather than Permission A, in an application for a non-material amendment made in 2016 is inconsequential because the amended works were to provide a hotel lobby in Gateway House. How the two permissions are drafted in relation to the demolition of the building is also inconsequential, as is the lack of a response by the Applicant to a query made in an e-mail by the Council regarding delivery of the remaining elements of Permission A.

10. Evidence indicates that Permission A and Permission B have been implemented to the same extent. Permission A has been commenced and the works completed by the date of the application are lawful.

11. For the reasons given above, and on all the evidence now available, the Council's refusal to grant an LDC to confirm that application Ref. No. 106792/JO/2014/C2 (Permission A) has been implemented and that the remaining parts of the permission are extant for Gateway House, Piccadilly Station Approach, Manchester was not well-founded and the appeal succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 22 November 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Permission A has been commenced and the works that have been completed to date are lawful

Signed

John Braithwaite

Inspector

Date: 12 May 2020

Reference: APP/B4215/X/19/3241541

First Schedule

Works carried out in accordance with Planning Permission 106792/JO/2014/C2 (Permission A)

Second Schedule

Land at Gateway House, Piccadilly Station Approach, Manchester M1 2GH

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified operation is only conclusively presumed where there has been no material change, before the operations begun, in any of the matters which were relevant to the decision about lawfulness.

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Plan

This is the plan referred to in the Lawful Development Certificate dated: 12 May 2020

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

Land at Gateway House, Piccadilly Station Approach, Manchester M1 2GH

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Scale: not to scale

