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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 11/06/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**KING'S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY BELFAST CITY COUNCIL
FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF A DECISION OF THE PLANNING APPEALS
COMMISSION**

**Denise Kiley KC (instructed by Belfast City Council Legal Services) for the Applicant
Philip McAteer (instructed by O'Reilly Stewart) for the Respondent
Conor Fegan (instructed by TLT NI) for the Notice Party**

HUMPHREYS J

Introduction

[1] In recent years there has been rapid growth in the number of short term residential lettings, particularly in urban settings, fuelled by major global online marketplaces. This has presented opportunities and challenges for tourism, the property market and residents of cities and towns. In many jurisdictions, planning controls in respect of such short term lets have been introduced in order to attempt to strike the correct balance.

[2] This application for judicial review arises in that context. On 8 August 2022 the applicant council refused to grant planning permission for retrospective change of use from residential to short term holiday let accommodation in respect of two apartments at Citygate, Sussex Place, Belfast.

[3] On 16 October 2023, the Planning Appeals Commission ('PAC'), the respondent to this application, allowed the appeals against these decisions and granted the change of use applications. Gerard Catney was the applicant for planning permission in respect of each property and is the notice party to the judicial review application.

[4] The applicant now seeks to challenge this decision of the PAC on the basis that it was based on a misinterpretation of the relevant planning policy.

The legislative and planning policy framework

[5] Section 45(1) of the Planning (Northern Ireland) Act 2011 ('the 2011 Act') states:

"Subject to this Part and section 91(2), where an application is made for planning permission, the council or, as the case may be, the Department, in dealing with the application must have regard to the local development plan, so far as material to the application, and to any other material considerations..."

[6] Section 6(4) of the 2011 Act provides:

"Where, in making any determination under this Act, regard is to be had to the local development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise."

[7] By section 58(7) of the 2011 Act, the PAC is also bound by this duty when it determines appeals relating to applications for planning permission.

[8] On 2 May 2023, Belfast City Council adopted its Plan Strategy 2035. It is the first of two documents which, when adopted, will form the complete Local Development Plan (LDP) for the area, the second being the Local Policies Plan. The arrangements for the transitional period, between the adoption of the Plan Strategy and the adoption of the Local Policies Plan, are set out in the Planning (Local Development Plan) Regulations (NI) 2015. Schedule 1, paragraph 3 provides that, where a Plan Strategy is adopted by a Council, reference to the "Local Development Plan" in the 2011 Act means the Departmental Development Plan (in this case still the Belfast Urban Area Plan 2001) and the Plan Strategy read together. In the transitional period, the Plan Strategy is given primacy by paragraph 3(b) of Schedule 1 which states:

"(b) any conflict between a policy contained in a departmental development plan and those of the plan strategy must be resolved in favour of the plan strategy."

[9] Councils, and the PAC, are therefore obliged to determine planning applications in accordance with LDPs, subject to other material considerations.

The Plan Strategy 2035

[10] The Plan Strategy outlines the ambition to grow the population of Belfast by some 66,000 by 2035. This planned growth will entail the need for 31,600 new homes in that period, the majority of which will be in the Belfast City settlement area.

[11] The housing policies have, inter alia, the following aims:

- (i) To ensure an appropriate supply of land to accommodate the new housing;
- (ii) To promote sustainable housing development within the urban footprint;
- (iii) To facilitate city centre living to grow the residential population of the city centre; and
- (iv) To build strong, inclusive and coherent communities.

[12] Policy HOU3 is entitled “Protection of existing residential accommodation” and it provides for a general presumption in favour of the retention of residential stock for permanent occupation. It states:

“Within an established residential area or fronting onto a city corridor outside of a designated centre, planning permission will be granted for the redevelopment and/or change of use of existing dwellings for other uses where:

- a. It is considered complimentary to surrounding residential uses and will not result in any adverse effects on existing residential amenity; or
- b. The proposal is for community infrastructure considered necessary within the residential area.

In the case of the partial change of use of an existing dwelling, in addition to the above requirements the non-residential use should:

- c. Be subordinate to the residential use; and
- d. Provide a separate user entrance if public access is required.

This will be subject to meeting all other policy requirements. The use of permanent residential stock as short-term holiday accommodation will be treated as a

change of use and will also be subject to the requirements of policy HOU13.”

[13] ‘Established residential area’ is defined in Appendix B to the strategy as an area:

“normally taken to mean residential neighbourhoods dominated by a recognisable form of housing styles with associated private amenity space or gardens. These areas may include buildings in commercial, retail or leisure services use, usually clustered together and proportionate in scale to the size of the neighbourhood being served. Within Belfast City, established residential areas often display a clear spatial structure”

[14] It is recognised in the strategy, at para 7.1.19, that there is a risk that the use of permanent homes or apartments to provide short-term holiday accommodation could erode the sustainable supply of housing stock in the city. Any application for change of use to short-term let accommodation would be subject to the criteria in both HOU3 and HOU13.

[15] Policy HOU13 (Short-term let accommodation) provides as follows:

“Planning permission will be granted for short-term let accommodation, whether new build or change of use, where the following criteria are met:

- a. It strengthens and diversifies the range of short-stay visitor accommodation in the city;
- b. It is accessible by public transport;
- c. It is sited within an existing tourism cluster or in close proximity to a visitor attraction;
- d. Has appropriate management arrangements in place to ensure a positive and safe living environment whilst minimising any potential negative impacts;
- e. The site is not located within a designated HMA (see policy HOU10), unless it can be demonstrated that the development is needed to meet a specific unsatisfied demand in that location; and

- f. In the case of a change from permanent residential use, part of the property must be retained as permanent residential housing.

Where all other policy requirements, such as those relating to design quality, residential density, affordable housing, transport provision and open space provision, are not met, conditions will be applied to limit occupation to short-term lets only. If appropriate, management arrangements may be secured using s76 planning agreements."

[16] The strategy explains, at para 7.1.88:

"It is vitally important that such accommodation does not compromise the supply of conventional housing and the high-level aim to grow the population of Belfast. As more and more properties are being offered for short-term let, assisted by the rise in on-line hosting sites and the lucrative returns available to property owners, the council has taken a proactive stance to actively manage the supply of this type of accommodation. Accordingly, where the proposal is to change the use of existing permanent housing, the council will require part of the property to be retained as permanent residential housing, in addition to meeting the wider requirements of policy HOU3 on protection of existing residential accommodation."

[17] In the glossary of the Plan Strategy, "short-term let accommodation" is defined as:

"where a property is rented to the same person(s) for not longer than 90 consecutive nights" (underline added)

[18] In the section of the strategy entitled "Tourism, leisure and culture", the policy aims are stated to include the support of sustainable growth in tourism, leisure and culture in the city centre. The need for accommodation of different types to support this aim is recognised as is the need for balance with other plan objectives. Para 8.4.13 states:

"It is important that...short term holiday lets provision does not compromise the supply of conventional housing in the council's plan area, and impact on the council's objective...to grow the population of Belfast."

The PAC decision

[19] The appeals were considered by Commissioner Gillespie who identified the statutory provisions and policy framework referred to above.

[20] At para [15], the Commissioner stated:

“It is evident from the headnote of Policy HOU 3 that it seeks to protect existing residential accommodation in established residential areas and locations fronting onto a city corridor outside of a designated centre. It does not, in my judgement, apply to proposals in the city centre where both appeal developments are located as the policy should be read as a whole.”

[21] He therefore found that policy HOU3 did not apply to the subject applications and moreover found:

“Policy HOU3 does not apply to proposals for short-term let accommodation in Belfast city centre.” (para [16])

[22] In relation to policy HOU13 and the meaning of “property”, in this context, the Commissioner found:

“21. Criterion (f) of Policy HOU 13 of the PS states that in the case of a change from permanent residential use, part of the property must be retained as permanent residential housing.

22. The explanatory text nor the glossary in the PS give any guidance as to what constitutes a ‘property’ for the purpose of Policy HOU 13. Furthermore, there is no reference to what part of the ‘property’ and to what extent it should be retained as permanent residential housing. Given this ambiguity, the appellant is entitled to have their proposal assessed on the interpretation most favourable to them.

23. The appellant asserts that ‘property’ relates to the building/Citygate as a whole. He contends that if the Council’s interpretation – that it refers to each apartment – is correct, it would make it virtually impossible to convert any single unit of accommodation to short term let accommodation. He states that this would create a moratorium on flat conversions which is not the intention of the policy and that it would also run contrary to the

tourism aspirations of the Council to create a vibrant and successful city. This position seems plausible.

24. The appellant stated that if the appeals were upheld, fifty six out of sixty apartments would remain as permanent residential housing within Citygate. The figure of fifty six excludes the two appeal developments and also apartments 18 and 54 which were granted Lawful Development Certificates (CLUDs) for use for short term holiday lets under applications LA04/2022/0934/LDE and LA04/2022/0574/LDE respectively. At the hearing, the Council referred me to a number of live enforcement cases relating to short term let accommodation at other apartments within Citygate. However, as none of these enforcement cases have been concluded by the Council, I attach limited weight to these in my consideration.

25. I find the appellant's interpretation of the policy convincing in the evidential context provided. Accordingly, I find criterion (f) of Policy HOU 13 of the PS to be satisfied."

The interpretation of planning policy

[23] It is well established that the interpretation of planning policy is a question of law for the court. In *R v Derbyshire County Council, Ex p Woods* [1997] JPL 958 Brooke LJ stated:

"If there is a dispute about the meaning of the words included in a policy document which a planning authority is bound to take into account, it is of course for the court to determine as a matter of law what the words are capable of meaning. If the decision maker attaches a meaning to the words they are not properly capable of bearing, then it will have made an error of law, and it will have failed properly to understand the policy."

[24] In *Tesco Stores v Dundee City Council* [2012] UKSC 13, the Supreme Court approved Brooke LJ's analysis and added:

"...policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context." (para [18])

“That is not to say that such statements should be construed as if they were statutory or contractual provisions...” (para [19])

[25] In this jurisdiction, in the case of *Re McCann’s Application* [2022] NICA 60, the Court of Appeal described the role undertaken by courts in interpreting planning policy in this way:

“The exercise is one of objective judicial interpretation of the language used in the policy’s contextual setting. The court must also take cognisance of the correct approach to planning policies generally. It has been stated repeatedly in the jurisprudence bearing on this topic that planning policies are measures of guidance and direction, not to be construed by applying the tools and standards appropriate to the construction of a statute or legal instrument”

[26] The relevant principles were summarised in *Re McNamara’s Application* [2018] NIQB 22 by McCloskey J:

“The interpretation of any planning policy is a question of law for the Court; exercises of interpretation should not treat planning policies as a statute or contract or any comparable instrument; a similar approach to the reports of planning case officers is to be adopted; and decisions involving predominantly matters of evaluative judgement are vulnerable to challenge on the intrinsically limited ground of *Wednesbury* irrationality only.” (para [17])

[27] The PAC is an independent, specialist, appellate body charged with the determination of planning appeals from councils and the Department. Its Commissioners are experts in the field and are familiar with the interpretation of planning policies. A judicial review court, whilst remaining the ultimate arbiter of the interpretation of policy, should afford to the PAC an appropriate level of deference when exercising its supervisory jurisdiction.

Analysis

[28] There are therefore two issues for determination:

- (i) Did the Commissioner err in his application of policy HOU3 in these applications?
- (ii) Did the Commissioner err in his interpretation of the word ‘property’ in policy HOU13 (f)?

(i) HOU3

[29] In relation to the first question, the Commissioner's reasoning on this issue is entirely opaque. Para [15] of his decision moves straight from a statement of policy to a conclusion without any interim reasoning. He then makes it clear, at para [16], that this determination applies to all such proposals in Belfast city centre. With all due respect to the decision maker, it is impossible to divine how he has reached this conclusion with its obviously far-reaching consequences. Insofar as he sought to draw a distinction between the "city centre" and "established residential areas", this is manifestly untenable. There are established residential areas within the city centre. This is made clear by the strategy itself.

[30] It may be that the Commissioner intended only to conclude, in his evaluative judgement, that these apartments are not located in an "established residential area". However, this is not what he says in the written decision, nor does he grapple with the Appendix B definition. Instead he concludes that HOU3 does not apply at all to applications in the city centre. This is a clear misdirection and cannot be sustained.

(ii) HOU13

[31] The conclusion that the word 'property' in policy HOU13 relates to the building as a whole, rather than an individual apartment, drove the Commissioner to the conclusion that criterion (f) of HOU13 was satisfied.

[32] A word such as 'property' in a planning policy is to be given its ordinary, natural, commonsense meaning within the context of the policy itself. It does not require to be subjected to intense forensic analysis. The relevant context will be spelt out by the aims and justification of the policy itself.

[33] The strategy makes it clear that its aims include maintaining and increasing the sustainable housing stock in the city both by the building of new homes and preserving existing residential properties - see, for instance, the statement at para 7.1.88. The interpretation preferred by the Commissioner would mean that if 59 out of the 60 Citygate apartments were let on a short-term basis, and the other remained in permanent residential use, criterion (f) would still be satisfied. There was no attempt by the Commissioner to explain how such a situation would further the stated aims of the policy under consideration.

[34] It is unclear why the Commissioner did not have regard to the definition of short-term let accommodation in the glossary which refers specifically to "a property" rented to a person for not more than 90 nights. This is completely inconsistent with a finding that "property" in this context means a whole apartment complex or building.

[35] The Commissioner's conclusion, in line with the submission of Mr Catney, that the council's interpretation would create a "moratorium on flat conversions" is without foundation. Mr Catney's evidence to the court on this issue is as follows:

"the prospect of simply renting out a single room in a two-bedroom apartment with open-plan shared living space would not be an attractive concept"

[36] It may well be that this represents a less attractive offering but this a far cry from the moratorium alleged by him and found by the PAC.

[37] The policy aims to preserve properties in permanent residential use by requiring part of the property to be retained in that state. The only coherent interpretation of the word 'property' in this policy must be the individual dwelling, whether that be an apartment or a house. There are many examples in the marketplace of rooms being offered for short-term let in both styles of accommodation. The evidence in the case revealed that some 28% of short-term lettings in Belfast involved a private room. HOU13 (f) serves to further the aims of the strategy by ensuring that properties are kept in permanent residential use whilst parts of them can be let by the owners on a short-term basis.

[38] To find otherwise is to wholly ignore the stated aims and intent of the policy and thereby to defeat it.

[39] Other arguments were advanced to me in support of the applicant's case, relating to the meaning of 'planning unit', the use of the 'red line' in planning applications and the evidence from the PAC's independent examination of the plan. None of these assisted me in the task at hand. The exercise was a straightforward one of the interpretation of planning policy, when read as whole, in the context of its stated aims and objectives.

[40] The Commissioner has therefore misinterpreted policy HOU13 in arriving at his conclusion on the meaning of the word 'property.' In the language of Brooke LJ the decision maker has attached a meaning to the words they are not properly capable of bearing and has therefore made an error of law.

[41] The word 'property' in policy HOU13 should be read as meaning, in these particular cases, the individual apartments.

Conclusion

[42] For these reasons, I quash the decision of the PAC dated 16 October 2023 and remit the appeals for redetermination by a different Commissioner.

[43] I will hear the parties on the question of costs and any consequential relief.