
Application Number 13/0523/CLUED Agenda Item
Date Received 12th April 2013 **Officer** Mr John Evans
Target Date 7th June 2013
Ward Petersfield
Site 142 Tenison Road Cambridge CB1 2DP
Proposal Application for a certificate of lawfulness under Section 191 for the use as additional letting bedrooms and ancillary accommodation to a hotel.
Applicant Mr M J Akhtar
 142-146 Tenison Rd Cambridge CB1 2DP UK

SUMMARY	<p>The certificate should be issued for the following reasons:</p> <ol style="list-style-type: none"> 1) Sufficient evidence has been provided to prove on the balance of probabilities continuous hotel use 10 years preceding the date of the application. 2) Further information from a former employee and regular guest has been provided. 3) The applicant has made a statutory declaration.
RECOMMENDATION	GRANT CERTIFICATE

1.0 SITE DESCRIPTION AND AREA CONTEXT

1.1 The application site is part of a terrace of late-nineteenth-century buildings on the west side of Tenison Road, near Cambridge railway station. Several of the buildings in this row are in hotel/bed and breakfast use, including the two neighbouring buildings at 144 and 146 Tenison Road. The application building, like its neighbours is a two-storey property with prominent bay windows at the front, additional accommodation within the roof space and a rear dormer window.

1.2 The site falls within the Central Conservation Area and the Controlled Parking Zone.

2.0 THE PROPOSAL

2.1 This is a revised application for a Certificate of Lawfulness for the use of number 142 Tenison Road as additional letting bedrooms and ancillary accommodation to a hotel. The applicant seeks to prove that 142 Tenison Road has been used as part of the main Fenners Hotel for 10 years preceding the date of the application.

2.2 The application is supported by the following documents:

- Correspondence with Cambridge City Council.
- 2 letters from a previous employee and guest at the premises.
- Sample details of previous occupiers.
- Additional email from a previous regular guest.
- Proof of employment of previous head of kitchen.
- Sworn statement from Mr Akhtar.
- Email from the City Council's Housing Services

2.3 The application is made under Section 191 of the Town and Country Planning Act 1990.

3.0 SITE HISTORY

Reference	Site	Description	Outcome	Appeal
78/0671	146	2-storey extension to dwelling	Refused	
80/0417	146	2 nd floor extension to B&B	Refused	
83/0395	142	1 st floor extension	Approved with conditions	
83/0737	146	Use as guest house	Approved with conditions	

83/0738	142	Change of use from residential with bedsitting accommodation to bedsitting accommodation	Approved with conditions	
83/0739	144	Change of use from residential unit to residential with lodging accommodation	Refused	
85/3381	146	Illuminated pole sign	Refused	
88/0251	144	Change of use from dwelling to hotel	Refused	Allowed
95/0759	146	Single storey extension at side and two pitched roofs at 2 nd floor level	Approved with conditions	
95/0770	146	Demolition of dormers to allow pitched roofs at 2 nd floor level	Approved with conditions	
02/0261	142	2-storey rear extension	Refused	
03/0811	146	2-storey rear extension, single-storey rear extension and two dormers to guest house	Refused	Dismissed
03/0812	142	Single-storey rear extension and 2 nd floor dormer to HMO	Refused	Dismissed
08/1207	146	Extension to form laundry and kitchen	Approved with conditions	
08/1208	146	Demolition of timber structure	Withdrawn	

10/0530/FULL	142	Retrospective change of use from residential to bed and breakfast accommodation in conjunction with no 144 and 146 Tenison Road.	Refused
12/0162/CLUED	142	Use of No 142 as a Hotel in Use Class C1	Refused

4.0 REPRESENTATIONS

Glisson Road and Tenison Road Area Residents Association (GTARA)

- It seems very little has changed since the previous application.
- No mention of the fact the fire service does not record the premises as part of the hotel.
- The conversion of the house of multiple occupation (HMO) in this instance is not acceptable.
- Given difficulties in housing young people the Council should do everything it can to ensure the property remains a HMO.

5.0 CONSULTATIONS

Legal Services Cambridge City Council

- 5.1 Sufficient evidence has been provided to grant a certificate.
- 5.2 In light of the information provided the legal officer believes that it is more probable than not that 142 Tenison Road has been used as hotel ten years preceding the application. In those circumstances a CLEUD is appropriate.

6.0 ASSESSMENT

- 6.1 The applicant seeks to demonstrate that the premises has been used continuously for a period of 10 years prior to the application, as ancillary hotel accommodation to a hotel known as Fenners

Hotel which is at 144 and 146 Tenison Road.

- 6.2 The planning merits of this matter are not a material consideration. The Council must determine whether, on the balance of probabilities, adequate evidence has been provided to demonstrate the continuous use of 142 Tenison Road as hotel accommodation ancillary to Fenners Hotel.

Previously refused certificate of lawfulness application

- 6.3 The previous certificate of lawfulness application was refused in 2012 because there were gaps in the evidence of a ten year period of use as a hotel. There were weaknesses in two of the submissions. Six of the submissions were considered 'neutral', which neither supported nor detracted from the applicants case.
- 6.4 Of the weaker submissions, one carried greater weight, but in total they were not sufficiently robust for the Council to grant a Certificate of lawfulness. A previous employee at the premises provided a statement which carried some weight, but would have been stronger if it was accompanied by evidence of employment at the Hotel.
- 6.5 Similarly the second submission, from a long term guest, was not sufficiently robust because it lacked detail and his supporting address.
- 6.6 This revised application is accompanied with further evidence from the long term resident regarding the nature of 142 Tenison Road and his home address in France. In addition, the former employee's letter of employment has also been provided.
- 6.7 From the information provided the Council's Legal Officer concludes that the applicant has discharged the burden of proof in that it is more probable than not that the site has been used as the applicant has stated for the ten years prior to the application.

Use of 142 Tenison Road

- 6.8 142 Tenison Road is physically linked and integrated to the main hotel. There are connecting doors at first and second floor level and the hotel is now clearly a part of the main business at 144 and 146 Tenison Road.

- 6.9 142 Tenison Road was used as temporary accommodation for homeless people by the City Council's Housing Services between 1997 and 2004, which is supported by evidence from the Council's Housing Team.
- 6.10 In 2004 the case officer (03/0812) believed the lawful use of 142 Tenison Road to be an HMO. The Council's enforcement records indicate investigations into breaches of this permitted use in 2004 and 2008. The Council's enforcement officer notes in June 2004 that 'these properties have a variety of uses but there is evidence to suggest that numbers 142, 144 and 146 are used to accommodate homeless persons by offering bed and breakfast accommodation'. This suggests the premises at that time were being used as a hotel.
- 6.11 I note evidence from the residents association GTARA, that the fire service have no record of 142 Tenison Road forming part of the hotel. Evidentially, this neither supports nor detracts from the applicants case as other statutory bodies follow other criteria under different legislation, which may share few characteristics relevant to planning use classes.
- 6.12 I note GTARA wishes the Council to robustly defend policies within the Local Plan, but the planning merits of the change of use are not material to whether a certificate should be issued.

Evidence from the applicant

- 6.13 In 2003 Mr Akhtar wrote that the premises were being used as an HMO. His subsequent explanation as to this discrepancy was that he did not see that there was any real difference between an HMO and bed and breakfast accommodation. In my view, to a person not familiar with planning, this is plausible and has probably contributed to the protracted investigations as to the use of the property. In addition, there is no detailed description from the Council's records, or those of third parties, which actually reveals any physical differences between the uses of 144-146 Tenison Road and number 142 Tenison Road.
- 6.14 Mr Ahktar states that after the bed and breakfast referrals from the Council had ceased, he continued offering bed and breakfast accommodation to foreign visitors. While this use may not have generated complaints from residents, it is still nevertheless a hotel use.

7.0 THIRD PARTY REPRESENTATIONS

- 7.1 I recognise the strong concerns from GTARA that granting the certificate will result in the loss of HMO accommodation, but the planning merits of this concern cannot be taken into account in deciding whether a certificate of lawfulness can be issued.
- 7.2 I also note that the premises was used to house homeless people around 1997 to 2004 which resulted in objections from neighbours. Regardless of whether the certificate is issued, the Planning Authority cannot control whether 144 - 146 or indeed 142 Tenison Road is used by homeless people seeking temporary accommodation in Cambridge. This use of the premises can be carried on in a hotel or a HMO.

8.0 CONCLUSIONS

- 8.1 Based on the additional evidence supplied by the applicant and my site inspection, I am of the opinion that the property has probably been continuously used for hotel guest accommodation for 10 years preceding the application.

8.0 RECOMMENDATION

That a certificate of lawfulness be granted under Section 191 of the Town and Country Planning Act 1990 (as amended) for 142 Tenison Road, Cambridge.

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In accordance with the requirements of section 51 of the Planning and Compulsory Purchase Act 2004.

2. Application for a certificate of lawfulness under Section 191 for the use as additional letting bedrooms and ancillary accommodation to a hotel.
3. 142 Tenison Road, Cambridge, as identified outlined in RED on the location plan attached to this Certificate.