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# *Tesco Stores Ltd v Leeds CC*

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## **Main issue**

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3. There is no real dispute over any of the factual evidence presented at the inquiry. This appeal is primarily concerned with the interpretation of those facts. The appellant's position is that the premises are in use as a public house, which is a term that encompasses a variety of ancillary activities including the provision of accommodation.

The Council's view is that the level of accommodation provided is more than ancillary to the public house use, such that the use of the premises ought to be regarded as a mixed use as a public house and hotel. The primary purpose of the LDC application is to establish that the lawful use of the premises falls within Class A4 of the Town and Country Planning (Use Classes) Order 1987 (SI 1987/764) as amended. If, as the Council claim, it is in mixed use, it would not fall within any Use Class. The issue, then, is very straightforward and that is whether the level of provision of accommodation can be regarded as a part of the public house use or whether it should be regarded as a component of a mixed use.

## **Reasons**

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4. The premises are generally referred to as "The Crown". It was accepted the parties that the fact that its full name is "The Crown Hotel" had no significance in this appeal. Many pubs with "Hotel" as part of their name do not, in fact, have any guest accommodation and many that do not have "Hotel" in their name do have guest accommodation.

5. The Rose and Crown Inn (as it was then known) was purchased in 1890 by John Smiths brewery. The premises were described as a dwelling house used as a public house and the "yard, stables, outbuildings and appurtenances thereto" were included. It is similarly described as a public house in an indenture dated January 11, 1842.

6. The premises were, therefore, in use as a public house more than a century before the current planning system came into being, hence there is no planning permission for their use as a public house. There has never been a planning permission to change their use to anything else.

7. Use Class A4 covers use as "a public house, wine bar or other drinking establishment". "Public House" is not defined, but, as it is a term that predates planning legislation by a very long time, it can be assumed that it is a term that would have a generally accepted meaning to the average man in the street. Public

houses are not all the same in terms of the facilities on offer. For example, some may be out-and-out drinking places; others might offer accommodation; some may have a reputation for offering good food and some may offer entertainment, such as bingo nights, discos, quiz nights or live bands. Taken in isolation, some of these other common elements of a public house use could fall within Use Classes C1 (Hotels, boarding and guest houses), A3 (Use for the sale of food and drink for consumption on the\*J.P.L. 116 premises) and D2 (concert hall, bingo hall and dance hall). Interpretation of the Use Classes Order therefore involves a certain amount of hair-splitting. For example, what is it about a public house that is an out-and-out drinking establishment that distinguishes it from an A3 use? What is the difference between a public house selling food and a restaurant that sells drink, or a hotel with a public bar and a public house with guest accommodation?

8. I would suggest that a number of factors put forward by the appellants are of little relevance to the consideration of this appeal. Any restrictions the owners place on the use and how the premises are described for rating purposes are of little assistance because such restrictions and descriptions are not formulated for planning purposes. The quality of the guest accommodation is of no consequence. Rather than a forensic examination of the turnover or profits each of the various elements makes to the overall business, the answer to the questions posed in the previous paragraph lies in the overall character of the use and its effect on the locality in land-use terms. A test might be how a reasonable and impartial person with knowledge of the various uses would describe the property. In common parlance, is it a pub, a hotel or a bit of both?

9. The Crown closed for business in 2012, but it is accepted that the use has not been abandoned. In addition to the bar facilities, it had a function room which served as a dining room, with a raised area in one corner where bands would sometimes play. On the first floor there were seven letting bedrooms and access to the publican's residential accommodation, which was on the second floor. The evidence shows that in 1984 there was a function room on the first floor, the publican's accommodation was spread over the first and second floors and there were only three letting bedrooms. Internal alterations made around 1992 confined the publican's accommodation to the second floor and the whole of the first floor became guest accommodation. The Council accepts that, when there were only three guest rooms, the overall use would be within what is now Use Class A4.

10. There is no doubt that, having upgraded and increased the number of guest bedrooms, the tenants of the time made efforts to market The Crown as a place to stay. Their efforts included advertising and accreditation by the Yorkshire Tourist Board. People who knew the premises in those days refer to a high occupancy rate, especially by people working in the area. However, it makes good business sense to make the best use of the facilities on offer so it could be expected that the publicans would advertise the various aspects of the public house use, including the availability of guest accommodation. Whilst they may have referred to it as a small hotel in their marketing literature, that did not necessarily mean that the use of the premises had changed in planning terms or that the premises could no longer be categorised as a public house. There would be no point in having guest accommodation unless people were encouraged to use it.

11. The provision of guest accommodation is not an unusual component of a public house use. In this case, given that the Council accepts that three guest rooms would not take The Crown out of A4 use, it is necessary to consider in what way the addition of a further four guest rooms might have affected the character of the

use in planning terms. As far as the ordinary person would be concerned, there would have been nothing about the external appearance of the premises that would be any different whether three or seven guest rooms were available. In terms of its character or street presence, it would fit the description of what would be regarded as a public house. On walking into the premises, there would be nothing to indicate it was anything more than a public house, with no separate reception area or any other facilities exclusively for use by staying guests. All of the guest bedrooms were contained within the original building. No additional rooms had been created by extending the building, constructing an annex for guest bedrooms or converting any outbuildings to guest bedrooms. There is nothing to suggest to the ordinary person that the premises had become anything more than the public house they had been for many years.

12. In terms of the land use effect of the additional guest bedrooms, in theory at least, a person living near the premises might be affected by any change in the activities over and above those that would normally be associated with the public house use. In this case, assuming that each room could accommodate\*J.P.L. 117 two people (and that may not be the case as some of the rooms are not particularly large) then with 100 per cent occupancy, the most that could be expected would be an increase of eight in the number of staying guests. It would be most unlikely that all of the additional guests would come and go outside licensing hours. As the rooms were often occupied by people working in the area, the likelihood is that they would not stay out late because they would need to be ready for work in the morning. Compared to the general comings and goings of customers at the public house, I consider it very unlikely that any additional activity caused by the use of four additional guest bedrooms would be noticeable to anybody living near the premises.

13. All things considered, I take the view that, as a matter of fact and degree, the provision of guest accommodation at The Crown, whether that was for three bedrooms or seven, did not take the use of the building beyond what could properly be described as a public house. The building had the external and internal character and appearance of a public house and the range of facilities on offer was encompassed in the term "public house" as would be generally understood by the average person. The level of activity associated with the premises would at all times have been what a person living close by could have expected of a public house. That being so, I conclude that the Council's decision to refuse to grant a LDC was not well-founded. The lawful use of the premises is as a public house, rather than a mixed use as a public house and hotel. The use therefore falls within Class A4 of the schedule to the Town and Country Planning (Use Classes) Order 1987 as amended. The appeal succeeds and I shall issue a LDC to that effect.

The appellant made an unsuccessful application for a full award of costs. The Costs Decision included the following:

8.

"Although I have agreed with the applicant's proposition that the provision of seven guest bedrooms was a part of or incidental to the use of the premises as a public house, that does not mean that the Council's position was hopeless or represented a stance that it was unreasonable to take. There was no real dispute about the evidence put forward and the decision ultimately rests on the interpretation of that evidence as a matter of fact and degree.

9.

The Council did not seek out any evidence of its own and did not have to do so. Their role was to consider the evidence put to them. In this case, the applicant's evidence was geared towards demonstrating that the provision of guest bedrooms was incidental to the public house use. They provided extensive evidence of the financial contribution made by the guest lettings to the overall business, of restrictive clauses in the tenancies of the premises that required them to be used only as a public house and of the purposes for which the premises were rated. However, I found this evidence of limited assistance. Other evidence considered by the Council included submissions from local people about their use of The Crown to accommodate visitors and from former tenants and their employees about the investment in and marketing of the guest accommodation, including reference to it as a small hotel. All of the evidence suggested that the provision of accommodation was a significant, but not main, part of the overall business.

10.

Before making its decision, the Council sought legal advice. They treated this as privileged information, which they were entitled to do. The advice was that the hotel accommodation was more than ancillary to the public house use, as a matter of fact and degree, and there was therefore a mixed use taking place.

11.

Interpretation of the relevant classes of the Town and Country Planning (Use Classes) Order 1987 as amended can involve some hair-splitting. An A4 use could include a pub with rooms and a C1 use could include a hotel with a public bar. In between, there could be a use that is neither A4 nor C1, but a mixture of both. Having received Counsel's opinion that, in this case, the use was neither A4 nor C1, but a mixed use, the Council could hardly be blamed for following that advice. The fact that Counsel for the applicants came to an opposing view demonstrated that it was not a clear-cut answer one way or the other. If there had been a clear-cut answer, then it could be expected that the legal opinions would be consistent with each other.

12.

Although I prefer the applicant's legal submissions, hence my decision on the appeal, it would be too great a leap for me to say that the Council's counsel was hopelessly wrong in his advice. I do not think\*J.P.L. 118 the Council acted unreasonably in accepting and following the advice they had been given. Under the circumstances, I conclude that the Council did not act unreasonably, thereby causing the applicant to incur costs that might otherwise have been avoided and no award of costs should be made."