
Appeal Decisions

Site visit made on 29 June 2016

by Elizabeth Jones Bsc (Hons) MCTP MRTPI

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

Decision date: 31 August 2016

Appeal A Ref: APP/G3110/C/15/3140353

Appeal B Ref: APP/G3110/C/15/3140354

Appeal C Ref: APP/G3110/C/15/3140355

Appeal D Ref: APP/G3110/C/15/3140356

74 Valentia Road, Oxford, Oxfordshire OX3 7PW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Mohammad Rauf (Appeal A), Mrs Niyar Rauf (Appeal B), Mr Zafar Iqbal (Appeal C) and Mrs Rubina Iqbal (Appeal D) against an enforcement notice issued by Oxford City Council.
- The notice was issued on 18 November 2015.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the land from use as a single family dwelling house (Use Class C3) to a small house in multiple occupation (Use Class C4).
- The requirement of the notice is to cease the use of the property as a house in multiple occupation.
- The period for compliance with the requirements is 9 months.
- The appeals are proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld.

Procedural Matter

1. The Council has issued other enforcement notices which allege the change of use of single family dwellinghouses (Use Class C3) to houses in multiple occupation on other land owned by some of the appellants. They have made separate appeals against these notices¹. I am the appointed Inspector in those other cases, but for the avoidance of doubt, will determine each appeal strictly with regard only to the evidence that is relevant to each appeal.

The Appeals on ground (c)

2. The appeal on ground (c) is that the matters alleged in the enforcement notice do not constitute a breach of planning control. The onus of proof is on the appellants to show that there has not been a breach of planning control.
3. 74 Valentia Road is a mid-terraced property that originally had three bedrooms and was in use as a single dwellinghouse within Use Class C3. Since purchasing the dwelling, the appellants submitted an application for a licence to use the property as a House in Multiple Occupation (HMO). The dwelling was

¹ APP/G3110/C/15/3140349, APP/G3110/C/15/3140350, APP/G3110/C/15/3137863 & APP/G3110/C/15/3137858.

- extended and now has six bedrooms and is currently in use as an HMO. The extension works are not the subject of the alleged breach of planning control.
4. The appellants have drawn my attention to the Council's website which states that "Whilst HMO's of seven unrelated tenants or more require planning permission, changes of use between Class C3 dwelling-houses and C4 HMOs are not subject to planning permission." In 2010 the Use Classes Order introduced Class C4, which was for up to 6 people living in a house as an HMO. At the same time the Town and Country Planning (General Permitted Development) Order 1995 was amended to allow a change of use from C3 dwellinghouse to C4 HMO as permitted development. On 24 February 2012, however, the Council introduced an Article 4 Direction removing the right to automatically change from C3 to C4 and so such a change now requires planning permission.
 5. The appeal property was in use as a single dwellinghouse at the time the Direction came into force. The material change of use to an HMO occurred after that date. Planning permission has not been granted for the change of use to HMO. The appeals on ground (c) fail.
 6. I note the appellants' concern that in applying for a licence to use the appeal property as an HMO, the Council did not advise that such a use would require planning permission. However, this cannot influence a decision as to whether planning permission is required or not, which is a matter of law.

The Appeals on ground (a)

7. The main issue is the effect of the use of the property as an HMO on the objectives of the Council's housing policies for the area.
8. The Council's housing policies aim to prevent an overconcentration of HMOs which can change the local character of an area and aim to promote a mix of housing to meet the needs of all and help to build balanced and mixed communities. To this end, Policy HP7 of the Oxford City Council Sites and Housing Plan (2013) (SHP) states that planning permission will only be granted for the change of use of a dwelling in Use Class C3 to an HMO where the proportions of buildings used within 100 metres of street length either side of the application site does not exceed 20%.
9. The Council has calculated that according to its HMO licensing records, there are 12 properties licensed as HMOs. Thus the percentage of HMO properties within 100m of the appeal site amounts to 35%. I acknowledge that the Council's evidence refers to the number of HMO licences granted and does not confirm how many properties are currently in use as HMOs. Given the number of HMO licences issued within 100 metres of the appeal property considerably exceed the 20% policy threshold; I consider that it is highly likely that the number of properties currently in use as HMOs already exceeds 20%. In addition, from my own site visit it was clear that a number of properties in Valentia Road were no longer in use as single dwellinghouses. Based on the evidence before me I have no reason to doubt that the Council's figures which show the policy allowance of 20% is already being significantly exceeded.
10. The appeal site sits in a residential area characterised by two storey houses typically grouped in short terrace blocks. Due to the close proximity to the University there is a high demand for student accommodation in the locality.

An overconcentration of HMOs in this road could cumulatively impact the residential character of the area due to the transitory nature of student accommodation, the greater chance of poor management of waste and local parking problems, all of which influence the residential character of the area.

11. The appellants have suggested letting the property to professional tenants which would cause less disruption. The occupation of an HMO typically manifests itself differently from that of a family home in particular in the number of comings and goings and there could be no guarantee that future occupiers would not be noisy. While single families can be just as noisy, I do not think it is unreasonable to consider the probability of disruption from an HMO to be greater, than from a family home
12. Furthermore, the appeal property contributes to the overconcentration of HMOs along this stretch of the road in clear conflict with Policy HP7. More than 20% of HMOs within 100 metres of street length either side of the appeal site and the loss of family dwellinghouses can result in a community becoming unbalanced which has the potential to detrimentally change the residential character of the area. To allow the appeal in conflict with this policy and without special justification would undermine the objectives of the Council's housing policies to create and maintain balanced and mixed communities. Moreover, I am required to determine the ground (a) in accordance with the provisions of the development plan unless material considerations indicate otherwise.
13. I therefore conclude that the use of the property as an HMO Use Class C4 fails to prevent an overconcentration of HMOs in this road which is harmful to the residential character of the area as it does not to help create sustainable communities. There is conflict with Policy HP7 of the SHP, Policy CS23 of the Oxford Core Strategy (2011) and Policy CP10 of the Oxford Local Plan (2005) which aim to deliver a balanced mix of housing to meet the needs of all. The use of the property as a C4 HMO without specific justification would undermine the objectives of the Council's housing policies in the area.
14. I note the appellants' comments made in relation to the payment of Council Tax by future tenants and the contribution towards housing shortage. However, these do not outweigh the harm caused by the failure to provide a balanced mix of housing in this particular location.
15. The appellants have drawn my attention to the cost of extending the property and consider that the quality of the internal facilities at the appeal property is to a high standard. In addition, the Council consider the facilities show compliance with the HMO Good Practice Guidance for Landlords. Nonetheless, the quality of the internal space and facilities does not overcome the harm caused to the residential character of the area due to the overconcentration of HMOs in the road. None of these matters are sufficient either individually or cumulatively to indicate that the ground of appeal should be determined otherwise than in accordance with the development plan. Thus, the appeals on ground (a) and the deemed application for permission fail.

Formal Decision

16. The appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Elizabeth Jones

INSPECTOR