Appeal Decision

by Mr Keri Williams BA MA MRTPI

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

Decision date: 16 December 2016

Appeal Ref: APP/G3110/X/16/3154487
66 Cardigan Street, Oxford, OX2 6BS

- 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.
- The appeal is made by Mrs T Woods against the decision of Oxford City Council.
- The application, ref.16/01050/CEU and dated 18 April 2016, was refused by notice dated 9 June 2016.
- The application was made under section 191(1) (a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate is sought is use as a House in Multiple Occupation.

Summary of Decision: The appeal does not succeed and a Lawful Development Certificate (LDC) is not issued.

Preliminary matters

1. No site visit was made in this case as it was not necessary for me to inspect the property externally or internally in order to determine the appeal.

Main issue

2. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. Planning merits are not relevant in this case. They are not an issue for consideration in an appeal under section 195 of the Act, which relates to an application for a Lawful Development Certificate (LDC). I have therefore not addressed any matters of planning merit which are raised by the appellant. My decision rests on the facts of the case, relevant planning law and judicial authority.

3. The burden of proof in this appeal rests with the appellant and the appropriate test of the evidence is the balance of probability. It is consistent with *Planning Practice Guidance* that an appellant's case should be accepted if there is no evidence to contradict or otherwise make his or her version of events less than probable, provided that an appellant's evidence is sufficiently precise and unambiguous.

Background

4. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (UCO) (as amended) is the use of a dwellinghouse by not more than six residents as a "house in multiple occupation" (HMO). It was inserted into the Use Classes Order by the Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 and took effect from 6 April 2010. This use did not previously fall within any Class within the UCO. It would have been a use

outside any Use Class, or *sui-generis,* before that date. In broad terms a Class C4 HMO use covers small houses or flats occupied by up to six unrelated individuals who share basic amenities. The term "basic amenities" includes toilet facilities, personal washing facilities and cooking facilities.

5. Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 sets out various changes of use between different Use Classes which are "permitted development". They do not the need an express grant of planning permission. Class L (b) provides that a change of use of a building from a use falling in Class C3 (dwellinghouses) to a use falling in Class C4 (houses in multiple occupation) is permitted development. This class of permitted development had been introduced earlier, in the Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2010. It had effect from 1 October 2010.

6. It is open to a local planning authority to make a Direction removing a permitted development right. In this case the Council made such a direction under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995 as amended. It took effect from 24 February 2012 and had the effect that a change of use from Use Class C3 to Use Class C4 is not permitted development in the area covered by the Direction. That area includes the appeal site.

Reasons

Summary of the main points of the appellant's case

7. The LDC application form confirms that a certificate is sought for an existing use. Although no Use Class is specified in section 7 of the form, it is said in section 9 that the property has had an HMO licence for at least 7 years. In section 9 of the form the grounds for an LDC are said to be that the use began within the last 10 years as a result of a change of use not requiring planning permission and there has not been a change of use requiring planning permission in the last 10 years. The use is said to have begun in 2008. No.66 is a 2 storey dwelling. Floor plans of the property are submitted. On the ground floor they show a sitting/dining room, another sitting room, a kitchen and a toilet. Three bedrooms and a bathroom are shown on the first floor. Mrs Woods explains that the downstairs front sitting room has been used as an additional bedroom.

8. In her appeal statement Mrs Woods says that she acquired the property in November 2013. There were tenants in-situ and it was managed by a letting agency. She says that there had been an HMO licence in place since 2008. Mrs Woods has recently carried out major improvements, during which the property was vacant for 7 months. She realised that it did not have "C4 planning" and applied for an LDC. She also says that the Council's licensing team confirmed that she could market the property as an HMO.

9. Extracts from 5 assured shorthold tenancy agreements are submitted. All are for 4 tenants. Judging by their surnames they appear unrelated. The agreements cover the periods 1 September 2008 to 31 August 2009, 10 September 2010 to 9 September 2011, 22 September 2012 to 14 August 2013, 21 August 2013 to 20 August 2014 and 1 September 2014 to 1 September 2015. An email from Mr McMackin of Hutton Parker letting agents is dated 14 April 2016. It says that the agency has let the property from 2008. It refers to

copies of tenancy agreements which it says should show it was continuously let from 2008. There is a Council Tax adjustment document for the period 1 September 2015 to 31 March 2016. It amended the Council Tax bill for the period by applying an empty property discount. An invoice for building works at the property is dated 7 January 2016. There are also emails between the appellant and her insurers. They are for dates in December 2015 and concern building works at the property. An email of 26 April 2016 from Ms Yasin, a Council officer, says that "everything is satisfactory and the property can be marketed as an HMO".

Assessment

10. I have first considered whether the evidence submitted is sufficient to show, on the balance of probability, that the property was in use as an HMO at the date of the LDC application. I have also considered whether the use was lawful at the date of application because express planning permission was not required. For completeness I have also considered immunity having regard to the time limits for enforcement action, although that is not the basis of the appellant's case.

11. Mrs Woods explains that the property was vacant for renovation from 1 September 2015 to May 2016. That was a lengthy period but since it was for renovation it is not sufficient, of itself, for the appeal to fail. There is evidence that the property was let in the year preceding the renovation works. Of more concern is the lack any substantive evidence of the manner of occupation by tenants, for example with regard to the degree of sharing of basic facilities. It is quite possible for up to six unrelated persons living together to reside as a single household, so that the use remains in Use Class C3. This may occur, for example, where there are longstanding friendships or where students live together as a single household, sharing domestic activities including cooking and cleaning. While tenants being unrelated is one consideration it is not the only one in assessing whether there is an HMO use. In this case, although HMO licences are referred to, none are submitted. Nor is there any evidence of the assessment which lay behind any such licences or of the manner of occupation by the tenants. I find that the evidence for an HMO use at the date of application for an LDC is not sufficiently precise or unambiguous.

12. Mrs Woods does not contend that a change of use from a single dwellinghouse to an HMO occurred after 24 February 2012. In any case, had such a change of use occurred between then and the date of application for an LDC it would not have amounted to permitted development because of the Article 4 Direction imposed by the Council. As I set out above, the permitted development provision for a change from a Use Class C3 (dwellinghouse) to C4 (HMO) was effective from 1 October 2010. There was therefore a period between that date and 24 February 2012, when the Article 4 Direction took effect, during which such a change of use would have amounted to permitted development. However, it is the appellant's case that the change of use took place well before that period. She refers to the use dating back to 2008. Tenancy agreements covering periods before 1 October 2010 are consistent with that position, as is the letting agent's evidence that the property has been let since 2008. However, there was no provision in the 2010 amendment to the GPDO for retrospective approval of a change of use to an HMO that occurred before 1 October 2010.

13. Lastly, I address immunity from enforcement for a change of use to an HMO. As I set out above, use as an HMO was a *sui-generis* use before 1 October 2010. A material change of use from a single dwellinghouse to an HMO before that date would therefore have been a breach of planning control. Having regard to section 171B of the Act as amended the relevant period for issuing an LDC on the basis of immunity is 10 years before the date of application. In this case the application was dated 18 April 2016 so that the relevant period began on 18 April 2006. Mrs Woods refers to an HMO use occurring only since 2008. None of her evidence addresses use prior to 2008 and the LDC application form confirms that the HMO use began within the last 10 years. The required 10 year period of continuous use had not elapsed by the date of application and the appeal cannot succeed on the basis of the section 171B time limits for immunity from enforcement.

Overall Conclusion

14. Having regard to the above and to all other matters raised I conclude as follows. The appellant's evidence is not sufficiently precise and unambiguous to show that the use of the property was as an HMO at the date of application. There has not been a change of use amounting to permitted development and there is not immunity from enforcement having regard to the section 171B time limits for enforcement action. The Council's decision not to issue an LDC was well-founded and the appeal should not succeed.

Formal Decision

15. I dismiss the appeal.

K Williams

INSPECTOR