



Appeal Decision

Site Visit made on 11 May 2021 by John Gunn Dip TP, Dip DBE, MRTPI

Decision by M Seaton BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2021

Appeal Ref: APP/G3110/W/21/3268640

37 Jeune Street, Oxford, OX4 1BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Cohen, Home UK Ltd. against the decision of Oxford City Council.
 - The application Ref 20/02006/FUL, dated 14 August 2020, was refused by notice dated 29 October 2020.
 - The development is described as 'Change of use from dwellinghouse (Use Class C3) to house in multiple occupation (Use Class C4)'.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matter

3. The decision notice reads 'Change of use from dwellinghouse (Use Class C3) to house in multiple occupation (Use Class C4) (Retrospective)'. The appellant has used the same description used by the Council, on his appeal form, and therefore it is assumed that both parties are content with the amended description. The reference to 'retrospective' is not necessary however as this is not an act of development. I have considered the appeal on this basis.

Main Issues

4. The main issues are whether the development:
 - contributes to an over concentration of houses in multiple occupation (HMOs) within the locality, and its effect on the achievement of balanced communities and;
 - provides adequate cycle storage facilities.

Reasons for the Recommendation

Concentration of HMOs

5. The appeal site is a two storey terraced property. The local area consists of similar dwellings and a number of these are in use as HMOs.

6. Policy H6 of the Oxford Local Plan 2036 (adopted June 2020) (LP) 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 proportion of buildings used in full or part as an HMO within 100 metres of street length either side of the application site does not exceed 20%". The policy approach is designed to manage how and where new HMO are allowed by setting criteria to control how they are provided and managed and by restricting HMO numbers where there is already a high concentration of existing HMO.
7. Both parties agree that there are 48 residential properties within 100m of the appeal site. The Council's evidence indicates that there are 20 properties (including the host property) that are currently used as HMOs, this represents 41.6% of properties. The Appellants evidence indicates that there are 13 properties (including the host property) that are currently licensed for use as HMOs. This represents 27% of properties within 100 metres of the appeal site. From evidence submitted by the Council, which is not disputed by the Appellant, the difference in numbers of HMO's would appear to be accounted for by HMO licenses that expired on 24th January 2021. In the absence of evidence to the contrary, it would be reasonable to conclude that these premises would continue to function as HMO's in the future.
8. Notwithstanding the above, if the appeal was to be allowed in either scenario the number of HMO's in the area surrounding the appeal site would be extended further in excess of the 20% threshold specified in Policy H6. This is not disputed by either party. Consequently, as a matter of fact, the proposal would conflict with Policy H6 of the LP.
9. I note that there has been little change to the external appearance of the appeal property. Furthermore, whilst acknowledging that there may be similar occupancy levels to family accommodation, I find that the character of HMOs is usually different. In particular HMOs typically have a higher density of occupation, with individuals of a similar age, resulting in the need for additional refuse and cycle storage facilities. They also place additional pressures on local facilities and services.
10. The Appellant has commented that "no concerns have been raised in relation to the aims and objectives that Policy H6 seeks to control and protect". In this regard I have taken into consideration that an HMO is already in existence at the appeal property, and comments have been made, by local residents, in relation to noise and disturbance. The Council for its part considers that these are matters that should be dealt with by the management company and would not be considered as part of this planning application. However, whilst recognising that it is difficult to generalise about this issue, as the impact will largely be dependent upon the occupants at any point in time, the overprovision of HMOs in an area can have a significantly detrimental effect on the quality of living conditions and experience available to occupiers of a street, which goes beyond just its visual appearance.
11. In light of the above I find that the loss of a family dwellinghouse has contributed towards an over concentration of houses in multiple occupation (HMOs) within the locality and has a harmful effect on the achievement of balanced communities. This is contrary to H6 of the Oxford Local Plan 2036 (adopted June 2020) which seeks to provide a balanced mix of dwelling types within the area and create a sustainable community.

Cycle storage

12. Levels of cycle use in Oxford are high and their use contributes significantly to sustainable transport in the city. In support of this, Policy M5 of the LP requires all residential development to provide a minimum level of bicycle parking provision in accordance with standards set out in Appendix 7.3 of the LP. The policy allows provision below the minimum standards for new student accommodation in certain circumstances. Where bicycle parking is provided it is expected that it would be well designed and located and have level unobstructed external access to the street.
13. On my site visit I noted that a bicycle store capable of accommodating up to 6 bicycles had been erected in the garden space to the rear of the property. In order to utilise the store cycles would have to be pushed through a long, narrow corridor and the kitchen. Whilst recognising that there are steps, of limited height, along the route, and the movement of cycles through the building may cause some disturbance and inconvenience to occupiers, these are outweighed by the benefits of secure storage. Moreover, it avoids the situation where cycles are stored at the front of the property, which would be to the detriment of the character and appearance of the area, which is one of the aims of Policy M5.
14. In light of the above, I find that the proposal would on balance provide adequate access to storage facilities for bicycles. Consequently, the development is not contrary to Policy M5 of the Oxford Local Plan 2036 (adopted June 2020) which seek to ensure that new developments provide secure and convenient cycle parking.

Other Matters

15. The appellant asserts that an enforcement notice, issued in relation to the use of the property as an HMO in 1986, was complied with on 17th December 1986 at which time the property reverted to a C3 (dwelling house) use. Moreover, he contends that the property has been used as an HMO for over 10 years, with the use commencing prior to the Article 4 direction requiring planning permission for the change of use of a C3 (dwelling house) to a C4 (small HMO) being brought into force. Consequently, he considers that the Class C4 Use is lawful in line with section 191 (1) (a) of the Town and Country Planning Act 1990 (as amended). This matter is disputed by the Council who have refused an application for a Certificate of lawfulness of existing use or development (LDC)¹ on the basis that it was not lawful by virtue of Section 191 (2) (b) of the Act. This states that "For the purpose of the Act uses and operations are lawful at any time if – (b) they do not constitute a contravention of any requirements of any enforcement notice then in force".
16. Whilst acknowledging the above, this appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission and a decision must therefore be made in accordance with the development plan unless material considerations indicate otherwise. It does not constitute an appeal against the refusal, by the Council, to grant a LDC which could have been made under section 195 of the Act. Consequently, I give this matter little weight in support of the proposal.

¹ 19/01541/CEU

17. I also acknowledge that the Council may have granted an HMO License for the property since the 1980's without any dispute. However, the issues addressed by the licensing authority, when considering the grant of an HMO License, are not entirely the same as those that would be addressed by a planning authority. It does not therefore automatically follow that the grant of a License would result in a planning permission. I give this matter neutral weight.
18. The Council acknowledge that the development complies with Policy H6 b) and c) which relate to internal space standard, amenities, and facilities respectively. From what I have seen and read I do not disagree with their opinion in this regard.
19. Furthermore, I acknowledge that the site is situated in close proximity to Cowley Road, which contains several retail units, bars, cafes, restaurants, and numerous convenience stores, and there are large areas of public open space, parks and open greenfield in the locality. I also recognise the benefits of having good access to public transport. I give these matters limited weight in support of the proposal.
20. On the balance of these considerations, none of the matters taken cumulatively would outweigh the harm caused by the over concentration of houses in multiple occupation (HMOs) within the locality and the harmful effect it has on the achievement of balanced communities that I have identified above.

Conclusion and Recommendation

21. Whilst I have found that the development provides adequate facilities for the storage of bicycles this does not outweigh the significant harm to the housing mix in the area contrary to Policy H6 of the Oxford Local Plan 2036 (adopted June 2020). There are no material considerations that indicate the application should be determined other than in accordance with the development plan. Therefore, for the reasons given above, I recommend that the appeal should be dismissed.

John Gunn

APPEAL PLANNING OFFICER

Inspector's Decision

22. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

M Seaton

INSPECTOR