
Appeal Decision

Site visit made on 12 July 2021

by **P N Jarratt BA DipTP MRTPI**

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

Decision date: 26 July 2021

Appeal Ref: APP/G3110/C/21/3271351

182 Headley Way, Oxford, OX3 7TA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Ishfaq Ahmed against an enforcement notice issued by Oxford City Council.
 - The enforcement notice, numbered 20/00229/INV, was issued on 19 February 2021.
 - The breach of planning control as alleged in the notice is the change of use of the property on the land from use as a dwelling house in Use Class C3 of the Town and Country Planning (Use Classes) Order (as amended) to use as a house in multiple occupation (within Use Class C4 or as a sui generis use).
 - The requirements of the notice are to cease the use of the property on the land as a house in multiple occupation (within Use Class C4 or as a sui generis use).
 - The period for compliance with the requirements is 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed insofar as it relates to the C4 use of the dwelling at 182 Headley Way, Oxford, OX3 7TA and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act, as amended, for use as a house in multiple occupation within Use Class C4, and subject to the following conditions:
 - i) The use of the dwellinghouse shall be limited to no more than six residents as a house in multiple occupation;
 - ii) The garage shall be used solely for the storage of bins and cycles and not be used for any other purpose and retained for that purpose thereafter.
2. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the sui generis use at 182 Headley Way, Oxford, OX3 7TA where permission is refused in respect of its use as a large house in multiple

occupation (sui generis use) on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The site and relevant planning history

3. The appeal property is a semi-detached dwelling located at the junction of Headley Way and Franklin Road in a residential area.
4. Application ref 18/01677/FUL to change the use of a dwellinghouse (Use Class C3) to a large House in Multiple Occupation (sui generis) (amended plan) was withdrawn. The return of a Planning Contravention Notice confirmed that the property was being used as a sui generis large HMO. Application ref 20/02007/FUL for the change of use from a house in multiple occupation (Use Class C4) to a larger house in multiple occupation (sui generis) (retrospective) was refused.
5. An application for a Lawful Development Certificate (LDC) for the existing use as a house in multiple occupation (Use Class C4) was refused as the Council did not consider that the evidence was sufficient to demonstrate that the property had been in use as a C4 HMO continuously prior to the adoption of an Article 4 Direction which came into force on 23 February 2012 and withdrew permitted development rights to change the use of a property from a C3 dwellinghouse to a C4 small HMO.

The appeal on ground (c)

6. An appeal on ground (c) is that there has not been a breach of planning control.
7. The appellant states that at the time of purchase of the property it was in use as an HMO, and that the previous owner had exercised permitted development rights existing prior to the Article 4 Direction coming into force. It is stated that in the light of changes to the Permitted Development Order and the Use Classes Order at the time, the appeal property would have automatically been classified as a C4 HMO without the need to obtain specific planning permission. In connection with the application for an LDC, evidence in the form of a Statutory Declaration and tenancy agreements for the period following the purchase of the appeal site were submitted. The appellant's statutory declaration indicates the property was purchased on 16 November 2012 and it was in use as an HMO. Work was carried out and lettings commenced in January 2013. The appellant managed the letting of the rooms between 2014 and 2018 and there were 3 tenants and the appellant and his wife also lived at the appeal property until 5 September 2018.
8. Further written evidence has been submitted with this appeal from the original letting agent (Beehive Lettings) confirming the use of the appeal site as being let as an HMO at the time of purchase. The letter dated 16 March 2021 from Ejaz Khan Aziz confirms that Beehive Lettings let the appeal property as an HMO between January 2013 through to mid-2014 and that they surveyed the property before the appellant's purchase of the property towards the end of 2012 and that it was in use as an HMO. However, the earliest date that can be attached to the statement is late 2012 and the submitted documentation about the company is of little value in the context of providing dated evidence. This further information does not demonstrate on the balance of probability that the use of the property could be regarded as C4 rather than C3 use at the time

that the Article 4 Direction came into force on 23 February 2012. Whilst I note that the appellant has acted in good faith and sought to regularise the use of the appeal site, the onus of proof nevertheless rests with the appellant and that has not been demonstrated.

9. The Council states that its records cast sufficient doubt that the use as a C4 HMO occurred prior to the Article 4 Direction. Reference is made to inconsistencies in evidence submitted as part of the LCD application including the withdrawn application ref 18/01677/FUL to change the use of a dwellinghouse (Use Class C3) to a large House in Multiple Occupation (*sui generis*). I note however that the appellant states that the reference to a Class C3 dwelling house is an administrative error.
10. In the response to the PCN of 10 August 2020 it was declared that use as a large HMO started on 7 September 2018. The first HMO licensing record was issued for seven occupants in June 2018. This indicates that any C4 use ceased and that the use of the property for 7 occupants represents a *sui generis* HMO use for which planning permission is required.
11. Whilst I note the appellant's comments regarding there being no need to seek planning permission when a change from C3 to C4 use was permitted, it nevertheless does not discharge the onus of proof on the appellant to provide evidence to substantiate the time when an HMO was established either for the purpose of a ground (c) appeal or in connection with a lawful development certificate.
12. Although the appellant considers that the lawful use of the property is C4, precise and unambiguous evidence has not been submitted to show this to be the case. The last lawful use appears to be C3 residential.
13. The appeal on this ground fails.

The appeal on ground (d)

14. An appeal on ground (d) is that it is too late to take enforcement action. Section 171B (3) indicates that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
15. In this case, the evidence does not indicate that a period of 10 years has passed to achieve immunity from enforcement action for C4 use which ceased, by the appellant's own admission, when the property became a *sui generis* large HMO in September 2018.
16. The appeal on this ground fails.

The appeal on ground (a)

17. The appellant's ground (a) appeal has been made on the basis that planning permission should be granted for what is alleged in the notice¹. The allegation refers to use as a house in multiple occupation (within Use Class C4 or as a *sui generis* use) but the appellant makes a case for planning permission being granted for the change of use from a C3 dwellinghouse to a C4 HMO² and not for an HMO of seven occupants which is a *sui generis* use. The appellant has indicated an intention to submit an application to regularise the use of the

¹ Paras 6.1 and 6.2 of the appellant's case.

² Para 6.3 of the appellant's case

property as a large HMO sui generis following the determination of this appeal. I have therefore considered the appeal on this ground to relate to Class C4 only.

18. Policy H6 of the Oxford Local Plan seeks to control the change of use of dwellings in Use Class C3 to an HMO in order to maintain a balanced mix of housing with the objective of creating balanced communities. The Council state that the development results in over 20% of HMOs within 100m either side of the property. When considering application 20/02007/FUL, the Council assessed that of the 54 buildings within 100m either side of 182 Headley Way, 12 were classed as HMO's. This resulted in a total of 22.22%, which is above the specified 20% in Policy H6.
19. The appellant has carried out his own detailed assessment based on the guidelines at Appendix 3.5 of the Local Plan and indicates that of the 54 buildings within 100m of the appeal site, a maximum of 9 (excluding the appeal property and 194 Headley Way which is being operated as a B&B) are registered as HMO's. This results in 16% or 18% including the appeal property, which is within the threshold of 20%. The Council has not challenged these figures or provided addresses of properties that they consider should be excluded. Nor has the Council indicated whether the HMO's included in their assessment are lawful in planning terms.
20. I note that the Oxford Civic Society is opposed to the change of use to a sui generis large HMO as the density of HMO's exceeds policy limits.
21. The Council has indicated that the internal space of the appeal property to be adequate for the licensed number of seven occupants. It therefore follows that it must be adequate for a lesser number of occupants. The Council has also indicated that parking requirements could be met and that bin/cycle storage requirements could be accommodated in the garage and controlled by condition. The appellant would accept such a condition.
22. The character and appearance of Headley Way and adjoining streets is that of two-storey detached, semi-detached and terraced housing with broad pavements, grass verges and mature street trees. This gives the impression of a conventional suburban residential area characteristic of the inter-war period and from my own observations the area does not appear to be overwhelmed by HMO's to the extent that they are creating an unbalanced neighbourhood.
23. Notwithstanding the discrepancies between the Council and the appellant's assessments, which are not greatly different, I consider that on balance the C4 HMO use does not create such harm that it would breach Policy H6.
24. The appeal on ground (a) in respect of the C4 HMO use class succeeds but fails in respect of the large HMO sui generis.

The appeal on ground (g)

25. The appellant considers that a compliance period of 12 months is necessary as the property has been let for the academic year September 2021 to August 2022. A shorter compliance period would cause difficulty for residents to find alternative accommodation at short notice.

26. The Council have liaised with the appellant's solicitors which at the time that the notice was issued, the then tenancy arrangements would have come to an end before the notice came into effect.
27. However, the appellant has exercised his right to appeal and has continued with the letting of the property either in the anticipation of success of the appeal or in the knowledge of the potential risks being taken. In the light of the success of the ground (a) appeal for the C4 HMO use, I consider that a compliance period of 5 months, as set out in the notice, is a reasonable period in which to reduce the occupancy levels of the property to six or less persons
28. The appeal on this ground fails.

Conclusions

29. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for C4 HMO use but otherwise I will uphold the notice and refuse to grant planning permission for large HMO sui generis use. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

P N Jarratt

Inspector