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# Appeal Decision

Site visit made on 22 February 2022

**by S A Hanson BA(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 March 2022**

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**Appeal Ref: APP/G3110/C/21/3285946**

**Land at 221A London Road, Oxford, Oxfordshire, OX3 9JA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Noreen Sarwar against an enforcement notice issued by Oxford City Council.
  - The notice, numbered 20/00368/ENF, was issued on 30 September 2021.
  - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the property on the land from use as a dwellinghouse in Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to use as a house in multiple occupation (within Use Class C4).
  - 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).
  - The period for compliance with the requirements is: 6 (six) months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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## Decision

1. It is directed that the enforcement notice be corrected by:  
  
deleting the plan titled "Location Plan- 221a London Road" attached to the notice.
2. Subject to that correction the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the property on the land from use as a dwellinghouse in Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to use as a house in multiple occupation (within Use Class C4) on Land at 221A London Road, Oxford, Oxfordshire OX3 9JA, subject to the following conditions:
  - 1) Unless within 3 months of the date of this decision a scheme for cycle and bin storage is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 2 months of the local planning authority's approval, the use of the site shall cease until such time as a scheme is approved and implemented.
  - 2) Upon implementation of the approved cycle and bin storage specified in this condition, they shall thereafter be retained/remain in use.
  - 3) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the

time limits specified in this condition will be suspended until that legal challenge has been finally determined.

### **Preliminary Matters**

3. The plan which accompanies the notice is technically incorrect as it identifies the property which is the subject of the notice and its neighbour 221 London Road. Nevertheless, the notice makes clear that it only attacks land at 221A London Road, Oxford OX3 9JA. As the appellant has brought this to my attention and there is no apparent doubt as to the land which the notice relates, the appellant has not been misled. I am therefore satisfied that the notice leaves no doubt as to the land subject to the alleged breach of planning control.
4. There are wide-ranging powers to correct or vary the notice<sup>1</sup> subject to no injustice to either party and an inaccurate plan can be deleted altogether leaving the site to be described in words alone. To that end, I can correct the notice to omit the plan. No injustice would arise to either party in doing so.
5. The council submitted copies of policies contained within its superseded local plan as part of the appeal. However, there is no reference to their relevance in either the notice or the appeal statement. Consequently, I will not refer to them in my decision.

### **The appeal on ground (a) and the deemed planning application**

#### **Main Issue**

6. This is the effect of the development on the balance of housing within the locality.

#### **Reasons**

7. The appeal building lies within an area that is subject to an Article 4 Direction which came into force on 24 February 2012. The Article 4 Direction withdraws permitted development rights for a change of use from C3 to C4, meaning that express planning permission must be granted on applications for such development.
8. The pertinent development plan policy in these circumstances is Policy H6 of the Oxford Local Plan 2036 (LP). This states that 'planning permission, where sought for the change of use of a dwelling in Use Class C3 to an HMO, will only be granted where: a) 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%'. Guidance on the application of Policy H6 is contained within Appendix 3.5 of the LP and this was provided by the appellant within their evidence.
9. The reasons for issuing the notice include that the number of HMOs within this situation would exceed 20% and that there was no basis for making an exception to the policy based on other site-specific considerations. The figure was subsequently quantified in the council's appeal statement that 23% of properties were in use as HMOs at the time the notice was issued. However, there is no evidence before me to demonstrate how that figure was reached.

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<sup>1</sup> section 176(1)(a) of the Act

10. I am aware that a planning application (ref. 20/02720/FUL<sup>2</sup>) was submitted to the council, prior to the issuing of the enforcement notice, to try to regularise the use at the appeal site. This application was withdrawn by the appellant on 22 December 2020 following an email<sup>3</sup> from the council to the appellant, where the council advised the appellant that an approval of the application would result in 25% of the properties within the 100m area being HMOs. The council considered that as this would be contrary to Policy H6, the application would be recommended for refusal.
11. To support their appeal on ground (a), the appellant has provided a detailed assessment of the appeal site and its neighbours in relation to Policy H6 of the LP and its HMO calculation instruction. With information provided by the council's HMO Register, the appellant's statement shows that there is a total of 46 buildings within the 100 metre street length of which 8 are HMOs, including the appeal site. These buildings are listed as Nos. 198, 214, 216, 217, 221, 221A, 222 and 225. This equates to 17.4% which is below the threshold of 20% contained within Policy H6 of the LP.
12. The calculations provided by the appellant are based on the council's HMO register, whilst the varying figures provided by the council are not supported by evidence. Furthermore, the appellant indicated the extent of the buildings which were included in the calculations on a screenshot of Google maps. This showed the 100 metre limit as directed by Annex 3.5 of the LP.
13. I am therefore minded to accept that, based on the balance of probability, the appellant's evidence, applying the policy correctly, indicates that the use of the appeal property as an HMO would not exceed the 20% limit set by Policy H6. The development would thus comply with the policy objective of preventing an over concentration of HMOs in the city.
14. The ground (a) appeal therefore succeeds.

### **Conditions**

15. The council did not provide any suggested conditions. The conditions I attach have been suggested by the appellant and are imposed to ensure that appropriate provision is made for cycle and bin storage to make the development acceptable in the interests of sustainability and the appearance of the area.

### **Overall Conclusion**

16. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission, subject to conditions, for the use as described in the notice.
17. The appeal on ground (g) does not fall to be considered.

*S A Hanson*

INSPECTOR

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<sup>2</sup> Change of use from dwellinghouse (Use Class C3) to House in Multiple Occupation (Use Class C4). Provision of bin and cycle store.

<sup>3</sup> Email dated 18 December 2020