
Appeal Decision

Site visit made on 3 August 2023

by R Satheesan BSc PGCert MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2023

Appeal Ref: APP/G3110/C/23/3317328

177 Headley Way, Oxford, Oxfordshire OX3 7ST

- 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 Raymond Bell against an enforcement notice issued by Oxford City Council.
 - The enforcement notice was issued on 27 January 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the dwelling on the Land from a single dwellinghouse (Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended)) to a house in multiple occupation (Use Class C4).
 - The requirements of the notice are:
 - (i) Cease the use of the dwelling on the Land as a house in multiple occupation.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. 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. The appeal is 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.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issue

2. The main issue is whether the development provides an appropriate mix and balance of housing in the area, with particular regard to the proportion of house in multiple occupation (HMO) in the area.

Reasons

3. The appeal property relates to a two-storey dwelling, which has been converted from a single dwelling to a Use Class C4 HMO. Oxford City is subject to an Article 4 Direction which removes permitted development rights for changes of use from Use Class C3 (dwellinghouses) of the Town and Country (Use Classes) Order 1987 (as amended) to Use Class C4 (houses in multiple occupation [HMO]) of that Order. Therefore, planning permission is required for such a change of use, which is not in dispute.

4. Part a) of Policy H6 of the Oxford City Council Local Plan 2036, adopted in June 2020 (LP) states that planning permission, for the change of use of a dwelling in Use Class C3 to an HMO, will only be granted 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%. Appendix 3.6 of the LP further outlines how to calculate the street length within 100m of the site.
5. The supporting text for this policy, whilst recognising the importance of HMO accommodation, highlights that in some areas of Oxford high concentrations of HMO are resulting in changes to the character of the local area, contributing to local parking problems and a large number of transient households. This has led to concerns that their communities are becoming unbalanced because the number of short-term tenants with less-established community ties has increased. In particular, the City Council considers that more than 20% of buildings in HMO use within a 100m length of street will result in an over concentration.
6. A calculation of the street length, in accordance with Appendix 3.6 of the LP, has been provided by the Council. This illustrates that within a 100m street length either side of the appeal site, there are 41 properties, of which 11 are in an HMO use (excluding the appeal property). This equates to 26.8% of properties in HMO use, in excess of the 20% threshold. With the appeal property included, it results in a further infringement of the threshold, with 29.2% of properties within the relevant 100m area in an HMO use. Therefore, the development fails to provide an appropriate mix and balance of housing in the area, and results in an over concentration of HMO in the area.
7. The appellant argues that a number of the properties included within the Council's HMO calculation should be discounted as they do not benefit from express planning permission. However, all of those properties referred to lawfully changed their use under permitted development prior to the introduction of the Article 4 direction in February 2012. Indeed, for each of those properties the Council, has records of HMO licences which date back to at least 2012. Thus, those other properties referred to by the appellant are all lawful HMO which must be included in the calculation. Indeed, Appendix 3.6 of the LP makes clear that *"In counting individual properties, the City Council will have regard to the number of houses, flats or buildings that are licensed HMOs, or for which a licence application is pending."*
8. My attention has been drawn to the planning history of the site where a planning application was refused and subsequently dismissed at appeal for the change of use to a Use Class C4 HMO (Appeal Ref: APP/G3110/W/21/3280343, dismissed on 19 April 2022). The appellant states that since that appeal, the Council have now included in their HMO calculation Nos 200 and 208. However, both of these properties were included in the Council's appeal statement for the previously dismissed appeal. Furthermore, both properties have HMO licences and appear to be located within the criteria set out in policy H6 and Appendix 3.6 of the LP.
9. The appellant also states that No 194 is a bed and breakfast (B&B) and should not have a licence or be included in the Council's calculation. However, the B&B relates to only one room within the HMO and the primary use of that property remains as a Use Class C4 HMO. Furthermore, that property also benefits from an HMO licence. Therefore, there is no clear reason before me to

discount this property from the HMO calculation. Furthermore, even if one property were to be discounted due to it being located on the cusp of the 100m distance, the concentration of HMO within 100m of the appeal site would still exceed the 20% threshold permitted by Policy H6 of the LP.

10. I therefore conclude that the development fails to provide an appropriate mix and balance of housing in the area, with particular regard to the proportion of HMO, contrary to policy H6 of the LP, which seek the aforementioned aims.

Conclusion on Ground (a) and the Deemed Planning Application

11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. I have found conflict with the development plan with regard to the unacceptable mix and balance of housing in the area, with particular regard to the proportion of HMO. None of the other matters raised by the appellant, including the standard of the accommodation provided, or the additional provision of more affordable accommodation for local key workers and health care professional outweighs this harm. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
12. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR