Appeal Decision

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 8 August 2024

Appeal Ref: APP/G3110/X/23/3325184
23 Iffley Road, Oxford OX4 1EA

- 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 (LDC).
- The appeal is made by Mr Anwar Ali against the decision of Oxford City Council.
- The application Ref 23/00734/CEU, dated 29 March 2023, was refused by a notice dated 8 June 2023.
- 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 of lawful use or development is sought is use of the property as an 8-bedroom HMO.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Anwar Ali against Oxford City Council. This application is the subject of a separate decision.

Procedural Matters

3. Considering the matters at appeal it was not necessary to visit the appeal premises. I have therefore made my decision based on the representations and supporting information submitted by the main parties as a matter of course as part of the application and appeal process.

4. Section 194(4) of the Town and Country Planning Act 1990, as amended (1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant a LDC was well founded. That turns on whether the appellant can demonstrate, on the balance of probabilities, that the change of use to a large HMO took place more than ten years before the date of the application and continued without

significant interruption thereafter, so as to be immune from enforcement action. The relevant date in this instance being 29 March 2013.

6. Having regard to case law, a consideration is whether this building has been used as a large HMO throughout the whole of the ten years, so that the planning authority could at any time during that period have taken enforcement action.

7. Furthermore, the change of use does not need to have been in the ten year period immediately preceding the date of the LDC application, provided that there has been no subsequent change of use since that use became lawful.

Summary of cases

8. The appellant maintains that the property has been in continual use as a large 7/8 bedroom house in multiple occupation (HMO) for at least ten years, commencing that use prior to 29 March 2013. Evidence has been provided in the form of copies of the Council's licences for the HMO which go back to 2007, and screenshots taken from the letting agency's data base detailing tenancy agreements for occupiers of the property between 1 September 2014 to 7 August 2023. Those records are supported by a letter from the letting agent confirming the accuracy of the records for that period and use of the property as a 7/8 bedroom HMO. A number of invoices from a previous letting agent, "The Letting Shop" have also been provided, together with a declaration from the Landlord with landlord insurance details.

9. The Council does not consider that the evidence demonstrates continual use as an 8 bedroom HMO for a full 10year period, particularly for the period prior to September 2014.

Assessment of evidence

10. Floor plans submitted with the application show 8 bedrooms over four floors of the appeal property, a single bathroom with separate toilet on the first floor and shower room with WC on the lower ground floor. The property has a single kitchen with dining area and separate living room all on the lower ground floor.

11. The screenshots from the current letting agency's data base show 12month tenancy agreements (TA) which commence on 1 September 2014 and continue through to August 2023. The different surnames on the tenancies would suggest that the occupants were not related and thus the property was in multiple occupation with shared facilities. The screenshots show that during that period the property was let to at least 7 occupants on 12month tenancies throughout that 9 year period, and in some years let to 8 occupants.

12. It is relevant that, in isolation, without corroborating information, the TA do not provide evidence of occupation. However, in this instance there is also a letter of declaration from the letting agent confirming the use of the property as a 7/8 bedroom HMO throughout this period. Furthermore, there is evidence that the property has had the benefit of an 8 person HMO licence issued by the Council. The licence was first granted in 2007 and subsequent licences continue through until 2024. Consequently, with no evidence from the Council that would contradict or otherwise make the appellant's version of events less than probable, I consider that on the evidence available and on the balance of probabilities, the property has been used as a 7 bedroom HMO throughout the 9 year period from 1 September 2014 to the end of August 2023.

13. However, as set out above, to be immune from enforcement action and for an LDC to be granted it is necessary for the appellant to demonstrate, on the balance of probabilities, that the change of use to a large HMO took place more than ten years before the date of the application and continued without significant interruption thereafter. An assessment of the evidence available and applicable to the period of 29 March 2013 and 1 September 2014 is thus also required.

14. Between 29 March 2013 and 1 September 2014, I understand that "The Letting Shop" were letting agents for the appeal property. There are statements dated March 2012, 1 May 2012, 29 May 2012, 29 June 2012, 1 May 2013, 1 June 2013, 1 August 2013, 2 September 2013, 1 October 2013, 3 March 2014, 1 April 2014, 31 May 2014 and 1 July 2014 from "The Letting Shop" which are addressed to the appellant. The statements show the amount of rent taken and deductions for management fees/VAT. However, as no TA have been provided it is not known how the property was occupied. Each statement shows a different income from the property, and it is not clear how many tenants may have been occupying it. Indeed, the 1 May 2012 statement indicates that there may have only been four occupiers as the details suggest that only four deposits were taken. Thus, even if I was to accept the appellant's reason for the gaps in statements as being due to their loss, the evidence is not sufficiently precise or unambiguous to demonstrate that the property was continually occupied by at least 7 unrelated occupiers during that time period. Furthermore, although the declaration from the appellant affirms that he has been the landlord of this property throughout the relevant period and detailed his landlord insurance, this does not provide evidence of how the property was occupied during that time. TA and details of rent or deposits taken would have provided greater clarification of the number of occupiers.

15. Overall, therefore, I consider that the information submitted with the LDC application is not sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the property has been in continuous residential use for a ten year period as a 7 or 8 bedroom house in multiple occupation (Sui Generis) for a period commencing on or before 29 March 2013.

Conclusion

16. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of use as a 7 or 8 bedroom house in multiple occupation was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in Section 195 (3) of the 1990 Act, as amended.

Elizabeth Pleasant

INSPECTOR