The Planning Inspectorate

Appeal Decision

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09th December 2024

Appeal Ref: APP/G3110/X/24/3344109
72 Abingdon Road, Oxford OX1 4PL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Ti Chen against the decision of Oxford City Council.
- The application ref 24/00497/CEU, dated 1 March 2024, was refused by notice dated 8 May 2024.
- The application was made under section 191(1)(a) of the Act.
- The use for which a certificate of lawful use or development is sought is use of the property as a House in Multiple Occupation (C4 use class).

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Ti Chen against Oxford City Council. That application is the subject of a separate decision.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

4. A direction under Article 4 of the GPDO[1] came into effect on land including the site on 24 February 2012. This prevents a material change of use from a dwellinghouse (C3 use class) to a small House in Multiple Occupation (HMO) (C4 use class) from being 'permitted development'. Express planning permission would have therefore been required for the material change of use of the site from a dwellinghouse to a small HMO on or after that date.

5. To clarify, a dwellinghouse falling within the C3 use class includes a dwellinghouse used by people to be regarded as forming a single household, and up to 6 residents living together as a single household (other than a use within the C4 use class)[2]. The C4 use class is defined in the UCO as a dwellinghouse used by not more than six residents as an HMO.

6. The appellant needs to show, on the balance of probabilities, that the use as an HMO was lawful on the date of the application. If there is no evidence to contradict the appellant's claims or make them less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted[3].

[1] The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
[2] As defined in The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO)
[3] *Gabbitas v SSE & Newham BC* [1985] JPL 630

7. With regard to section 171B of the Act at the date of the application, the use of the property as an HMO would have been lawful if it began on or before 1 March 2014 and remained substantially uninterrupted since.

8. The appellant bought the site in January 2013 and undertook refurbishment works. It is claimed that the property has been in use as an HMO consistently since mid-2013. This conflicts with the information provided in the application form which states that the property has been in use as an HMO since 24 February 2014. In either case, the use would have been lawful on the date of the application if it had been consistent since.

9. I note the appellant's submission that he is a rational investor with a business aim of maximising profit, and that no rational investor would leave the property vacant for an extended period. However, it is not inconceivable that this would prevent the property from being anything other than a fully tenanted HMO consistently since it was refurbished. This is because it is not uncommon for there to be matters beyond a landlord's control.

10. The earliest tenancy agreement is dated 20 May 2014 (the 2014 TA) and relates to 4 tenants paying a total of £3,000 per month, whose 12-month term of occupancy is stated as beginning on 1 June 2014. It refers to rent continuing on a monthly rolling basis after the initial 12-month term, unless the tenancy is terminated by any parties.

11. The 2014 TA is a single document with all 4 tenants listed together and defined as 'the tenant'. As such, it shows all 4 tenants were responsible for the monthly rent together, rather than separately. This would suggest that they were living together as a single household. There is no individual rent specified or other information to clarify whether this was the case or not, or when any of those tenants ceased living at the site. It is possible that they all vacated the site at the end of their 12-month tenancy, or that all/some continued living there on a monthly rolling basis for much longer. It is unclear either way.

12. There are 2 Valuation Reports written by chartered surveyors. One relates to an inspection of the site on 26 September 2016[4] (the 2016 VR). Section 2 of the 2016 VR states 'The property has been refurbished in a way to provide a potential house for multiple occupation. However, we understand that the vendor does not currently have a licence, but is in the process of applying'. Section 4 refers to the house having 6 bedrooms with en-suites, and explains that the author understood there to be 4 people residing at the property on separate contracts. In addition, section 25 refers to the possibility of the property being used as an HMO in the future without affecting its valuation.

13. Appendix 3 to the 2016 VR provides the letter of instruction to the valuer dated 19 September 2016. It states, 'the property is subject to occupational lease on AST basis, total passing rent is £2,800 per month'. The 2016 VR is therefore somewhat consistent with the 2014 TA, suggesting the property was still being lived in by 4 people. It is slightly inconsistent in referring to those tenants paying a combined £2,800 per month separately, compared to all 4 tenants on the 2014 TA being responsible together for a combined £3,000 per month.

14. It is therefore also unclear whether the tenants at the time of the 2016 VR were living together as a single household or not. They may have been the

[4] by Ben W Upright MRICS, of Cotswold Surveyors Ltd

same tenants listed in the 2014 TA, or they may have been different people. In any case, the language of the 2016 VR suggests that the site merely had the potential to be used as an HMO at that time.

15. An HMO licence was applied for on 29 October 2016, and one was issued on 16 December 2016, but this does not indicate how the site was being used before then. Furthermore, there is a lack of clarity as to who occupied the property prior to the 2014 TA. The appellant has claimed it was occupied by tenants as a small HMO, but there are no details of who those people were or the circumstances which led to the 2014 TA.

16. The second valuation report[5], relating to an inspection carried out on 13 January 2021, refers to the site being in use as a 7-bedroom HMO, notably with 2 double bedrooms with en-suites at ground floor level. It provides details of the rent taken for each bedroom, showing that Room 4 was vacant at that time and that total passing rent was £4,180 per month. The appellant has claimed separately that there have never been 7 bedrooms, and I note there were only 6 bedrooms when the Council visited on 7 May 2024.

17. The evidence shows that various people (other than those listed in the 2014 TA) entered into tenancy agreements ranging between 6- and 12-month minimum terms between May 2020 and August 2023. In the absence of explanations as to who moved into and out of the house when, and whether they lived together as a single household or not, the tenancy agreements offer little in support of the appellant's case. Furthermore, I am reluctant to accept that inconsistencies between the valuation reports and the appellant's other submissions are due to errors made by the authors of those reports. This is because the authors were formally instructed chartered surveyors who had a professional duty to ensure their reports on the facts were accurate.

18. Overall, there is a lack of sufficiently precise and unambiguous evidence to support the appellant's case. I cannot disregard the gaps and inconsistencies in the evidence based on the appellant being a rational investor. I understand the reasoning, but this does not provide the clarity needed to show, on the balance of probabilities, that the site has been in consistent use as an HMO falling in the C4 use class since at least 1 March 2014. This does not mean that I find the use unlawful, but I cannot confirm its lawfulness on the evidence provided.

19. The appellant's evidence is not therefore sufficiently precise and unambiguous to show that it is more likely than not that the use of the property as an HMO (C4 use class) was lawful on the date of the application, with regard to section 191(2) of the Act.

Conclusion

20. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the property as an HMO (C4 use class) was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

L Douglas

INSPECTOR

[5] By Zain Ahmad MRICS and Shaf Ali MRICS, of Belleveue Mortlakes