



Appeal Decisions

Site visit made on 26 November 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date:

11th December 2024

Appeal A Ref: APP/G3110/C/23/3335859

2 New High Street, Oxford OX3 7AQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Magnus Hanson Heine against an enforcement notice issued by Oxford City Council.
- The notice was issued on 29 November 2023.
- The breach of planning control as alleged in the notice is Without planning permission the material change of use of the Land from a dwellinghouse (Use Class C3) to short term let accommodation (Sui Generis).
- The requirement of the notice is to cease the use of the property for the provision of short term let accommodation.
- The period for compliance with the requirement is 1 month from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), and (g) of 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.

Appeal B Ref: APP/G3110/W/23/3335902

2 New High Street, Oxford OX3 7AQ

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
- The appeal is made by Mr M Hanson-Heine against the decision of Oxford City Council.
- The application Ref is 23/01859/FUL.
- The development proposed is described in the application form as 'use of property for short stay letting (change from C3 use)'.

Formal Decisions

Appeal A

1. It is directed that the enforcement notice is varied by:
 - The deletion of the text 'Cease the use of the property for the provision of short term let accommodation' at paragraph 5 of the notice and its substitution for the text 'Cease the primary use of the property as short-term let accommodation'; and
 - The deletion of the text '1 month' at paragraph 6 of the notice and its substitution for the text '12 weeks'.
2. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Appeal B

3. The appeal is dismissed.

Appeal A: Ground (b)

4. To succeed under this ground the appellant needs to show that the alleged material change of use of the land from a dwellinghouse falling in the C3 use class (a 'C3 dwellinghouse') to short-term let accommodation ('STLA') has not occurred, as a matter of fact. The submission of a planning application and an appeal under ground (a) are not admissions that the alleged breach has taken place, or that it requires planning permission if it has taken place.
5. The property is a family-sized house with kitchen, dining, lounge and utility areas, bedrooms and bathrooms. It has 3 double bedrooms with en-suites at first floor level, and a double bedroom at ground floor level (also referred to as a dining room on plans). A Planning Contravention Notice (PCN) response from the appellant explains that it is not lived in by anyone 'permanently', as it is rented out from time to time, with most occupiers staying for short periods.
6. Between November 2019 and September 2024 there were at least 145 separate bookings taken for people to stay at the house, covering at least 529 nights (as of the date of the PCN response in November 2023). Furthermore, I noted a sign on the front door to the house referring to the Airbnb online travel agent website, and the house was set out ready for guests to stay.
7. It is therefore clear that the house was in use as STLA before the notice was issued and that the alleged breach of planning control has occurred, as a matter of fact.
8. The appeal under ground (b) fails.

Appeal A: Ground (c)

9. To succeed under this ground of appeal the appellant needs to show, on the balance of probabilities, that the change of use does not constitute a breach of planning control.
10. Section 57 of the Act sets out that planning permission is required for the carrying out of development. Section 55 provides the relevant meaning of 'development', which includes the making of any material change in the use of any buildings. A change in the use of a building does not therefore necessarily require planning permission, unless it is a material change. Where that is the case, a change to a use within the same use class, as defined in The Town and Country Planning (Use Classes) Order 1987 (as amended) ('the UCO'), shall not be taken to involve development¹.
11. There is scant evidence as to how the site was used prior to short-term letting commencing. The appellant's PCN response states that it was rented on a year-long let initially after he purchased it in 2016, and then by a company known as Hands Free Letting Ltd from August 2017 to November 2019. However, it is not disputed that the house was previously a C3 dwellinghouse, or that this is its lawful use.
12. The C3 use class is defined in the UCO as: 'Use as a dwellinghouse (whether or not as a sole or main residence) by – (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not

¹ Section 55(2)(f) of the Act

more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).’ This is a broad definition capable of covering a great number of different types of living accommodation, where occupants form a single household.

13. A Government consultation² on the possibility of a new use class being created for short-term lets does not lead me to ignore the findings in *Moore*³. That is to say, whether the use of a dwellinghouse for commercial letting as holiday accommodation amounts to a material change of use will be a question of fact and degree in each case, depending upon the particular characteristics of the use. When considering whether a material change of use has taken place, a comparison should be made between the character of the activities associated with the existing use and those associated with the former use, rather than any potential lawful uses.
14. It is therefore a matter to be assessed in each case whether a material change of use has taken place, and the supporting text to Policy V5 of the Oxford Local Plan 2036 (2020) (the OLP) is unhelpful in this regard. Aside from the ambiguity of the advice it provides at paragraph 8.20, it oversimplifies what can be a complex legal issue and does not reflect the findings of the Courts. That part of the OLP does not therefore offer great assistance.
15. The site is home to a popular piece of public art in a residential setting, known as the Headington Shark House. It is a two-storey mid-terrace dwelling which is modest in all respects, save for the spectacular tall model of a shark crashing through the front roof slope. The shark sculpture has been in place since 1986 and has become a local tourist attraction, of sorts. As such, the site attracts visitors down the residential side street from the main London Road, affecting the context in which the use of the site is experienced.
16. There is no evidence before me as to how many people have been occupying the house during each stay. Having noted 4 double beds during my visit, it would be reasonable to assume that up to 8 people can stay there, although I noted ample space in the lounge, where sofas may be informally used as beds.
17. The appellant’s PCN response suggests that there had been 25 to 44 separate bookings each year since November 2019, covering between 97 and 187 nights each year. Cleaners visit the house between each stay and there is no evidence of intervening tenancies, with the property said to be available for minimum 2-night bookings 365 days-a-year.
18. The evidence shows there is a substantial turnover of occupants, and it is correct to describe the nature of their stays as transient. It is unclear whether they form single households, but the short duration of their stays and the opportunities for them to comprise large groups of friends leads me to doubt they would. This is because there would be little time for an effective single household to be formed or to operate in any meaningful manner. I have not been provided with evidence to suggest otherwise.
19. The character of STLA of such size in this location is therefore very different to that of the former use as a C3 dwellinghouse. There are regular comings and goings of numerous people who are likely to be unfamiliar with the site and surroundings. People unrelated to the site are essentially moving in and out of

² Introduction of a use class for short term lets and associated permitted development rights (April 2023)

³ *Moore v SSCLG & Suffolk Coastal DC* [2012] EWCA Civ 2101

the house multiple times each week/month on an ongoing basis. The nature and extent of the short-term letting, and the absence of intervening tenants forming a single household leads me to find that the use of the site as STLA is not ancillary or incidental to the lawful primary use as a C3 dwellinghouse.

20. The context of the site, where the shark sculpture attracts visitors to its immediate surroundings to stop and observe, does not significantly alter how the change in the character of the use is experienced. The site remains in a relatively quiet residential area, set away from the traffic and commercial uses of London Road to the north, notwithstanding the proximity of that busier environment, and two hairdressers to the south.
21. There is no evidence of complaints about the STLA, but that is not indicative of an absence of any material change. The change in the nature of the residential accommodation has brought about a very different use of the site, which has significant planning consequences: there are regular comings and goings of different people unfamiliar with the site and surrounding area; it is taxed differently⁴; and it has resulted in the loss of a C3 dwellinghouse where occupants would form a single household. For the above reasons, it has not been shown on the balance of probabilities that a material change of use has not taken place, or that the STLA falls within the C3 use class.
22. The onus is on the appellant to provide evidence to support their case. While I sympathise that it is difficult to prove something which is claimed to have not taken place, there is little evidence relating to how the site is used to support the appellant's arguments. On the evidence which is available, as a matter of fact and degree, a material change of use has taken place. This does not benefit from planning permission and is in breach of planning control.
23. The appeal under ground (c) must therefore fail.

Appeal A: Ground (a) and the deemed application for planning permission and Appeal B: the appeal against the refusal of planning permission

24. The main issues are the effect of the development on the provision of housing and whether the site is an appropriate location for STLA.

Provision of Housing

25. Policy H5 of the OLP states that planning permission will not be granted for development that results in the net loss of self-contained dwellings, except where particular circumstances apply. It is not disputed that none of those exceptions apply and that the development conflicts with Policy H5.
26. The loss of a single C3 dwellinghouse represents a very modest reduction in the city's housing stock in the context of the tens of thousands of houses being planned for and/or built within and around Oxford. However, the supporting text to Policy H5 makes it clear that given the scale of the objectively assessed housing need in Oxford it will be important to ensure that the existing stock of homes is protected. This is to prevent the benefits of building new houses being undermined. The development has resulted in the loss of a C3 dwellinghouse, which is contrary to Policy H5 of the OLP.

⁴ It is not disputed that the property is now listed as being subject to a non-domestic assessment associated with a commercial use, rather than Council Tax associated with domestic accommodation

Location

27. Policy V5 of the OLP states that planning permission will only be granted for the development of new sites for holiday and other short stay accommodation in specific locations, and subject to various criteria. These specific locations include District Centres and on Oxford's main arterial roads. The site is not within any of these locations and criterion b) of Policy V5 states that short stay accommodation must not result in the loss of a dwelling.
28. Representations have been made seeking to change the boundary of the Headington District Centre to include the site. However, there is nothing before me to show such a change is likely to be made in any subsequent development plan.
29. It is a very short walk from the site to the Headington District Centre and London Road (a main arterial road). Part of the District Centre also runs along the rear boundary of the site. There is no evidence of any harm being caused to the living conditions of neighbouring residents or highway safety and I am satisfied such potential harm could be prevented by conditions. However, even if I were to disregard the fact that the site is not within the specific locations mentioned by Policy V5, the development would remain in conflict with criterion b) of the policy. Therefore, although this specific development is in an appropriate location, it is contrary to Policy V5 of the OLP which seeks to achieve sustainable tourism.

Other Matters

30. Some tourists may assume that the house is open to closer inspection on account of the shark sculpture. I do not doubt that some people may try to peer through windows or even gain access to the house to see inside. While these are unwelcome interruptions for residents, the shark sculpture has been in place for almost 40 years with the house remaining in use as a C3 dwellinghouse. Curtains, blinds and obscure glazing to the front elevation windows provide reasonable levels of privacy, considering it is a terraced house close to the road. Even with the advent of social media, no more than minimal weight should be given to the harmful effects that the presence of the public art is claimed to have on the living conditions of residents.
31. The site is on the Council's Heritage Asset Register, and it is therefore a non-designated heritage asset. There are no details before me of the maintenance costs associated with the public art, or how the roof may leak as a direct result of the sculpture. As it has not been demonstrated that the use of the house as STLA is necessary to fund maintenance works to the sculpture and roof, I assign little weight to claims that the shark will likely be removed if planning permission is not granted. The development does not support the retention or enhancement of the distinctive character of the public art, and nor does it protect against any harm or loss of significance to the non-designated heritage asset. Policy DH5 of the OLP does not support the development.
32. Policy CIC1 of the Headington Neighbourhood Plan (2017-2032) (2017) states that a set of projects to reinforce the identity of Headington will be identified and implemented after wider consultation. A list of potential projects includes a suggestion that Headington Shark symbolism could be extended and strengthened. The shark sculpture is a powerful symbol for Headington, but it

has not been shown that retention or enhancement of the public art is reliant on the development. There is no support from Policy CIC1.

33. There are small-scale economic and social benefits associated with the development. It facilitates people visiting the area to spend money locally and supports the vitality of the nearby District Centre, and those effects may be multiplied by the appeal of the public art. However, there are also negative economic and social effects associated with the loss of a C3 dwellinghouse. In any event, the economic and social benefits of the development only attract modest weight in its favour. Although the development is appropriate for its location, it draws minimal support from Policies V1 and V6 of the OLP, which seek to ensure the vitality of District Centres and encourage cultural and social activities, amongst other things.
34. There is no evidence of any harm caused by the development to the living conditions of neighbouring residents or highway safety through increased parking stress. However, the lack of such harm is not a benefit weighing in favour of the development.
35. It is possible that once a C3 dwellinghouse use is reinstated, rooms within the house could be let to guests without bringing about a material change in the use of the land. The appeal decision⁵ I have been referred to as justification for this 'fallback position' refers specifically to the 'occasional letting of two bedrooms in a six bedroom house', which is very different to the circumstances in this case. That appeal decision does not confirm that 'a single person or a couple living in the house and allowing others to come and stay' would not necessarily require planning permission. However, even if such an arrangement would be lawful, a C3 dwellinghouse would remain, and its primary purpose would be to provide accommodation for a single household.
36. Another appeal decision⁶ I have been referred to is also of little relevance, as it concerned planning permission being granted for a material change of use from a House in Multiple Occupation (C4 use class) to part bed and breakfast, short-term letting, and a self-contained flat. Very different circumstances applied in that case, where Policy H5 of the OLP was not raised and a self-contained dwelling remained.

Conclusion

37. The development is contrary to Policies H5 and V5 of the OLP on account of it resulting in the loss of a C3 dwellinghouse and its location outside of a District Centre and not on a main arterial road. The site is, however, very close to the Headington District Centre and London Road, and in the absence of evidence to suggest the development may harm the living conditions of neighbours or cause highway safety issues, it is in an appropriate location. This reduces the weight I assign to the harm resulting from the development's failure to accord with Policy V5.
38. Although the loss of a single C3 dwellinghouse is a modest reduction in the city's housing stock, I do not reduce the weight I assign to the harm caused by that loss, which Policies H5 and V5 seek to avoid, unless exceptional circumstances apply. I have found no such circumstances exist in this case,

⁵ Appeal Ref: APP/J3720/X/21/3282578

⁶ Appeal Ref: APP/G3110/W/23/3317443

and I assign significant cumulative weight to the harm associated with the failure to accord with Policies H5 and V5 of the OLP.

39. There are benefits weighing in favour of the development and some support from Policies V1 and V6 of the OLP, but for the above reasons I assign these considerations modest cumulative weight. I also note the claimed fallback position, but that would not result in the loss of a C3 dwellinghouse.
40. Overall, taking all matters raised into account, the development is not 'sustainable development' as referred to by Policy S1 of the OLP and the National Planning Policy Framework, and these do not support the development. The development is contrary to the development plan taken as a whole and there are no material considerations which indicate planning permission should be granted. The appeal under ground (a) in Appeal A and the appeal in Appeal B therefore fail and the deemed application for planning permission is refused.

Appeal A: Ground (f)

41. To succeed under this ground of appeal the appellant needs to show that the requirement of the notice exceeds what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity which has been caused.
42. The notice requires the use of the house for the provision of STLA to cease. The purpose of the notice is therefore to remedy the breach, rather than any injury to amenity.
43. Notwithstanding the above, the notice seemingly prohibits any short-term letting of the house, even that which may not require planning permission. For example, once the use of the site reverts to a C3 dwellinghouse, occasional short-term letting may be ancillary to that lawful primary use, dependent on how it is carried out.
44. The *Mansi*⁷ principle is relevant, in that the notice cannot prevent the appellant from doing things which are otherwise lawful. I can vary the notice to ensure it requires the primary use of the house as STLA to cease, which would not impinge on the appellant's right to use the house for occasional short-term letting, provided its primary use remains as a C3 dwellinghouse.
45. The appeal under ground (f) therefore succeeds to the extent set out above.

Appeal A: Ground (g)

46. To succeed under this ground of appeal the appellant needs to show that 1 month falls short of what should reasonably be allowed for the notice to be complied with. It is requested that this is extended to 12 weeks.
47. The appellant was entitled to assume their appeals would be successful, which were not without merit. Though it may have been prudent for no more bookings to have been accepted once the notice was issued, there was no certainty as to how long the appeal process would take. Cancelling all existing bookings beyond the next month would be a straightforward process, penalising the appellant and people who have made bookings in good faith. Alongside this, the harm caused is the loss of a C3 dwellinghouse, and marketing the house for rent or sale would take some time, during which the

⁷ *Mansi v Elstree RDC* [1964] 16 P&CR 153

house would likely remain empty. Under these circumstances, I consider 12 weeks a reasonable period for the notice to be complied with.

48. The appeal under ground (g) therefore succeeds.

Conclusion

49. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

L Douglas

INSPECTOR