



Appeal Decision

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08th January 2025

Appeal Ref: APP/G3110/X/24/3344597

8 Venneit Close, Oxford OX1 1HZ

- 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 Chun Tim Yip against the decision of Oxford City Council.
 - The application ref 23/02404/CEU, dated 16 October 2023, was refused by notice dated 10 April 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 as a House in Multiple Occupation (C4 use class).
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Main Issue

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

Reasons

3. The site is a 3-bedroom flat which was in use as a small House in Multiple Occupation (HMO) (C4 use class, as defined by the UCO¹) on the date of the application. A direction under Article 4 of the GPDO² came into effect on 24 February 2012. This prevents a material change of use from a dwellinghouse (C3 use class) to a small HMO falling in the C4 use class from being 'permitted development' at the site. Express planning permission would have therefore been required for the material change of use of the site to a small HMO on or after that date. There are no enforcement notices in force on the land.
4. The appellant claims that the flat has been occupied by three unrelated people and used as a small HMO consistently since 2001. There is minimal evidence as to who occupied the flat and in what manner prior to 24 August 2013. Therefore, on the limited evidence, I am not satisfied as a matter of fact and degree that the flat was used as a small HMO before that date. However, if the site has remained in use as a small HMO consistently, without substantial interruption, since 24 August 2013, its use as such would have been lawful with regard to sections 171B and 191 of the Act on the date of the application. This is because 24 August 2013 is more than ten years before the date of the application.
5. The UCO states that for the purposes of the C4 use class, HMO has the same meaning as provided at section 254 of the Housing Act 2004. This refers to part of

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

² The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

a building being an HMO if it is 'occupied' in a specific manner. It does not follow, however, that there would necessarily be a discontinuance of a small HMO use for the purposes of section 171B of the Act where less than three people occupy a flat for brief and temporary periods, such as between changing tenancies.

6. Copies of tenancy agreements and bank statements have been provided alongside explanations as to how the flat has been rented out since 24 August 2013. There are gaps in the evidence, but the tenancy agreements and bank statements are consistent with each other. Furthermore, these are corroborated by dated copies of email exchanges between tenants and the appellant, and letters from tenants who lived in the flat between August 2013 to May 2016 and July 2015 to at least April 2024³. These all show that the flat has been rented out to various combinations of three people on individual tenancies since 24 August 2013. On the evidence, I am satisfied that those people did not live together as a single household, even if they were friends, knew each other prior to moving into the flat, or appointed a single person to make rental payments.
7. There have been irregular periods since August 2013 when only two tenants were living in the flat, awaiting a new tenant. The evidence suggests that prior to 2020 these varied up to 40 days⁴. These were minor and insignificant periods during which the flat remained a small HMO, with three lockable bedrooms. The Council could have taken enforcement action against the HMO (if it was unauthorised) during these periods as they were brief and do not represent any discontinuance of the small HMO use. They did not 'stop the immunity clock ticking'.
8. There were periods between March and July 2020 (at the beginning of the COVID-19 pandemic) when tenants stayed elsewhere. The evidence shows that the tenants only stayed elsewhere temporarily due to lockdown restrictions and that they continued to pay rent. No tenancies were terminated prior to 1 July 2020, and I am satisfied that the flat remained the tenants' main residence during that period.
9. The tenancy of one occupant ended on 1 July 2020, leaving the flat occupied by only two tenants until a replacement tenant moved in on 28 August 2020. The delay was apparently at the request of the existing tenants, who did not want a new person to move in while social distancing restrictions were in place. Again, during this period the flat remained in use as a small HMO with three lockable bedrooms, albeit with only two of those bedrooms physically occupied, while a third tenant was waiting to move in. In the specific circumstances, I do not find this period was a substantial or otherwise significant interruption to the small HMO use which had been ongoing since at least 24 August 2013.
10. With the above in mind, it would be wrong to combine periods when the flat was not physically occupied by all three tenants between March and 1 July 2020 with the period 1 July to 28 August 2020 for the purposes of identifying any discontinuance in the small HMO use. This is because the flat remained the main residence of three tenants while they stayed elsewhere temporarily. This would have been similar to the short physical absence of tenants due to extended holidays. The flat remained in use as a small HMO and, importantly, open to enforcement action (if unlawful at that time).

³ Letters dated 27 April 2024 and 16 April 2024 from Jenny Banks and Ashleigh Alderslade

⁴ Unspecified day in August 2014 to 23 August 2014, 3 to 7 May 2016, unspecified day in September 2016 to 10 October 2016, 2 to 8 September 2017, 21 September to unspecified day in September 2018, unspecified day in December 2018 to 5 January 2019

11. In summary, the flat did not cease being in use as a small HMO every time a tenant moved out without being immediately replaced. Similarly, it did not cease being a small HMO when tenants stayed elsewhere for brief periods during the COVID-19 pandemic. It temporarily ceased being physically occupied by three people, but only for brief and insignificant periods such that there was no discontinuance of a small HMO use which was in the process of gaining immunity from enforcement action. If the small HMO use was already lawful by any of those points, there was no material change of use to a dwellinghouse falling in the C3 use class (or any other use) or abandonment of the small HMO use.
12. For the above reasons, there are very different circumstances in this case to those which applied in *Miles*⁵, where an outbreak of foot and mouth disease led to the cessation of motorcycling activities on agricultural land for a 12-to-18-month period before any immunity from enforcement action had accrued. It was not open to the Local Planning Authority (LPA) in that case to take enforcement action during the period of cessation, as the unauthorised use was not ongoing. In contrast, in this particular case, the Council was able to take enforcement action during the COVID-19 pandemic period when tenants were staying elsewhere (if the use was unlawful at that time).
13. There are also stark differences between the facts of this particular case and those in *Islington* and *Ellis*⁶. The flat in the case of Islington was entirely uninhabitable while being substantially renovated for a period of approximately 3 months, when it was not open to the LPA to take enforcement action as there was no unauthorised dwelling. In *Ellis* there had been a 16-month period where an occupancy condition had not been breached. I am not therefore persuaded that the case law referred to by the Council supports its view that the flat was not in use as a small HMO when tenants stayed elsewhere temporarily during the COVID-19 pandemic, or during the very brief periods between changing tenancies.
14. There are gaps in the appellant's evidence as to how the flat has been used since 2001. However, overall, I find the evidence and supporting explanations relating to the use of the flat since 24 August 2013 to be reasonably clear, precise and unambiguous. This evidence is not contradicted. As such, on the balance of probabilities, the evidence shows that the flat was in use as a small HMO for at least ten years prior to the application being made. This is notwithstanding the brief periods where the number of occupants has fallen below three. These were passing, insubstantial and insignificant periods, during which the Council could have taken enforcement action if the small HMO use was unlawful at those times.

Conclusion

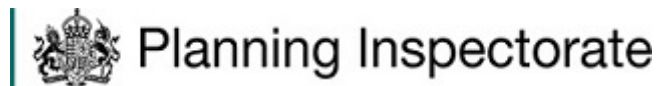
15. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of 8 Venneit Close, Oxford OX1 1HZ as a House in Multiple Occupation (C4 use class) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

L Douglas

INSPECTOR

⁵ *Miles v NAW & Caerphilly CBC* [2007] EWHC 10 (Admin)

⁶ *Islington LBC v SSHCLG & Maxwell Estates* [2019] EWHC 2691 (Admin); *Ellis v SSCLG* [2009] EWHC 634 (Admin)



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 16 October 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in thick red lines on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

As a matter of fact and degree, the land has been in use as a small House in Multiple Occupation falling within the C4 use class, as defined in The Town and Country Planning (Use Classes) Order 1987 (as amended), consistently, without substantial interruption, since at least 24 August 2013. No enforcement action could have therefore been taken in respect of the existing use of the land for such purposes on 16 October 2023 because, on the balance of probabilities, it was lawful with regard to sections 171B(3) and 191(2) of the Town and Country Planning Act 1990 (as amended).

Signed

L Douglas

Inspector

Date: 08th January 2025

Reference: APP/G3110/X/24/3344597

First Schedule

Use as a small House in Multiple Occupation (C4 use class).

Second Schedule

Land at 8 Venneit Close, Oxford OX1 1HZ

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 08th January 2025

by L Douglas

Land at: 8 Venneit Close, Oxford OX1 1HZ

Reference: APP/G3110/X/24/3344597

Scale: Not to Scale

