



Appeal Decision

Site visit made on 26 November 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2025

Appeal Ref: APP/G3110/X/23/3325043

228 London Road, Headington, Oxford OX3 9EG

- 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 Yan Ling Cheng, Oxford Guest House against the decision of Oxford City Council.
 - The application ref 23/00643/CPU, dated 20 March 2023, was refused by notice dated 16 May 2023.
 - The application was made under section 192(1)(a) of the Act.
 - The use for which a certificate of lawful use or development is sought is the provision of meals to 12 non-resident guests between 1200 and 2200 hours (daily).
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 30 December 2024.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded, with particular regard to whether the provision of meals to 12 non-resident guests between 1200 and 2200 on a daily basis would constitute a material change in the use of the site.

Reasons

3. 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 or other land. Any use which is incidental or ancillary to a lawful primary use of land does not result in a material change in the use. The use of any land for a purpose specified as being within the same use class, as defined in The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO), shall not be taken to involve development either.
4. It is not disputed that the site has an existing lawful primary use as a 6-bedroom guest house with associated staff dwelling, falling within the C1 use class. The appellant's case is that the proposal would be incidental or ancillary to the lawful primary use, and as such it would not bring about a material change in the use of the land. The onus is on the appellant to provide evidence

which is sufficiently precise and unambiguous to show that the proposal would be lawful, on the balance of probabilities.

5. The C1 use class is defined in the UCO as 'use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided'. Although the guest house falls within the same use class as a hotel, which may have many more bedrooms and facilities, the correct approach when considering whether a material change of use would take place is to compare the proposal to the existing use taking place, not any other potential lawful uses. It is wrong, therefore, to consider whether the proposal would be ancillary or incidental to other uses falling within the C1 use class, such as a 'typical guest house', a much larger hotel, or any other 'C1 use'. For example, the provision of meals to 12 non-resident guests at one guest house may not bring about a material change of use, but it may at another guest house. It is a matter of fact and degree to be considered in each specific case.
6. Externally, the site comprises a large, detached building in a long plot, with narrow gaps between residential dwellings either side. It has a parking space at the front and vehicular access down one side leading to 5 parking spaces at the rear. Commercial style kitchen extract ducting runs close to the east boundary. The surrounding area is primarily residential in character, dominated by traffic along London Road, which is a main arterial link to the city centre.
7. Internally, guest bedrooms are located at ground and first floor levels and are accessed through the main front entrance which is centred around a reception area. There is a modestly sized dining area which is accessible through the reception area and from a side door. There was sufficient space for the 6 tables and 16 chairs seen during my visit. The kitchen is accessed off the dining area, and it is fitted with commercial style hob, deep fat fryers, grill, fridges, freezer and air extraction system. The sizes and facilities of the dining area and the kitchen are commensurate to the use of the site as a 6-bedroom guest house.
8. It is not disputed that the guest house can accommodate 10 resident guests, and that they are able to have 3 meals a day each, which would result in 30 meals being served to residents every 24-hour period. I appreciate the point being made as to the potential for a large number of meals to be served to resident guests, but there is no evidence that this number of meals is regularly, if ever, served daily. In the absence of such evidence, I consider it unlikely that the guest house serves this number of meals daily.
9. It may well be unlikely that 12 non-resident guests would visit for meals at the same time, or that 12 non-resident guests would visit for meals every day. However, the application seeks to confirm such scenarios would be lawful. The proposal could therefore be responsible for considerable changes in the amount of food cooked, vehicle movements, and general activity within the site.
10. The proposal would bring about only a moderate change in the number of people visiting the site, but this would result in a significant change in the character of its use. This is on account of the site's constrained layout, between residential properties, even though it fronts onto a busy road with other commercial properties. In this context, activity associated with up to 12 non-resident guests visiting for meals every afternoon/evening, in addition to resident guests, would go well-beyond what would ordinarily be expected for a 6-bedroom guesthouse of such size in this location. As I see it, these additional

comings and goings may not cause any planning harms, but they would nonetheless significantly change the character of the use.

11. Although the commercial style kitchen extract system may be appropriately maintained to prevent adverse odour or noise effects on neighbours, its likely increased operation would be distinct and obvious in the residential setting. Similarly, there would be opportunities for greater use of on-site parking facilities close to neighbouring residential garden spaces, even if the intention is to retain them for resident guest use only. With this in mind, on the evidence provided, I consider it likely that there would be significant changes in how neighbouring residents would experience the character of the use of the land.
12. Overall, the character of the use would change from that of a modest guest house to a far more intensive commercial operation where food would be provided to non-resident guests who could outnumber resident guests. Although hotels falling in the C1 use class often have facilities open to non-resident guests, it has not been shown, as a matter of fact and degree, that the proposal would be ancillary or incidental to this particular small-scale guest house, which is in a residential setting.
13. The findings in the case law¹ referred to do not lead me to any different conclusions on the pertinent matters in this case. In particular, in *Emma Hotels Ltd*, I note that only 20% to 30% of a hotel bar's customers were resident guests, which did not bring about a material change in the use of the land. This was because, amongst other things, the non-residents' bar was an incident of the hotel use. This does not mean that similar ratios between resident and non-resident guests using facilities at other hotels, guest houses, or boarding houses falling in the C1 use class will not result in a material change of use.
14. Taking all matters raised into account, it has not been shown on the balance of probabilities that the proposal would not result in a material change in the use of the land, or that the use of the site would remain within the C1 use class.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the provision of meals to 12 non-resident guests between 1200 and 2200 hours (daily) 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

¹ *Emma Hotels Ltd v SSE & Southend-on-Sea BC* [1980] 41 P&CR 255 and *Kensington and Chelsea RBC v Mia Carla Ltd* [1981] JPL 50