



Appeal Decisions

Inquiry held on 19 February 2025

Site visit made on 18 February 2025

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06th March 2025

Appeal A Ref: APP/G3110/C/24/3354100

Appeal B Ref: APP/G3110/C/24/3354101

Land at 187 Divinity Road, Oxford OX4 1LP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeals are made by Mrs Yan Zhang (Appeal A) and Mr Stephen Holley (Appeal B) against an enforcement notice issued by Oxford City Council.
- The notice was issued on 9 September 2024.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the dwelling on the Land from a single dwellinghouse (Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended)) to a house in multiple occupation (Use Class C4).
- The requirement of the notice is to cease the use of the property on the Land as a house in multiple occupation (within Use Class C4).
- The period for compliance with the requirement is 10 months from the date the notice takes effect.
- The appeals are proceeding on the ground set out in section 174(2)(d) of the Act.

Decision

1. The appeals are allowed and the enforcement notice is quashed.

Background and Main Issue

2. The use of a building as a dwellinghouse by not more than six persons forming a single household is a use falling within the C3 use class, as defined in The Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). Since April 2010, the use of a dwellinghouse by not more than six residents as a house in multiple occupation (HMO) is a use which falls within the C4 use class. The UCO clarifies that for the purposes of the C4 use class, an HMO has the same meaning as set out at section 254 of the Housing Act 2004 (as amended) (the Housing Act).
3. Section 254 of the Housing Act states that a building is an HMO if, amongst other things, the living accommodation is occupied by persons who do not form a single household, and as their only or main residence, where rents are payable, and where two or more of the households share one or more basic amenities.
4. Schedule 14(6) of the Housing Act and Regulation 6 of the relevant Regulations¹ clarify that a building is not an HMO if it is occupied only by one or more persons who have the freehold estate, any member of the household of such persons; and no more than two other persons.
5. It is not disputed that express planning permission would have been required for the material change of use of the dwelling from a use falling in the C3 use class to

¹ The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006

a use falling in the C4 use class on or after 24 February 2012 on account of a direction under Article 4 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) being in effect.

6. With the above in mind, the main issue is whether, at the date when the notice was issued, enforcement action could have been taken in respect of the material change of use of the dwelling to an HMO falling in the C4 use class (a C4 HMO).
7. It is not disputed that the site has been in use as a C4 HMO consistently, without substantial interruption, since 1 January 2015. Considering the evidence on the balance of probabilities, I see no reasons to reach any different conclusion. Therefore, if the evidence also shows it is more likely than not that the site had been in use as a C4 HMO on 9 September 2014, and it continued in such use without substantial interruption up until, and beyond, 1 January 2015, the appeals under ground (d) will succeed following the provisions of section 171B of the Act.

Reasons

8. The site is half of a pair of semi-detached dwellings. It is claimed that the site had been in use as an HMO prior to the appellants purchasing it in January 2013, since at least the 1980s. The next-door neighbour has confirmed in writing that it has been operated as an HMO throughout the time he has lived in the other half of the semi-detached pair, since 1987. The neighbour has not, however, provided evidence to support this and he did not attend the Inquiry to give evidence under oath, which could have been subject to cross-examination. It is therefore unclear how many lodgers may have resided with the former owner over any specific periods, or what household arrangements may have historically been in place. For these reasons, as a matter of fact and degree, I am unconvinced that the site had a lawful use as an HMO by the time the appellants purchased it.
9. The appellants gave oral evidence under sworn affirmation, confirming that they lived together in the house, as the freehold owners of the site, between February 2013 and 7 January 2015, alongside various paying tenants/lodgers. Some of those other people were students from China, aged between 18 and 20, who were the children of friends of Mrs Zhang, paying for accommodation inclusive of bills and pre-English coaching. A translated email dated 4 October 2013 refers to these arrangements in respect of various students, including one named York.
10. The appellants clarified in oral evidence that York was the English name adopted by a Chinese student named Ke Xin, who lived with them between September 2013 and December 2014. There are no copies of formal contracts or bills relating to York/Ke Xin, and there are no copies of bank statements confirming receipt of the payments discussed in the email dated 4 October 2013.
11. In addition to York/Ke Xin, it was stated under oath that three others lived with the appellants at the site, forming separate households, throughout September 2014 to January 2015: Brian Wilson, Eugenio Logik, and Roberto Garcia.
12. An unsigned tenancy agreement dated 14 August 2014 for Brian Wilson states the period of his tenancy at the site would have been 26 August 2014 to 25 May 2015, with £800 rent to be paid per calendar month in advance of every month. A subsequent signed tenancy agreement relating to Brian Wilson and three others, dated 3 April 2015, refers to a tenancy period between 11 April and 10 July 2015 with a combined £3,200 rent to be paid per calendar month.

13. Bank statements dated 1 October 2014 to 31 January 2015 show £800 deposited into Mrs Zhang's account from 'WILSON BRIAN SA' on 27 October and 26 November 2014. The bank statements show no such payments in December 2014. Further bank statements show £900 deposited into the account from the same payee on 2 January, 2 February, and 22 April 2015 (the March 2015 statement is absent). I see no reasons to doubt claims that the bank was unable to provide copies of statements earlier than 1 October 2014.
14. Eugenio Logik and Roberto Garcia were a Spanish couple, named on a signed tenancy agreement dated 25 July 2013, who rented a 'self contained room' at the site, sharing basic amenities with other occupiers. The tenancy agreement states their occupancy was to run from 19 September 2013 to 18 March 2014, although an unsigned handwritten note on the tenancy agreement refers to them staying until December 2014. It states their rent was £900 per calendar month, to be paid in advance by the 18th of each month.
15. The bank statements referred to above show two cash deposits of £450 paid into Mrs Zhang's bank account on 29 October 2014, and further cash deposits of £450 paid on 30 and 31 December 2014. It was stated that these were the rent payments of Eugenio Logik and Roberto Garcia, who had stayed after their initial tenancy agreement had expired. There is nothing unusual in those claims, other than the lack of cash deposits in November 2014.
16. Mrs Zhang and Mr Holley spoke of fond memories living with the other people, as separate households, but sometimes sharing meals. Eugenio Logik and Roberto Garcia were a teacher and an electrician who had moved to Oxford in search of work at a time when the Spanish economy was experiencing difficulties. An informal agreement to their rent was described while they stayed beyond the end of their tenancy agreement, sometimes paying £450 rent in cash each, with both of them sometimes struggling to pay the rent. This goes some way to explaining the lack of references to either of their names in bank statements dating from October to December 2014 and a possible missing rental payment for November 2014.
17. Brian Wilson's rent increased in January 2015, but there is no record of him paying any rent in December 2014. Mrs Zhang explained that she had only noticed this when examining bank statements in preparation for the Inquiry, which had left her disappointed as the only explanation she could provide was that Brian Wilson, then a Phd student, must have failed to have paid his rent that month without the appellants noticing. There is nothing to suggest the site had reduced occupancies during December due to festive periods.
18. Overall, I found the appellants to be compelling witnesses who clearly explained how they lived at the site with various people between January 2013 and January 2015. The appellants' confusion as to how to describe some of those people was indicative of their lack of understanding of the statutory definition of an HMO and the need for a licence and express planning permission at the site.
19. Unguarded references to the site being where the appellants lived 'as a family' between January 2013 to January 2015 do not lead me to doubt that a number of people lived with them, paying rent and comprising separate households during that period. It was, after all, where they lived as a family, and the evidence shows they were previously unaware that the site was in use as a C4 HMO while they were living there. It is not the case that an HMO cannot be reasonably described as

a family home by the people living there, especially if they are laypersons who do not know the statutory definition of an HMO.

20. The information Mr Holley gave to the Council when seeking pre-application planning advice and planning permission does not deny that the site was in use as an HMO prior to January 2015. Furthermore, misunderstandings and misdescriptions are evident in correspondence where the appellants incorrectly draw distinctions between the site being used as a 'family home' and for multiple occupancy. In this context, I find it likely that the appellants misunderstood what was required of them to regularise the alleged breach of planning control. I do not therefore take the appellants' decisions to seek pre-application advice and planning permission, rather than a lawful development certificate, as acceptance that a C4 HMO use of the site was unlawful. Nor do Mr Holley's descriptions of the site in those applications undermine the more detailed evidence subsequently presented.
21. For these reasons I accept that Mr Holley was referring, incorrectly, to a licenced HMO existing since 2015, when he meant to refer to 2016, in previous applications. These were reasonable mistakes for laypersons to have made, considering the appellants were unaware an HMO licence was required until advised by an estate agent in September 2014. In addition, the process of applying for and receiving an HMO licence was drawn-out, with Mrs Zhang first enquiring about obtaining a licence in October 2014, applying for a licence in April 2015, and then receiving a licence in May 2016 after necessary internal works had been completed. Against this background, it is unsurprising that the Council's letter dated 6 June 2023 outlining the alleged breach of planning control caused the appellants some confusion.
22. The email exchanges between Mrs Zhang and Mr Williams show there was confusion on Mrs Zhang's part as to how people living at the site should have been described, by seemingly making a distinction between lodgers and tenants, and then explaining that she had not counted friends' children studying pre-English as lodgers. In oral evidence it became clear that the appellants had not considered those students as lodgers or tenants on account of the more informal arrangements of their occupancy. Nevertheless, those students were adults, paid rent, and formed separate households at the site.
23. I therefore find no disingenuity in the appellants referring to the site as their family home when they were living there with at least three other persons forming separate households, creating a C4 HMO in planning terms. I find the full exchange of emails between Mrs Zhang and Mr Williams unclear on who was living at the site at different times, but this does not lead me to doubt the veracity of the appellants' oral evidence, which was given under oath, when considered alongside the other evidence.
24. On balance, the evidence shows it is more likely than not that at least three other persons lived with the appellants at the site, forming separate households and creating a C4 HMO throughout September 2014 to January 2015. Since January 2015 the site has been occupied by three or more people forming separate households, continuing the C4 HMO use. Considering all the evidence together, I do not find the appellants to be unreliable witnesses. Furthermore, I find the appellants' evidence to be sufficiently precise and unambiguous to show, as a matter of fact and degree, that the site has been in use as an HMO falling in the C4

use class continuously, without substantial interruption, since at least 9 September 2014.

25. The appeals under ground (d) must therefore succeed.

Conclusion

26. For the reasons given above, I conclude that the appeals should succeed on ground (d). The enforcement notice will be quashed.

L Douglas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Christopher Moss Counsel

He called

Yan Zhang The appellant in Appeal A

Stephen Holley The appellant in Appeal B

FOR THE LOCAL PLANNING AUTHORITY:

Tazafar Asghar Counsel

He called

Ian Williams Oxford City Council

DOCUMENTS PROVIDED AT THE INQUIRY

Copy of email exchanges between Ian Williams and Yan Zhang dated 15 to 19 August 2024 and 3 to 17 September 2024