The Planning Inspectorate

Appeal Decision

Site visit made on 4 December 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2020

Appeal Ref: APP/Q0505/C/19/3226916
Land at 11 March Lane, Cambridge, Cambridgeshire CB1 3LG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Dr Othman Cole against an enforcement notice issued by Cambridge City Council.
- The enforcement notice, numbered EN/0225/18, was issued on 22 March 2019.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised material change of use of the premises at the Land from a large House in Multiple Occupation (sui generis) to short-term visitor accommodation (sui generis).
- The requirements of the notice are:-
  (i) Permanently cease the use of the premises for short-term visitor accommodation provided for paying occupants.
  (ii) Permanently cease and remove all forms of advertising the entire premises for let in relation to the short-term visitor accommodation use.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period. Hence the application for planning permission deemed to have been made under section 177(5) of the Act, as amended, falls to be considered.

Decision

1. It is directed that the enforcement notice be varied by:

   - *deleting* requirement (ii).

2. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. In this decision I consider the grounds of appeal in logical, not alphabetical order. The logic is that if an appeal against an enforcement notice (the 'Notice') succeeds on ground (c), the notice is quashed and the other grounds become redundant.

4. Advertising the accommodation online and the scope of requirement (ii) of the Notice relate to matters outside the ambit of planning control of the use of the appeal premises, as was similarly noted by the Inspector for the

17 Richmond Road appeal decision[1]. I am able to vary the Notice to omit this requirement without causing injustice to the parties.

Appeal on ground (c)

5. Ground (c) is that the matters alleged in the Notice, if they have occurred, do not constitute a breach of planning control. It is a legal ground of appeal, distinct from any planning merits. The onus of proving it lies with the appellant, and the test of the evidence is on the balance of probability.

6. The key question is whether 'development' has taken place which requires planning permission and, if so, whether planning permission is granted or the development is otherwise deemed to be lawful. The definition of development[2] includes "the making of any material change in the use of any buildings or other land". In this case the appellant claims that a material change of use of the premises from a large HMO (sui generis) to short-term lets (sui generis) has not occurred.

7. The appeal property is a two storey modern semi-detached dwelling located on a bend on March Lane in an established residential area on the north eastern edge of Cambridge. The appeal property was granted planning permission on appeal[3] for a change of use of a dwellinghouse to a house in multiple occupation (HMO). An approved floor layout drawing KK/1604/3 (attached as Appendix 1 of the appellant's statement) shows 8 bedrooms.

8. On an accompanied site visit I gained access to all 8 bedrooms which were furnished with beds, wardrobes and chests of drawers. Most rooms had a double bed, although the rooms varied in size. There was also a small communal kitchen that led through to a dining room, which also had a sofa and a number of fridges. The property had three small shower/WC rooms. The internal layout was as per the approved layout plan.

9. At the rear of the property there was a fully paved triangular communal garden. The front of the property was paved, with driveway parking for allegedly three vehicles. To the side of the property there was a key locker on the wall and a timber covered structure with cycle racks for the parking of 4 bicycles.

10. The rooms are advertised and booked online based on the length of stays required by the occupants. The appellant has confirmed that none of the tenants are on Assured Shorthold Tenancy Agreements (ASTAs) and that despite this change in the tenancy arrangements, the property remains occupied by up to 8 individuals sharing communal facilities, which is not materially different to its use as an 8-bedroom HMO. I find that the cessation of ASTAs in themselves is not an issue, but it is the effect the cessation has on the characteristics of the accommodation.

11. The appellant confirms in Appendix 3 of his Statement that in the period between September 2018 and March 2019 the property had a total of 256 bookings (772 nights booked), with the average length of stay being 3.15 nights. During this period the occupancy rate was 61.1%. The data shows that

[1] APP/Q0505/C/18/3193261 dated 7 December 2018
[2] Section 55 of the Town and Country Planning Act 1990
[3] APP/Q0505/W/16/3155887 dated 6 January 2017

47.8% of bookings were made by one-time clients and 55.2% by repeat clients. At the time of my site visit not all the rooms were occupied.

12. The property as a short-term visitor accommodation use may well see similar daily comings and goings when compared to an HMO, as occupants leave and return to the property each day, and this will generate some noise and disturbance. I acknowledge that a large HMO with its occupants and visitors could also create noise and disturbance to local residents. However, the turnover of occupants in the property is a factor.

13. Typically, the HMO with 8 occupants, each on a 6 month binding ASTA could mean there were would be 16 different occupants throughout a 12 month period, together with associated activities and visits from friends and family. But 256 bookings for part of the year, with occupants staying an average of 3.15 nights, represents a frequent turnover of occupants of a significant quantum. The largely transient pattern of occupancy, coupled with associated arrivals and departures, regardless of whether they are repeat clients or not, is more than compared to the longer-stay nature of an HMO resident.

14. Furthermore, this significant turnover of occupants will mean a greater number of different people arriving and leaving, including early in the morning and late at night, trying to get acquainted with the place, find their keys, and park. Whilst the nearest bus stop is approximately 500 metres away on Teversham Drift/Cherry Hinton Road, short-stay occupants unfamiliar with Cambridge may be more likely to come by car or use taxis from the railway station or airport, and there would be nothing to prevent them from doing this. Those arriving by car would then need to find somewhere to park either at the property or on the nearby streets. This would generate more vehicular comings and goings than an HMO, whose occupants would be more permanent and who would become more familiar with the area and hence would be more likely to use public transport or cycle.

15. Due to the online remote booking system there is nothing to prevent people booking rooms individually but being part of a larger group of friends or acquaintances and again there is no one on site to monitor this to ensure there is no undue noise and disturbance. Hence there is an increased likelihood of the property being occupied in a manner significantly different from an HMO.

16. There would also be additional comings and goings from staff employed to clean and change bed linen as part of the serviced accommodation. The HMO had a minimal level of service provision in terms of professional cleaning, and tenants could also elect to use the bed linen change service. I have not been told the frequency of this, but a weekly bed linen change would not be unreasonable for HMO occupants. However, bed linen changes would be more frequent with short-term visitor lets, as the beds would need to be changed after each stay. As the rooms would not all be let at the same time or on the same sequence of letting or for the same duration, there could theoretically be bed linen changes every day. This increased intensity and nature of service provision, albeit less than fully serviced apartments, guest houses or hotels, further distinguishes the use from an HMO.

17. The other appeal examples cited at 17 Richmond Road and Roman House & Florian House[4], both in Cambridge, relate to changes of use from smaller

[4] APP/Q0505/C/18/3196460 dated 4 March 2018

dwelling houses to short-term visitor accommodation and therefore are not directly comparable to the proposal before me where the whole building can already operate as a large HMO.

18. The appellant refers to the Council's inappropriate application of its 'working definition' of short-term visitor accommodation to determine if a material change of use has occurred. It defines short-term visitor accommodation as 'accommodation less than 90 days duration provided for paying occupants'. It also considers various other factors such as whether all the rooms in a dwelling house are in use for such accommodation, and whether the frequency of the short-term visitor use exceeds 10 in any calendar year or the cumulative duration of short-term visitor use exceeds 6 months in any calendar year. However, a Use Class C4[5] HMO or sui generis HMO changing to a short-term visitor accommodation, would be judged on its merits.

19. The appellant cites the Court of Appeal judgement in *Moore v Secretary of State for Communities and Local Government*[6] as being a more relevant legal basis. This found that matters of whether there was a material change of use came down to assessment of the particular characteristics of the accommodation in each case as a matter of fact and degree.

20. The Council advise that its 'working definition' was informal guidance to its officers, but it is no longer actively used as part of determining whether a material change of use has occurred, and has not been used in this case. I find its requirements alone do not necessarily indicate a material change of use has occurred, as each case needs to be determined on its own merits. Therefore, it has not been determinative in my decision and I note that the Inspector for the 17 Richmond Road appeal also found the 'working definition' offered little assistance. Notwithstanding *Moore*, it is also established that a relevant factor in assessing whether a change of use is material is whether there would be significant planning consequences, including environmental impacts such as off-site effects of the use on residential amenity.

21. I accept that many occupants may well be professionals or students on work placements who require a temporary form of accommodation, but this has no bearing on whether a change of use has occurred. Similarly, the appellant's aim to focus on short to medium lets in the future, rather than visitors staying 1-2 days, does not alter my findings on this matter. Furthermore, I have not been presented with any substantive evidence to demonstrate how the appellant would re-focus his business, such as whether the online booking system would be changed to prevent stays of a certain short duration.

22. In conclusion on this matter, I find the size of the property and the number of bedrooms, the number of bookings throughout the year and the average short length of stay, and the consequential increased frequency of comings and goings of occupants, together with visits from staff employed to clean and change bed linen on potentially a daily basis, combine to change the nature of the accommodation and the use of the property. I regard, as a matter of fact and degree, that the use of the property as short-term let visitor accommodation is materially different from the use as an HMO.

[5] The Town and Country Planning (Use Classes) Order 1987 (as amended)
[6] [2012] EWCA Civ 1202

23. In light of the above, I find there has been a breach of planning control. Accordingly, the appeal on ground (c) fails.

Appeal on Ground (a) and the Deemed Application

24. The appellant has made an appeal on ground (a) – that planning permission ought to be granted for the matters alleged in the notice.

Main Issues

25. I consider the main issues are:

i) the effect of the proposed development on the living conditions of occupiers of the nearby dwellings, with particular regard to noise and disturbance, and
ii) the effect of the loss of a permanent residential accommodation on the provision of housing.

Living conditions

26. The area comprises mainly family dwellings and it has a calm and quiet character. The appeal property is semi-detached and in close proximity to adjacent dwellings, particularly due to its orientation and small rear garden. As a result, comings and goings would be apparent to occupiers of these dwellings.

27. I accept that occupants of an 8-bed HMO could generate activity and noise and disturbance, as indeed could a large single family. However, the change in use and nature of the premises to a property occupied by people for short duration stays, together with the number of bookings throughout the year, and the consequential increased turnover of occupants, as well as cleaning and maintenance staff, would all combine to increase general comings and goings to the property beyond what would normally be expected of an HMO. This would give rise to an associated increase in overall noise and disturbance, an observation endorsed by comments from occupiers of a nearby property.

28. This would be exacerbated by the likely increase in the manoeuvring of cars and on-street parking, including at night and early in the morning, arising from new occupants frequently arriving and leaving, many of whom would be unfamiliar with the property and its surroundings. This would be in contrast to its use as a large HMO where occupants would be more permanent and familiar with the area and more likely to use public transport and cycling. The small convenience store near the bus stop that can provide for some day-to day needs.

29. In granting the HMO on appeal, parking provision was deemed acceptable, based on an amended layout plan showing the frontage laid to hard standing and the access widened. The frontage has a central concrete drive, with areas of gravel either side, but no parking bays marked out. I noticed the dropped kerb is only aligned with the concrete driveway. From my observations of the orientation of the frontage, if a vehicle was parked on the concrete drive, it would be difficult for other vehicles to enter or leave the gravelled parking areas either side. As a result the provision of 3 parking spaces appears more theoretical than actual. Whilst this parking arrangement may work with HMO residents, who would more likely know each other and know whose car was which, short-term visitor occupants would have less interaction with each other. This would likely lead to increased vehicle manoeuvres to try and get into and out of these spaces causing noise and disturbance, especially as the property is

semi-detached. Other visitors may elect to park on the nearby streets, which would likely increase on-street parking in the area compared to the HMO use. This is borne out by a nearby third party, who states that many visitors drive commercial vehicles who park on the road causing congestion as there is not enough on-site parking.

30. The short-term transient nature and frequency of new occupiers would tend to mean they had little connection to the local area and hence may be less inclined to respect the surrounding area and its existing residents, meaning they have fewer concerns or realisation of causing noise and disturbance.

31. Whilst there may be 'house rules' given to occupants or published on the internet to stress the importance of respecting nearby residents and preventing noise and disturbance, there is no one on site to control or manage the occupants to ensure this happens.

32. The appellant would be willing to have a condition restricting lengths of stay to a minimum duration, for example 4 weeks. This would help lessen concerns to some degree, but would not, in my view, significantly create or increase a level of connection or investment in the neighbourhood. Furthermore, such a condition would be difficult to enforce, and it would not prevent noise and disturbance in itself. Hence it would not be effective enough to overcome the harm I have identified.

33. I find the use as short-term visitor accommodation would have a harmful impact on the living conditions of existing residents of nearby properties. It would conflict with Policy 35 of the 2018 adopted Cambridge Local Plan (the 'CLP') which seeks to ensure that development will not lead to adverse effects and impacts on, amongst other things, the quality of life/amenity.

Loss of housing

34. The Council has a spatial strategy for the location of residential development and CLP Policy 3 seeks to maintain housing provision and will only support the change of housing to other uses in exceptional circumstances.

35. I acknowledge the appellant's business aim is to focus on tenants who require temporary accommodation for a short to medium term who may not be in a position to commit to a 6 or 12 month binding ASTA. However, no legal mechanism has been put forward to secure longer stays, or changes to the online booking system mentioned above. There is nothing to prevent the rooms being used for visitors and anyone else wanting stays of varying duration, including 1 or 2 days. The appellant's suggested "4 week stay" condition would not address the loss of housing stock.

36. Whilst there may be a demand for such short-stay accommodation for particular groups of people in the city, I have not been provided with any substantive evidence or exceptional circumstances to demonstrate or persuade me that the need for short-term visitor accommodation is more pressing than maintaining the city's permanent housing stock.

37. Based on the evidence before me, I find the change of use from an HMO to a short-term let visitor accommodation would result in the loss of permanent housing stock in the city. Accordingly, the development would be contrary to

CLP Policy 3, and there are no material considerations to justify a departure from the development plan.

Other Matters

38. If planning permission were to be granted, the Council has suggested a condition requiring the submission of a management plan detailing who will manage the property, display of contact details, visitor guidance and the requiring that the property is managed in accordance with the approved management plan. It would go some way to addressing noise and disturbance concerns, but would not overcome the loss of permanent housing stock in the city.

39. I note the comments from occupiers of No. 12 concerned with inconsiderate refuse bin use, parking, noise and disturbance, and property maintenance. I have already addressed parking and noise and disturbance above. With regards, refuse bins, there is sufficient space within the frontage of the property for their storage. The responsibility for putting them out and bringing them back off the street rests with the occupants. Short-term visitors would not be familiar with refuse collection days, so the property manager or other staff would need to address this. With regards the maintenance of the property, this is not a planning matter, and in light of my conclusions on the main issues it is not determinative in this case.

Conclusion on ground (a) and the deemed planning application

40. The proposed development would not accord with the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given above, the appeal on ground (a) fails.

The appeal on ground (g)

41. Ground (g) is that the period specified for compliance with the Notice falls short of what is reasonable. The Council has specified 3 months. The appellant considers this unreasonable and has suggested an alternative compliance period of 6 months in order to carry out the required administrative changes and to honour 6 months' of booking commitments.

42. The Notice does not require any physical works to be undertaken. The 3 month compliance period would take effect from the date of this decision and would allow existing occupiers to continue their stay up to the end of the compliance period. Those who have booked to stay more imminently would not need to cancel their stay and be inconvenienced, provided their stay fell wholly within the 3 month compliance period.

43. Future booking commitments for stays after the 3 month compliance period will have to be cancelled and bookings refunded or costs paid if necessary, and according to any terms and conditions of booking. This may inconvenience some people, but in my view the scale of disappointment and cancellation would be relatively modest, in the absence of evidence of the number of future bookings. It would still give future occupants the time and opportunity to find alternative accommodation.

44. To extend the compliance period to 6 months in order to avoid inconvenience to some occupants, would prolong an unacceptable use and not outweigh the

harm caused to living conditions of nearby residents and the loss of permanent housing accommodation in the wider public interest.

45. I am aware of the Inspector granting a 6 month compliance period in the Roman and Florian House appeal, but there were more units of flats/rooms in question and there were also other issues to take into account such as staff redundancies. Such matters have not been put to me in this appeal.

46. I therefore find 3 months would be a reasonable compliance period in this case. The appeal on ground (g) therefore fails.

Conclusion

47. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

K Stephens
INSPECTOR