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/19/3226489
Land at 6 Blandford Walk, Cambridge, Cambridgeshire CB4 3NQ

- 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/0217/18, was issued on 14 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 use of the premises for short-term let 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 let 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 appellant has paid the prescribed fees so the appeal on ground a) and 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. The appeal property already has planning permission[1] for a change of use of a dwellinghouse to a large House in Multiple Occupation (HMO) (sui generis). A condition was imposed restricting its use to no more than 10 persons at any given time.

4. 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')

[1] LPA ref: 16/1495/FUL

succeeds on ground (c), the notice is quashed and the other grounds become redundant.

5. 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[2]. I am able to vary the Notice to omit this requirement without causing injustice to the parties.

Appeal on ground (c)

6. 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.

7. 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[3] 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.

8. The appeal property is a two storey modern detached dwelling located at the end of a cul-de-sac in an established residential area on the north western edge of Cambridge. On an accompanied site visit I gained access to all 10 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 an open-plan communal kitchen/dining/sitting room, 4 shower/wc rooms and a communal garden at the rear. The dwelling has a driveway for the parking of one vehicle. There is unrestricted on-street parking around the cul-de-sac. Bus stops for buses into the city are located nearby on Cambridge Road/Histon Road, a main arterial route into the city.

9. 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 10 individuals sharing communal facilities, which is not materially different to its use as a 10 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.

10. The appellant confirms in Appendix 3 of his Statement that in the 12 months between March 2018 and March 2019 the property had a total of 852 bookings, with the average length of stay being 3.22 nights, although July showed longer stays of clients, probably attending Summer Schools in the city. During the year in question, the occupancy rate was 85.9%. There were bookings by repeat clients, but the illustrated data shows that the majority of bookings

[2] APP/Q0505/C/18/3193261 dated 17 December 2018
[3] Section 55 of the Town and Country Planning Act 1990

were made by one-time clients. At the time of my site visit not all the rooms were occupied.

11. The property may well see similar daily comings and goings between the HMO and the short-term accommodation use, 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.

12. Typically, the HMO with 10 occupants, each on a 6 month binding ASTA could mean there were would be 20 different occupants throughout a 12 month period, together with associated activities and visits from friends and family. But 852 bookings in one year, with occupants staying on average 3.22 nights, with associated arrivals and departures regardless of whether they are repeat clients or not, represents a significant and frequent turnover of occupants throughout the year. The largely transient pattern and frequency of occupancy, compared to the longer-stay HMO resident, would change the nature of the accommodation and hence the use of the premises. The existing condition restricting occupancy at any one time to 10 people does not prevent the increased turnover of clients.

13. 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, park somewhere and use the rear garden space. Whilst there are bus stops nearby, 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 around the cul-de-sac head, Blandford Walk or neighbouring roads. 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.

14. 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. 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.

15. 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 and for different stay durations, 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.

16. 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 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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

[4] APP/Q0505/C/18/3196460 dated 4 March 2018
[5] The Town and Country Planning (Use Classes) Order 1987 (as amended)
[6] [2012] EWCA Civ 1202

and degree, that the use of the property as short-term let visitor accommodation is materially different from the use as an HMO.

22. 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

23. 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

24. 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

25. The cul-de-sac comprises mainly family dwellings and it has a calm and quiet character. The appeal property is set at an angle in the corner of the head of the cul-de-sac, in close proximity to adjacent dwellings. As a result, comings and goings would be apparent to occupiers of these dwellings and to those around the head of the cul-de-sac.

26. I accept that occupants of a large 10-bedroom 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 associated increase in overall noise and disturbance.

27. This would be exacerbated by the likely increase in on-street parking with frequent new occupants when compared 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. Being located at the head of the cul-de-sac these comings and goings would be more noticeable to nearby residents as would additional car movements and door shutting or even slamming, particularly at night. 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.

28. 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.

29. 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.

30. I find the short-term visitor accommodation use would have a harmful impact on the living conditions of existing residents of Blandford Walk, particularly those at the end of the cul-de-sac. Accordingly, 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

31. 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.

32. 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.

33. 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.

34. 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

35. 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.

Conclusion on ground (a) and the deemed planning application

36. 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)

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

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

Conclusion

43. 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