

West Area Planning Committee

15 February 2012

Application Number: 12/00046/FUL

Decision Due by: 2 March 2012

Proposal: Retention of use as student accommodation.

Site Address: 229 Cowley Road (**Appendix 1**)

Ward: St Clement's Ward

Agent: Kemp And Kemp

Applicant: Mandeep Kandola

Call in – The application was called in by Councillors Young, Benjamin, Altaf-Khan and Fooks on the grounds that the house is too large for a family house and well adapted already for student accommodation. New housing strategy is for preference to be given for student housing to be located on main roads. Such accommodation is safer for students and avoids the out of hours nuisance caused to residents in side roads.

Recommendation: To **refuse** planning permission for the following reason:

- 1 The proposed development would result in the net loss of a self contained residential dwelling. The application is therefore contrary to policy HS10 of the Oxford Local Plan 2001 - 2016.

Planning Obligations:

Notwithstanding the recommendation above, in the event that committee is minded to support the planning application, then, in accordance with the Planning Obligations SPD and the Sites and Housing Development Plan Document (Proposed Submission) the following contributions would be required to mitigate the impact of the proposals on City and County Services and affordable housing delivery. The contributions set out below are indexed linked to values at 2006 levels and should be increased accordingly to the real value at the time of payment. The applicant has indicated in relation to the first item that he is unable to make the contributions in full for viability reasons. A letter of explanation is attached as **Appendix 2**.

- £38,427.20 towards affordable housing
- £780 towards indoor sports facilities
- £819 towards library infrastructure
- £1794 towards cycle safety measures

Principal Planning Policies:

Oxford Local Plan 2001-2016 (OLP)

CP1 - Development Proposals
CP6 - Efficient Use of Land & Density
CP10 - Siting Development to Meet Functional Needs
TR3 - Car Parking Standards
TR4 - Pedestrian & Cycle Facilities
HS10 - Loss of Dwellings
HS19 - Privacy & Amenity

Oxford Core Strategy 2026

CS17_ - Infrastructure and developer contributions
CS25_ - Student accommodation

Sites and Housing DPD – Proposed Submission

HP5_ - Location of Student Accommodation
HP6_ - Affordable Housing from Student Accommodation

Other Material Considerations:

- PPS 1 - Delivering Sustainable Development
- PPS 3 - Housing
- PPG 13 - Transport
- Regional Spatial Strategy for the South East
- Planning Obligations SPD
- Parking Standards, Transport Assessments and Travel Plans SPD

Relevant Site History:

11/02068/FUL - Change of use of dwelling house to house in multiple occupation (HMO) – Withdrawn

10/00562/FUL - Three storey rear extension (retrospective) - Approved

APP/G3110/A/C/10/2123487 - Appeal by Ms B Kaur against the enforcement notice issued by Oxford City Council for the unauthorised change of use of 229 Cowley Road from a dwelling house to student accommodation - Dismissed

09/02099/FUL - Retention of rear extension to 229 Cowley Road. Change of use from residential dwelling to student accommodation. Provision of cycle parking and bin storage – Refused

09/00087/FUL - Erection of 2/3 storey building fronting Bartlemas Road to provide 9 study bedrooms at rear of 229/231/233 Cowley Road – Refused

09/00032/FUL - Retention of extension to 229/ 231/ Cowley Road and use of 229, 231 and 233 Cowley Road as student accommodation (39 bedrooms) including

change of use from dwelling (229) and guest house (231, 233) – Withdrawn

08/00754/FUL - Retention of extension to 229 and 231 Cowley Road. Retention of use of 229, 231 and 233 Cowley Road as student accommodation (39 bedrooms) including change of use from dwelling (229) and guest house (231/233) – Withdrawn

05/02433/FUL - Single and three storey rear extensions to 229 and 231 Cowley Road. Raise roof, two dormers in front elevations and single dormer to rear of 231 Cowley Road – Approved in Part

05/01016/FUL - Single, two and third storey rear extension - Approved

Public Comments:

Statutory and Internal Consultees:

Highways And Traffic – No objection subject to condition to prevent students bringing cars in to Oxford and cycle parking and contribution towards cycle safety measures
Thames Water Utilities Limited – No objection

Officers Assessment:

Site Description and Proposal

1. The application site comprises No 229 Cowley Road, a three storey end of terrace property. The authorised use is as a dwelling house. However the property has been operating as student accommodation for a number of years without the benefit of planning permission. The adjoining properties at Nos 231 and 233 (also in the ownership of the applicant) are in use as student accommodation having gained planning permission in 2009.
2. The application seeks permission to retain the property in use as student accommodation.
3. Officers consider the determining issue in this case to be the loss of the dwelling house.

Planning History

4. There is a lengthy planning history on this site (set out above). For ease officers set out below the key points:
 - Planning permission granted for single and three storey rear extension in 2006, increasing the number of bedrooms from 4 to 6;
 - Three storey extension approved in 2006 built 1.9m longer than approved, omitting the single storey element entirely. Further

investigation determined that the property was now in use as student accommodation;

- Following several aborted application submission an application was refused in 2009 for the retention of the extension and use of the property as student accommodation;
- Following the refusal in 2009 the Planning Department issued an Enforcement Notice requiring the use to cease and the extensions to be regularised. An application to retain the extension as built was approved in April 2010, however the Enforcement Notice was Appealed by the applicant;
- A Planning Inspector dismissed the appeal in June 2010 on the grounds that the change of use to student accommodation, albeit retrospective, would result in the loss of a dwelling house contrary to policy HS10 of the Local Plan. The appeal decision is attached as **Appendix 3**.

5. In considering the appeal the Inspector raised no other concerns, e.g. residential amenity and car parking, and accepted that the location was otherwise suitable for student accommodation. Officers will therefore focus their assessment on the matters of contention.

Loss of Dwelling

6. Local Plan policy HS10 states that planning permission will not be granted for development which results in the net loss of self-contained residential accommodation. The loss of the dwelling house would therefore be contrary to policy HS10. In addition to this, the Planning Inspector considered this issue in the context of a number of material considerations (see Appeal Decision) and concluded that none of the other matters outweighed the conflict with the adopted local plan policy.
7. Since the appeal decision in July 2010 there has been no shift in the policy context so far as Local Plan policy HS10 is concerned and as such officers can find no planning reason to take a different view to the Planning Inspector.

Affordable Housing

8. Policy HP6 of the Site and Housing Development Plan Document (Proposed Submission) states that '*Planning Permission will only be granted for new student accommodation that includes 8 or more bedrooms if a financial contribution is secured towards delivering affordable housing elsewhere in Oxford.*' The application proposes 13 student study bedrooms and therefore triggers the requirement for affordable housing delivery (this figure is set out above). The Committee should be mindful that whilst the document is not adopted it is a material planning consideration and does carry some weight in determining the planning

application. The applicants have submitted a letter explaining why they are not able to pay the full contribution and have offered £10,000 towards off-site affordable housing and the other infrastructure contributions.

9. In the event that the Committee supports the application officers would draw its attention to the new requirements of policy HP6 and recommend that in resolving to grant planning permission authority be delegated to officers to issue the planning permission on completion of a legal agreement and appropriate contribution towards affordable housing.

Parking

10. The application does not include any off street car parking. However if Committee are minded to support the proposal officers can confirm that it is reasonable to impose a condition in accordance with Core Strategy policy CS25 to prevent students resident at the property from bringing cars into Oxford. The Highway Authority agrees with this approach. A condition is also recommended to ensure that cycle parking is provided.

Conclusion: There has been no change in circumstances since the enforcement appeal was dismissed. The proposal would still be contrary to Local Plan policy HS10 and as such officers would recommend that planning permission be refused. Should the Committee resolve to support the application officers would recommend the imposition of the conditions set out in the report and that authority be delegated to officers to issue the planning permission on completion of a legal agreement to secure appropriate contributions to off – site affordable housing.

Human Rights Act 1998

Officers have considered the implications of the Human Rights Act 1998 in reaching a recommendation to refuse this application. They consider that the interference with the human rights of the applicant under Article 8/Article 1 of Protocol 1 is justifiable and proportionate for the protection of the rights and freedom of others or the control of his/her property in this way is in accordance with the general interest.

Section 17 of the Crime and Disorder Act 1998

Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to refuse planning permission, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

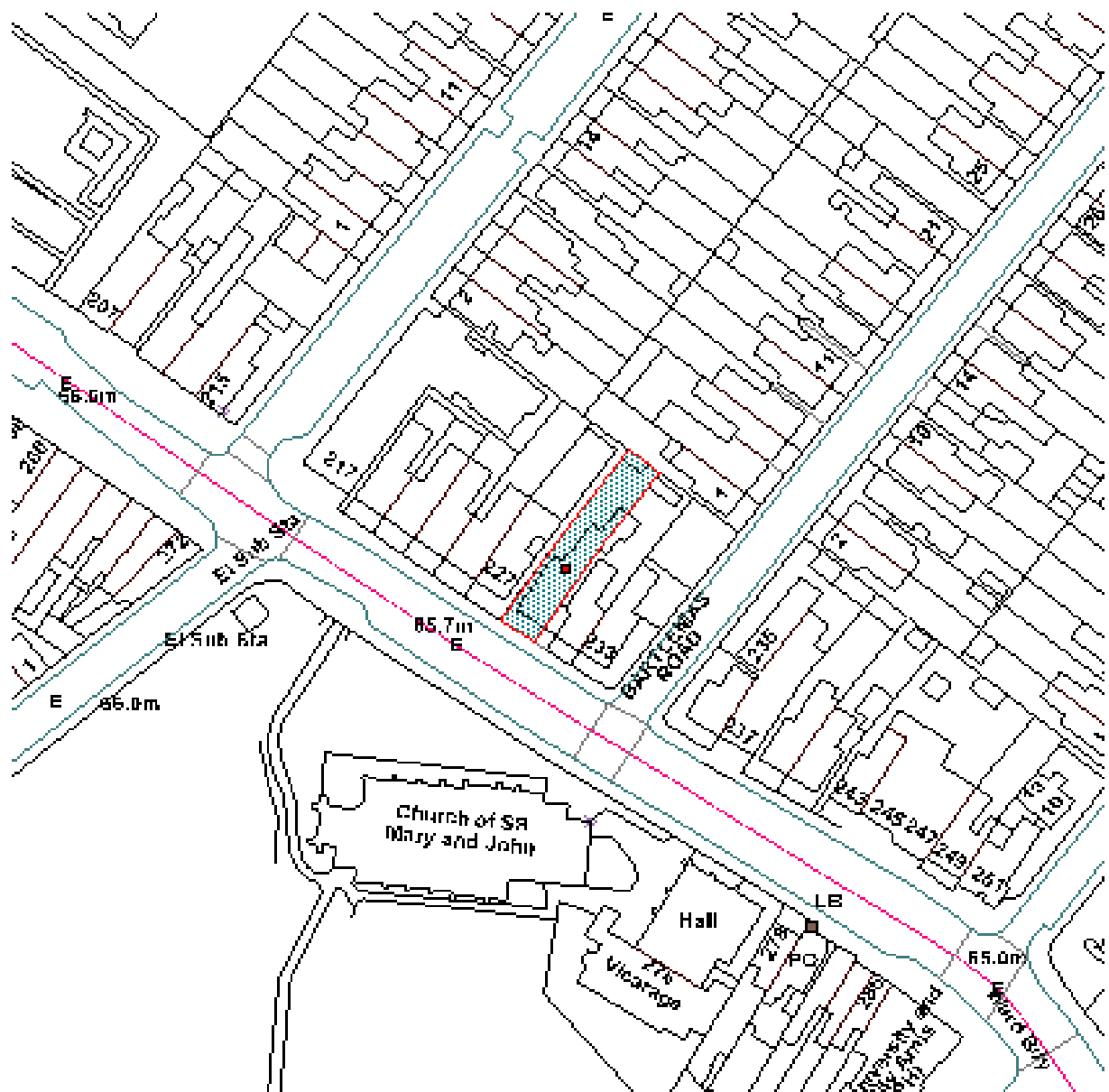
Background Papers: 12/00046/FUL

Contact Officer: Steven Roberts

Extension: 2221

Date: 31 January 2012

Appendix 1 – 229 Cowley Road



Appendix 2 – Letter from applicant regarding contributions

Dear Mr Roberts,

I write in connection with my application at 229 Cowley Road, Oxford (ref: 12/00046/FUL) and in response to your e-mail dated 17th January 2012. I am sorry to say that I cannot afford to provide the full amount of £42,065.20p.

Since January 2011 I have been unemployed and not claiming benefits. Although I am actively seeking employment, my situation is such that I have had to return to my parents' home and my running costs (food, travel, heating, clothing, socializing etc.) are now kindly met by them.

The current average outgoings of 229 Cowley Road are numerous and are not met by the rental income. The average monthly breakdown is as follows:

Mortgage	£3,915
Gas	£200
Electricity	£190
Water	£52.50
Internet connection	£37
Building Insurance	£35.50
Fire safety test	£8.50
Gas safety test	£6.70
Electric safety test	£8.50
Maintenance fees	£225

This averages to £4,678.33 per month and therefore £56,140 per year. The rental income is £54,000. As you can see the net amount does not enable me to provide the full contributions requested. In fact, there is currently a loss, which has thus far been covered by my family.

I can offer £10,000, after an application for a loan. This money would more than meet the contributions you request for City (indoor sport fee of £780 and £100 for admin costs) and County (£819 for libraries, £1794 for cycle safety measures and £100 for admin costs) facilities. The remainder will be provided by way of an off-site contribution to affordable housing.

If you wish to discuss the matter further, please contact Mr S Singh who is in charge of running 229 Cowley Road for me.

Best regards

Mandeep Kandola



Appeal Decision

Site visit made on 14 June 2010

by **Andrew Hammond** MA MSc CEng
MIET MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
26 July 2010

Appeal Ref: APP/G3110/C/10/2123487
229 Cowley Road, Oxford OX4 1XG

- 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 Ms B Kaur against an enforcement notice issued by Oxford City Council.
- The Council's reference is 09/00723/ENF.
- The notice was issued on 13 January 2010.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the land from use as a single dwelling house to use as student accommodation.
- The requirements of the notice are to cease the use of the property as student accommodation.
- The period for compliance with the requirements is 6 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. I dismiss both the ground (a) appeal and the appeal under ground (g), uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeal on ground (a)

main issue

2. The main issue in this appeal is the effect on the stock of self contained dwellings in Oxford.

discussion

3. There is no dispute between the parties that the premises are in use as student accommodation. The property, as currently arranged, comprises a large communal kitchen/sitting area to the rear ground floor, three bathrooms and 13 study/bedrooms each with its own lockable door and wash basin. Whilst it is disputed when the use began, the appellant does not claim that it has subsisted for 10 years or more and makes no appeal under ground (d) of section 174(2) of the Town and Country Planning Act 1990 as amended.
4. Furthermore the appellant accepts that the change of use of 229 Cowley Road is contrary to the development plan in the terms of saved Policies HS.9 and

HS.10 of the Oxford Local Plan 2001-2016 (LP). Policy HS.9 states that planning permission will not be granted for the change of use of the whole of any dwelling to non-residential use and Policy HS.10 states that planning permission will not be granted for any development which results in the net loss of one or more self-contained dwellings.

5. Notwithstanding the conflict with the development plan, the appellant argues that there are material considerations which sufficiently outweigh the development plan in this case.
6. Firstly it is suggested that the use has resulted in no ill effects on the locality. Whilst there may be no obviously apparent harmful effects "on the ground", the change of use has clearly resulted in the loss of a single self-contained dwelling contrary to the essence of LP Policy and the aims it seeks to achieve, introducing significant harm in this respect. As with consideration of any application or appeal, a mere lack of specific harm in one respect cannot outweigh actual harm in another.
7. 229 Cowley Road is operated as student accommodation in conjunction with Nos. 231 and 233, together with which it forms a terrace of 3 properties. The appellant argues that the acceptability and precedent of the use has been established by the granting of planning permission for change of use of Nos. 231 and 233 in 2009. That permission was, however, for the retention of a rear extension to number 231 and change of use of 231 and 233 from a guest house to student accommodation. Clearly no precedent was established for change of use from a single dwelling. The fact that the three properties are operated together does not, in my opinion, add significant weight in favour of the change of use.
8. The Council has granted retrospective planning permission for a 3 storey rear extension to No.229 (containing 3 bedrooms to each of the 1st and 2nd floors above the kitchen). It is similar to an extension to the rear of 231, also granted retrospective planning permission. However the Council made clear in the decision notice (Ref. 10/00562/FUL) that the extension approved retrospectively is for use in association with the authorised use of the residential dwelling house and permits no change of use. Whilst the internal arrangements of the approved extension do not appear to be ideal for use of the property as a single dwelling, that would not have been grounds for the Council to refuse planning permission for the extension. Therefore the grant of retrospective planning permission for the extension adds very little weight to arguments in favour of the change of use.
9. The appellant further argues that the property is well managed as student accommodation and goes some way to meeting a pressing need for such in a sustainable location. From what I saw on the site visit the property is currently clearly well managed and works to facilitate the change of use have been carried out to a high standard. The location is sustainable with a wide range of facilities in the immediate area and good public transport. However the demand for student accommodation, location and current management of the premises are, in my opinion, considerations of little weight in favour of the change of use.

10. In the grounds of appeal, the appellant states that to consider the property as a single dwelling is neither reasonable nor viable. No material has been submitted in support of this statement. However, the Council have suggested that it may be acceptable to convert the building to 3 flats and, in any event, any difficulties in returning the property to its existing lawful use, as a single dwelling, brought about by works to facilitate the change of use cannot legitimately be pleaded in support of the appeal.
11. The appellant has entered into a Unilateral Undertaking (UU) to provide contributions towards indoor sports facilities, cycle safety measures and library facilities. I acknowledge that the need for contributions would be reasonably brought about by the change of use and that the sums involved accord with adopted supplementary planning guidance. However the existence of the UU does not outweigh the harm in other respects.
12. I conclude that the considerations in favour of the change of use are cumulatively of insufficient weight to justify a departure from the provisions of the development plan and the appeal on ground (a) fails.

The appeal on ground (g)

13. The time for compliance with the enforcement notice is 6 months from the notice taking effect. The grounds of appeal state that 12 months would be more appropriate to allow the outstanding tenancy agreements to run out. A period of 6 months will extend beyond the end of the academic year and I see no justification for extending the compliance period.
14. The appeal on ground (g) fails.

Andrew Hammond
INSPECTOR