



## 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 1<sup>st</sup> and 2<sup>nd</sup> 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

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