

## EAST AREA PLANNING COMMITTEE

- 5<sup>th</sup> July 2017

**Application Number:** 17/01101/CEU

**Decision Due by:** 29<sup>th</sup> June 2017

**Extension of Time:** 14<sup>th</sup> July 2017

**Proposal:** Application to certify that the existing use as a House in Multiple Occupation (Use Class C4) is lawful development.

**Site Address:** 99 Gipsy Lane, Oxford, OX3 7PU

**Ward:** Churchill

**Agent:** Mr Alex Creswell

**Applicant:** Mr Melih Tanyeri-Aladag

**Reason at Committee:** The application has been called in by Cllr Brown and supported by Cllrs Fry, Curran, Price, Anwar and Clarkson for the reason that the council has a policy of not approving further HMOs in this area because of the high number already there and the loss of family housing.

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### 1. RECOMMENDATION

1.1. East Area Planning Committee is recommended to:

**(a) Approve the application for the reasons given in the report**

### 2. EXECUTIVE SUMMARY

2.1. This report considers an application for a certificate of lawfulness to certify that the existing use as a House in Multiple Occupation (Use Class C4) is lawful. The submitted application is made on the basis of Section 191 of the Town and Country Planning Act 1990 (as amended). Section 9 of the submitted application form states that the use commenced more than ten years ago.

2.2. The key matters for assessment set out in this report include the following:

- Whether the dwellinghouse has been in the continuous use as a House in Multiple Occupation for more than 4 years.

### 3. LEGAL AGREEMENT

3.1. This application is not subject to a legal agreement.

### 4. COMMUNITY INFRASTRUCTURE LEVY (CIL)

4.1. The proposal is not liable for CIL.

## **5. SITE AND SURROUNDINGS**

- 5.1. The site is located within the Churchill Ward of Oxford the east of the city centre close to Oxford Brookes University. The property is a terraced property typical of those in the area.
- 5.2. The site location plan is at Appendix 1.

## **6. PROPOSAL**

- 6.1. The application seeks a certificate of lawfulness to certify that the property is an existing lawful House in Multiple Occupation within Use Class C4.

## **7. RELEVANT PLANNING HISTORY**

- 7.1. There is no planning history on the site.

## **8. RELEVANT LEGISLATION**

- 8.1. Applications for Certificates of Lawful Use are not assessed against local planning policies but the evidence is reviewed against the following legislation which sets the framework for determining these applications.
- 8.2. Section 191 of the Town and Country Planning Act 1990 states that an existing use is lawful is no enforcement action may be taken against them because the time for taking enforcement action has expired.
- 8.3. Section 171B of the same Act states that no enforcement action may be taken after four years in the event of a change of use to a dwellinghouse. A small HMO (use class C4) is considered a form of dwellinghouse and so would be lawful if four years has passed without enforcement action.
- 8.4. National Planning Practice Guidance provides guidance on how applications for Certificates of Lawful Development should be assessed. In particular it states:

“In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.”

## **9. CONSULTATION RESPONSES**

- 9.1. A site notice was displayed in front of the property on 15<sup>th</sup> May 2017.

### **Statutory and Non-Statutory Consultees**

- 9.2. No consultees.

### **Public representations**

- 9.3. No representations received.

## **10. PLANNING MATERIAL CONSIDERATIONS**

- 10.1. Officers consider the determining issues to be:

i) Whether the property has been continually used as a House in Multiple Occupation for a period of more than 4 years.

### **i. Signed Declaration**

- 10.2. The application contains a signed declaration from Mr Melih Tanyeri-Aladag (the applicant) witnessed by Carl William Selby of Hedges Law Limited which sets out that the property was purchased in 2005 as an investment to let to students. The property has been let since around this date to students and has also been let to 4 unrelated students. This sworn declaration is made under the Statutory Declarations Act 1835.

### **HMO records**

- 10.3. The property did not benefit from an HMO license until 24th February 2017. Before this date it is believed that the property was an unlicensed HMO.

### **Tenancy Agreements**

- 10.4. Only one tenancy agreement has been provided which the application and is dated 1<sup>st</sup> September 2006. This shows that the property was let for a period of 12 months to four unrelated occupants.

### **Council Tax Records**

- 10.5. Evidence has been provided with the application confirming that the property has been exempt from council tax between 01/09/2005 to 31/08/2016 except for a small number of days where tenancies changed over. Whilst this demonstrates that students have been occupying the property it does not confirm the number of occupants.

## **11. CONCLUSION**

- 11.1. On the basis of the above, the lawful development certificate should be granted because the applicant has successfully proved that on the balance of probabilities the property has been in continuous use for a period of more than four years as a House of Multiple Occupation and there is no evidence to contradict the sworn declaration made. In addition, there is no extant enforcement notices issued in relation the use that is sought.

- 11.2. It is recommended that the Committee resolve to grant a certificate of lawfulness for the development.

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