

## EAST AREA PLANNING COMMITTEE

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

**Application Number:** 17/01102/CEU

**Decision Due by:** 7<sup>th</sup> July 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:** 7 Old Road, Oxford, OX3 7JY

**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 dwelling house 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.

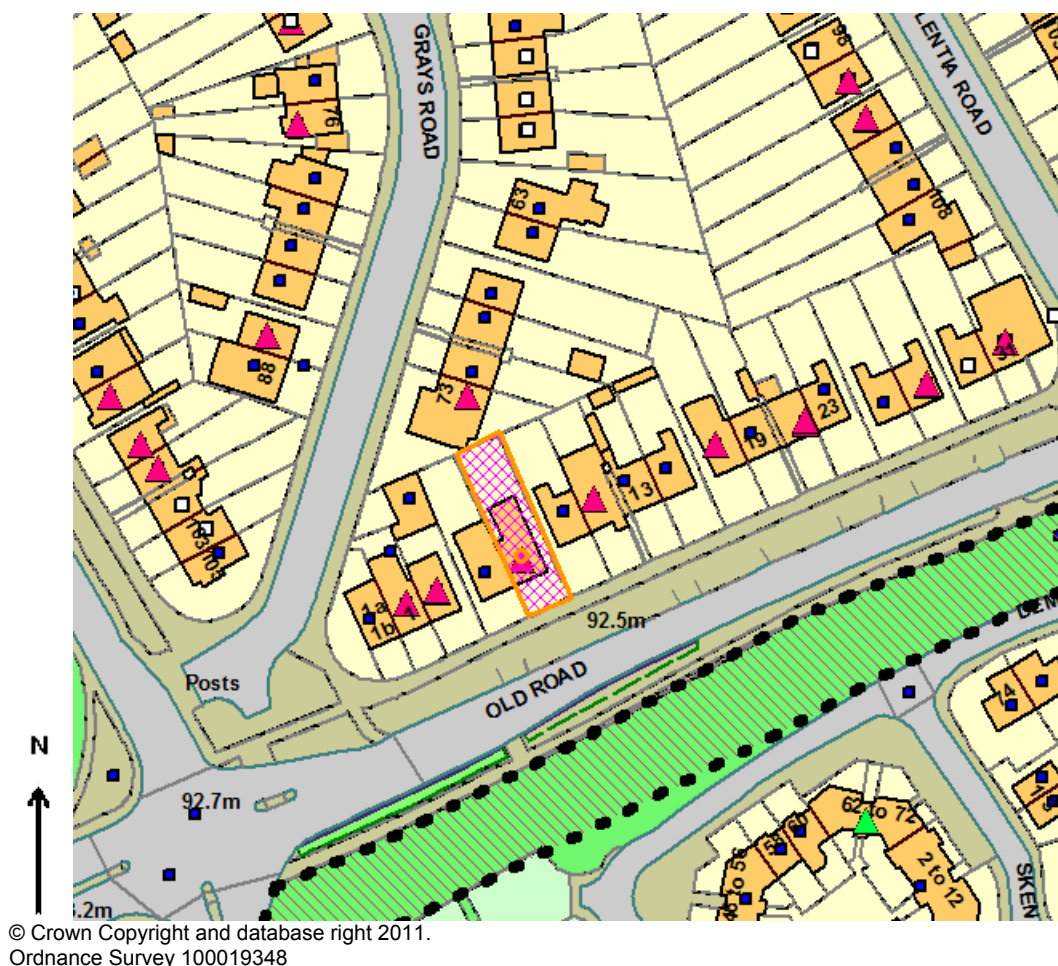
### 4. COMMUNITY INFRASTRUCTURE LEVY (CIL)

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 shown below:



## 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

Application Reference	Description of Development	Decision
12/02223/FUL	Erection of first floor rear extension and dormer loft conversion to create 3 x self-contained flats (Class C3). Provision of bin and cycle storage.	Withdrawn 6 <sup>th</sup> November 2012
16/03096/FUL	Change of use from dwellinghouse (Use Class C3) to House in Multiple Occupation (Use Class C4)	Refused 25 <sup>th</sup> January 2017

## **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 dwelling house. A small HMO (use class C4) is considered a form of dwelling house 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 26<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 2004 as an investment to let to students. The

property has been let since around October 2004 to 6 unrelated individuals. This sworn declaration is made under the Statutory Declarations Act 1835.

### **HMO records**

- 10.3. The application includes a copy of an HMO license that commenced on the 1<sup>st</sup> December 2016. Before this date it is possible 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 2007. This shows that the property was let for a period of 12 months to six unrelated occupants.

### **Council Tax Records**

- 10.5. Evidence has been provided with the application confirming that various council tax exemptions and discounts were applied to this property over the last 4 or five years and confirmation of a history of student discounts and exemptions back to 2004.
- 10.6. Whilst this demonstrates that students have occupied the property in the last ten years, it does not confirm the number of occupants, or detail the status of the occupants over the last four years.

## **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.