



## Appeal Decision

Site visit made on 14 November 2023

**by N Robinson BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 01 December 2023**

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### **Appeal Ref: APP/B1605/W/23/3323028**

#### **6 Marsh Lane, Cheltenham GL51 9JB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Jonas Martins (Verum Investments Ltd) against the decision of Cheltenham Borough Council.
  - The application Ref 22/01864/COU, dated 17 October 2022, was refused by notice dated 21 February 2023.
  - The development proposed is change of use from a single dwelling to a 4 bed HMO.
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#### **Decision**

1. The appeal is allowed and planning permission is granted for change of use from a single dwelling to a 4 bed HMO at 6 Marsh Lane, Cheltenham GL51 9JB in accordance with the terms of the application, Ref 22/01864/COU, dated 17 October 2022, subject to the conditions set out in the attached schedule.

#### **Applications for costs**

2. An application for costs was made against Cheltenham Borough Council by the appellant. This application is the subject of a separate Decision.

#### **Preliminary Matter**

3. The change of use of the property has been implemented and therefore I am considering this appeal retrospectively.

#### **Main Issue**

4. The main issue is whether the proposal results in an unacceptable concentration of Houses in Multiple Occupation (HMOs), with particular regard to Policy HM5 of the Cheltenham Plan (2020) (LP).

#### **Reasons**

5. The appeal site comprises a mid-terraced property located in a predominantly residential area in the St Paul's ward of Cheltenham, close to the Hardwick Campus of the University of Gloucestershire. The appeal relates to the change of use of the property from a dwelling house to a 4-bedroom HMO.
6. The confirmation of an Article 4 Direction<sup>1</sup> by the Council necessitates that changes of use from a dwelling into a HMO require planning permission. LP Policy HM5 seeks to control HMOs in the St Paul's ward. Amongst other matters, this policy requires that proposals should not result in the proportion

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<sup>1</sup> Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

of HMOs exceeding 10% of all residential properties within a 100m radius of the application site. LP Policy HM5 and its supporting text state that the number of HMOs within the search area will be calculated based on the results of a biennial survey undertaken by the Council, which, it is stated, will be available for publication on completion of each survey.

7. The Council's case does not specify the number of properties or HMOs within a 100m radius of the appeal site. Nonetheless, they state that the percentage of HMO properties within a 100m radius of the property currently stands at 13%. It is stated that this figure was calculated based on the number of licensed properties on the public HMO register (published on the Council's website) and additional raw survey data from 2022 provided by the Council's Housing Standards Team, based on which it is stated that the change of use of the property to a HMO is contrary to LP Policy HM5.
8. The appellant has clarified the number of properties within a 100m radius of the appeal property (134) and based on the information before me submitted in support of the appeal the Council appear to be in agreement with this figure. The appellant has produced a copy of the latest published biennial survey of HMOs in the St Paul's area undertaken by the Council (dated November 2022). This survey shows that the change of use of the appeal property results in 11 HMOs within 100 metres of the site, which equates to 8.2% of all properties. Thus, based on the results of the published biennial survey, the 10% threshold is not breached. Given the wording of LP Policy HM5 and its supporting text, in which specific reference is made to the calculations being based on the published results of the biennial survey, I see no reason not to use that figure and afford it considerable weight.
9. In light of the above, the development does not result in an exceedance of the 10% threshold of HMOs within a 100m radius of the appeal site and thus does not result in an unacceptable concentration of HMOs. The development therefore accords with LP Policy HM5 which requires, amongst other matters, that development for HMOs does not result in an over concentration within the locality.

### **Other Matters**

10. I acknowledge the concerns raised regarding disturbance from noise and fumes, including disturbance from existing HMOs. I note that the consented use of the property as a 2-bedroom dwelling would likely have been occupied by fewer residents. Nonetheless, any increase in the number of occupants would likely be modest and there is no substantive evidence before me that the use of the property as a 4-bedroom HMO results in any materially different effects in terms of noise and fumes than that from the consented use of the property.
11. I acknowledge the concerns of local residents with respect to parking and access. The appeal property includes no off-road parking and at my site visit, I noted that there were limited opportunities for parking in the vicinity of the site and that parking on the road and kerbside on both sides of Marsh Lane reduced its width. Nonetheless, I note that there are public transport alternatives within walking distance of the site and that the site is well located in relation to the university campus, which could reduce the reliance on private car use. Parking and access have not been argued as a concern by either the Borough Council or the Local Highway Authority, and I have no compelling evidence to indicate

that the proposed modest increase in occupiers would cause significant adverse impacts in these respects or that it would prejudice highway safety.

12. Further comments regarding the retrospective nature of the application are noted, however, I have determined the appeal on the merits of the scheme in front of me. Additionally, whilst I note that interested parties have raised concerns about whether building regulations have been granted for the accommodation, this matter is dealt with under separate legislation and is not a matter for consideration as part of this appeal.

### **Conditions**

13. The Council has not suggested any conditions should the appeal be allowed. A time limit condition is not necessary as the use has already been implemented. A condition stating the approved drawings is necessary to provide certainty and there is nothing before me to suggest that the development has not been implemented other than in accordance with the submitted plans.
14. Given the size of the property, I consider it reasonable and necessary to restrict its maximum occupancy to 4 people, in the interests of ensuring that appropriate living conditions are maintained. Additionally, I have included conditions to provide cycle storage at the property to encourage more sustainable modes of travel and refuse storage to ensure a satisfactory development of the application site.

### **Conclusion**

15. For the reasons given I conclude that the appeal should succeed.

*N Robinson*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1.) The development shall be carried out in accordance with the following drawings: Site Location Plan, Proposed Basement Plan, Proposed First Floor Plan, Proposed Ground Floor Plan.
- 2.) The HMO hereby approved shall be occupied by no more than 4 people at any one time.
- 3.) Unless within 3 months of the date of this decision a scheme for secure cycle storage facilities is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site as a 4 bed House in Multiple Occupation shall cease until such time as a scheme is approved and implemented.

Upon implementation of the approved secure cycle storage scheme specified in this condition, that secure cycle storage shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4.) Unless within 3 months of the date of this decision a scheme for storage of refuse is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site as a 4 bed House in Multiple Occupation shall cease until such time as a scheme is approved and implemented.

Upon implementation of the approved refuse storage scheme specified in this condition, that refuse storage shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.