The Planning Inspectorate

Appeal Decision

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 8 November 2016

Appeal Ref: APP/Y5420/C/16/3147097
8 New Road, London, N22 5ET

- 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 Mr C Patel against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice (Council Ref: UNW/2014/00918) was issued on 23 February 2016.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the property from a single family dwellinghouse (C3) to a House in Multiple Occupation (HMO) (C4).
- The requirements of the notice are to cease the use of the property as a HMO and revert the property back to its lawful use as a C3 single family dwelling.
- The period for compliance with the requirements is four (4) months after the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is allowed on ground (f) and the requirements of the enforcement notice are varied by the deletion of the words "…and revert the property back to its lawful use as a C3 single family dwelling" leaving the requirement as to "Cease the use of the property as a HMO". Subject to this variation the enforcement notice is upheld.

Procedural matters

2. A site visit was arranged for 12.45 on 1 November 2016 but neither of the principal parties attended. As a consequence the visit was aborted. There is however no dispute that the use alleged is taking place and no ground (a) or deemed planning application to consider. The merits of the development that has taken place do not therefore fall to be considered and consequently there is no need to see inside the property.

Ground (f)

3. The purpose of this ground is to argue that the requirements of the notice are excessive and that there are lesser steps that would remedy the breach of planning control and/or any injury to amenity that has been caused. It is not a ground that can be used on its own to argue that the development in question is acceptable and should benefit from planning permission. Case law has established that this is a ground (a) consideration and as this has not been pursued such an argument has no foundation in law[1].

[1] *Wyatt Bros (Oxford) Ltd v SSETR [2002] EWCA Civ 1560* & *Miaris v SSCLG [2016] EWCA Civ 75 / JPL 784*

4. The grounds of appeal supplied for the appellant seek in part to make out that the development that has taken place provides acceptable accommodation and that a HMO of this nature is a type of residential use which is suitable in this location contributing to the mix of housing accommodation within the Borough. For the reasons explained above this argument cannot be entertained under ground (f) and if such a case was to be advanced then an appeal under ground (a) with the payment of the requisite fee was necessary. Accordingly there is no need to take this any further.

5. The other point made on ground (f) is that whilst it would be possible for the property to revert to a single family dwelling (C3) the need to carry out remedial works would be excessive and the bedrooms with en-suite facilities and the kitchen can remain untouched. It is evident that the requirements of the notice do not require the removal of any bathrooms or the kitchen but only the cessation of the present use and the reversion to a single family dwelling. So the claim about what is needed is without substance. Nevertheless the courts have held that it is sufficient in cases such as these that the requirement is to simply cease the unauthorised use and not to add that the house should revert to a single dwellinghouse. This may be the outcome and one which the Council desire but it is sufficient to stop using the property as a HMO to remedy the breach.

Conclusion

6. For this reason, I conclude that the requirements are excessive in part, and I will vary the wording accordingly, prior to upholding the notice. The appeal under ground (f) succeeds to that extent.

N P Freeman

INSPECTOR