

Appeal Decision

Site visit made on 14 November 2016

by K R Seward Solicitor

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

Decision date: 18 November 2016

Appeal Ref: APP/Z5060/C/16/3157375

76 Osborne Square, Dagenham, Essex RM9 5BA

- 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 Colin Pepper against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice was issued on 1 August 2016.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised subdivision of the property into two residential units.
- The requirements of the notice are:-
 - Cease use of the property as two residential units.
 - Return the use of the property to a single family dwelling house.
 - Remove all fittings and alterations related to unauthorised use as two residential units.
 - Remove all subsequent waste material from the property.
- The period for compliance with the requirements is 1 year.
- The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections

Preliminary Matters

1. There is inconsistency between the terminology used in the allegation and the requirements of the notice. The allegation states that there has been a subdivision of the property into two residential units whereas the first requirement is to cease the use as two residential units. The allegation should be more appropriately framed as a material change of use to use as two residential units.
 2. The second bullet point of paragraph 5. goes beyond requiring remedy of the breach of planning control by requiring that the property be returned to use as "a single family dwelling house". A notice cannot require a use to be revived or carried on. It is sufficient to require the breach of planning control to cease. Accordingly, the second requirement in paragraph 5. should be deleted.
 3. Both corrections identified above can be made without injustice to either party.
 4. In an appeal on ground (b), there is no consideration of the planning merits. Therefore, comments concerning the absence of parking problems or harm to neighbouring living conditions do not fall to be considered.
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Reasons

5. An appeal on ground (b) is that the breach of control alleged in the notice has not occurred. In order to succeed on this ground it would need to be demonstrated that there has been no change of use to two residential units.
6. No 76 is at one end of a 2 storey residential terrace. The appellant maintains that it is one, 5 bedroomed property, having been extended to provide accommodation for his parents. In order to maintain their independence no connecting door was inserted. Since his father passed away, the extension has been occupied solely by the appellant's elderly mother. In time, the appellant says that the property will revert to use as a single dwellinghouse.
7. As things stand, it is clear that there are two residential units. Whilst there is no separate house number, there are two front doors. One leads to ground floor accommodation only comprising a lounge, fully fitted kitchen, a bedroom and bathroom. The other door is for the larger part of the property spread over two floors including accommodation above the adjoining ground floor unit. Each is a separate self-contained unit with the facilities needed for independent day-to-day living. Neither unit can be accessed internally from the other. Only the front and rear gardens are shared.
8. Notwithstanding the reason for the sub-division and the appellant's future intentions, the fact remains that two separate residential units have been created. As set out in section 55(3)(a) of the 1990 Act, this involves a material change in use of the building, for which there is no planning permission.
9. I conclude as a matter of fact the breach, as alleged, has occurred.

Formal Decision

10. It is directed that the notice be corrected by:-
 - (a) deleting the text under the heading in paragraph 3. of the notice and replacing it with the following:

"Without planning permission, the material change of use of the property to use as two residential units."; and
 - (b) deleting the requirement in the second bullet point of paragraph 5.
11. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

KR Seward

INSPECTOR