
Appeal Decision

Site visit made on 21 February 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 20 March 2017

Appeal Ref: APP/Z5060/C/16/3158858
79 Upney Lane, Barking, Essex IG11 9LD

- 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 Mrs Zahidha Parveen against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 24 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of a single family dwelling house to a house in multiple occupation.
 - The requirements of the notice are:
 - Cease the mixed use of the single dwelling house as a House in Multiple occupation;
 - Remove the fittings and alterations (including locks on doors and kitchens and bathroom fittings) that have been installed to achieve the mixed use of the single family dwelling house as a House in Multiple Occupation; and
 - Remove all waste and refuse from the site.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of the word 'mixed' from the first and second requirements set out in paragraph 5 of the notice. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

2. A site visit was arranged for 11.40am on Tuesday 21 February 2017. The appellant was informed about this on 9 January 2017 and the letter setting out the details of the site visit was sent by email, as the appellant had indicated on her appeal form that this was her preferred method of contact. The letter set out that it was important that the appellant make arrangements for the Inspector to be met at the site to enable the inspection to be made. If the appellant could not attend then she was to arrange for someone else to take her place and if that was not possible she was to inform the Planning Inspectorate.
 3. On the day of the site visit neither the appellant nor a representative met the Inspector at the site and the Inspector had not been advised of any other arrangements. The Inspector had been met at the site by a representative from the Council who knocked at the door of the premises and spoke to a tenant. She telephoned the letting agent as she knew nothing about the site
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visit but the agent was unable to assist so in the circumstances the tenant declined to permit the Inspector to enter the premises. The visit was then aborted.

4. Paragraph B.9 onwards of the Procedural Guide: Enforcement Notice Appeals, England¹ states 'Where the appeal concerns a case which will be decided purely on the basis of technical and/or legal interpretation of the facts the Inspector may decide the appeal without a site visit.' In this case the appeal has been made solely on ground (b). This will involve an interpretation of the facts and the Procedural Regulations² permit a decision being made taking into account only such written representations as have been submitted within the time limits. Having looked at the evidence, I am satisfied that it is not necessary to arrange a second visit and I am content that I have all of the evidence to enable me to make a decision taking into account only the written representations.

The Notice

5. The first and second requirements in paragraph 5 of the notice refer to a 'mixed' use of the property. This is incorrect as the allegation is the material change of use of a single dwelling to a house in multiple occupation (HMO) and the parties have responded to this appeal on that basis. I will therefore vary the notice to omit the word 'mixed'. This would not result in either injustice or prejudice to either the appellant or the Council.

The ground (b) appeal

6. Under a ground (b) appeal the onus of proof falls upon the appellant to show that the alleged breach of planning control has not occurred as a matter of fact. In this case the Council allege that there has been a material change of use of a single dwelling house to a HMO.
7. The appellant submits that she did not know about the breach of control and has no details of the tenants; however she does not deny that the property is occupied by a number of tenants. She states though that this was not her doing and encloses a copy of her agreement with a lettings agency, Nouveau Homes at 29a Longbridge Road, Barking. This deed, which is not dated, is signed by the appellant (who gives her name as Zahida Parveen Iqbal) and Nouveau Homes and covers the letting of the property by the letting agent to tenants and the provision of a guaranteed rent to the appellant for three years. Within the terms of the agreement it states that this is to commence 1 August 2014. On receipt of the enforcement notice the appellant states that she has given notice to the letting agent to empty the property and return the dwelling to her. However it is not clear who she has contacted, or when, as these details were not included with her copy of the email.
8. The Council were first made aware of the HMO use on 3 December 2014 after a Council Tax officer visited the property and found eleven unrelated persons in residence. On 11 December 2014 Primelodge Estates at 29 Longbridge Road, Barking contacted the Council and stated that they were evicting the tenants in order to cease the HMO use. They enclosed a copy of a tenancy agreement, dated 15 June 2014, which was made between Misses Angelova and Doncheva

¹ Published 23 March 2016

² Town and Country Planning (Enforcement)(Written Representations Procedure)(England) Regulations 2002, Rule 10

(the tenants) and themselves and which states that the landlord is Mrs Iqbal. This agreement also states that the landlord's agent is Primelodge Estates. The Council produced a copy of the eviction notice which was given by Primelodge Estates. There was a follow up visit by a Planning Enforcement officer on 5 August 2015 when seven people were found to be in residence and another visit a year later on 3 August 2016 when it was found that the HMO use was still taking place.

9. I find that, whilst the appellant may have signed an agreement with a letting agency ultimately, as the owner of the property, its use is her responsibility. There is no explanation from the appellant as to why, if she leased the property to Nouveau Homes for the purpose of letting it to tenants by the lessee, that Primelodge Estates appear also to be the landlord's agent and are managing the property in December 2014. The Council have produced evidence of HMO use by various officers beginning in December 2014 and the appellant has not disputed this evidence. For these reasons I conclude that as the appellant has been unable to demonstrate that the alleged breach of planning control has not occurred as a matter of fact, the appeal on ground (b) fails.

Conclusion

10. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

D Fleming

INSPECTOR