
Appeal Decision

Site visits made on 21 February 2017 and 20 April 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 24 April 2017

Appeal Ref: APP/Z5060/C/16/3159551

19 Temple Avenue, Dagenham, Essex RM8 1LL

- 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 Jooli Joseph against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 12 September 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 the 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 the unauthorised use as two residential units; and
 - Remove all subsequent waste material from the property.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by: the deletion of the words 'unauthorised subdivision' and the substitution of the words 'material change of use' and varied by: the deletion of the word 'two' and the substitution of the word 'separate' from the first requirement and the deletion of the second requirement of the notice set out in paragraph 5. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

2. A site visit was arranged for 10.45am on Tuesday 21 February 2017 and the appellant was informed about this on 4 January 2017. 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. The details of the site visit were also emailed to the appellant's new agent on 20 February 2017 when it was confirmed that the site visit would still go ahead as planned even though new agents had been appointed and new grounds of appeal pleaded.
 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
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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 gentleman who knew about the visit and purported to know the appellant but would not permit entry. The Council's representative telephoned the agent but received no reply. The gentleman therefore telephoned the appellant who subsequently spoke to the Inspector. Initially she claimed not to know about the site visit but then advised she did not wish the visit to go ahead unless she was there and she was unable to attend as arranged. The tenant from the first floor was prepared to permit entry to her living area but the gentleman refused access to the premises and so in the circumstances 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 was made initially on ground (b). The appellant then sought to add appeals on grounds (d) and (f) though no facts ever accompanied those grounds. The appellant has not submitted a Statement of Case and in the circumstances it was considered appropriate to arrange a second site visit at 11.00am 20 April 2017. Whilst the appellant did not attend this site visit, the Inspector was accompanied by a Council representative and was shown around the property by the tenants.
5. An enforcement notice must enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control. It is not clear in this case as the description of the allegation is stated as being the 'subdivision of the property into two residential units'. Subdividing a property does not necessarily amount to a change of use requiring planning permission. Rather it is the making of a material change of use that is defined as development in the Town and Country Planning Act 1990.
6. I consider though that the appellant has not been misled by the incorrect framing of the allegation. This is because from the ground (b) appeal she refers to the premises already being 'granted double dwelling' which is an understanding of the nature of the breach of planning control. This error can therefore be corrected without causing injustice to the appellant.

The appeal on ground (b)

7. 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 to two residential units.
8. The appellant submits that she was not aware of the breach of planning control, that no structural changes have been made by her, that a previous landlord built the extension and that she pays two lots of Council tax for the property. However, these statements do not demonstrate that the alleged breach of planning control has not occurred as a matter of fact and the appellant does not deny that the property is occupied as two units of accommodation. Furthermore she even pays Council tax for both of them.

¹ Published 23 March 2016

9. At the site visit I saw that the property has been divided into two residential units with a flat on each floor, each with its own kitchen and bathroom. It is therefore concluded that the evidence supports the allegation that there has been a material change of use of the property into two residential units. The appeal on ground (b) therefore fails.

The appeal on ground (d)

10. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. She needs to show, on the balance of probability, that the material change of use of the property to two flats took place more than four years before the notice was issued and that it has continued, without material interruption, since that date. The notice was issued on 12 September 2016 so the appellant needs to show that the material change of use began no later than 12 September 2012.
11. The appellant provides no facts to support this ground of appeal. The Planning Practice Guidance advises² that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to reject it. This is provided the appellant's evidence alone is sufficiently precise and unambiguous, on the balance of probability.
12. Whilst the appellant has indicated that she wishes to appeal on ground (d), unfortunately she has not demonstrated the veracity of her claim. Furthermore, the appellant does not contradict the Council's submissions with any further comments and offers no detailed information on the condition of the property prior to her purchase.
13. The Council submit a copy of an extract from a website Rightmove that shows that the property was listed for sale as a three bedroom terrace house in December 2014. No mention is made in the description of the property that it has been subdivided into flats.
14. The burden of proof rests with the appellant and from the extremely limited amount of material before me I conclude that the appellant has not satisfied the requirement to submit evidence that is sufficiently precise and unambiguous. Consequently she has not discharged the onus of proof to demonstrate that the use of the property as two flats has been in existence for the relevant period before the issue of the notice, on the balance of probability. The appeal on ground (d) therefore fails.

The appeal on ground (f)

15. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council require the cessation of the unauthorised use and the removal of fittings and alterations which facilitate the operation of the use. The purpose of the notice would therefore appear to be to remedy the breach of planning control.

² Reference ID: 17c-006-20140306

16. The appellant submits no facts to support this ground of appeal. The onus is on the appellant to state the precise details of any lesser steps otherwise it is not possible to judge whether the Council's requirements are excessive or not. The appeal on ground (f) therefore fails.
17. It is necessary to vary the notice by the deletion of the requirement to return the property to use as a single family dwelling house. This is because an enforcement notice cannot require the revival of a previous use. Neither party would be prejudiced by this change. In addition it is not necessary to specify that use as two residential units should cease, merely that use as separate residential units should cease.

Conclusion

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

D Fleming

INSPECTOR