
Appeal Decision

Site visit made on 17 April 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 10 May 2019

Appeal Ref : APP/Z5060/C/18/3214506

Land at 316 Westrow Drive, Barking, IG11 9BX

- 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 Raymond Versace against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
- The notice was issued on 25 September 2018.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of a single-family dwelling house to a residential care home (C2 use class).
- The requirements of the notice are to cease the use as a residential care home (C2 use class), remove all alterations and fixtures enabling the conversion to a residential care home (C2 use class) and remove all consequent waste material from the premises.
- The period for compliance with the requirements is six 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.

Summary of Decision: the appeal is allowed and the enforcement notice is quashed.

Preliminary matter

1. The Appellant has lodged a ground (c) appeal. This ground of appeal is that the matters alleged do not constitute a breach of planning control. But it is established law that a change of use from a single family dwelling house (use class C3) to a residential care home (use class C2) requires planning permission and there are no arguments before me to the contrary. The Appellant's argument is that the property has not been changed from a C3 use class to a C2 use class. Essentially, he says that the alleged breach has not occurred as a matter of fact. This is pertinent to a ground (b) appeal. The parties have addressed this issue in their submissions so I do not consider there to be any prejudice in considering a hidden ground (b) appeal as opposed to a ground (c) appeal and accordingly I shall do so.

Ground (b) appeal

2. This ground of appeal is that the alleged breach of planning control has not occurred as a matter of fact. The onus of proof rests on the Appellant and the test of evidence is the balance of probabilities.
3. The notice alleges the unauthorised material change of use of a single-family dwelling house to a residential care home (C2 use class). A single family dwellinghouse falls within use class C3. Use Class C3(b) includes where not

more than 6 residents live together as a single household and care is provided for residents. A C2 use comprises the use for the provision of residential accommodation and care to people in need of care (other than a use within a Class C3 dwellinghouse). This appeal therefore turns on whether as a matter of fact the appeal site has been used for a Class C3(b) or Class C2 use and the fundamental question in determining this is whether the residents of the property form a single household and receive care.

4. In determining whether the residents live together as a single household and receive care I have looked at the facts before me including the degree of care they receive.
5. The appeal site is being used as a supported housing facility and the Council have placed looked after young people at the property in order to prepare them for independent living. I do not know from the representations before me the ages of the residents but they are described as looked-after young people needing assistance to live independently and therefore I have considered them as young adults and not children. In order to form a household for the purposes of Class C3(b) the persons who live together need not be related as family members.
6. Whilst I note the description of services set out in the provider's website and drawn to my attention by the Council I must consider the actual use of the appeal site. I saw at my site visit that the layout of the property is largely what is expected of a family home with communal lounge, kitchen and garden areas. There is no dispute that bedrooms provide separate private sleeping space. I note that the Appellant refers to locks on bedroom doors to provide privacy and security and I do not find this determinative of whether the residents form a single household. The Council refers to the fact that residents are placed there as individuals through referrals by councils but I do not find this to mean that they cannot form a single household. I saw that one of the rooms was used as an office for the support workers and that there is CCTV at the property but this room is relatively small in the context of the building and not unexpected in a home where care is provided. There is nothing before me to suggest that the layout of and facilities in the buildings are significantly different to a C3(b) building. The accommodation appears to be for the benefit of a household with resident adults in need of some assistance rather than to support the accommodation of people in need of significant care. The Appellant explains that the residents frequently shop and cook together and have formed friendship bonds. The evidence points to a prevailing sense of communal living and I find as a matter of fact and degree that there is nothing inherent within the layout of the property that would suggest that the use falls outside use class C3(b).
7. I have no reason to doubt the Appellant when he explains that support workers on site are not resident and mainly assist residents in day to day tasks rather than undertaking such tasks on their behalf. I have considered the Council's argument that the website describes 24 hour semi-independent units but the website description of services is general and not specific to the appeal site. I must consider the evidence before me as to the actual use of the site and there is no evidence that contradicts or casts serious doubt on the description of care provided by the Appellant. The signs at the property appeared to me to support this description. There is no evidence before me to suggest that the needs of the young adults residing at the property are

such that they are not capable of running a household themselves albeit with some support. I do not agree with the Council that the level of care has the characteristics of a C2 use but is more accurately described on the evidence before me as supported living. I find as a matter of fact and degree that the care provided to the residents falls within the meaning of use class C3(b).

8. I note that the Council's reasons for issue of the notice include harm to the living conditions of neighbours with particular regard to noise and disturbance. Whilst the planning merits of the development are not relevant to this appeal I note that it is inherent within the terms of the Use Classes Order that vulnerable groups may fall within Class C3(b) and therefore this is not an argument that suggests the residents are not living together as a single household.
9. The Appellant's evidence does not need to be independently corroborated in order to be believed and I find nothing in the Council's submissions that casts any serious doubt on the Appellant's description of the use of the site. As a matter of fact and degree on the evidence before me I find that a change of use from a single family dwellinghouse (use class C3) to a residential care home (use class C2) has not occurred as a matter of fact.
10. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly the enforcement notice will be quashed.

Formal Decision

11. The appeal is allowed and the enforcement notice is quashed.

S. Prail

Inspector