



Appeal Decision

Site visit made on 7 January 2020

by K Stephens BSc (Hons), MTP, MRTPI

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

Decision date: 14 February 2020

Appeal Ref: APP/Z5060/C/19/3231523

98 Sandringham Road, Barking IG11 9AJ

- 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 Naveed Baqa of Golder Baqa Company against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 10 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of a single-family dwelling to a House of Multiple Occupation.
 - The requirements of the notice are:-
 - Cease the use as a house in multiple occupation.
 - Remove all alterations and fixtures enabling the conversion to a house in multiple occupation.
 - Remove all consequent waste material from the premises.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice upheld.

Background

2. The property is a two storey dwelling with accommodation in the roof. It is one of a terrace of 4 similar properties, which is the prevailing house type in the street. The area to the front of the property has been laid to hardstanding, like a number of others in the road, but there is no dropped kerb to it.

Appeal on ground (b)

3. Ground (b) is that the matters alleged in the enforcement notice have not occurred as a matter of fact. To succeed on ground (b), the onus is on the appellant to show, on the balance of probabilities, that the alleged breach of planning control has not occurred.
4. Under the Use Classes Order¹ the use of a building as a dwellinghouse comes under Use Class C3 and is defined as being used by (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class

¹ The Town and Country Planning (Use Classes) Order 1987 as amended

- C4). As there is no mention of care being provided, parts (a) and (c) are more relevant in this case.
5. Under the Use Classes Order the use of a building as a dwellinghouse by not more than six residents as a "house in multiple occupation" (HMO) comes under Use Class C4. HMOs are generally occupied by one or more households and who share one or more basic facilities (which is a toilet, personal washing facilities or cooking facilities), or the accommodation is lacking one or more basic amenities.
 6. For the purposes of Class C3 a "single household" is to be construed in accordance with section 258 of the Housing Act 2004, and is generally people who are all members of the same family, including relatives, living together as a single household. The issue in this case is for the appellant to show the building is being used as a dwellinghouse by a single household, and not as an HMO.
 7. It is well established by the courts that there needs to be some degree of relationship between the occupants to constitute a single household, if they are not related but living together as a single household. The courts have also found that there is no single factor about how the occupants live, the presence or absence of which, is in itself conclusive as to whether a property is in use as an HMO.
 8. The Council claims a licence to rent private property as an HMO was applied for. The Council's letter to the appellant in their Appendix 1, alleging a change of use to an HMO on the basis of the licence application, is not proof that there has been a breach of planning control. The Council has not submitted any evidence to show such a licence was submitted and applied for.
 9. On the other hand, the appellant has not provided any substantive evidence to demonstrate that the private rented licence was applied for in error, apart from what was written on the appeal form. I have not been presented with any evidence, such as a letter to the licensing authority explaining the private rented licence application was made in error, or any documentation from the licensing authority that it has recognised the error and has amended its records accordingly. The appellant has not submitted any evidence to demonstrate that the occupants live as a single household, such as the relationship between the occupants, did they come as a single group, does each occupant have a tenancy agreement with the appellant for example.
 10. On my visit I saw there were 5 rooms potentially for use as bedrooms as they were furnished with beds and wardrobes. This included the ground floor front room being used as bedroom. This room would have originally been a reception room from my experience of the floor plans of similar properties. At the time of my visit only 3 rooms appeared to be occupied including the ground floor front room. There was also a small kitchen, a separate dining room and a small bathroom with shower over the bath. There was a rear garden accessible from the rear of the house.
 11. I noticed that there were locks on the bedroom doors, including the ground floor front room being used as a bedroom. Whilst this fact alone does not mean an HMO is operating, it would seem to indicate to me, and from what I saw on site, some degree of separate living.

12. In the absence of any substantive evidence to the contrary, and on the balance of probability, I cannot conclude that the breach has not occurred. Therefore, the appeal on ground (b) must fail.

Appeal on ground (c)

13. Ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. It is a legal ground of appeal, distinct from any planning merits. The onus of proving it lies with the appellant and the test of the evidence is on the balance of probability.
14. The key question is whether 'development' has taken place which requires planning permission and, if so, whether planning permission is granted or the development is otherwise deemed to be lawful.
15. Development, as defined by section 55 of the 1990 Act², includes a 'material change of use'. Section 55(2)(f) provides that use for any other purposes within the same "class" specified in the Use Classes Order does not involve development.
16. Under the Use Classes Order the use of a building as a dwellinghouse comes under Use Class C3. Use Class C4 is use of a dwellinghouse by not more than six residents as a "house in multiple occupation." Under the GPDO³ a dwelling falling within Class C3 is permitted to change to an HMO falling within Class C4 without needing planning permission and this change would not constitute development.
17. However, the Council has made an Article 4 Direction, appended to the Council's Statement. This removes the permitted right to change from a Class C3 use to a Class C4 use without planning permission. This means that for dwellings falling within the area defined in the Article 4 Direction, a change to an HMO for up to six persons is development which requires planning permission.
18. Under appeal ground (b) I have found that the property is in use as an HMO. Because the Article 4 Direction removes the permitted change from a dwelling to an HMO, development has taken place.
19. The Council has not granted planning permission for the change of the dwelling to an HMO. Furthermore, there is no appeal against ground (a) so an application for deemed planning permission to be granted is not before me. Therefore, there is no planning permission and the development is not otherwise deemed to be lawful.
20. Therefore, for the reasons above, a breach of planning control has occurred and the appeal on ground (c) fails.

Conclusion

21. For the reasons given above I consider that the appeal should not succeed.

K Stephens
INSPECTOR

² The Town and Country Planning Act 1990

³ The Town and Country Planning (General Permitted Development) (England) Order 2015