The Planning Inspectorate

Appeal Decisions

Site visit made on 25 August 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th September 2020

Appeal A: APP/Z5060/C/19/3242275
Appeal B: APP/Z5060/C/19/3242276
8 Sherwood Gardens, Barking, Essex IG11 9TH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Zahid Iqbal (Appeal A) and Mrs Elaine Atkinson (Appeal B) against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice was issued on 7 November 2019.
- 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 House of Multiple Occupation (HMO).
- The requirements of the notice are (1) Cease the use as an HMO; (2) Remove all alterations and fixtures enabling the conversion to an HMO; (3) Remove all consequent waste material from the premises.
- The period for compliance with the requirements is 6 months after the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) and (d) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed in this appeal.

Summary of Decisions: The appeals are allowed and the enforcement notice is quashed.

Applications for costs

1. Applications for costs were made by Mr Zahid Iqbal and Mrs Elaine Atkinson against the Council of the London Borough of Barking & Dagenham. These applications will be the subject of separate Decisions.

Appeals A and B - the appeals on ground (c)

2. To succeed on this ground, the appellants must demonstrate on the balance of probability that the change of use to an HMO alleged in the notice does not constitute a breach of planning control. The first recorded tenancies began in July 2007, and the appellants believed it was lawful to begin the HMO use at that time. Whilst providing no detail, they note that there had been litigation over the interpretation of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Order) as to whether a change of use from

dwellinghouse to HMO was development requiring planning permission prior to the creation of Use Class C4[1] in April 2010.

3. The occupation of a dwellinghouse by not more than 6 unrelated persons in 2007 would not necessarily have brought about a material change of use. However, the definition of a dwellinghouse in the Order at that time stated it must either be occupied by a single person, or by people living together as a family, or by not more than 6 residents living together as a single household.

4. The appellants state that their tenants have occupied the property as separate households since letting began. This confirms that the property has not been occupied by a single person or by people living together as a family or as a single household, and therefore the use did not fall within the dwellinghouse Class in the Order. Furthermore, the appellants have not discharged the burden on them to demonstrate on the balance of probability that the formation of the HMO was not a material change in the use of the property and not development requiring planning permission.

5. For these reasons the appeals on ground (c) should not succeed.

Appeals A and B – the appeals on ground (d)

6. The question to be determined in the appeals on this ground is whether, on the balance of probability, the use of the property as an HMO began on or before 7 November 2009, 10 years before the notice was issued, and continued thereafter without significant interruption. If this can be demonstrated, the use of the property as an HMO would be immune from enforcement action.

7. I saw on my visit that all bedrooms had lockable doors and that kitchen and bathroom facilities were provided communally. One room was unoccupied at the time and I saw it did not contain any facilities for cooking or washing.

8. Copies of 26 tenancy agreements, the first 2 beginning on 30 July 2007 and the most recent on 3 October 2019, have been provided. The start dates in 24 of the agreements tally with dates set out in an appellant's witness statement. A further tenancy is recorded in the same statement, but a copy of the relevant agreement has not been provided. While some tenants moved out before the end of their agreements, there is only one record of a date on which this occurred, although the appellants have indicated the year, and sometimes the month, when other tenants left. Seven agreements extended the occupation by existing tenants, indicating a degree of continuity.

9. All the agreements describe the property being rented as 8 Sherwood Gardens, although one has a hand-written annotation to indicate that it was specific to a downstairs double room. Tenancy deposit records relating to 2 tenancies that began in May 2010 indicate that those tenants occupied rooms 3 and 5 respectively. An application for a Private Rented Property Licence made in December 2015 named 6 tenants then occupying bedrooms 1, 2, 3, 4 and 5. This evidence, and the differences in rent levels between concurrent agreements, indicate that lettings have been room-based, consistent with use of the property as an HMO.

[1] Houses in multiple occupation: Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"

10. A next-door neighbour's witness statement confirms that he has observed the comings and goings of tenants since 2007 and has been on speaking terms with many of them, 4 of whom are named in the statement. This statement, and one made by an appellant, confirm that the property has remained an HMO since 2007, with no breaks in occupancy, with between 4 and 6 occupants from at least 3 separate households.

11. Considered overall, and in the absence of any contrary evidence, the appellants' evidence is sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the use of the property as an HMO began before 7 November 2009 and continued thereafter without significant interruption.

12. For these reasons the appeals on ground (d) should succeed.

Conclusions

13. For the reasons given above, I conclude that the appeals should succeed on ground (d). The enforcement notice will be quashed.

14. In these circumstances, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act in Appeal A do not fall to be considered.

Decisions

15. The appeals are allowed and the enforcement notice is quashed.

Mark Harbottle

INSPECTOR