
Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2020

Appeal Ref: APP/B5480/C/20/3248593

The land at 9 Queens Gardens, Rainham RM13 8EB

- 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 Chaim Reiner against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 29 January 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of a dwellinghouse (class C3) to a house in multiple occupation (HMO) (class C4).
 - The requirements of the notice are:
 - (i) Cease using the property as a house in multiple occupation (HMO); and
 - (ii) Remove all kitchen and cooking facilities except one kitchen on the ground floor, and remove all washing/shower facilities on the ground floor and all electricity meters/fuse boxes from the premises except for one which serves the whole premises; and
 - (iii) Remove all debris associated with steps 1 and 2 above, 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) (f) and (g) 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.
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Decision

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

Preliminary Matter

2. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the Council have submitted sufficient evidence to understand the nature of the site and development given the grounds of appeal and points in dispute. Both the appellant and the Council were given an opportunity to comment on this approach and any responses received have been considered.

The appeal on ground (f)

3. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. 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)). As the enforcement notice requires the use as an HMO to cease and the removal of those facilities which are considered to facilitate the use, I find that the purpose of the notice is to remedy the breach of planning control.

4. The appellant has not suggested any lesser steps or submitted evidence to substantiate their case on this ground.
5. In order to return the building to its previous lawful state and remedy the breach of planning control, the necessary requirements are to cease the use as an HMO, as well as to remove those facilities associated with and which facilitate the unauthorised change of use, so that the layout of the premises is returned to the position which it was before the unauthorised change of use took place.
6. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

The appeal on ground (g)

7. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant has not suggested what they consider a reasonable period would be.
8. Whilst I am mindful that the property may be occupied, I have no details about the occupants' circumstances, for example I have not been provided with copies of tenancy agreements held by the tenants or details in relation to any such agreements. I therefore have no substantive details of the terms of the tenancies held by any current occupiers, particularly in relation to matters such as the notice periods required by either side.
9. The purpose of the time period within an enforcement notice is to allow for the unauthorised use to cease and for the physical works associated with the use to be removed. In the absence of substantive evidence, I cannot be certain that the period of three months, specified in the notice, is not proportionate to the breach of planning control that has occurred.
10. Accordingly, the appeal on ground (g) fails.

Conclusion

11. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Felicity Thompson

INSPECTOR