
Appeal Decision

Site visit made on 11 May 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 June 2021

Appeal Ref: APP/Z5060/C/20/3255471

Land and premises at 47 First Avenue, Dagenham RM10 9AT

- 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 Rattan Devsaini against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
 - The enforcement notice was issued on 10 June 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of a single-family dwellinghouse to a House of Multiple Occupation.
 - The requirements of the notice are:
 - Cease the use as a house of multiple occupation.
 - Remove all alterations and fixtures enabling the conversion to a house of multiple occupation.
 - 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) (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matters

2. An appeal has been brought under ground (c) on the basis that the matters alleged in the notice (if they occurred) do not constitute a breach of planning control. To succeed on this ground, the appellant would need to demonstrate that the use of the property as a House in Multiple Occupation (HMO), as alleged, benefits from planning permission or amounts to permitted development. The appellant does not make this argument. Instead, the appellant's case is that the use is by him, his family and two lodgers, essentially that it remains a single family dwellinghouse.
3. Such an argument is more relevant to ground (b) which is that the breach of control alleged in the notice has not occurred. If the appellant can show that the property was not in use as a HMO then the allegation will be wrong and the appeal must succeed under ground (b). This argument was raised in the appellant's initial submissions which the Council has had the opportunity to respond to, therefore no prejudice arises from my dealing with the arguments as though made under ground (b).

The appeal on ground (b)

4. In order to succeed on ground (b) it would need to be demonstrated that a change of use of the property, as alleged, has not occurred. The wording of ground (b) is that the matters alleged have not occurred rather than the matters are not occurring. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.' Therefore, the onus is on the appellant to demonstrate that the property was not in use as a HMO occupied at the relevant date, being the date of issue of the notice 10 June 2020.
5. The definition of a HMO contained in the Housing Act 2004 states that a building or a part of a building meets the standard test (and is therefore an HMO), subject to a number of criteria including - if the living accommodation is occupied by persons who do not form a single household.
6. The appellant's submissions on this ground are limited but he stated that the property is occupied by himself, his wife and son along with two lodgers, which he was told he could do without planning permission or an HMO license.
7. The house contains seven/eight bedrooms, with one of the first-floor rooms being vacant at the time of my visit. Of the two bedrooms on the ground floor, one included a single bed and some gym equipment but did not appear to be occupied at the time of my visit, with the other containing a double bed. In addition to bedrooms the house includes two kitchens and several bathrooms. The kitchens are located on the ground floor at the rear of the house and are separated by a lockable door, as is the lounge and bathroom on the ground floor.
8. The Council have not challenged the appellant's evidence and have provided no evidence that could have assisted in determining the nature and scale of the alleged use, especially during the period leading up to the issue of the notice.
9. However, I accept that the layout of the property is capable of lending itself to a HMO use, including bedrooms with lockable doors, which is uncommon in single units but common in HMOs. Furthermore, whilst the existence of a HMO license is not evidence of actual use as a HMO, in the absence of explanation, that the appellant applied for such a license casts some doubt on their claim.
10. From my own observations I have no reason to believe that all the bedrooms are currently occupied. However, I am conscious that in the case of HMO accommodation, the level of occupation may fluctuate from time to time and it may be that since the issue of the notice, circumstances have changed. In any case, in respect of an appeal on this ground the relevant date is the date of the notice. The appellant has the burden of proof and his submission has not been supported by any firm evidence, such as details of who was in occupation at various times.
11. Consequently, in the absence of substantive supporting evidence from the appellant, I find that the appellant has failed to discharge the burden of proof to show on the balance of probabilities that the property was not a HMO at the time the notice was issued. I conclude as a matter of fact the breach, as alleged, has occurred and the ground (b) appeal therefore fails.

The appeal on ground (d)

12. An appeal on ground (d) is on the basis that, at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice.
13. By virtue of s.171B(2) of the 1990 Act where there has been a breach of planning control consisting of a material change of use, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach, being the date the use began.
14. The appellant has submitted copies of a license reference M/027520 dated 31 August 2019 and a further HMO license dated 29 October 2019. However, they have provided no evidence to substantiate a claim that the use as an HMO began more than ten years ago.
15. In an appeal on ground (d) the burden of proof lies with the appellant. In the absence of any evidence, I conclude that the property has not been in continuous use as a HMO for a period of ten years prior to the service of the notice. Consequently, the appellant's ground (d) claim cannot succeed.

Other matters

16. The appellant submitted various plans and documents relating to the erection of side and rear extensions and conversion of the garage to use for a disabled person. However, the Council does not seek to dispute the lawfulness of the extensions or garage conversion. In the absence of explanation, it is unclear what relevance these documents have to the appellant's case which concerns whether the breach of control, alleged in the notice, has occurred.

Conclusion

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

Felicity Thompson

INSPECTOR