



Appeal Decision

Site visit made on 26 October 2021

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2021

Appeal Ref: APP/Z5060/C/21/3276212

Land and premises at 233 Stamford Road, Dagenham, RM9 4EJ shown edged blue on the site plan.

- 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 Osaro Richards against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 4 May 2021.
 - The breach of planning control as alleged in the notice is the material change of use of a single-family dwelling house to a House of Multiple Occupation.
 - The requirements of the notice are to cease the use as a house of multiple occupation, remove all alterations and fixtures enabling the conversion to a house of multiple occupation 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) (a), (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. The National Planning Policy Framework was revised in July 2021 (the Framework) and this post-dates the issue of the enforcement notice. The main parties were afforded the opportunity to comment on the implications of the Framework from the point of view of determining this appeal. I have also taken it into account.
3. The evidence indicates that the Council is reviewing its development plan in the form of the Draft consultation Regulation 19 Local Plan 2037, dated September 2020 (DLP). As it has not yet reached a very advanced stage, I am unable to afford its policies significant weight in decision making terms having regard to paragraph 48 of the Framework.

Appeals under grounds (b) and (c)

4. The appeal on ground (b) is made on the basis that the matters comprising the alleged breach of planning control have not occurred. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control.

5. In determining enforcement notice appeals in 2019¹ for the same property and relating to the alleged change of use to 4 independent units of accommodation, and which did not relate to appeals made under grounds (b) and (c) of section 174(2) of the Act, the Inspector did not reach a conclusive view in terms of the actual lawful use of the property. There was discussion in the Inspector's decision about it being '*indicated*' that the property was purchased in May 2002 and '*at that time*' was being used as a HMO, but there was no specific finding on whether, at that time, such a use was lawful. What the previous appeal did show however, and as part of the ground (d) appeal, is that it was not clearly and unambiguously shown, on the balance of probabilities, that the property had been in use continuously as four separate dwellings from 3 July 2014 until 3 July 2018.
6. There is no evidence before me to demonstrate that the property was not originally a single dwellinghouse. The onus is on the appellant to make his case under grounds (b) and (c). The evidence supports the view that when the notice was issued the property was in use as a HMO and I have not been provided with clear and unambiguous evidence to indicate that the lawful use of the property is anything other than a single dwellinghouse.
7. The Council has introduced an article 4 direction in the area, dated 14 May 2012, which stipulates that planning permission is required for change of use from a dwellinghouse to a use class C4 HMO use. There is no dispute between the parties about the appeal property falling within the article 4 direction area boundary. Furthermore, the appellant does not dispute the claim that when the notice was issued the property was in use as a house in multiple occupation (HMO).
8. The appellant considers that planning permission is not required for the breach of planning control on the basis that when he bought the property in 2002 it was already in use as a HMO. To this extent, he claims that the article 4 direction does not apply to the appeal property. However, the appellant has not provided me with any objective evidence to substantiate the claim that the property was in use as a HMO in 2002 or indeed prior to the introduction of the 2012 article 4 direction.
9. I therefore conclude that the matters comprising the alleged breach of planning control have occurred. Therefore, the ground (b) appeal fails. I also conclude that there is no clear or unambiguous evidence before me to support the view that a breach of planning control has not taken place. Indeed, the evidence is that the development does require planning permission taking into account the 2012 article 4 direction. Accordingly, the ground (c) appeal fails.

Appeal under ground (d)

10. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
11. In this case, the appellant has not provided any objective evidence to demonstrate that the property has been in continuous use as a HMO for ten years or more. I therefore find, on the balance of probability, that the use

¹ Appeal Ref Nos APP/Z5060/C/18/3207913 & 3207914 dated 19 July 2019

enforced against is not immune from enforcement. I therefore conclude that the appeal on ground (d) fails.

Appeal under ground (e)

12. The appeal on ground (e) is that copies of the notice were not properly served on everyone with an interest in the land as required by s172 of the Act. The appellant claims that the notice was not correctly served on him as he has changed his name from 'Oscaro Kpenosen Aiyamenkhue' to 'Oscaro Kpenosen Richards'. The Notice was served on Oscaro Kpenosen Aiyamenkhue, but it was also served on the 'owner' and the 'occupier' of 233 Stamford Road. Furthermore, and, in any event, the appeal has been lodged by Oscaro Kpenosen Richards and there is no dispute between the main parties that this is the same person as Oscaro Kpenosen Aiyamenkhue.
13. On the evidence that is before me, I am satisfied that all those with an interest in the land, irrespective of any possible name change, were aware of the enforcement notice and hence the potential to appeal. In this case, the evidence is that the appellant did receive a copy of the enforcement notice and has made an appeal. The appellant has not actually provided me with any written evidence of a name change. In any event, the evidence is that the appellant has not been substantially prejudiced in respect of this matter as he has lodged the appeal. Therefore, the ground (e) appeal fails.

Appeal under ground (a) and the deemed planning application

Main issue

14. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the enforcement notice and the main issue is (i) the effect of the loss of a family dwellinghouse in the Borough and (ii) the effect of the change of use on the living conditions of the occupiers of neighbouring properties in respect of noise and disturbance.

Loss of family dwellinghouse

15. Policy BC4 of the Borough Wide Development Policies Development Plan Document 2011 (BWDP DPD) states that '*when planning permission is required, the Council will resist proposals which involve the loss of housing with three bedrooms or more*'. Paragraph 3.4.3 of the reasoned justification to the policy states that '*the preferred policy helps to address the loss of family homes and aims to ensure that the current deficit is not worsened by further flat conversions and HMOs*'.
16. In this case, the appellant has not provided any reasonable evidence to justify departing from the restrictions imposed by policy BC4 of the BWDP DPD in terms of the loss of a family home in the Borough. I therefore conclude that the breach of planning control conflicts with the housing balance and mix requirements of policy BC4 of the BWDP DPD and policies GG4, H9 and H10 of the London Plan 2021.

Living conditions

17. The Council does not dispute the appellant's evidence that there are four tenants living at the property or that this was the case when the enforcement

notice was issued. In this context, and taking into account the Council's comment that the lawful use of the property is a single dwellinghouse, I do not consider that the breach of planning control has resulted in a material increase in noise, disturbance or comings or goings so as to result in any significant change to the living conditions of the occupiers of neighbouring properties.

18. The number of occupants at the property could be controlled by planning condition so that in terms of potential noise and disturbance, the overall effect on the living conditions on the occupiers of neighbouring properties was not materially different to use of the property as a single dwellinghouse. Subject to the imposition of such a planning condition, I conclude that the breach of planning control would not conflict with the amenity requirements of policy BP8 of the BWDP DPD and paragraph 130(f) of the Framework.

Ground (a) appeal conclusion

19. While I have found that subject to a planning condition, the breach of planning control would not cause any unacceptable harm to the living conditions of the occupiers of neighbouring properties in respect of noise and disturbance, there is identified conflict with the development plan in terms of the loss of a family dwellinghouse. This is a matter of overriding concern and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails.

Appeal under ground (f)

20. The appeal made under ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.
21. Given my conclusion in respect of the ground (a) appeal, the steps required by the notice are not excessive. Ceasing use of the property as a HMO, including the removal of all alterations and fixtures which enabled conversion to a HMO, is necessary to remedy the breach of planning control. Therefore, I conclude that the ground (f) appeal fails.

Appeal under ground (g)

22. The appeal on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
23. The compliance period in the notice is six months. The appellant has requested two years commenting that the property includes four tenants and that longer time is needed to evict given that there is currently an 'eviction ban'. It is understood that Covid-19 eviction rules have now changed and hence a period of six months would allow both the eviction of tenants and compliance with the requirements of the notice.
24. I recognise that in upholding the notice, it would mean that the occupiers of the property would lose a home. In this regard, I have taken into account rights under Article 8 of the Human Rights Act 1998, which states that everyone has a right to respect for private and family life, their home and correspondence. In this case, there is no evidence to suggest that a significantly extended compliance period would be reasonably needed in order for tenants to find alternative accommodation. Furthermore, upholding the

enforcement notice is a legitimate and proportionate response to addressing the breach of planning control in the public interest given the need to ensure a balanced housing stock in the Borough. This outweighs the loss of a home for each of the tenants.

25. I conclude that the evidence demonstrates that a period of six months to comply with the requirements of the notice is reasonable. However, if it transpires that it can be reasonably justified that a longer period is needed to deal with the requirements of the notice then under s173 (1) (b) of the Act, the local planning authority can waive or relax any requirements of such a notice and, in particular, may extend any period specified in accordance with s173 (9). Therefore, the ground (g) appeal fails.

Conclusion

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR