Appeal Decision

Site visit made on 31 January 2018

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 12 February 2018

Appeal Ref: APP/Z5060/C/17/3171989
18 Beverley Road, Dagenham, Essex RM9 5HR

• The appeal is made by Fash Nejad under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 15/00112/NOPERM) issued by the Council of the London Borough of Barking and Dagenham on 16 February 2017.

• The breach of planning control alleged in the notice is “the unauthorised material change of use of a single-family dwelling house to that of a House of Multiple Occupation”.

• The requirements of the notice are as follows:
  - Cease use of the property as a House of Multiple Occupation.
  - Return the use of the property to a single-family dwelling house.
  - Remove all fittings and alterations related to unauthorised use as a House of Multiple Occupation.
  - Remove all subsequent waste material from the property.

• The period for compliance with these requirements is three months.

• The appeal is proceeding on the ground set out in section 174(2)(a).

Decision

1. It is directed that paragraph 5 of the enforcement notice be varied by deleting the words “Return the use of the property to a single-family dwelling house.”

2. Subject to this direction, the appeal is dismissed, the enforcement notice is upheld as varied and planning permission is refused on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990.

Reasons for the decision

Background

3. The breach of planning control is the change of use of the house from a house occupied by a single household (Class C3) to a house in multiple occupation (HMO) with not more than six residents (Class C4). The General Permitted Development Order normally grants planning permission for such a change of use, but in 2012 the Council made a direction under Article 4 of the Order, which removes the right to make this change anywhere in the Borough.

4. An application was made to the Council in 2015 for planning permission for extensions and a loft conversion at the house in connection with its use as an HMO (ref:15/00633/FUL). Permission was refused and an appeal against the refusal was dismissed in 2016 (ref: APP/Z5060/W/15/3139229). I understand that building works were carried out following the appeal decision, which made
the extensions and loft conversion acceptable to the Council as structural alterations to the house as a single-family dwelling. The Council’s outstanding concern is the use of the house as an HMO, against which the enforcement notice is directed.

Ground (a)

5. From what I have seen and read about the appeal, I consider that the main issues in deciding whether planning permission should be given for the use of the house as an HMO relate to (1) the loss of the house as a single-family dwelling, (2) the effect of the HMO use on neighbours’ amenities and (3) the availability of car-parking space for the occupants of the HMO.

6. The Inspector dealing with the previous appeal reached conclusions on these issues. On the second and third issues, he stated:

“... the proposal would not materially prejudice the living conditions of nearby residents, with respect to noise and disturbance. There would be no conflict with [the Barking and Dagenham Borough Wide Development Policies Development Plan Document (DPD)] Policy BC4 in this respect which, among other things, seeks to avoid any significant loss of amenity as a result of increased traffic, noise and/or general disturbance” and

“There is a large paved forecourt in front of the property, which should be able to absorb any parking requirements”.

7. I have no reason to disagree with these conclusions. There is no indication that the HMO use since the appeal decision has harmed amenities; in fact, the only neighbour representations I have received state that there has been no noise or disturbance in the last two years. I too noted that the house has a large parking area on its forecourt. This provides more than the number of parking spaces indicated by planning policies and I agree with the officer’s report in relation to application 15/00633/FUL that a refusal of planning permission on this ground could not be justified.

8. The principal concern is therefore the loss of the house as a single-family dwelling. On this issue the previous Inspector referred again to DPD Policy BC4, which includes the statement:

“The Council is seeking to preserve and increase the stock of family housing in the Borough. Consequently, when planning permission is required, the Council will resist proposals which involve the loss of housing with three bedrooms or more”

and he concluded:

“I have seen nothing to indicate that the stock of family housing is now adequate or that the Policy BC4 is out of date; or to show that there is an overriding need for a HMO in this locality. Hence the policy should be upheld.”

9. The appellant has not sought to demonstrate that the stock of family housing is adequate, or that the statement in Policy BC4 quoted in paragraph 8 above is out of date or that there is an unsatisfied demand for HMOs that justifies making an exception to the policy. Instead, he submits that a family-sized dwelling would not in fact be lost following the extensions and the HMO use
since the house was a two-bedroom house before it was extended. However, it seems to me that the policy is intended to apply to the house as it stood at the time when the HMO use commenced, which the appellant acknowledges was after it had become a house with more than three bedrooms.

10. The appellant then submits that the remaining provisions of the policy have been satisfied. I do not disagree, and it was clear from my inspection that the appellant had provided good-quality HMO accommodation. However, these remaining provisions do not apply to this house, since they relate only to “Other proposals” for HMOs, i.e. proposals that do not “involve the loss of housing with three bedrooms or more”.

11. I have concluded that planning permission should not be granted for the change of use of the house to an HMO, because it would result in the loss of the house as a single-family dwelling contrary to Policy BC4 and the considerations put forward in this appeal are insufficient to indicate that my decision should not be in accordance with the policy. The appeal on ground (a) has therefore failed and the notice has been upheld with the variation explained in paragraph 12 below.

The requirements of the enforcement notice

12. The first, third and fourth requirements of the notice will remedy the breach of planning control, by discontinuing the HMO use and restoring the house to its condition before the breach took place. The second requirement - to return the use of the house to a single-family dwelling house – exceeds what is necessary to remedy the breach and I have therefore deleted it.

D.A.Hainsworth

INSPECTOR