
Appeal Decision

Site visit made on 10 January 2017

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 16 February 2017

Appeal Ref: APP/J0350/C/16/3153310

48 Lynwood Avenue, Slough SL3 7BH

- 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 Daljit Deol against an enforcement notice issued by Slough Borough Council.
 - The enforcement notice was issued on 27 May 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a two storey side and first floor rear extension ("the Extension").
 - The requirements of the notice are:
 - i) Remove the Extension in its entirety.
 - ii) Remove from the land all materials, rubbish, debris, plant and machinery resulting from compliance with the above requirements.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 24 January 2017.

Decision

1. It is directed that the enforcement notice be varied by the deletion of 6 months and the substitution of 9 months as the period for compliance. Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

2. The site visit was arranged on the basis that I would be accompanied by both parties. However, the Council failed to attend at the time arranged. I therefore carried out the site inspection unaccompanied although the appellant gave me access to the rear garden and two of the first floor rooms. The Council was advised of this and raised no objection to the appeal being determined on that basis.
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The appeal on ground (c)

Background and cases made

3. Planning permission¹ was granted in 1997 for “erection of two storey side and single storey pitched roof rear extension and front entrance porch” (the 1997 permission). In 1998 planning permission² was granted for “erection of two storey side extension with pitched roof, part single storey rear extension with pitched roof, part two storey rear extension with pitched roof, single storey side extension with flat roof and single storey front extension with pitched roof” (the 1998 permission).
4. Development began in 1998 and in October 2001 a completion certificate was issued by the Council’s Building Control Services in respect of a single storey side and rear extension. My understanding is that notwithstanding that description, the whole of the structure is beyond the rear elevation of the original dwelling; it is not attached to any part of the side elevation of the original dwelling. No further work took place until 2012 when the development was completed as it stands today.
5. A planning application³ was submitted in January 2013 for “retrospective planning approval for a gable-end roof over upper storey rear extension.” This was refused planning permission by the Council and dismissed on appeal⁴ in November 2013 (the 2013 appeal). In doing so, the Inspector amended the description of the development to “erection of a first floor level rear extension with a gable roof and side extension with a hipped roof.” In other words, he reflected what had been built and determined the appeal on that basis.
6. In simple terms the appellant’s case on this ground is that as a material start was made within the time permitted by the commencement condition, “the extension” as defined in the summary details above is permitted by the 1998 permission. Alternatively, the two storey side extension has permission by virtue of the 1997 permission.
7. My understanding of the Council’s case is that it considers the single storey side and rear extension certified as complete in 2001 to be a self-contained development. It was completed some 15 years before the notice was issued. That may be why the notice does not attack this element. It then argues that by the time the development as a whole was completed both the 1997 and the 1998 permissions had expired. With reference to *Commercial Land*⁵ and *Silver*⁶ and other judgements it also argues that it is not possible to determine if a planning permission has been implemented or not until it can be ascertained that the final development accords with the planning permission. I believe the Council’s contention is that the ‘as built’ development differs materially from that approved by both the 1997 and 1998 permissions; therefore neither can have been implemented.

¹ Ref: P/03439/002

² Ref: P/03439/003

³ Ref: P.03439.004

⁴ Ref: APP/J0350/D/13/2205658

⁵ *Commercial Land Ltd v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 1264 (Admin)

⁶ *Silver v Secretary of State for Communities and Local Government* [2014] EWHC 2729 (Admin)

Appraisal

8. The development that has been carried out is different to that approved by either the 1997 or the 1998 permissions, dramatically so in the case of the rear extension at first floor level. In the table below what each permission allowed and what has actually been built is set out. Although not subject of the notice, the alterations to the front elevation and the rear elevation at ground floor level are included in order to get a complete picture of the extent to which either permission has been implemented. The summary below is derived from the approved plans that have been supplied in evidence by the parties.

	1997 permission	1998 permission	As built
Front	Porch and garage set forward of front elevation with hipped gable roof over both	Porch and garage set forward of front elevation with hipped gable roof over both	Garage set back from front elevation with pitch roof over this only below 1 st floor front window in side elevation
Side	2-storey hipped gable roof slightly below original ridge height and set back from front elevation	2-storey hipped gable roof slightly below original ridge height and set back from front elevation	2-storey hipped gable roof well below original ridge height and set back from front elevation
Rear ground floor extn	Hipped gable roof full width across original rear elevation and side extension. Central door, one window, one French window	Flat roof full width across original rear elevation and side extension. Central door, one window, one French window	Flat roof full width across original rear elevation and side extension. Central door, one window, one French window
Rear 1 st floor extn	None	A full width-of-original-dwelling extension above and set back slightly from ground floor extension. Hipped gable roof set slightly below main roof ridge height. One window to side elevation facing No 50	A substantial gable end full height and full-width-of-original-dwelling extension above and set back slightly from ground floor extension with high level window in rear and windows in each side elevation

9. Taking these elements in order, the 'as built' front elevation is different from either of the permitted designs. As this faces the public domain I consider this to be a material difference even though this is not subject of the notice and will remain in place.
10. The 'as built' side extension is similar to both permitted side elevation designs which seem to be identical to one another. Although set slightly lower down from the main roof ridge than either permitted design I do not regard this as a material difference.

11. Turning to the ground floor rear extension, the only difference between the three is the roof design. The 'as built' is the same as the 1998 permission design with both differing from the 1997 permission design. Again, as this is not visible from the public domain and has no effect on the living conditions of either neighbour, I do not regard this as a material difference.
12. Dealing finally with the rear extension at first floor level, the table speaks for itself. None was proposed or approved by the 1997 permission. That approved by the 1998 permission was subservient to the main roof ridge, had a hipped gable roof and limited side elevation fenestration. The 'as built' extension is materially different in almost every respect and far more obtrusive.
13. The appellant has to be clear which permission has been implemented. I understand his case to be that it is the 1998 permission. Applying *Silver* it is my judgement that the differences between the approved and the 'as built' front elevations and the rear first floor extensions are so great that the 1998 permission cannot be said to have been implemented.
14. The alternative argument that the two storey side extension is permitted by the 1997 permission seems to me wholly misconceived and contrary to *Silver*. That permission did not approve a rear first floor extension at all. What has been built either in part or in whole cannot therefore benefit from the 1997 permission as it is a completely different development.

Conclusion

15. Looking at the development that has been carried out and comparing this with both the 1997 permission and the 1998 permission plans demonstrates, in my judgement, that the differences are, as set out above, so material that applying the principles established by *Silver* neither permission can have been implemented. The development that is the subject of the notice is therefore development carried out without the required planning permission. The appeal on ground (c) therefore fails.

The appeal on ground (a) and the deemed planning application

16. The breach of planning control alleged defines the deemed application to be considered. However, s177(1)(a) allows on appeal planning permission to be granted for, among other things, any part of those matters alleged.
17. The appellant has been insistent throughout the appeal that planning permission is not sought for the two-storey side extension at all. However, that was on the basis that if it was concluded that the 1998 permission had not been implemented, it would somehow inevitably follow that implementation of the 1997 permission would be established. As I have explained in considering the appeal on ground (c), I do not consider either permission to have been implemented; the two-storey side extension is therefore unauthorised development for which the appellant does not seek planning permission. Furthermore, the appellant does not seek planning permission either for the first floor rear extension as built. Permission is instead sought for a reduced extension.

18. I shall nevertheless deal first with the deemed application defined by the breach alleged. The court⁷ has been very clear that consistency in decision making is important for there to be public confidence in the planning system. Previous appeal decisions are a material consideration to be taken into account if sufficiently closely related to the issues in another appeal.
19. Self-evidently the deemed application before me is also the development considered and dismissed by the 2013 appeal decision. This is therefore a material consideration to which I must give very substantial weight. No change in the development plan or other policy document since that appeal decision was issued has been brought to my attention. Indeed, I note that the development plan policies and supplementary planning document (SPD) guidance cited in the reasons for issuing the notice are those against which the 2013 appeal proposal was assessed and found to be in conflict with.
20. The only matter claimed by the appellant as a change in circumstances is that my colleague was unaware of the 1997 permission and was not properly advised about the 1998 permission.
21. It appears from paragraph 3 of the 2013 appeal decision that the Inspector was well aware of what the 1998 permission approved. He notes that there was no evidence before him that, first, the single-storey rear extension constituted implementation of the 1998 permission or that, second, the recent additions to the property accorded with the 1998 permission. That evidence is now before me and, as set out above, it confirms in my judgement that the answers are, first, 'no it does not' and, second, 'no they do not'.
22. Turning to the 1997 permission, it is correct that this is not referenced in the 2013 appeal decision. However, it is not clear to me why this is relevant. As the table above shows the 'as built' two-storey side extension being considered is different from that approved by the 1998 permission but that which is approved by the 1998 permission is the same as the design approved by the 1997 permission. It does not matter therefore whether the 1998 permission scheme is considered (which the previous Inspector was aware of) or the 1997 permission scheme (which it seems he was not); they are the same. No first floor rear extension was approved at all by the 1997 permission. I therefore do not consider the absence of any reference to the 1997 permission in the 2013 appeal decision to be a change in circumstances that has any material bearing on my decision.
23. In paragraph 6 of the 2013 appeal decision the Inspector explains why the two-storey side extension is out of keeping with and harmful to the appearance of the street scene. I have no new evidence to cause me to come to a different conclusion. Similarly, in paragraph 5 he explains why the height, width and rearward projection of the first floor rear extension is an obtrusive addition that overly dominates the original dwelling and its neighbours. That is a conclusion that I cannot disagree with on the evidence before me.
24. I therefore also conclude that on the main issue of the effect of the development on the character and appearance of the area the development carried out conflicts with policies H15, EN1 and EN2 of the Local Plan for Slough (LP), adopted in March 2004. These address general design principles and those specifically for residential extensions. They are consistent with the

⁷ *Fox Strategic Land and Property Ltd v SSCLG & Anor* [2012] EWHC 444 (Admin)

policies in the National Planning Policy Framework (the Framework) which was published after the adoption of the LP. It also fails to adhere to the design guidance set out in considerations DP3 and EX12 of the Residential Extensions Guidelines SPD adopted in January 2010 which gives further guidance on the implementation of the LP policies referred to.

25. In addition, the residents of the adjoining property say that the development is overbearing and infringes their privacy from overlooking due to the window at first floor level in the side elevation. Their living conditions are therefore adversely affected.
26. The overbearing nature of the first floor rear extension has already been considered. I do not believe however that there is any loss of privacy from overlooking. Although to a main habitable room, the window in question is obscure glazed and only the top part can be opened. As this is at a high level, I do not consider that there would be any overlooking through this window in the normal use of the room. On this issue I therefore find no conflict with LP policy H15.
27. For these reasons and consistent with the 2013 appeal decision I therefore consider that planning permission should not be granted on the deemed planning application defined by the breach alleged, namely the two-storey side extension and the first floor rear extension.
28. As set out above, the appellant relies wholly on the ground (c) appeal in respect of the two-storey side extension and does not seek planning permission for this element of the development carried out.
29. Planning permission is however sought for a reduced first floor rear extension to be secured by condition. No plans have been submitted to show what the appellant proposes. Instead it described thus:

"to reduce the size of the first floor extension by 1 metre and remove the gable end roof and replace with a hipped roof"
30. If it is intended to reinstate the design of the first floor rear extension shown on the 1998 permission approved plans it would have been a simple matter to say so and identify the plan by number(s). In the absence of such clarity I cannot be sure what is intended. I am therefore unable to assess the impact on the character and appearance of the area and the dwelling itself or the living conditions of the neighbouring occupiers. It would not be appropriate to impose a condition of the 'scheme to be agreed' type as the Council would then be obliged to agree something in the absence of any assessment of the effect at this 'in principle' stage. I cannot therefore grant the planning permission sought on the basis suggested.
31. For all these reasons, the appeal on ground (a) fails and the application for deemed planning permission does not succeed.

The appeal on ground (f)

32. An appeal on this ground is that the requirements exceed those necessary to achieve the Council's purpose in issuing the notice. In this case, that is to remedy the breach of planning control. It is for the appellant to explain how lesser steps would still achieve that purpose.

33. The appellant's case on this ground of appeal is again primarily in the alternative in my understanding although there may be a slight inconsistency between paragraph 1.16 and paragraphs 3.3 and 3.4 in the original grounds of appeal statement.
34. First, on the assumption that the 1998 permission was implemented it is argued that it is necessary only to remove the gable roof and reduce the first floor rear extension by 1 metre. Second, if only the 1997 permission was implemented, the requirement to remove the two-storey side extension is excessive. Finally, if both permissions are deemed to be validly implemented, it is necessary to remove only the gable end roof.
35. I have already assessed the planning merits of each of these in dealing with the appeal on ground (a). The appellant has not contemplated and has not therefore addressed the situation that I have found, namely that neither of the permissions has been implemented.
36. The court has held that it is not for the Inspector to cast about for lesser steps than those set out in the notice; it is for the appellant to put them forward. There is therefore no lesser scheme for me to consider. The appeal on ground (f) therefore fails.

The appeal on ground (g)

37. The case made on this ground of appeal is that six months is insufficient time to enable some of the family members to find alternative accommodation while the works required take place. A period of nine months is suggested, six to source alternative accommodation and three to undertake the works.
38. The Council notes the appellant's view that, in fact, a three month period is adequate to carry out the requirements of the notice. Evidence is provided of the type and amount of rental property typically available in the area at any time. The Council therefore considers six months to find alternative accommodation is unreasonable.
39. The requirements in this case are simply to remove the unauthorised works, not make good the building. That restoration is likely to require planning permission since it will require substantial works to the roof and the side and rear elevations at a minimum. It would be unreasonable in my view to embark on the requirements before the appellant knew what could be done to make the home habitable again.
40. The appellant's suggested compliance period would, in effect, allow a six month period for any planning permission required to be obtained. I shall therefore vary the period accordingly. The Council also has the power through s173A(1)(b) to extend the period for compliance should it consider that to be justified by any circumstances brought to its attention.
41. To that limited extent, the appeal on ground (g) succeeds.

Overall conclusion

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

Brian Cook

Inspector