

## Appeal Decisions

Site visit made on 9 January 2017

**by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS**

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

**Decision date: 20 March 2017**

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### **Appeals A & B: APP/J0350/C/16/3158472 & 3158473 366 Trelawney Avenue, Slough SL3 7TS**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeals are made by Sanjay Aulack & Rita Aulack against an enforcement notice issued by Slough Borough Council.
  - The enforcement notice, numbered 11, was issued on 17 August 2016.
  - The Council's reference is 10/2016 & 11/2016.
  - The breach of planning control as alleged in the notice is the change of use of the land from use as a single residential unit of accommodation to use as two separate residential units of accommodation.
  - The requirements of the notice are (i) cease the use of the land as two separate residential units of accommodation; (ii) remove any doors, partitions, separations or obstructions related to the use of the land as two separate residential units of accommodation and (iii) 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 1 month.
  - The appeals are proceeding on the grounds set out in section 174(2)(a) & (g) of the Town and Country Planning Act 1990 as amended.
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### **Appeal C & D: APP/J0350/C/16/3158474 & 3158475 366 Trelawney Avenue, Slough SL3 7TS**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeals are made by Sanjay Aulack & Rita Aulack against an enforcement notice issued by Slough Borough Council.
  - The enforcement notice, numbered 10, was issued on 17 August 2016.
  - The Council's reference is ref/P/05511/004.
  - The breach of planning control as alleged in the notice is the erection of an unauthorised front canopy extension to the dwelling house located on the land.
  - The requirements of the notice are to (i) remove the canopy and its supports from the land & (ii) remove from the land all materials, rubbish, debris, plant and machinery resulting from compliance with above requirements.
  - The period for compliance with the requirements is 2 months.
  - The appeals are proceeding on the grounds set out in section 174(2)(a) & (g) of the Town and Country Planning Act 1990 as amended.
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### **Procedural Matters**

1. A costs application was made by the appellants, which is the subject of a separate decision.
2. The appellants argue that the notice is not precise and the extent of demolition of the canopy is not clear. However, the canopy, even though attached to the

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porch, can be clearly distinguished from the porch, and the Council confirms that the notice does not relate to the porch. In my view, the porch and canopy are clearly identifiable and the notice is precise in only referring to the canopy and not the porch, "erection of an unauthorised front canopy extension".

3. The appellants also challenge the change of use notice on the grounds of precision. Case law is clear that it is the appellant who is in the best position to know what works have been done, such as here, to convert the building into two flats and clearly it is reversal of that which is required, so well within the knowledge of the appellant. The notice requires removal of those works, identifying as necessary removal of any doors, partitions, separations or obstructions related to the use of the land as two separate residential units of accommodation and this is confirmed by the Council in its statement. This is clear and precise and the appellants have full knowledge of the conversion undertaken.
4. Paragraph 4 of the Change of Use Notice refers to '10 years'. This is incorrect and should be '4 years'. This has no material impact on the appeal and I shall therefore correct the notice to that effect.

## **Decisions**

### ***Appeals A and B***

5. The enforcement notice is to be corrected in paragraph 4 by deletion of 10 years and the insertion of 4 years. Subject to this correction the appeals are allowed on ground (g) and the enforcement notice is varied by the deletion of 1 month and substitution of 6 months as the period for compliance. Subject to this variation 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.

### ***Appeals C and D***

6. The appeals are 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.

## **Reasons**

### ***Appeals A and B***

7. The development plan includes the Slough Local Development Framework Core Strategy [CS] and the Local Plan for Slough [LP]. Also relevant is the Residential Extensions Guidelines Supplementary Planning Document [SPD].
8. On the evidence presented I am not able to do a calculation of the up-to-date Full Objectively Assessed Need for the area or to decide on the correct 5 year housing land supply figure for the authority and clearly doing such a calculation in relation to one flat would be disproportionate. A previous inspector, whilst concluding there was an up to date 5 year supply, also found that the figure was not based on a Full Objectively Assessed Need [FOAN]. However, once a FOAN has been identified the actually objectively assessed need and requirement for the supply can be adjusted down from the FOAN to allow for appropriate constraints. This would not be unreasonable given constraints such as Green Belt, so while the Full Objectively Assessed Need may come up with a

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requirement of perhaps 800 – 1000 units per annum there would be some reasonable expectation that this could be reduced to come to a sensible objectively assessed need figure to take account of constraints.

9. The Council's report indicates that the Core Strategy requirement was for 315 units per annum and that was subsequently increased to 550 per annum. It is projected that there will be around 800 completions; well in excess of that figure. I acknowledge that if the 5 year supply was not properly based on a calculated Full Objectively Assessed Need and not been done fully in accordance with the guidance in the National Planning Policy Framework, so the weight to my decision is therefore guided by paragraphs 49 and 14. A Full Objectively Assessed Need might be around 927 as put by the appellants, but it could be possible to have this result in an Objectively Assessed Need towards 550 as identified by a previous inspector at appeal. However, to my mind given the substantial amount of completions over and above the Council's calculated 5 year supply requirement figure and that this proposal would provide only 1 additional unit, the overall weight I attach to the additional housing provision is little and I give considerable weight to the Council's development plan policies, even acknowledging they relate to housing supply and the effect of the policies of the NPPF.
10. CS Policy CP4 states that in urban areas outside of town centres, new residential development will predominantly consist of family housing and be at a density related to the character of the surrounding area. It also states that there shall be no loss of family accommodation as a result of flat conversions, changes of use or redevelopment, reflecting the recommendations contained within Berkshire Strategic Housing Market Assessment which advises that a higher proportion of larger houses be built in Slough than has been delivered in recent years.
11. The Core Strategy Development Plan Document identifies that a family dwelling is a fully self-contained dwelling (with a minimum floor area of 76 square metres) that has direct access to a private garden and comprises a minimum of two bedrooms and may include detached and semi-detached dwellings and townhouses but not flats or maisonettes. The appellants argue that there is no justification for the policy, but the development plan has been through the normal consultation process and has the weight of that justification behind it. If it was not thought appropriate the policy could have been challenged at that stage.
12. I consider that even with the current NPPF policy, it is still reasonable and necessary to control the types/mix of development in an area to suit that identified as being needed. The development clearly does not comply with the policy and would remove a larger house, converting it to flats, and I attach considerable weight to that. It does not comply with CS Policy CP4. I accept that there are two families living in the flats, but that does not mean that the flats meet the council's policy objective of keeping and providing family housing as defined by the policy.
13. In addition, the property is in a residential area where many of the properties about it are similar two storey terrace houses and to change these to flats and have two units in one terrace property would be out of character with the nearby development. The use by two families in one house would cause harm by potentially almost doubling the activity in that house compared with those

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occupied by a single family. It would not enhance the distinctive urban character of the area.

14. I accept that there are, not too far from the appeal property, a number of blocks of purpose built flats. These to my mind do not justify the loss of the larger family house or the conversion of this building into flats. It still is out of character with the nearby development of terraced houses. It would also go against the aim to have the higher density of development in the town centre to help protect the character of the suburbs.
15. The appellants indicate that they do not understand the aim to have the higher density development in the town centre. It seems to me plain that the aim is to maintain the suburbs for family accommodation which in these houses would be less dense than say blocks of flats and certainly less dense than the proposal, which would effectively double the density of units at the appeal site. To my mind the policy is a reasonable approach to housing provision.
16. The Council also notes that the notice does not require the occupants to leave, accepting that the house could be used in accordance with the requirements of houses in multiple occupation. However, I do appreciate that given numbers, one family might have to move out and that there could be human rights issues. I have taken into consideration the Human Rights Act and the European Convention on Human Rights and I recognise that dismissal of the appeal could potentially interfere with rights under Article 8 and Article 1 of the First Protocol. However, given the harm identified, the action is in accordance with the law and pursues legitimate aims of protecting the environment and is proportionate to the situation.

### **Planning Balance**

17. I acknowledge that there are economic benefits in terms of the improvement to the property, but it could be refurbished and improved without converting to two flats, so I attach little weight to this. The additional family will help to boost the local economy and I attach moderate weight to that, but take into consideration that it is only one family. Socially there are also benefits to the community having an additional family. The appellants indicate environmental benefits in improvements undertaken to the property. While I have found the canopy unacceptable, I acknowledge the design benefit of the provision of the front porch and the continued maintenance. However, I do not accept that a house in this area would not be likely to be properly maintained by a single owner and that for proper maintenance to occur it is necessary for the flat conversion to take place. The porch is also appropriate for a house as well as for flats so little weight is given to these matters. I also consider that there are considerable environmental dis-benefits from substantially increasing the density of use of the dwelling. On balance I do not consider that this is sustainable development in terms of the Framework.
18. Housing application should be considered in the context of the presumption in favour of sustainable development and relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Where the relevant policies in the development plan are found to be out-of-date the National Planning Policy Framework indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the

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Framework. I have concluded the loss of family housing is not sustainable development for which the presumption relates and that while weight to the development plan policies are reduced, they still attract considerable weight as identified by Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

19. Overall, I conclude that the provision of the additional unit and associated benefits would not justify the development that does not accord with Policies.

### **Ground (g)**

20. I appreciate that the notice does not require the occupiers to leave once the property has been reunited, but there must be a strong possibility that will be the case. I consider that it is therefore reasonable that time should be given for the occupiers to find alternative accommodation. 1 month is not a reasonable period for this and I consider that 6 months is more reasonable. The appeal on ground (g) succeeds.

### **Appeals C and D**

#### **Ground (a)**

21. CS Policy CP8 notes that all development shall (b) respect its location and surroundings. LP Policy H15 notes proposals for extensions to existing dwelling houses will only be permitted if all of the following criteria are met, including that they are of a high quality of design and use materials that are in keeping with the existing property and identifiable character of the surrounding area. LP Policy EN1 also requires a high standard of design and compatibility, with or improvement of the surroundings in terms of building form and design and visual impact. LP Policy EN2 indicates that extensions should be compatible with the design and architectural style, layout and proportions of the original structure.
22. Guideline EX1 of the Council's SPD states that front extensions will be single storey and restricted to porches only. Accompanying text notes that front canopies or extensions that span the entire width of the property or dwelling will not normally be permitted unless such extensions form the predominant character of the street. Guideline EX4 notes that Doric, fluted or decorative columns will not normally be permitted if they do not accord with the character or appearance of the main house.
23. The front porch is a reasonable extension and accords with the local policies. However, the canopy, which spreads across much of the remainder of the front of the building with a plastic type column at the end for support, is directly contrary to the Council's policies and does not improve the character and appearance of the area. It dominates the front of the building and is an incongruous feature, particularly with the plastic column. However, I accept that the appellants would remove the column and replace it with something more in keeping, so I place no weight on the column design.
24. The canopy extension forms a bulky and intrusive feature at the front of the building and is relatively close to the public areas and clearly visible from the public areas even accepting there is some limited screening from adjacent planting. It is not in keeping with the surrounding area as most buildings accord with policy and do not have front canopies. I accept that there are a few

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buildings with front canopies, but these are not many and the dominant house form nearby is without canopies. There are other front extensions, but these generally appear to be porches and reasonably compliant with policies. The few canopies provided are not the predominant feature of the area and the few that are here do not justify this proposal. In any case, harmful features on other buildings should not justify further harmful features that would undermine the Council's adopted policies to avoid such extensions.

25. I have taken into account recent changes to permitted development and the Government's aim behind this to make it easier for families to undertake home improvements. However, this is not permitted development and the government places great weight on development plan policies which form a basis for development in an area and in this case the development does not accord with the policies. I also note that LP Policy H15 indicates that extensions are an important method of home improvement, but it also identifies that it is important that these are built in an appropriate way. I accept that the canopy which is single storey is designed and built with the front porch. However, it is the canopy that does not accord with the policies and has the unacceptable impact and the fact that it is connected to the porch does not make it acceptable. I have also taken into account decisions identified by the Council and appellants, but have concluded on the facts of this case and relative lack of other canopy extensions that the development is unacceptable here.
26. The canopy is contrary to CS Policy CP8 and LP Policies H15, EN1& EN2 and to guidance in the SPD. The appeal fails on ground (a).

***Ground (g)***

27. The appellants are concerned that the requirement is for removal of the porch as well as the canopy. However, as noted above the notice is clear in the allegation that it is the canopy only. In those circumstances the appellants are content that the period for compliance is reasonable. The appeal does not succeed on ground (g).

***Graham Dudley***

**Inspector**