
Appeal Decision

Site visit made on 18 April 2018

by Diane Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 May 2018

Appeal Ref: APP/J0350/C/17/3180222

5 York Avenue, Slough SL1 3HP

- 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 Rodolfo Michini against an enforcement notice issued by Slough Borough Council.
 - The enforcement notice was issued on 20 June 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the erection on the Land of an unauthorised single storey rear extension adjoined to an existing single storey rear extension ('the Additional Rear Extension') as shown hatched green on the plan accompanying the notice.
 - The requirements of the notice are:
 - (i) Demolish the Additional Rear Extension.
 - (ii) Remove from the Land all materials, debris, plant and machinery arising from compliance with the first requirement.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) 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.

The ground (c) appeal

2. The appeal relates to a semi-detached house that has been extended to the side and rear in the past. The allegation relates to an additional rear extension (ARE) that projects approximately 7m further into the garden than the existing extension. It also extends more or less across the full width of the property.
3. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The Council submit that the ARE formed part of and was linked to the first rear extension at the time the notice was issued. The appellant claims that works were carried out on the 10 June 2017 to uncouple the extensions and at the site visit I saw that a wall and roof which linked them had been removed.
4. However, the appellant has submitted no evidence, such as dated photographs, to demonstrate when the alleged uncoupling took place. The Council also maintain that the extensions are still effectively linked as the gap between them is very small. This was agreed on site to be 85cm. The width of the ARE also means that it is not possible to reach the rear of the garden without going

through the ARE. The Council submit that this indicates that the ARE is an integral part of the dwelling rather than a truly detached structure. I consider that as the appellant has not discharged the burden of proof in relation to when the uncoupling took place, it is the appearance of the ARE in the Council's photographs before the notice was issued that is the appeal before me now.

5. The meaning of development is set out in section 55(1) of the Town and Country Planning Act 1990 and includes the carrying out of building operations on land. Section 55(1A) confirms that such operations include additions to buildings and other such operations normally undertaken by a person carrying on business as a builder.
6. The appellant accepts that operational development has taken place but submits that it is 'permitted development'. He does not specifically refer to a particular class of permitted development (PD) as set out in the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO) but given his argument that the ARE is now detached, it would appear he is relying on Class E. This relates to the provision within the curtilage of the dwelling of any building or enclosure required for a purpose incidental to the enjoyment of the dwelling.
7. I consider the relevant Class is A as this relates to the enlargement, improvement or other alteration of a dwelling. Development is not permitted by Class A if the enlarged part of the dwelling would extend beyond the rear wall of the original dwelling by more than 6m and the materials used in any exterior work are not of a similar appearance to those used in the construction of the exterior of the existing dwelling.
8. In this case the depth of the ARE with the first rear extension results in a projection of over 11m into the garden which is greater than the limit of 6m. In addition, the facing materials on the original dwelling are brick but the ARE has been constructed in breeze blocks which are a different colour, size and texture and are not similar in appearance to brick. As such, I conclude that the ARE does not comply with the limitations of Class A and is not therefore PD.
9. Even if it could be shown that the uncoupling works had taken place before the issue of the notice, it is my view that the ARE would still fall to be considered under Class A. This is because leaving a gap, even a sizeable gap, to circumvent the limitations of the GPDO does not override the provisions of the GPDO. This is shown in a diagram on page 25 of the 'Permitted development rights for householders: Technical Guidance' (TG) which assists with the interpretation of the TG. I have had regard to this Department of Communities and Local Government publication in making my assessment.
10. With regard to the appellant's submissions and Class E, for a building to enjoy the PD provided by this Class the purpose of the building has to be incidental to the enjoyment of the dwelling. The appellant has not stated the purpose of the ARE but at the site visit I saw that the space is being used to store what appears to be family clothes and to accommodate a fridge. These uses are also shown in the Council's photographs taken in May 2017.
11. The Council refer to the case of *Emin*¹ which establishes that the key point when considering an incidental purpose is reasonableness. What is abnormal is

¹ Emin v SSE [1989] EGCS 16

not necessarily unreasonable but also that what could be regarded as incidental does not depend on the unrestrained whim of the occupier. This was subsequently reiterated in *Croydon*² in which the court held that the concept of what was incidental to the enjoyment of the dwelling as such involved an element of objective reasonableness and was not a matter solely at the whim of the individual owner or occupier.

12. The TG sets out at page 42 that the meaning of incidental does not cover use of an outbuilding for primary living accommodation such as a bedroom or a kitchen. In order to be PD the use of the entire outbuilding must be required to be incidental to the enjoyment of the dwelling.
13. I find that the use of the outbuilding to hang and store clothes is akin to a bedroom use and using it to run a fridge is akin to a kitchen use. The onus of proof is on the appellant to show, on the balance of probabilities, that his use of the ARE is reasonably required for a purpose to the use of the dwelling as a dwelling. This is because there must be a prospect that the nature and scale of such activities could go beyond a purpose merely incidental to the enjoyment of the dwelling as such. In that context the physical size of the outbuilding is a relevant part of the consideration in that it represents some index of the nature and scale of the activities.
14. The appellant has submitted drawings of the ARE which show that its footprint is similar in size to the original footprint of the dwelling before it was extended with the first rear extension. I consider therefore that the size of the ARE is significant although physical size in itself is not conclusive, it is nonetheless an important determinative in this case. The appellant has also not demonstrated that space for bedroom and kitchen storage, whilst no doubt welcome for him, is reasonably required on such a scale in relation to the host dwelling.
15. Having regard to all of the above points, the evidence presented does not show, on the balance of probabilities, that the ARE is reasonably required for a purpose incidental to the enjoyment of the host dwelling. As such, it does not comply with the limitations of Class E and is therefore not PD.
16. I have found that development has taken place which falls to be considered under Class A of Schedule 2, Part 1 of the GPDO and that the ARE is an extension to the dwelling not a detached building. I have also found that the ARE does not comply with either the limitations of Class A or Class E and for these reasons it is not PD. The appeal on ground (c) therefore fails.

Conclusion

17. For the reasons given above I consider that the appeal should not succeed.

D Fleming

INSPECTOR

² *Croydon LBC v Gladden* [194] 1 PLR 30