



Appeal Decision

Site visit made on 1 July 2019

by Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2019

Appeal Ref: APP/J0350/W/19/3225180

6 and 8 Cippenham Lane, Slough SL1 5BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr V Singh against the decision of Slough Borough Council.
 - The application Ref P/09849/003, dated 5 October 2018, was approved on 7 January 2019 and planning permission was granted subject to conditions.
 - The development permitted is part single and part double side and rear extension to plots 6 and 8 Cippenham Lane.
 - The condition in dispute is No 6 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development Order 2015, (or any Order or Statutory Instrument revoking and re-enacting that Order) Part 3 Changes of Use Class L) No's 6 and 8 Cippenham Lane shall only be occupied as single family dwelling houses and shall not be subdivided or used in multiple occupation Use Class C4 without the prior written approval of the Local Planning Authority.
 - The reason given for the condition is: The rear Garden(s) are considered to be only just adequate for the amenity area appropriate for houses of the size proposed and would be too small to accommodate future development(s) which would otherwise be deemed to be permitted by the provision of the above order.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr V Singh against Slough Borough Council. This application is the subject of a separate Decision.

Main Issue

3. Planning Permission has been granted for extensions to both 6 and 8 Cippenham Lane. The appeal seeks permission to carry out the development without having to comply with condition 6. This restricts the change of use of these properties from a single dwelling house to a C4 without a planning approval, on the basis that the remaining amenity space would only provide suitable living conditions for a single family, and not for occupiers if in C4 use as a House in Multiple Occupation (HMO). The main issue is whether condition 6 meets the requirement to be necessary and reasonable, as set out in the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG) in relation to the imposition of conditions on Planning Approvals.

Reasons

4. Nos 6 and 8 make a pair of semi-detached houses centrally located in Slough. They are adjacent to a terrace of other residential properties of similar size on one side and a car dealership showroom on the other. Nos 6 and 8 currently have similar sized rear and front gardens, the latter of which provide parking for their occupiers.
5. Prior to the approval for extensions that reduce the size of the gardens to these two houses, the planning permission for the adjacent car showroom¹ also included the reduction in length of the rear gardens of Nos 6 and 8. Like the approval that is the subject of this appeal, this earlier approval was also the subject of a condition that precludes the change of use of No 6 and 8 to a C4 use as a HMO without planning approval being sought. This earlier conditional planning approval, therefore, precludes this change of use without a further planning approval, even if the recent permission was not implemented.
6. Otherwise unacceptable development can be made acceptable through the use of conditions which meet the requirements set out in paragraph 55 of the Framework, which states that they should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
7. The PPG makes it clear that conditions restricting the future use of permitted changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances.
8. In my view the reduction in the size of the amenity space of both Nos 6 and 8 by successive planning approvals results in a scale of amenity space proportionate to the size of the house that would be material in considering whether the house would be suitable for C4 use as a HMO and represents an exceptional circumstance with regard to the restriction of permitted change of use under the provisions of the GPDO. This allows the consideration of the effect of this change of use on the living conditions of potential occupiers and neighbours with reference to the scale of amenity space.
9. The appellant has stated that the Council should have set out which Development Plan policy or policies the condition relates to in their reasons for applying condition 6 in the decision notice. As the development is approved, the reasons given are for attaching a condition and not reasons for refusal and there is, therefore, no express requirement to give a policy in the reasoning. The requirement for conditions is that they should be related to the development and be required for planning reasons.
10. In my view Condition 6 and reasons given for its application are precise, in determining the extent of the restriction to the provisions of the GPDO and in referencing the approved reduction in the size of the rear garden and therefore amenity space and its suitability if the house was in another use. The reasons given clearly relate to planning purposes, as set out in Paragraph 53 of the Framework, which states that these rights should only be removed where this is necessary to protect local amenity or where there is clear justification to do so.

¹ Planning Ref: P/09849/001

11. Notwithstanding my findings in this regard, the Council have brought to my attention that Policy EX48 of the Slough Local Development Framework Residential Extension Guidelines Supplementary Planning Document 2010, which forms part of the development plan, advises that extensions shall not be permitted where the retained rear garden space is less than 9 metres in depth or 50m². This seems to me to provide a policy reason as to why the appeal properties should require appropriate control to be exercised over a future more intensive C4 use as a HMO and their extension reasonably made the subject of Condition 6.
12. I do not find that it would be reasonable to conclude that, by not applying an Article 4(2) direction for their District or for a defined area, the Council have determined that there is no need to restrict any type of dwelling from utilising the permitted development order. Although the council has not put in place such a direction, the application of Condition 6 on the approval does, however, demonstrate that the council believes there is need to remove these rights in exceptional circumstances. The application of this condition restricting the future use of the permitted change of use under the provisions of the Town and Country Planning (General Permitted Development Order) 2015 (the GDPO) is, therefore, necessary, relevant to planning and to the development permitted, and is precise.
13. Furthermore Condition 6 would be enforceable, should a change of use be carried out without consent and brought to the Council's attention, for example, through the regulatory controls for the licencing of HMO's.
14. The material submitted for this appeal demonstrates that the Council's intention to give approval to the extension of these two properties, subject to them being used as single family dwelling houses, but not for further subdivision or use as a HMO without planning approval, was communicated to the appellant prior to the submission of the Planning Application.
15. Further consultation by the Council with the appellant under the Town and Country Planning (pre-commencement conditions) Regulations 2018 was not required, as the condition is not one that requires approval prior to the commencement of the approved development. No restriction has been put in place that restricts the ability of the appellant to apply for such a change of use.
16. No material has been submitted that would indicate that Condition 6 is not reasonable in all other respects.

Conclusion

17. For the reasons given above I conclude that condition 6 meets the requirements of the Framework in relation to the imposition of conditions on planning approvals and similarly accords with the PPG in relation to the restriction of changes of use permitted under the GPDO.
18. The appeal is therefore dismissed.

Victor Callister

INSPECTOR