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## Appeal Decisions

Site visit made on 17 September 2019

**by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 November 2019**

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### **Appeal A: APP/J0350/C/19/3221638**

#### **68 Bradley Road, Slough SL1 3PP**

- 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 Lakshmi Kanthan against an enforcement notice issued by Slough Borough Council.
- The enforcement notice was issued on 21 December 2018.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of;
  1. 3.7m high boundary wall as shown marked in green on the attached enforcement plan.
  2. 1.12m high raised platform as shown marked in yellow on the attached enforcement plan.
  3. Self-contained outbuilding at the rear of the garden as shown marked in blue on the attached enforcement plan.
- The requirements of the notice are: -
  - (i) Demolish the unauthorised boundary wall
  - (ii) Demolish the unauthorised raised platform
  - (iii) Demolish the unauthorised outbuilding
  - (iv) 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), (b) and (f) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

**Summary of decision: The appeal is dismissed and the enforcement notice is upheld with corrections.**

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### **Appeal B: APP/J0350/W/19/3223491**

#### **68 Bradley Road, Slough SL1 3PP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Lakshmi Kanthan against the decision of Slough Borough Council.
- The application Ref P/16754/007, dated 27 July 2018, was refused by notice dated 21 December 2018.
- The development proposed was originally described as '*retrospective application for the retention of an outbuilding measuring 50sqm and the conversion of the building to an ancillary gym and office, located within the rear garden of 68 Bradley Road*'.

**Summary of decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.**

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**Appeal C: APP/J0350/W/19/3223492**  
**68 Bradley Road, Slough SL1 3PP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Lakshmi Kanthan against the decision of Slough Borough Council.
- The application Ref P/16754/009, dated 20 November 2018, was refused by notice dated 21 December 2018.
- The development proposed is described as '*Alterations of boundary wall including lowering in height and insertion of obscure glazed privacy screen together with reduced depth of raised platform. This application follows withdrawal of application ref: P/16754/008*'.

**Summary of decision: The appeal is dismissed.**

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**The Notice**

1. I have powers under Section 176(1)(a) of the 1990 Act to correct any defect, error or misdescription in the enforcement notice. The alleged breach of planning control includes the unauthorised erection of a 'self-contained outbuilding'. An outbuilding is normally ancillary to a dwellinghouse whereas here it is clear from the reasons for issuing the enforcement notice and the evidence before me that the alleged breach involves the erection of a self-contained unit of residential accommodation. As such, I consider that for the purposes of clarity that the enforcement notice should be corrected by deleting the words 'self-contained outbuilding' from point 3 and replace them with 'a self-contained unit of residential accommodation'. Both parties were given the chance to comment on this. Due to this change, the requirements of the notice would also need to be corrected by deleting the word 'outbuilding' from requirement (iii) and replacing it with 'self-contained unit of residential accommodation'. I can make the necessary corrections to the notice without causing injustice to the appeal parties.
2. The alleged breach in relation to points 1 and 2 contains measurements of the boundary wall and raised platform. Nevertheless, these measurements are superfluous as these structures are identified on the plan attached to the enforcement notice. Therefore, I intend to correct the notice by deleting the words '3.7m high' from point 1 and '1.12m high' from point 2. I can make the necessary corrections to the notice without causing injustice to the appeal parties.

**Preliminary Matters**

3. For clarity as the original description of development relating to Appeal B, taken from the application form, is inaccurate in relation to the size of the building I have removed the reference to a unit of measurement from the description in the formal decision on that appeal. Furthermore, I have also removed the words retrospective and retention and the reference to the address from that description as they do not relate to an act of development. For clarity and to avoid confusion, I will also delete the word 'outbuilding' and replace it with '*detached building*' within the formal decision and refer to it as this within my reasoning below.
4. The detached building as proposed under this planning permission appears to be substantially complete. The Council have stated that as constructed it is

slightly larger than that shown on the submitted drawings. I have dealt with the appeal on the basis of the submitted drawings.

5. A revised version of the National Planning Policy Framework (the Framework) has been published since Appeal A was lodged. However, the sections relevant to that appeal have not materially altered. As such, in the circumstances of these cases I do not consider that it is necessary to seek the further views of the parties. I am required to consider the appeals on the basis of the current Framework.

## **Background**

6. The appeal site comprises a semi-detached dwelling and its associated grounds. The dwelling has been appreciably increased in size recently with single storey and 2-storey extensions. There is a public open space, Baylis Memorial Park (BMP) that adjoins the rear garden of 68 Bradley Road (No 68). Due to the topography the ground levels adjacent to the boundary with BMP are noticeably lower than the ground floor level of No 68.
7. In January 2018 the Council granted a Lawful Development Certificate for a proposed rear outbuilding (LDC). In March 2018 planning permission, P/16754/006 (the 2018 permission) was granted for extensions to No 68.
8. A raised platform has been constructed adjoining the existing rear elevation of No 68. A wall of around 2.5m high from the floor level, and coinciding with the depth, of that platform has been constructed along the boundary with 70 Bradley Road (No 70). A detached building with a footprint of around 61 square metres and around 2.8 metres high has also been constructed within the rear garden close to the boundary with BMP. These structures are those included in the enforcement notice.
9. Planning applications to reduce the depth of the raised platform, reduce the overall height of the boundary wall, the insertion of an obscure glazed privacy screen and the retention of the detached building and its conversion to an ancillary office and gym were refused by the Council in December 2018. The submitted plans for the retention of the detached building indicate that the layout would not include a kitchen and bathroom.
10. There is no dispute that as the detached building is within 2 metres of a boundary of the curtilage of No 68 and its height is greater than 2.5 metres it does not meet the limitations under Article 3, Schedule 2, Part 1, Class E.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) even if it had been erected for purposes incidental to the enjoyment of a dwellinghouse.

## **Appeal A – ground (b) appeal**

11. Ground (b) is that those matters mentioned in the alleged breach have not occurred. I acknowledge that the appellant states that the detached building has not been used as a self-contained unit of residential accommodation. Nevertheless, the issue is whether as a matter of fact a self-contained unit of residential accommodation has been erected within the rear garden of 68 Bradley Road.
12. The appellants state that the intended purpose of the detached building is as a home office and gym and they submitted a planning application to convert the

building to that use (Appeal B). I observed that there were numerous pieces of gym equipment within the main room of the building and another room appeared to be in use as an office. Parts of the building also appeared to be used for storing items associated with the domestic use of No 68. There were also fitted cupboards throughout parts of the building and a separate bathroom with toilet, washbasin and bath/shower at the time of my site visit.

13. The Council's Statement includes photographs taken during their visits and inspections of the building in October 2018 and August 2019. The photographs show that the building had been equipped with a fitted kitchen, including an oven and hob with extractor hood. It was apparent that at the time of my site visit that this kitchen had been largely removed from the detached building.
14. However, at the times of the Council's inspections and when the enforcement notice was issued the detached building could function as a self-contained unit of residential accommodation, having all the facilities required for day-to day private domestic existence. In addition, although clearly situated within the rear garden of No 68, it is possible to access it without entering the main dwelling, via a gate to the side of No 68 or a gate in the boundary with BMP.
15. Therefore, the detached building that has been erected, clearly at the time the notice was issued, had the characteristics of, and on the balance of probability, was erected as a self-contained unit of residential accommodation. In conclusion, a self-contained unit of residential accommodation has been erected at the rear of the garden to No 68 and the appeal on ground (b) does not succeed.

### **Appeal A - ground (a), the deemed planning application and Appeals B and C (s78 appeals)**

#### ***Main Issues***

16. Taking into account all of the above, the main issues are: -

- The effect of the development on the living conditions of nearby occupiers with regard to outlook, daylight and sunlight;
- Whether the site is suitable for the development with regard to the character and appearance of the area and development plan policies relating to type of housing;
- Whether the site is suitable for the development with regard to its Flood Zone location.

#### ***Reasons***

##### *Living conditions*

##### *Appeals A & C - Raised platform and boundary treatment*

17. The raised platform as constructed is substantially greater in depth than that shown on the approved plans associated with the 2018 permission. Moreover, it would appear that the sloping topography within the rear garden of No 68 has been altered in some areas to create level 'terraces'. This appears to have resulted in the overall visible height, above the present ground levels, of the raised platform being appreciably greater than that shown on the 2018

- permission approved plans. Furthermore, a wall of around 2.5 metres in height has been built on top of the raised platform on the boundary with No 70.
18. No 70 is attached to No 68 and there are patio doors within the rear elevation of No 70 and an adjoining patio that are in close proximity to the boundary with No 68. It is also clear from the evidence before me that due to the ground levels and topography that the majority of the overall height of the raised platform in combination with the boundary treatment above it are clearly discernible from the patio doors and patio area of No 70.
  19. The raised platform and wall on top it extend from a single storey extension and they are in close proximity to the patio doors and patio. Consequently, I consider that due to the overall height and length of the raised platform and wall that it is likely that they are experienced by the occupiers of No 70 from their patio doors and when on their patio as overbearing and oppressive.
  20. The patio doors face north-west and therefore only receive direct sunlight during the late afternoon. As the wall and raised platform are positioned approximately north of the patio doors due to that orientation, they will not reduce the amount of sunlight received through the patio doors. Nevertheless, given the height and proximity of the raised platform and the boundary wall to the patio doors it is likely that they materially reduce the amount of daylight received by those doors exacerbating the harm to the living conditions of the No 70. No technical evidence has been submitted, but my assessment of the appeal site and the raised platform and wall as built lead me to conclude that it is likely that these parts of the development appreciably reduce the daylight received by the patio doors of No 70.
  21. The proposal as part of Appeal C would reduce the depth of the raised platform and therefore the length of the wall on top of it. It would also reduce the height of the boundary treatment on top of it to 1.75 metres with the top 0.75 metres being an obscure glazed screen. These reductions and the fact that the glazed part of the boundary treatment would allow a proportion of daylight through it would mean that noticeably more daylight would be received by the patio doors than with the development as built. As such, it is likely that the proposal would not materially harm the living conditions of the occupiers of No 70 with regard to daylight.
  22. Nonetheless, the platform and boundary treatment in combination would still extend 3.3 metres beyond the existing single storey extension and would be considerably taller than any boundary treatment that could be erected on this boundary through permitted development rights. As a result, I consider that the proposal would still be likely to be experienced as overbearing and oppressive when experienced from the patio doors and patio of No 70. I acknowledge that the obscure glazing panels are proposed to minimise the impact of the proposal on the living conditions of the occupiers of No 70. However, movement would be apparent through them and the perceived overlooking would increase its oppressiveness.
  23. A raised platform was shown on the approved plans of the 2018 permission. However, even though the proposal, as part of Appeal C, would reduce the depth of the raised platform to a dimension similar to that shown on those drawings it would not alter the overall height of the platform. As stated above, the increase in the height of the platform appears to be due to the alterations that have been made to the ground levels. Given, the amount of work that has

been carried out to the garden area to create the level terraces it is highly unlikely that the appellant would recreate the previous ground levels and construct the raised platform as shown on the approved plans of the 2018 permission.

24. I also have little evidence before me to indicate whether the raised platform did form part of the development that was granted planning permission as part of the 2018 permission. In addition, even though the notation on the approved drawings refers to a 2m high fence it is not clear whether it is citing an existing or proposed fence. Moreover, it appears that no 2m high fence on top of the raised platform was indicated on the side or sectional elevations that form the approved plans for the 2018 permission. Only the proposed railings appear to be shown on those drawings. As such, the 2018 permission has limited weight as a fallback position in relation to the raised platform and its associated boundary treatment.

#### *Appeal B- detached building*

25. The detached building has a substantial footprint and it extends across a large part of the width of the rear garden area. Due to the sloping topography its overall size will be discernible from the neighbouring properties and their garden areas. However, the detached building has been erected at a ground level that is substantially below the floor levels of the neighbouring self-contained unit of residential accommodations. Moreover, it is at the bottom of the rear garden and has a predominantly flat roof.
26. In addition, the detached building could be demolished and another building erected that would meet the limitations of the LDC. Given the numerous attempts by the appellant to gain approval for the LDC and that the detached building has been erected it is highly likely that another building would be erected. As a result, this would represent a fallback position that would have considerable weight. The evidence before me is not clear as to the size of the building approved within the LDC as the Council have stated it was 44 square metres, but 36 square metres is also cited. I also have no evidence as to what the proposed height of the LDC building was, but it is reasonable to consider that it would have been around 2.5 metres. In any case, the LDC building would be slightly lower in height and would have a greater footprint than the detached building as built. However, these differences would bring about limited change to the neighbours' outlook given the location of the detached building.
27. Taking into account all of the above, although the detached building is of a substantial footprint it is not within a sufficiently close proximity to cause harm to the outlook of neighbouring occupiers or appear harmfully overbearing.

#### *Conclusion – living conditions*

28. In conclusion, whilst I have found that the detached building does not harm the living conditions of nearby occupiers with regard to outlook, I consider that the raised platform and wall as built harm the living conditions of the occupiers of No 70 with regard to outlook and daylight. Moreover, the proposal as part of Appeal C would harm the living conditions of the occupiers of No 70 with regard to outlook.

29. Consequently, in these respects these parts of the development would not comply with Core Policy 8 of the Slough Local Development Framework Core Strategy 2006 – 2026 (CS) which, states amongst other things, that the design of all development within the existing residential areas should respect the amenities of adjoining occupiers. This policy is broadly consistent with paragraph 127 of the Framework which states, amongst other things, that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users. As such, with regard to paragraph 213 of the Framework the conflicts with this policy have substantial weight.

*Character and appearance*

30. Bradley Road is a cul-de-sac made up of a range of predominantly, 2-storey, semi-detached properties and forms part of an area of similar streets situated around BMP. The dwellings, in the main, face onto and are set back similar distances from Bradley Road. As a result, there is a clear linear pattern of development with dwellings largely fronting the highway. The rear garden areas of the dwellings at the head of the cul-de-sac of Bradley Road, including that of No 68, appear to be generous in size in comparison to those of other houses on Bradley Road. These generous garden areas together with BMP and the mature landscaping within it give the area an open and spacious character.
31. CS Core Policy 8 states, amongst other things, that all development in the Borough shall be of a high-quality design that is attractive and respect its location and surroundings. Saved Policies EN1 and EN2 of the Local Plan for Slough (LP) state, amongst other things, that development proposals are required to reflect a high standard of design, must be compatible with their surroundings in terms of a number of criteria and proposals for extensions to existing buildings should be compatible with a number of factors relating to the original structure.
32. The Council's Residential Extensions Guidelines Supplementary Planning Document (SPD) states, amongst other things that walls/fences/other means of enclosure shall be designed to reflect the existing character of the surrounding area. It goes on to state that 'outbuildings' should not detract from the character of the area through over dominance or obtrusiveness and that the acceptable scale/size of 'outbuildings' will be determined having regard to a number of factors.
33. I observed that there are footpaths through BMP in close proximity to the rear of a number of the dwellings on Bradley Road. Due to the sloping topography BMP is at a lower ground level than the ground floor level of No 68 and in places there are views through the mature landscaping into the rear garden of No 68 from the footpaths in BMP.

*Appeals A & C – raised platform and boundary treatment*

34. The overall height of the wall and the raised platform as built in combination with the wall's length and the sloping topography mean that when viewed from the neighbouring properties' gardens and BMP they create an imposing and somewhat forbidding structure that appears incongruous and is not attractive. As a result, the wall and platform as built do not reflect a high standard of design.

35. The proposal as part of Appeal C would reduce the depth of the raised platform and the height and length of the boundary treatment above it. The reduction in the depth of the platform and the overall height of the boundary treatment would reduce the visual impacts of them when viewed from the footpaths in BMP. Nevertheless, even though the top part of the boundary treatment would be obscure glazed panels the overall height of the boundary treatment in combination with the raised platform would be significantly taller than the majority of other boundary treatments in the immediate vicinity of the appeal site. As such, when viewed from the neighbouring properties it would appear incongruous and would not be compatible with its surroundings.
36. The impact of the proposal on the character and appearance of the wider area when viewed from the public realm would be limited. Nonetheless, the harmful effects of the structure would be apparent from the neighbouring properties and I can find nothing in local and national planning policy to suggest that the requirement for high quality design only applies to development that is visible from within the public realm.
37. Consequently, both the raised platform and wall as built and the proposal as part of Appeal C harm and would harm the character and appearance of the area. It follows that they conflict and would conflict with CS Core Policy 8 and saved LP Policies EN1 and EN2. These policies are broadly consistent with section 12 of the Framework therefore the conflicts arising in these respects would have substantial weight. These parts of the development also conflict with and would conflict with guidance in the SPD.

*Appeal B - detached building*

38. I observed that detached buildings ancillary to and to the rear of dwellings are not uncommon in the surrounding area and many are visible above or form part of boundary treatments adjoining BMP. Even though, the Council considers that only a small number appear to be authorised they form part of the overriding character and appearance of the area. There is a variety to the size, height and design of those detached buildings. Whilst the building that has been constructed appears to have a larger footprint than a lot of the detached buildings that have been drawn to my attention, I do not consider its appearance to be out of keeping with its setting.
39. Its flat roof design ensures that the part of the building visible above the boundary fencing is not dominant when viewed from BMP. Furthermore, when the mature landscaping within BMP is in full leaf the detached building is only seen in glimpsed views. As stated above, the building is visible from the neighbouring properties. However, given its location and the ground level it has been built at, it does not appear obtrusive. Its footprint does not exceed the footprint of No 68 before it was extended recently. Its design and materials respect the host dwelling and surrounding area. In the context of the generous size of the rear garden and the size of No 68 as extended I do not find it to be seriously out of scale or over dominant. There is little evidence before me to indicate that the garden space guidelines within the SPD are not met with the constructed building in place. In addition, the overall open and spacious character of the area is retained in regard to this part of the development.
40. Moreover, as stated above the LDC provides a fallback position that has considerable weight. The building that has been erected when considered as a detached building in use ancillary to the residential use of No 68 does not have

a significantly greater impact on the character and appearance of the area than the building that could be constructed under the LDC. It follows that the development as proposed would not harm the character and appearance of the area and therefore would not conflict with CS Core Policy 8, saved LP Policies EN1 and EN2 and the guidelines in the SPD.

*Character, appearance and type of housing*

*Appeal A - self-contained unit of residential accommodation*

41. I have found that the detached building used for ancillary purposes to the residential use of the main dwelling would not be uncharacteristic within the rear garden of No 68. However, a self-contained unit of residential accommodation has very different characteristics. Where a new self-contained unit of residential accommodation or dwelling is to be formed it should conform to the design standards for new residential units and be appropriately located. In this case the self-contained unit of residential accommodation is situated in a backland location which conflicts sharply with the pattern and layout of dwellings in this residential neighbourhood. The self-contained unit of residential accommodation has no street frontage, no separate private amenity space, is single storey and its siting at the end of a private rear garden and in close proximity to boundary treatments, has resulted in a dwelling that is poorly related to the pattern of development in respect of dwellings in the surrounding area. As such, the self-contained unit of residential accommodation harms the character and appearance of the area.
42. Although there may be other buildings of a similar type and in similar locations at the rear of houses nearby, there is no demonstrable evidence before me that any of those other structures have been permitted by the Council to be used as dwellings. I therefore give this consideration limited weight in this respect.
43. Saved LP Policy H13 states, that proposals for small scale infilling, including backland development, will not be permitted unless they comply with a number of criteria. One of those criteria is that the type, design, scale and density of the proposed new dwelling is in keeping with the existing residential area. CS Core Policy 4 states, amongst other things, that within existing suburban residential areas there will only be limited infilling which will consist of family houses that are designed to enhance the distinctive suburban character and identity of the area.
44. Given my findings above in relation to the character and appearance of the area I conclude that the self-contained unit of residential accommodation conflicts with saved LP Policies H13 and EN1 and CS Core Policies 4 and 8. These policies are broadly consistent with section 12 of the Framework therefore the conflicts arising in these respects would have substantial weight.

*Flood Zone*

*Appeals A and B – self-contained unit of residential accommodation and detached building*

45. The part of the garden where the detached building has been constructed is within Flood Zones 2 and 3 whereas No 68 itself is within Flood Zone 1. CS Core Policy 8 states, amongst other things, that development will only be permitted where it can be demonstrated that it will not increase the risk of flooding elsewhere and development must manage water arising from the site

in a sustainable manner. Buildings used for dwellinghouses are defined in the Technical Guidance on Flood Risk as a more vulnerable use which is only appropriate development in Flood Zone 3, subject to passing the Sequential Test and the Exception Test.

46. Paragraph 158 of the Framework states, amongst other things, that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Paragraph 163 of the Framework states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere and that where appropriate, applications should be supported by a site-specific flood-risk assessment. Footnote 50 states that such an assessment should be provided for all development in Flood Zones 2 and 3. Paragraph 164 of the Framework goes on to state that applications for some minor development should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments. Minor development is defined at footnote 51 as including householder development.
47. The appellant has submitted a Flood Risk Assessment (FRA) and the Council has had the chance to comment on it. The FRA only relates to the detached building and its use as a home office and gym. The FRA concludes that flood resilient construction techniques have been incorporated into the detached building and that a water butt with a minimum capacity of 150 litres has been installed. It goes on to state these measures will be sufficient in mitigating any risk of ground water flooding and will ensure that the proposal, Appeal B, does not increase any risk of surface water flooding.
48. I have no reason to dispute the findings of the FRA. It follows that the construction of the detached building and its use as a home office and gym as proposed as part of Appeal B complies with CS Core Policy 8 and the Framework in this respect.
49. I have no evidence before me that an FRA has been undertaken in connection with the self-contained unit of residential accommodation as constructed, Appeal A. The Planning Practice Guidance (PPG) states that the objectives of an FRA are to establish whether a proposed development is likely to be affected by current or future flooding from any source; whether it will increase flood risk elsewhere; whether the measures proposed to deal with these effects and risks are appropriate; the evidence for the local planning authority to apply the Sequential Test, and whether the development will be safe and pass the Exception Test.
50. On the basis of the evidence before me, in the absence of an FRA in relation to the self-contained unit of residential accommodation, I am unable to conclude that there are no reasonably available alternative sites for a self-contained unit of residential accommodation in lower flood risk area or that the self-contained unit of residential accommodation would not increase the risk of flooding elsewhere. It follows that the proposal would not comply with CS Core Policy 8 and paragraphs 158 and 163 of the Framework. With regard to paragraph 213 of the Framework whilst this policy does not contain any reference too the Sequential or Exception Tests it is broadly consistent with the aims of the

Framework in relation to flood risk. As such, the conflict with CS Core Policy 8 has substantial weight.

#### *Other matters*

51. Local residents object to the retention of the detached building, including in respect of setting a precedent, loss of privacy and that the detached building has been erected without planning permission. Loss of privacy did not form part of the Council's reasons for refusal relating to the detached building and I am satisfied that given the distance of the detached building from the adjacent dwellings and the difference in levels that this matter would not result in a level of harm which would justify dismissal of the appeal.
52. In addition, I have considered the appeal entirely on its own merit and in the light of all the information before me; any future proposals nearby would also need to be considered in the same manner. Hence, allowing Appeal B in relation to the detached building would not necessarily set a precedent for further similar development in the area.
53. The fact that the detached building has been constructed without permission is not a reason in itself to dismiss Appeal B. The development should be judged against material planning considerations. While I understand that my decision will be disappointing for some local residents, the information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be an over-riding issue warranting dismissal of Appeal B.

#### *Appeal B - Conditions*

54. The Council did not suggest any conditions in relation to Appeal B. However, the appellant suggested that the use of the detached building and its layout could be controlled by conditions. Both parties were given the chance to comment on conditions relating to these matters and the Council suggested an alternative wording in relation to Condition 1. In the interests of conciseness and enforceability the wording of that suggested condition has been amended.
55. To ensure that the detached building is used as ancillary to the domestic use of No 68 conditions restricting its use and alterations to the layout are necessary. The purpose of condition 2 is to require the appellant to comply with a strict timetable for dealing with the amendments to the internal layout which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the building retained by the grant of planning permission may only remain if the appellant complies with each one of a series of requirements.

### **Conclusions**

#### *Appeal A – ground (a) and the deemed planning application*

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

### *Appeal B*

57. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

### *Appeal C*

58. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

## **Appeal A – ground (f) appeal**

59. The ground of appeal is that the steps required by the notice to be taken are excessive. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).
60. The Council has not identified which of these purposes it seeks to achieve. Nonetheless, in requiring the demolition of all of the unauthorised development it is evident that the Council seeks to remedy the breach. The Courts have held that if there is an obvious alternative to total demolition which would overcome planning difficulties at less cost and disruption, then I should consider it.
61. The appellant has suggested that requirements could be varied to comply with the alternative schemes as identified in Appeals B and C or that the boundary wall could be required to be no more than 2 metres from ground level.
62. I have found that Appeal B should be allowed and planning permission granted for the detached building. I consider that the structure of the detached building is an element of development common to both the permission and the enforcement notice. To that extent section 180 of the 1990 Act would mean that the notice will cease to have effect so far as inconsistent with that permission. Therefore, requirement iii) of the notice would cease to have effect.
63. However, I have found that Appeal C should be dismissed. Moreover, the boundary wall as built is constructed on top of the raised platform and there is no specific alternative for a boundary wall that would not be separate to the raised platform. Given that the notice in these respects does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive.
64. For the reasons given above I conclude that the requirements are not excessive. The appeal relating to ground (f) fails.

## **Formal Decisions**

### **Appeal A**

65. It is directed that the enforcement notice be corrected by: -

- deleting the words '*self-contained outbuilding*' from point 3 and replace them with '*a self-contained unit of residential accommodation*';
- deleting the word '*outbuilding*' from requirement (iii) and replace it with '*a self-contained unit of residential accommodation*';

- deleting the words '3.7m high' from point 1 and '1.12m high' from point 2

Subject to these corrections 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.

### **Appeal B**

66. The appeal is allowed and planning permission is granted for a detached building and the conversion of the building to an ancillary gym and office at 68 Bradley Road, Slough SL1 3PP in accordance with the terms of the application, Ref P/16754/007, dated 27 July 2018, and the plans submitted with it, subject to the following conditions:

1. The detached building hereby permitted shall only be used for purposes ancillary to the residential use of the dwelling known as 68 Bradley Road. The detached building shall not be used as separate self-contained residential accommodation.
2. Unless within 1 month of the date of this decision the internal layout of the building as indicated on the drawing no: P001 is implemented the detached building shall be demolished and all debris and rubble associated with that demolition shall be removed from the site. Upon implementation of the approved layout specified in this condition, that layout shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

### **Appeal C**

67. The appeal is dismissed.

*D. Boffin*

INSPECTOR