



Appeal Decisions

Site visit made on 29 June 2021

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2021

Appeal A Ref: APP/J0350/C/21/3270258

Appeal B Ref: APP/J0350/C/21/3270259

27 The Spur, Slough SL1 6EU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Santosh Potnuru and Appeal B is made by Mrs Ramya Potnuru, both against an enforcement notice issued by Slough Borough Council.
 - The notice was issued on 16 February 2021.
 - The breach of planning control as alleged in the notice is:
The unauthorised construction of rooflights on the side of the dwellinghouse.
 - The requirements of the notice are to:
 - (i) *Remove the unauthorised 8 no. windows/roof lights from the northern elevation of the property and make good and repair the roof appropriately.*
 - (ii) *Remove from the land all materials, rubbish, debris, plants and machinery resulting from compliance with the above requirements.*
 - The period for compliance with the requirements is 3 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal B is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/J0350/D/21/3269700

27 The Spur, Slough SL1 6EU

- 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 Santosh Potnuru against the decision of Slough Borough Council.
 - The application Ref P/02939/003, dated 31 July 2020, was refused by notice dated 10 December 2020.
 - The development proposed is to vary condition 2 attached to planning approval ref. P/02939/001 to enable the retention of the existing dwelling subject to minor alterations, including permanent obscure glazing to side facing roof lights.
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Decisions

Appeals A and B – the enforcement appeals

1. It is directed that the enforcement notice is corrected by the deletion of the alleged breach of planning control and its substitution with "The failure to comply with condition 2 of planning permission Ref: P/02939/001, granted on 27 June 2018 for the construction of a part front & single storey side extension & loft conversion including rooflights" and the deletion of word "plants" in requirement (ii) of the notice and its substitution with the word "plant".

2. Subject to the corrections, the appeals are allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, I hereby discharge condition No 2 attached to planning permission dated 27 June 2018, ref: P/02939/001, granted by Slough Borough Council, and substitute the following new condition:

The upper row of rooflights in the roof slope facing 25 The Spur shall be non-opening and obscurely glazed to at least Level 3 of the Pilkington range (or equivalent) and the lower rooflights shall be non-opening, and shall be so retained at all times.

3. I also grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction of a part front & single storey side extension & loft conversion including rooflights at 27 The Spur, Slough SL1 6EU as shown on the plan attached to the notice without complying with the said condition and subject to the following conditions:

1. The upper row of rooflights in the roof slope facing 25 The Spur shall be non-opening and obscurely glazed to at least Level 3 of the Pilkington range (or equivalent) and the lower rooflights shall be non-opening, and shall be so retained at all times.
2. All new external work shall be carried out in materials that match as closely as possible the colour, texture and design of the existing building.
3. No windows, other than those hereby approved shall be formed in the north and south (side) elevations of the development without the prior written approval of the local planning authority.

Appeal C – the section 78 appeal

4. The appeal is allowed and planning permission is granted for the construction of a part front & single storey side extension & loft conversion including rooflights at 27 The Spur, Slough, SL1 6EU without complying with condition 2 imposed on planning permission ref: P/02939/001, granted on 27 June 2018 in accordance with the terms of the application, Ref P/02939/003, dated 31 July 2020, and the plans submitted with it, subject to the following conditions:

1. The upper row of rooflights in the roof slope facing 25 The Spur shall be non-opening and obscurely glazed to at least Level 3 of the Pilkington range (or equivalent) and the lower rooflights shall be non-opening, and shall be so retained at all times.
2. All new external work shall be carried out in materials that match as closely as possible the colour, texture and design of the existing building.
3. No windows, other than those hereby approved shall be formed in the north and south (side) elevations of the development without the prior written approval of the local planning authority.

Costs

5. An application for costs has been made by Mr Santosh Potnuru and Mrs Ramya Potnuru against Slough Borough Council. This application is the subject of a separate decision.

Preliminary Matters

6. The notice purports to be one issued under paragraph 171(A)(b) of the 1990 Act and alleges a breach of condition, but the alleged breach of planning control makes no mention of a planning permission or any condition(s) said to be in breach. After I raised this with the main parties, the Council confirmed that the notice should allege a breach of condition, namely the failure to comply with condition 2 of planning permission Ref: P/02939/001, granted on 27 June 2018 for the construction of a part front & single storey side extension & loft conversion including rooflights, which states:

The development hereby approved shall be implemented only in accordance with the following plans and drawings hereby approved by the Local Planning Authority:

(a) Drawing No. BW1-00708755, Dated April 30, 2018, Recd On 04/05/2018

(b) Drawing No. 903-A, Dated APR. 2018, Recd On 04/05/2018

(c) Drawing No. 903-B, Dated APR. 2018, Recd On 04/05/2018

(d) Drawing No. 903-C, Dated APR. 2018, Recd On 04/05/2018

(e) Drawing No. 903-D, Dated APR. 2018, Recd On 04/05/2018

(f) Drawing No. 903-E, Dated APR. 2018, Recd On 04/05/2018

(g) Drawing No. 903-F, Dated APR. 2018, Recd On 04/05/2018

The reason for imposing the condition is:

To ensure that the site is developed in accordance with the submitted application and to ensure that the proposed development does not prejudice the amenity of the area and to comply with the Policies in the Development Plan.

7. The appellant has confirmed that this is how the appellant has viewed the breach of planning control and has been how the appeal has been approached. The occupier of 25 The Spur contends that what has been constructed is materially different from what was approved, in that the amount of new building work falls outside of the scope of the permitted development. Whilst I accept that it may not have been readily appreciated that the approved development would have entailed demolition and rebuilding to the extent that it has, I am nevertheless satisfied that the development is broadly in accordance with the permitted development. I am satisfied that no injustice would arise if I were to correct the notice to refer to the correct breach of planning control.
8. There is also a typographical error in requirement (ii) of the notice, which refers to "plants" instead of "plant". I shall correct this error as no injustice would arise from my doing so.

Appeal on ground (a) – that planning permission should be granted

Main Issue

9. The main issue is the effect of the removing or varying the condition on the living conditions of the occupiers of 25 The Spur, with particular regard to privacy and perceived overlooking.

Reasons

10. The plans approved under planning permission Ref: P/02939/001 show 3 rooflights in the roof slope facing 25 The Spur, providing high-level light to a hallway, bedroom and utility room. The most significant difference in the development as carried out is that the internal room arrangement has changed, and that 8 rooflights have been installed in the roof slope facing 25 The Spur.
11. The side elevation of the extended property lies very close to the boundary with the bungalow at 25 The Spur. There are 8 rooflights set into the roof slope facing No 25, four at a lower level and 4 at a higher level. The 4 lower rooflights are all clear-glazed, but they provide light to a hallway and a family room, and are well above the height of the floor, and their height means that there can be no overlooking of No 25. The four higher rooflights provide light to a staircase, two bathrooms and a bedroom. At the time of my visit, all four had been obscurely glazed and the handles had been removed, rendering them unopenable. Were it not for these measures, they would provide scope for clear overlooking of windows in No. 25. Accordingly, with these mitigatory measures in place, no actual overlooking is possible.
12. The bungalow at 25 The Spur has a living room window and a kitchen window which face towards the appeal site, and the distance between these windows and the nearest rooflights is just a few metres, slightly more in the case of the kitchen. An L-shaped sofa is positioned immediately behind the living room window and a computer desk is next to it. Wherever anyone is seated on the sofa or in the chair at the computer desk, one or more of the rooflights can be seen. However, the angle between the room and the rooflights is such that little of the plane of the rooflights can be seen. Even so, the number of the rooflights and their closeness, particularly the lower ones, to the living room, and to a somewhat lesser extent to the kitchen, create an uncomfortable feeling that the room may be overlooked.
13. However, a relevant consideration is that the approved scheme allowed for 3 rooflights in the roof slope facing No.25, in a slightly lower position and of a slightly larger size than the lower ones currently installed, two of which would be clearly visible from the living room window and two from the kitchen window. In my judgement, because the approved rooflights would be lower, and therefore closer to the windows of No 25, and slightly larger, the perception of being overlooked would be of a similar magnitude to the current arrangement. The approved scheme is an obvious fallback position and I consider that the appellant would be very likely to construct the approved rooflights if this appeal were to fail. I therefore consider that it is a material consideration of great weight, so that, on balance, the perceived overlooking of the current arrangement is not materially different from that which would be experienced from the approved scheme.

14. The rooflights are also visible from parts of the rear garden of No. 25. Overlooking of rear gardens is a common feature of urban living, but here there would be no direct overlooking from the rooflights. Views of the rooflights from the garden are oblique and large parts are shielded by planting. I consider that no material harm would arise from perceived overlooking of the rear garden.
15. I therefore conclude on the main issue that the development, subject to the imposition of conditions requiring the upper rooflights to be permanently closed and obscurely glazed, does not result in material harm to the living conditions of the occupiers of 25 The Spur, and does not conflict with Core Policy 8 of the Slough Core Strategy or Policy EN1 of the Local Plan for Slough, which respectively deal with sustainable development and the standard of design, and seek to protect living conditions of neighbouring occupiers. Nor is there any conflict with the Council's Supplementary Planning Document – *Residential Extensions Guidelines*.

Other Matters

16. The occupier of No 25 is also concerned about light pollution from the rooflights. Whilst it may be slightly noticeable when lights are on within the relevant rooms, given the shallow angle at which they are visible, I consider that this would be unlikely to cause material harm over and above that which would arise from the permitted windows.
17. The rooflights have no impact on the amount of light received in the rooms of the neighbouring property and have an almost immaterial impact on the outlook from that property in comparison with the approved scheme.
18. The occupier of No 25 has raised a number of other matters, including the way in which the Council dealt with the planning applications for No 27 and its enforcement investigations, as well as concerns about obstruction and trespass, but these are not matters which are the subject of my jurisdiction and they cannot affect my decisions on the appeals.

Conditions

19. As I have discussed above, conditions are required to ensure that the upper rooflights are both obscurely glazed and non-opening to protect the privacy of the occupiers of No 25. I shall also require that the lower rooflights be non-opening to minimise the perception of being overlooked.
20. On both appeals, I shall reimpose the conditions on the original planning permission insofar as they are still capable of having effect.

Conclusions

Appeals A and B

21. For the reasons given above, I conclude that Appeal A succeeds on ground (a) and the enforcement notice should be quashed. I shall discharge the condition which is subject to the notice, and grant planning permission on the application deemed to have been made for the operations previously permitted without complying with the condition enforced against but subject to new conditions as described above.

22. As the appeals succeed on the basis that a new planning condition should be imposed, it is necessary not only to grant planning permission on the deemed planning application under s177(5) and s177(1)(a), but also to discharge the condition that is subject to the enforcement notice under s177(1)(b) and impose the new condition on the original planning permission under s177(4).
23. The appeals on grounds (f) and (g) do not fall to be considered.

Appeal C

24. The appeal succeeds and planning permission is granted.

JP Roberts

INSPECTOR