



Appeal Decision

Site visit made on 25 August 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th September 2021

Appeal Ref: APP/J0350/C/20/3262847

Land at 146 High Street, Langley, Slough SL3 8LF

- 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 Ms Victoria Yao against an enforcement notice issued by Slough Borough Council.
- The enforcement notice was issued on 12 October 2020.
- The breach of planning control as alleged in the notice is (i) Without planning permission, the material change of use of the land from use as a single dwellinghouse to use as nine self-contained flats ("unauthorised use"). (ii) Without planning permission, the erection on the land of a single storey side extension shown edged green on an attached plan and an attached front timber structure on the front elevation shown edged yellow on an attached plan ("unauthorised works").
- The requirements of the notice are: Unauthorised use-(i) Cease the use of the dwellinghouse on the land as nine self-contained flats and return the dwellinghouse to its lawful use as a single dwellinghouse. (ii) Remove all kitchens, kitchenettes and cooking facilities in full from each of the nine self-contained flats but leave one kitchen remaining in the dwellinghouse. (iii) Remove from the land all materials, rubbish, debris, plant and machinery resulting from compliance with paragraphs (i) and (ii) above. Unauthorised works-(iv) Demolish the single storey side extension and the attached front timber structure on the front elevation. (v) Remove from the land all materials, rubbish, debris, plant and machinery resulting from compliance with paragraph (iv) above.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(c),(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. Step (i) of the enforcement notice requires the use as nine self-contained flats to cease, whilst step (ii) requires the removal of kitchens, kitchenettes and cooking facilities from each of the nine self-contained flats. However, the number of flats enforced against is already clearly set out in the allegation. Therefore, specifying the precise number of flats in the requirements is unnecessary. It may also lead to uncertainty as to what the notice actually requires. Consequently, I intend to correct the notice by deleting the reference to the number of self-contained flats from the requirements at steps (i) and (ii). The requirements would be sufficiently precise; the appellant would be in

no doubt as to what they had to do to comply with the notice. I am satisfied that there would be no injustice.

2. As there is no deemed planning application arising from a ground (a) appeal, planning merits considerations can have no bearing on my decision.

Ground (c) appeal

3. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control.
4. The appeal site contains a detached residential building with single storey extensions to the side and front. There was no dispute that the lawful use of the building is as a single dwellinghouse and that the use as nine self-contained flats in the allegation is in breach of planning control. Further, there was no dispute that in respect of the side and front extensions also attacked by the notice, the latter had been erected in breach of planning control. I have found no reason to come to a different conclusion on these matters. The ground (c) appeal is therefore limited to the side extension. It is for the appellant to show that their appeal on this ground should succeed, the relevant test of the evidence being on the balance of probability.
5. Erection of the side extension clearly involved building operations falling within the definition of development at s55(1) of the Act. Planning permission is required for the development of land, having regard to s57(1) of that Act. The appellant submitted that the side extension was authorised by the GDPO¹ which, at Article 3, Schedule 2, Part 1 Class A, grants planning permission for the enlargement, improvement, or other alteration of a dwellinghouse, subject to the relevant size and locational limitations and conditions of that Class being met. I was referred to an LDC² issued under s192 of the Act by the Council in November 2015 for a proposed single storey side extension³. According to the appellant, the side extension was erected between April and June 2017. Extracts from the Council's Building Control records show that building operations were undertaken at the site during the above period.
6. A small House in Multiple Occupation (HMO), whether within Use Class C4⁴ or otherwise, is not prevented from being a single dwellinghouse for the purposes of the GPDO. Even so, there was little evidence to suggest that erection of the side extension and any associated internal works were undertaken other than to create a separate self-contained unit of living accommodation. For example, there was no witness account or contemporaneous documentation which showed that the side extension had been used as part of the HMO following its erection.
7. During my visit, I observed what were in effect two separate, self-contained residential units in the side extension. When a Council Officer visited the site on 1 May 2018, around a year after the side extension was erected, they recorded that it contained a living and sleeping area and kitchen as well as bathroom facilities and was functionally separate from the rest of the building. As it was also noted that an interconnecting door had been sealed off, it is highly likely that the accommodation was also physically separate from that in

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

² Certificate of lawfulness of proposed use or development.

³ Council Ref: P/03578/007.

⁴ The Town and Country Planning (Use Classes) Order 1987 (as amended).

the rest of the building. Given that the side extension had been substantially completed only a relatively short time before, it would in my view be surprising if erection of that structure and installation of the facilities observed during the Council Officer's visit had not been part of a single continuous building operation. In correspondence with the Council dated 21 May 2018, the appellant described the purpose of erecting the side extension as being for herself and her daughter to move into, to increase the number of tenants in the building. This reinforces my view of it being more likely that the side extension was erected as separate self-contained living accommodation. As a result, the available evidence does not support the appellant's claim of the side extension being erected in association with the use of the building as an HMO.

8. Moreover, as built the side extension is materially wider and higher than that shown on the drawings accompanying the LDC application. The width of the original building is around 8 m, whilst the side extension is almost 5 m wide. Consequently, the width of the side extension is greater than half the width of the original dwellinghouse, exceeding the size limitation at paragraph A.1 (j) (iii) of Class A. It follows that the side extension cannot be permitted by Class A in any event. No grant of express planning permission for the side extension was drawn to my attention.
9. Therefore, the appellant has been unable to show to the required standard that the side extension does not constitute a breach of planning control and the ground (c) appeal fails.

Ground (f) appeal

10. The ground of appeal is that the requirements of the notice are excessive.
11. At s173(4), the Act provides that the purpose of an enforcement notice can be to remedy the breach of planning control, including by discontinuing any use or restoring the land to its condition before the breach took place, or to remedy any injury to amenity that has been caused by the breach. Although the notice does not state as such, its purpose must be to remedy the breach. The notice requires nothing less than cessation of the unauthorised use together with the total removal of the facilitating works to restore the site to its condition before the breach took place. The requirements set out in the notice would achieve exactly that purpose.
12. Varying the notice to require something less than the demolition of the side and front extensions would not restore the site to its condition before the breach took place. A requirement to submit a further LDC application would leave the side extension in place. Such a requirement also risks being found to be uncertain, as the appellant could not tell from the notice what they needed to do to remedy the breach. Further, it fails to address what would happen if that application were to be unsuccessful. For similar reasons, more or less the same conclusions would apply to requiring the submission of a planning application for the front extension. Additionally, the requirement to remove the materials and so on resulting from the remedial works does not exceed what is reasonable for remedying the breach.
13. Be that as it may, I am mindful that following compliance with the notice the building would revert to use as a single dwellinghouse and it could therefore be enlarged with the planning permission granted by the GPDO at Article 3, Schedule 2, Part 1, Class A. The LDC provides clear evidence that in the event

the side extension was to be totally demolished, a smaller side extension could then be erected which met the relevant limitations and conditions of Class A. A replacement side extension could be erected more or less immediately following demolition of the existing structure. There is no sound reason to think that the appellant would not seek to erect such an extension, for example to replace some of the internal space lost due to the remedial works. As a result, erecting a smaller replacement side extension under Class A following the remedial works represents a realistic fallback position.

14. The Act at s173(4) also provides for remedying the breach by making any development comply with the terms, including conditions and limitations, of any planning permission granted in respect of the land. This includes where that permission is granted by the GPDO. The side extension could be modified so that it did not exceed the size limitations of Class A. The drawings accompanying the LDC application show how the side extension could be altered and reduced in size to meet the limitations and conditions of Class A. This would bring the side extension within what would otherwise be permitted by that Class. Requiring alteration and reduction in the size of the side extension as an alternative remedy would be sufficiently clear for there to be no uncertainty as to what must be done to comply with the notice. Therefore, having regard to the fallback position of what could otherwise be achieved under Class A, reducing the size of the side extension so that it complied with the planning permission granted by the GPDO represents an obvious alternative which would overcome the planning difficulties at less cost and disruption than total demolition.
15. For the above reasons, whilst I find that the requirements are not excessive, I shall vary the notice as set out above to provide an alternative remedy to part of the breach and the ground (f) appeal succeeds to that extent.

Ground (g) appeal

16. The ground of appeal is that the time specified for complying with the requirements of the notice falls short of what should reasonably be allowed.
17. The appellant and the tenants of the building have been aware throughout this appeal that the notice will come into effect and that the requirement to cease the use as self-contained flats will be upheld. Also, Government restrictions on movement and social contact associated with the COVID-19 pandemic have been eased since the appeals were made. Nevertheless, those restrictions were in place for several months following the issue of the notice. As a result, it is unlikely that the tenants would have been able to source and secure suitable alternative accommodation for much of that time. COVID-19 related legislation meant that prior to 31 May 2021, the tenants could reasonably have expected at least six months' notice from the appellant before any possession proceedings were commenced. My understanding is that the appellant would currently following termination of the tenancies still be required to give at least four months' notice in respect of possession proceedings.
18. The remedial works involved would generally be relatively small-scale and straightforward operations for an experienced small building contractor. Whilst the unauthorised use has to cease before the remedial works are carried out, that does not mean that actions cannot be taken such as securing any necessary finance, sourcing and securing a suitable contractor and arranging for the remedial works to be carried out. There was no firm evidence of any

specific difficulties currently being encountered in terms of securing the services of a suitable contractor, or of extensive delays in their availability to undertake work. To my mind, the length of time involved in undertaking the above actions, together with having the remedial works carried out, is unlikely to exceed more than a few months. This would remain the case if a new kitchen facility would also have to be provided on the ground floor. Even so, this means that the time involved in carrying out the remedial works together with that associated with ceasing the unauthorised use is likely to make complying with the notice in six months somewhat challenging. Due to the lack of certainty, it is not appropriate to rely on the Council varying the notice to extend the compliance period.

19. Taking the above matters into account, extending the time for compliance to nine months in respect of the totality of the requirements would allow the tenants a more reasonable period in which to find suitable alternative accommodation. It would also allow the appellant a more reasonable timeframe in which to secure any necessary finance, as well as to arrange for and have the remedial works carried out. Furthermore, it would provide some scope to absorb any unforeseen delays or disruption caused by the continuing effects of the pandemic. This would therefore strike a more appropriate balance between remedying the planning harm identified in the notice as soon as practicable, whilst also giving appropriate weight to the circumstances of the appellant and her tenants. In reaching this conclusion however, I also find that extending the compliance period to twelve months would perpetuate the breach and the planning harm identified.
20. For the reasons given above I conclude that a reasonable period for compliance would be nine months and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Conclusion

21. For the reasons given above, the ground (c) appeal does not succeed and I shall uphold the enforcement notice with a correction and variations.

Formal Decision

22. It is directed that the enforcement notice is corrected by:

- Deleting the following text-*"nine (9)"* in steps (i) and (ii) at paragraph 5.

And varied by:

- After step (iv) at paragraph 5 insert the following step (iv) (a):
"Or, as an alternative to the step at paragraph 5 (iv) above, demolish the attached front timber structure on the front elevation (as shown edged yellow on the plan attached to the enforcement notice) and alter and reduce the size of the single storey side extension (as shown edged green on the plan attached to the notice), to include reducing the width so that it does not exceed more than half the width of the original dwellinghouse, to make it comply with the terms, including the conditions and limitations, of the planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Article 3, Schedule 2, Part 1, Class A."

- At step (v) add at the end of the sentence "*or paragraph 5 (iv) (a) above*".
- The deletion of "*six months*" in paragraph 6 and the substitution of "*nine months*" as the period for compliance.

23. Subject to the correction and variations the appeal is dismissed and the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR