



Appeal Decision

Site visit made on 1 September 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th September 2021

Appeal Ref: APP/J0350/C/21/3277190

Land at 10 Marlborough Road, Slough SL3 7LH

- 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 Mangal Singh Lalli against an enforcement notice issued by Slough Borough Council.
- The enforcement notice was issued on 19 May 2021.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised construction on the land of a second single storey rear extension ("unauthorised development").
- The requirements of the notice are: (i) Demolish the unauthorised development. (ii) Remove from the land all materials, rubbish, debris, plant and machinery resulting from compliance with the requirement stated at (i).
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and the enforcement notice is upheld as set out below in the Formal Decision.

Preliminary Matter

1. The revised National Planning Policy Framework (the Framework) came into force during the course of this appeal. The main parties have been given an opportunity to comment on the implications of the revised Framework in respect of the appeal and I have taken it into account in my decision.

Ground (a) appeal

Main Issues

2. The main issues in this appeal are:
 - The effect of the second single storey rear extension on the character and appearance of the area.
 - The effect on the living conditions of occupiers of adjoining residential property, having regard to outlook.

Reasons

Character and appearance

3. The appeal site contains an enlarged two storey detached dwelling. The dwelling is located in an established residential area, largely comprising rows of semi-detached and detached dwellings of a similar age and architectural style.

For the most part, the dwellings are similarly spaced and they occupy generously sized linear plots, the ample, largely open front and back gardens helping to assimilate subsequent residential extensions and outbuildings into their surroundings. The foregoing factors all contribute appreciably to the well-ordered and pleasantly spacious suburban character and appearance of the surrounding area.

4. The single storey extension in this appeal protrudes from a pre-existing single storey flat roofed enlargement at the back of the dwelling. The extension is of significant depth, running adjacent to the side boundary up to part of the tapering back garden boundary. At around 10 m, the overall depth of the extension considerably exceeds the recommended maximum of 4.25 m from the rear main wall of the original dwelling, set out in the Council's Residential Extensions Guidelines Supplementary Planning Document (SPD). This is before taking the pre-existing enlargement, which already protrudes around 4 m from the rear elevation of the original dwelling, into account. Whilst the dwelling is detached and at the end of a row of properties, given the similarities in the alignment of dwellings throughout the row and also having regard to the orientation of adjoining residential property in Blenheim Road, there is no sound reason why the SPD guidance should not be given considerable weight. Furthermore, the extension occupies about a third of the back garden width and at around 2.5 m in height, it is appreciably taller than structures on the boundaries between the site and adjoining residential property.
5. Due to its external dimensions, the extension is substantial in scale. Together with the considerable scale of the pre-existing enlargements at the rear and side, the dwelling now exhibits an appreciable sense of being subsumed by later additions. As a result, the extension appears poorly related to the dwelling and although single storey, it fails to be visually subordinate and erodes the inherent character of the dwelling. The slight difference in roof height evident between parts of the extension does not assist in offsetting its visual impact to any great degree. Whilst there are clearly other single storey flat roofed extensions in the vicinity, as far as I was made aware none have a similar overall depth or proximity to the back garden boundary compared with the extension in this appeal. Being constructed of unfinished blockwork, the west-facing external wall adds to the failure of the extension to integrate with the dwelling. Boundary planting does not significantly offset the poor external appearance of the blockwork and in any event, such planting is not a year-round, permanent solution.
6. In addition, due to the extension's scale and the proximity to the site boundaries, a much greater portion of the back garden is either occupied by or immediately adjacent to substantial built form compared with prior to its erection. The back garden is now considerably more modest in size and there is a noticeably greater sense of enclosure compared with the generally more open and expansive back gardens in the locality, thus creating a more built-up feel in the environs. This is markedly different from extensions and outbuildings at other residential property in the vicinity, which, even where substantial in scale, for the most part sit comfortably within their respective plots.
7. The above has all led to the extension being seen as an incongruous feature in its surroundings, failing to respect or reflect the character of the dwelling and appearing entirely at odds with the spacious qualities of the prevailing pattern

of local development. Whilst there might be few public views of the extension, the resulting visual harm is readily apparent from adjoining residential property. In any event, limited availability of public views is not a good reason to permit visually unacceptable development as it could be repeated too often, with further adverse visual consequences.

8. In reaching the above conclusions, I have also had regard to the planning permission granted by Article 3, Schedule 2, Part 1, Class E of the GPDO¹ to erect an outbuilding within the curtilage of a dwelling where it is required for a purpose incidental to the enjoyment of the dwelling as such, provided the relevant limitations on the size, height and location are met. In May 2019, a Lawful Development Certificate (LDC) under s192 of the Act was granted for a proposed outbuilding at the site². Even so, the LDC scheme was significantly smaller than the extension. There would have been a substantial amount of space between the dwelling and the outbuilding, considerably and appreciably offsetting its visual impact. I accept that even a small gap from the enlarged dwelling is likely to mean that an outbuilding could still fall within Class E. In this respect, I acknowledge the findings of an Inspector in a recent appeal at another location³. Even so, there was little clear and compelling evidence to indicate that a structure with a footprint similar to or larger than the extension would be required for a purpose incidental to the enjoyment of the dwelling. In any event, the extension must be considered as a whole. The available evidence does not show that the extension was erected other than as one continuous building operation. As a result, in my judgment the adverse visual consequences of the extension are not materially similar to what would have resulted from a Class E development.
9. I also note that the GPDO Article 3, Schedule 2, Part 1, Class A provides for erecting a larger single storey rear extension. However, that is subject to prior approval being obtained. Moreover, the overall depth of the extension considerably exceeds Class A limits. Accordingly, that Class has limited relevance to the appeal.
10. For the above reasons, I find that the extension causes unacceptable harm to the character and appearance of the area. By failing to achieve a high quality design that is attractive and respects its location and surroundings, the extension does not accord with criterion in Core Policy 8 of the Slough Local Development Framework Core Strategy Development Plan Document (CS). Similarly, the failure of the extension to reflect high quality design in terms of scale, building form and visual impact does not accord with criteria in Policy EN1 of the Slough Local Plan (LP), whilst for corresponding reasons the extension does not accord with LP Policy EN2. In addition, by not being of a high quality design in keeping with the site and the character of the surrounding area, the extension does not accord with LP Policy H15. Not achieving a well-designed place means that the extension is inconsistent with the revised Framework.
11. Nevertheless, if the part of the extension approximately 2.5 m in width adjacent to the pre-existing enlargement were to be removed, physically severing the extension from the dwelling, the remaining footprint and built envelope would then correspond with that shown on the drawing accompanying

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

² Council Ref: P/04013/002.

³ Appeal Ref: APP/N5090/X/20/3261594.

- the LDC scheme. Modifying part of the development described in the notice, for which permission has been sought under the deemed planning application pursuant to ground (a), would be involved. At s177(1)(a), the Act provides that planning permission may be granted in respect of the whole or part of the breach described in the notice. Therefore, it is appropriate to consider whether permission should be granted for part of the extension under ground (a).
12. The above works would bring the modified extension within the size and height limitations at Class E, paragraph E.1. I am given to understand that the appellant requires a gym facility for reasons of their health and wellbeing and that of their family. Use as a home gym would be functionally related and therefore incidental to the primary residential use of the dwelling. During my visit, I observed that part of the extension equating to the footprint of the development in the LDC scheme was in such a use. The LDC outbuilding would have been used for similar purposes. Therefore, it is not unreasonable to find that an outbuilding is required in relation to the dwelling. In turn, this leads me to conclude that there is a realistic prospect of an outbuilding under Class E being erected with similar dimensions to the LDC scheme, in the event the appeal failed.
13. Given the above circumstances, requiring the extension to be totally demolished would serve no useful planning purpose, as a substantial part could simply be re-erected under Class E almost immediately after. Planning enforcement action is intended to be remedial, not punitive. Moreover, modifying the extension as set out above, with the resulting reduction in scale and the significant sense of space created between the extension and the dwelling, would also appreciably reduce its visual impact on the surroundings. Modifying the extension to physically sever it from the dwelling and comply with the LDC scheme would therefore overcome the planning difficulties at less cost and disruption and represents an obvious alternative to the requirements of the notice.
14. As a result, modifying the extension as described above would not cause unacceptable harm to the character and appearance of the area and accords with CS Core Policy 8 and LP Policies EN1, EN2 and H15, being consistent with the SPD guidance on residential outbuildings and the revised Framework.

Living conditions

15. One of the residential back gardens adjoining the west boundary of the site is that of 5a Blenheim Road (No 5a). This back garden is foreshortened. Also, an electricity sub-station wraps around part of the back garden. These factors mean that No 5a has a back garden of modest size compared to the more expansive back gardens typical of the locality. There is a garden building of relatively modest size and height towards the end of part of No 5a's back garden. Prior to erecting the extension, the pre-existing enlargement adjoined a significant part of the far end of No 5a's back garden but partly sat behind that property's garden building. However, given its overall depth the extension adjoins a much greater portion of No 5a's back garden boundary, as well as the sub-station. Whilst the extension is lower than the 3m maximum height limit in the SPD, it is considerably taller than the boundary fencing and No 5a's garden building. Neither the relatively limited distance between the rear elevation of No 5a and the far end of its back garden or the garden building assist significantly in offsetting the visual presence of the extension.

16. Due to the above factors, the extension is seen as a considerable, unrelieved expanse of built form adjacent to the boundary, appearing as a substantial and obvious built feature a relatively limited distance from the rear-facing windows and in the back garden at No 5a. Whilst there has been no significant erosion of natural light or increased overshadowing, the above has given rise to the occupiers of No 5a experiencing a substantially greater and more oppressive sense of enclosure at the back of their property, thereby considerably eroding the level of outlook that they might otherwise reasonably expect to enjoy.
17. However, complying with the LDC scheme would also create a significant amount of space between the modified extension and the dwelling, appreciably reducing the sense of enclosure experienced by the occupiers of No 5a. Consequently, as modified the extension would not cause unacceptable harm to the living conditions of occupiers of adjoining residential property. As the extension would not then have a significant adverse impact on the amenity of adjoining occupiers, it accords with criterion in LP Policy H15. In addition, providing a high standard of amenity for existing and future users would be consistent with the revised Framework.

Other matters

18. I am given to understand that the extension was erected whilst the appellant was self-isolating during the COVID-19 pandemic and that part of it had enabled him to work from home. However, such circumstances are not particularly unusual and given that the UK is at present recovering from the effects of the pandemic this carries limited weight in relation to retaining the extension as built.

Conditions

19. After seeking the views of both main parties, I intend to impose two conditions. The first condition requires the extension to be modified to comply with the drawing accompanying the LDC scheme to physically sever it from the dwelling and to give the more visible portion of the west-facing external wall an appearance which is more visually harmonious with the external walls of the dwelling. The condition is necessary to overcome the harm to the character and appearance of the area and to the living conditions of occupiers of adjoining residential property.
20. The condition is drafted in the form set out below 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 implementation of the required modification works, because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the development granted planning permission may only remain if the appellant complies with its requirements. It would be a relatively straightforward matter for an experienced small building contractor to be engaged and to undertake the modification works within a few months. The condition is precise and reference to the drawing accompanying the LDC scheme means that there is certainty in exactly what has to be done to achieve compliance. The requirement to remove demolition materials is intended to prevent external storage and does not preclude incorporating salvaged elements into other works at the site where it is reasonably necessary to do so. Accordingly, in my view the requirements of the condition are proportionate and reasonable.

21. Additionally, I shall impose a condition restricting the use of the development other than for purposes incidental to the enjoyment of the dwelling. In doing so, I am mindful that an outbuilding erected pursuant to Class E is not prevented from subsequently being used as primary living accommodation in association with the relevant dwelling. Nevertheless, in my view the condition is necessary to safeguard the living conditions of occupiers of adjoining residential property. In any event, as this is a deemed planning application arising from a ground (a) appeal, Class E does not apply.

Ground (f) appeal

22. The ground of appeal is that the notice requirements are excessive.
23. At s173(4) the Act provides that an enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place, or the purpose of remedying 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 demolition of the extension, by which the site would be restored to its condition before the breach took place.
24. Modifying the extension to comply with the drawing accompanying the LDC scheme as an alternative to demolition has been dealt with on ground (a). In relation to ground (f), reducing the size of the extension and severing it physically from the dwelling would not remedy the breach as the entire structure was erected unlawfully. Neither would cladding part of the west-facing wall, either by itself or in combination with a reduction in size. Only total removal of the extension would remedy the breach, as only that would restore the site to its condition before the breach took place. Consequently, the notice requirements are not excessive for the intended purpose and the appeal on ground (f) fails.

Conclusion

25. For the reasons given above I conclude that the appeal should succeed in part only, namely for part of the extension, and I will grant planning permission for this part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as they are inconsistent with the permission which I will grant by virtue of s180 of the Act.

Formal Decision

26. The appeal is allowed insofar as it relates to the part of the second single storey rear extension shown on drawing number 201937-01 attached to this decision and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of that part of the second single storey rear extension on the land at 10 Marlborough Road, Slough SL3 7LH referred to in the notice, subject to the conditions in the Schedule at the end of this Decision.
27. The remaining part of the appeal concerning the part of the second single storey rear extension not shown on drawing number 201937-01 is dismissed, the enforcement notice is upheld and planning permission is refused in respect of the application deemed to have been made under section 177(5) of the 1990

Act as amended for the erection of that part of the second single storey rear extension on the land at 10 Marlborough Road, Slough SL3 7LH.

Stephen Hawkins

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be totally demolished and all resulting demolition materials removed from the site, unless within three months of the date of this decision the following have been completed:
 - a) The development has been altered and reduced in size to accord with drawing number 201937-01 attached to this decision, so that the remaining structure is physically severed from the dwelling with no part of the external walls or roof not shown on that drawing being retained, using external materials to match the external walls of the dwelling, with the resulting demolition materials removed from the site; and
 - b) The west-facing external wall of the development between 1.8 m above ground level up to the eaves level has been finished with brick slips to match the external walls of the dwelling.

Following compliance with a) and b) above, the external wall materials of the development shall be maintained.

In the event of a legal challenge to this decision, the operation of the time limit specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The development hereby permitted shall only be used for purposes incidental to the enjoyment of the dwelling and shall not be used as primary living accommodation.

Plan

This is the plan referred to in my decision dated: 30th September 2021

by Stephen Hawkins MA MRTPI

Land at 10 Marlborough Road, Slough SL3 7LH

Reference: APP/J0350/C/21/3277190

Scale: Not to scale

