The Planning Inspectorate

Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 6 May 2022

Appeal Ref: APP/J0350/C/21/3281780
34 Glentworth Place, Slough SL1 3UT

- 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 Nadeem Butt against an enforcement notice issued by Slough Borough Council.
- The enforcement notice, numbered 2020/00482/ENF, was issued on 30 June 2021.
- The breach of planning control as alleged in the notice is the conversation of an outbuilding, and its use as a self-contained residential dwelling and shown on the plan attached to the notice edged in blue ("Unauthorised Use").
- The requirements of the notice are to:
  1. Cease the use of the outbuilding as self-contained unit of residential accommodation ("Unauthorised Use").
  2. Remove the kitchen and shower room from the outbuilding.
  3. Remove the internal walls incorporating the kitchen and the shower room.
  4. Remove all plumbing, boiler, connections and associated pipework that serve the kitchen and shower room within the outbuilding.
  5. 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) (d) (f) of the Town and Country Planning Act 1990 as amended (the Act).

Decision

1. It is directed that the enforcement notice be:

   - corrected by the replacement of the word "conversation" by "conversion" in section 3;
   - varied by removing the words "and shower room" from step 2, section 5;
   - varied by removing step 3, section 5 in its entirety;
   - varied by removing the words "and shower room" from step 4, section 5 while adding the words "save for those serving the shower room" to the end of the sentence.

2. Subject to this correction and variations made due to success under ground (f), the appeal is otherwise dismissed and the enforcement notice is upheld.

Costs Applications

3. Costs applications have been made by Slough Borough Council against Nadeem Butt, and by Nadeem Butt against Slough Borough Council. These applications are the subjects of separate Decisions.

Procedural Matters

4. It was not necessary to conduct a site visit to determine this appeal, and I note from the appeal form that the appellant agrees.

5. I am using my powers to correct a simple typographical error in the notice allegation (conversion, not conversation), without any injustice to the parties.

Ground (d)

6. For an appeal to succeed under this ground, the burden of proof is on the appellant to satisfy me on the balance of probabilities that no enforcement action could be taken in respect to the breach of planning control on the date the notice was issued.

7. Section 171B(2) of the Act provides that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no action may be taken after the end of the period of four years beginning with the date of the breach.

8. Accordingly, as the notice was issued on 30 June 2021, the appellant must demonstrate to the required standard of proof that the building had been in use continuously as a single dwellinghouse since at least 30 June 2017.

9. There is no definition of the term 'dwellinghouse' in the Act but it was accepted in *Gravesham*[1] that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence.

10. So, when did the building provide viable facilities for living with regard to these *Gravesham* characteristics of a dwellinghouse?

11. Notwithstanding tenancy and other documents from the appellant asserting occupation of the building from 5 June 2016, the appellant accepts that a kitchen was not installed until sometime between Council visits on 12 February 2020 and 4 June 2021.

12. The appellant says that despite the lack of a kitchen before it was eventually installed, the occupants had mobile cooking facilities (a portable oven and microwave). However, I give this limited weight as I find it unlikely that the visiting Council officer would have failed to have made a note of those facilities in his records (submitted with the Council's evidence) - had they been in day-to-day use on 12 February 2020 - and I cannot see evidence of those facilities in the photographs taken by the officer on that date.

13. Therefore, on the evidence and as a matter of fact and degree, I find that the building did not have the facilities required for day-to-day private domestic existence until after the February 2020 Council visit. Accordingly, I am not satisfied on the balance of probabilities that the building had been in use continuously as a single dwellinghouse since at least 30 June 2017 and the ground (d) appeal fails.

[1] Gravesham BC v SSE & O'Brien [1983] JPL 306

Ground (f)

14. For an appeal to succeed under this ground, I must be satisfied that the requirements of the notice are excessive in achieving its purpose. It is clear from the way the notice has been drafted that its purpose is to remedy the breach of planning control by discontinuing the unauthorised use and restoring the land to its condition before the breach took place.

15. Given my finding on ground (d) that the breach set out in the notice – the conversion of the outbuilding to a self-contained residential dwelling – had not occurred at the time of the 12 February 2020 visit (which from the officer's notes also appears to be the Council's position at that time[2]), it is excessive to require the removal of the shower room which was in place before the breach took place. Clearly, therefore, the shower room was not 'part and parcel or integral' to the breach as argued by the Council in its response to this ground of appeal.

16. The ground (f) appeal therefore succeeds, and I am varying the requirements of the notice so as not to require the removal of the shower room or the associated walls, plumbing, boiler, connections and associated pipework that serve it. Further, I am varying the notice to remove the requirement to remove "internal walls incorporating the kitchen" as the Council's statement is clear that these do not exist due to the open plan nature of the arrangement[3].

17. An interested third party has suggested that the requirements of the notice are not excessive enough, and that I should vary the notice in requiring demolition of the outbuilding as it is said to be unauthorised. However, I do not accede to that request (which would cause injustice to the appellant) as it would go beyond remedying the breach of planning control attacked by the notice which is conversion of the building rather than its erection.

Conclusion

18. For the reasons given above I conclude that the appeal should not succeed except on ground (f) since the notice requirements are excessive. I shall uphold the enforcement notice with a correction and variations.

Andrew Walker

INSPECTOR

[2] "Outbuilding has 2 rooms, a WC/shower room and a larger room… Advised to only use the outbuilding incidental to the main house, and that a planning application should not be forthcoming."
[3] "The outbuilding consists of an open plan kitchen, lounge area and bedroom and a separate bathroom."