



Appeal Decision

Site visit made on 26 April 2022

by Mrs H M Higenbottam BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 15 June 2022

Appeal Ref: APP/J0350/C/3283190

58 Long Readings Lane, Slough SL2 1PZ

- 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 Sajjad Hussain Syed-Bukhari against an enforcement notice issued by Slough Borough Council.
 - The enforcement notice was issued on 17 August 2021.
 - The breach of planning control as alleged in the notice is 'The conversion of an outbuilding as shown edged blue, and its use as a self-contained unit of residential accommodation (Unauthorised Use).'
 - The requirements of the notice are:
 - (i) Cease the Unauthorised Use.
 - (ii) Remove the kitchen and shower room from the outbuilding.
 - (iii) Remove the internal walls incorporating the kitchen and the shower room
 - (iv) Remove all plumbing, boiler, and associated pipework in connection to the kitchen and shower room within the outbuilding.
 - (v) 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 six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by:

- The insertion of the words 'Requirement 5 (i)' before the word 'Six' and the insertion of the word 'and' after the word 'effect' and the deletion of the full stop in paragraph 6(i).
- The insertion of the following words after the amended paragraph 6(i) '(ii) Requirements 5 (ii), 5(iii), 5(iv) and 5(v) seven (7) months after the notice takes effect.'

Subject to these variations the appeal is dismissed, and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by Slough Borough Council against Mr Sajjad Hussain Syed-Bukhari. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal was originally lodged on grounds (b), (c), (d), (f) and (g). No grounds of appeal were provided for grounds (b) and (c). The Planning Inspectorate wrote to the appellant on 27 September 2021 confirming that the appellant was not pursuing ground (b), and it was removed as a ground of appeal. The appellant was informed at that time, that unless a response was received the appeal would proceed on grounds (d), (f) and (g) only. No response was received from the appellant. I will therefore consider the appeal on the basis of grounds (d), (f) and (g) only.

Appeal on ground (d)

4. In appealing on ground (d) the burden of proof is firmly on the appellant to demonstrate on the balance of probabilities that the use was lawful through the passage of time when the enforcement notice was issued. This means that the alleged use had continued uninterrupted (apart from *de minimus* spells) for a period of four years before the notice was issued. The material date is therefore 17 August 2017.
5. The appellant has provided two unsigned and undated statements. The first statement states that the outbuilding has been a separate self-contained residential unit for a period in excess of four years. It is also stated that the individual stated to occupy the outbuilding independently is not related to the appellant and that the outbuilding is heated by a boiler which is independent to the main house. The second statement is from an individual who states she has occupied the outbuilding continually and without interruption as an independent residence for a period exceeding 4 years.
6. Unsigned and undated letters are forms of evidence can only be given little or limited weight in considering whether or not the evidential burden is discharged.
7. In this case the Council rely on the signed and dated statement in the application reference Y/15000/001 relating to the appellant's application for prior approval for an extension at the appeal property. In the application form the agent confirmed that the plans and information in that application are true and accurate. The application was dated 15 December 2020. The plans showed a single dwelling with an outbuilding. Nothing on the submitted plans or information indicated the existence of a self-contained dwelling in the outbuilding. This application was refused on 28 June 2021 because there was more than one dwelling house within the curtilage of No 58 and as such it did not benefit from permitted development rights under Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
8. Therefore, there is inconsistency between the current undated and unsigned statements submitted to support the appellant's case in this appeal and the signed and dated documents submitted in support of the earlier prior approval application. In my view, the evidence in support of the occupation of the outbuilding for a continuous period of four years before the service of the enforcement notice, lacks precision and clarity. Moreover, there is no explanation of the contradictory assertion in the 2020 application as part of the the evidence submitted with the appeal.

9. On the basis of the evidence submitted it has not been demonstrated on the balance of probabilities that the outbuilding has been occupied for at least 4 years continuously as a self-contained dwelling. As such, the appeal on ground (d) fails.

Appeal on ground (f)

10. This ground of appeal is that the requirements of the notice are excessive and that lesser steps would overcome the objections. The appellant states that the steps are excessive. The appellant accepts that the requirement (i) to cease the use is necessary to remedy the breach of planning control. However, requirements (ii) to (v), in the appellant's view, do not facilitate the new use as a separate dwelling. He states that all the works undertaken i.e the fittings and fixtures to create the kitchen and shower room, were ancillary to the lawful use of the whole property as a single planning unit. The appellant considers that the requirements (ii) to (v) are therefore excessive
11. The Council consider the requirements are necessary to remedy the breach of planning control as a self-contained dwelling. The purpose of the enforcement notice is to remedy the breach of planning control.
12. It is for the appellant to demonstrate on the balance of probabilities that the kitchen, shower room, boiler etc were installed prior to the material change of use of the outbuilding to a self contained unit of residential accommodation. The appellant has provided no substantiated evidence of when the kitchen, shower room and boiler etc were installed, by whom and how the building was being used and by whom at the time of installation.
13. On the basis of the information available, I consider that the installation of the kitchen, shower room and boiler etc facilitated the material change of use to a self contained unit of residential accommodation, and as such, were integral to and solely for the purpose of facilitating the material change of use. It is therefore appropriate and not excessive that the requirements include the removal of the kitchen, shower room, boiler, internal walls to the kitchen and shower room.
14. I therefore conclude that the requirements of the enforcement notice would not exceed what is necessary to remedy the breach of planning control that has occurred. The appeal on ground (f) fails.

Appeal on ground (g)

15. This ground of appeal is that the time given to comply with the notice is too short. The Council have given six months to comply with the requirements. The appellant considers that it would be reasonable to allow time for the current occupiers to look for alternative accommodation and that a 12 month compliance period would strike the appropriate balance between competing public and private interests so as not to place a disproportionate burden on the appellants or on the occupiers of the outbuilding. He also states that if ground (f) fails the steps required to complete the required works can only be carried out once the occupiers have moved out and an additional 6 months to the aforementioned 12 months would be more appropriate. He is also concerned that the pandemic has affected the housing rental market and local trades availability to comply with the requirements.

16. The requirements of the enforcement notice would result in the occupier losing their home. This would represent a serious interference with the occupiers right to respect for private and family life and the home (Article 8 of the Human Rights Act 1998). Article 8 establishes a right to respect for private and family life and prohibits interference with it by a public body except where it is (1) lawful and (2) necessary in the interests of such matters as public safety, national economic wellbeing, and the protection of health. Article 1 establishes a right to the peaceful enjoyment of a person's possessions and prohibits interference except in the public interest and thus is engaged for both the appellant and the occupier. It does not impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest. The enforcement notice seeks to address the unauthorised use of the outbuilding and is necessary to regulate the use of land.
17. While I note the assertions of the appellant there is no substantiated evidence in relation to the availability of rental accommodation or builders to carry out the works. In my view, six months is a reasonable period for the occupier to look for alternative accommodation. I appreciate that the works to comply with the requirements will take place once the occupier has vacated the outbuilding, which could be earlier than six months. The works associated with removal of the kitchen, shower room, boiler, and walls etc are not onerous and would be likely to take a day or two. However, to enable the works to be carried out after the occupier has left the outbuilding I will allow a further month for compliance with requirements (ii) to (v).
18. Subject to the increase in the compliance period for the later requirements I consider the enforcement notice would be a proportionate interference with the occupiers and landowners rights under Articles 1 and 8. The protection of the public interest cannot be achieved by means that are less interfering of their rights.
19. For the reasons given above I conclude that a reasonable period for compliance would be six months for requirement (i) and seven months for requirements (ii) to (v), and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Hilda Higenbottam

Inspector