



Appeal Decision

Site visit made on 29 November 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH JANUARY 2023

Appeal Ref: APP/J0350/C/21/3288254

Land at 15 Mansel Close, Slough SL2 5UG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Naseem Khan against an enforcement notice issued by Slough Borough Council.
 - The notice, numbered 2020/00732/ENF, was issued on 2 November 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised subdivision of a single-family dwelling house into 3 separate dwellings.
 - The requirements of the notice are to:
 - (i) Cease the use of the property as separate residential dwellings.
 - (ii) Remove any doors, partitions, walls, separations, staircase or obstruction that facilitate the use of the property as 3 dwellings.
 - (iii) Remove any kitchens so that only one kitchen remains for use of all the occupants of the single family dwelling house.
 - (iv) 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 after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Applications for costs

1. An application for costs was made by Slough Borough Council against Mrs Naseem Khan. This application is the subject of a separate decision.

The Notice

2. Before considering the ground of appeal made, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
3. The notice alleges the 'subdivision of a single-family dwelling house into three separate dwellings'. However, part 1 of the notice states that there has been a breach of planning control within paragraph 171A(1)(b) of the 1990 Act, which is failing to comply with any condition or limitation subject to which planning permission has been granted. This is not consistent with the breach alleged, and I have not seen any reference in the evidence to a relevant planning

permission, the conditions of which have not been complied with. Reference to section 171A(1)(b) of the 1990 Act is not, therefore, correct. The notice should refer to section 171A(1)(a), which is the carrying out of development without the required planning permission.

4. Development is defined in section 55(1) of the 1990 Act as including 'the making of any material change in the use of any building or other land'. The Notice clearly relates to the making of a material change of use, yet it does not refer to this in the allegation. I do not, therefore, find the notice sufficiently precise in its reference to the development of land for which planning permission would be required¹. The notice is defective in this respect.
5. Notwithstanding the above, in making her ground (d) appeal, I am satisfied that the appellant has understood that the allegation was intended to refer to a material change of use from one to three dwellings. The necessary corrections would not alter the nature of the breach of planning control alleged. As such, I can correct both part 1 and 3 of the notice without causing any injustice in this case.
6. On a separate matter, the land outlined in red on the enforcement notice plan is occupied by a dwellinghouse and an outbuilding, yet the description of the land to which the notice relates does not refer to buildings, only to land. In the interests of precision and clarity, I will include reference to the buildings in part 2 of the notice.
7. The short form of the land to which the notice relates is given in part 2 of the notice as 'the Land'. This short form will relate to the land and buildings, once the notice is corrected as I intend. Requirement (i) of the notice is not, however, consistent with this as it refers to 'the property'. In the interests of precision and consistency, I will correct requirement (i) of the notice to refer to 'the Land'.
8. Although requirement (i) clearly seeks to remedy the breach of planning control and return the land to its former use as a single dwelling, it could be more precise. By requiring the cessation of the use of the land as more than one dwelling, the recipient of the notice should be in no doubt as to what they are required to do.
9. In making the above-mentioned corrections to part 2 and 5 of the notice, I am satisfied that no injustice would be caused to either party. These corrections would not make the notice more onerous, and are only made in the interests of precision and consistency.

Ground (d)

10. An appeal on ground (d) is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. The starting point for the ground (d) appeal is the date of the breach. In order to succeed, the appellant must show that, prior to the issue of the enforcement notice, the use subject of the notice, once corrected as intended, had been continuous for a period of four

¹ Section 57 of the 1990 Act states that planning permission is required for the carrying out of any development of land.

years beginning with the date of the breach². The relevant date for the ground (d) appeal is, therefore, 2 November 2017.

11. In a ground (d) appeal, the burden of proof is on the appellant and the test of the evidence is the balance of probability. In this regard, the appellant has made a brief statement in her appeal form to say that the breach of planning control in this case occurred more than 10 years ago. She has not, however, provided a date of the breach (i.e. said when the material change of use occurred, other than it being more than 10 years ago). Neither has she provided precise and unambiguous evidence to demonstrate that the use of the appeal site as three dwellings had been continuous for a period of four years beginning with that date.
12. The appellant says that evidence has been collected and will be provided, including lodgers agreements, dated letters and the electoral roll. She has not, however, supported her ground (d) appeal with this evidence.
13. To support its case the Council has provided evidence which relates to the four years directly prior to the issue of the enforcement notice. I note the extract of the Government's Valuation Office Agency's records, which states the address of the property as 15 Mansel Close and gives the Council tax band of the property with effect from 27 April 2009. The Council say that its listing as a single family dwelling house is consistent with the Council Tax payments and records. The Council has also provided the names of those individuals on the electoral roll at 15 Mansel Close for the years 2017 to 2021.
14. It could be suggested that the use of the appeal site as three dwellings might result in a listing in the above-mentioned records for No.15, as noted by the Council, with there also being a separate listing for the two other dwellings at the appeal site; say 15a Mansel Close and 15b Mansel Close. It would have been helpful for the Council to have clarified that the extracts provided in its evidence are the **only** Valuation Office Agency's records and electoral roll records for the appeal site; i.e. that there are no other records that relate to any other addresses for the land and buildings at the appeal site.
15. Nevertheless, the records refer only to 15 Mansel Close, suggesting that they relate to the whole of the appeal site, rather than part of it. Other than the appellant's limited statement in her appeal form, there is no other evidence before me to demonstrate that there are separate Valuation Office Agency and electoral roll records for the appeal site that relate to the other two dwellings.
16. Whilst there may be additional individuals, other than the appellant, listed on the electoral roll records, this does not assist the appellant in her case. The Council say that these records relate to the 15 Mansel Close address. Those listed would, therefore, have been resident together at the address given as 15 Mansel Close for the purposes of the electoral roll. There is nothing before me to suggest that any of those listed were residents of another dwelling with a different address at the appeal site.
17. All things considered, the appellant has failed to discharge the burden of proof that is upon her in this case. There is insufficient evidence before me to demonstrate that, on the balance of probability, prior to the issue of the enforcement notice, the use of the appeal site as three separate dwellings had

² In accordance with section 171B (3) of the 1990 Act.

been continuous for a period of four years beginning with the date of the breach. For these reasons, the ground (d) appeal should fail.

Conclusion

18. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decision

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

- The deletion in part 1 of the reference '(b)' and its substitution with the reference '(a)';
- The insertion in part 2 of the words 'and buildings' between the words 'Land' and 'at 15 Mansel Close';
- The deletion in part 3 of the words 'the unauthorised subdivision of a single-family dwellinghouse into' and their substitution with the words 'the material change of use of the Land from a single dwelling to'; and
- The deletion of the words 'property as separate residential dwellings' and their substitution with the words 'Land as more than one dwelling'.

20. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

J Moss

INSPECTOR