
Appeal Decisions

Site visit made on 4 April 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2023

Appeal A Ref: APP/J0350/C/21/3289293

Appeal B Ref: APP/J0350/C/21/3289294

32 Furnival Avenue, Slough SL2 1DW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Surjit Singh against an enforcement notice issued by Slough Borough Council ('the Notice').
 - Appeal B is made by Ms Kamal Kaur against an enforcement notice issued by Slough Borough Council. ('the Notice')
 - The enforcement notice, numbered 2020/00713/ENF, was issued on 22 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised construction of the outbuilding and its use as a self-contained dwelling as shown with a solid green line on the annexed plan ("The Unauthorised Development").
 - The requirements of the notice are: a) Demolish the outbuilding (as outlined in green on the annexed plan); and b) 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)(b) and (f) of the Town and Country Planning Act 1990 as amended
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Decisions

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

Adding the words "or by making the development comply with the terms of planning permission P/18017/000" between the words "(as outlined in green on the annexed plan)" and the words "; and" at the end of paragraph a) of Section 5 of the Notice, 'What you are required to do'.

Subject to the variation, the appeals are dismissed and the enforcement notice is upheld.

Procedural Matter

2. As the result of some confusion regarding the site visit, I undertook this on the basis of an Access Required Site Visit (ARSV). The Council's representative met me as I was leaving the property; I explained what had happened and he confirmed that he had no objection to the ARSV.

Reasons

3. 32 Furnival Avenue ('No 32') is a semi-detached property on a street of similar properties. A path at the side of No 32 leads to its fairly long rear garden, towards the end of which there are two outbuildings. The Notice relates to the outbuilding that is furthest from the house. At the time of my site visit, this was set out as a dwellinghouse, having been sub-divided to create a bathroom, kitchen-living room and two other rooms, one of which had beds in it and the other had exercise equipment.

Ground (b)

4. An appeal under Ground (b) is made on the basis that the breach of planning control alleged in the Notice has not occurred. This is a legal ground of appeal where it is for the Appellants to make their case on the balance of probability.
5. Planning permission¹ was granted for the construction of a rear outbuilding for use as a gym and store incidental to the existing dwelling on 11 May 2020. The Appellants state that the building allowed under that scheme was in the same position as the appeal building and would have had the same external dimensions. This is not countered by the Council, so I take it to be the case. There are, however, differences externally, in respect of the position and number of windows and the position of the access door. Internally, the approved scheme allowed for a building that was largely open, save for a small room housing a shower and wc; what has been built is markedly different.
6. Whether the external changes to the building might have been treated as a non-material amendment to the scheme by the Council, as put forward by the Appellant, is academic as no application under s96A of the Act was made.
7. The Appellants claim that the wording of the Notice is such that it alleges the erection of an outbuilding, which, by extension, would have been incidental to the use of the main dwelling, and that it further alleges a subsequent change of use to a self-contained dwelling.
8. The Appellant claims that the building was completed in June 2021 and that the kitchen was then added in July 2021. Thus, it was not, they claim, built as a separate dwellinghouse but "the starting point of the consideration [of the appeal] is the change of use to a self-contained dwelling rather than being built as a separate dwelling".
9. I do not read the use of the word 'and' in the Notice's allegation as introducing two distinct and separate elements of development. Rather, I read this as the Council enforcing against the erection of an unauthorised building for residential purposes separate from the use of No 32.
10. It is for the Appellants to make their case on the balance of probability. Where the Council has no evidence of its own, the Appellants' case has to be precise and unambiguous. In the absence of such things as receipts, contemporaneous photographs or evidence from tradespeople, I find that the scant evidence put forward in respect of the Appellants' asserted timetable of events does not reach that threshold.

¹ Council reference P/18017/000

11. The layout of the windows and door serving the building was to my mind clearly designed to accommodate the kitchen that has been installed and, therefore, to facilitate the residential use of the building. Given this, and that the period between the completion of the building and the installation of the kitchen, set out by the Appellants, is so short, I find it to have been a single operation.
12. That finding is given additional weight by the 'Facebook Market Place' advertisement that the Council has drawn to my attention. This, it states, dates from 7 June 2021, which is not challenged by the Appellants. I have no doubt that what is shown in the advertisement is the appeal property. Although, as the Appellants say, this is not evidence of the actual use of the property, it does, to my mind, support the contention that the building was built as a self-contained unit.
13. The Appellants make reference to case law² in respect of the 'tests' to be applied when assessing whether an outbuilding is being put to a use ancillary to that of a dwellinghouse. They have not provided me with copies of the cases, though they are well-known. They have also supplied me with four decisions³ from Inspectors where planning permission was granted for self-contained units, with kitchens and bathrooms, for purposes ancillary to the use of the main dwelling.
14. I agree with the positions reached by those Inspectors that, whilst an outbuilding might have the facilities to be used as a self-contained dwelling, it is the manner of their use that is definitive in whether it is ancillary or not. What the decisions show is that each decision has to be made on its own merits, based on their individual circumstances.
15. The Appellants' assert that the accommodation was used by relatives in the summer of 2021, in a manner ancillary to the use of No 32. The Council has provided no evidence to the contrary. However, I have been provided with no evidence of who those people were or how long they stayed; nor, most importantly, was I provided with details of how they used the building and how this related to the use of No 32. Similarly, scant evidence has been given in respect of the use of the building by the property owner, due to the constraints of the kitchen in the main house. As a result, it has not been demonstrated precisely and unambiguously that their use of the building was ancillary to No 32.
16. The Appellants refer to the *Burdle*⁴ case, that sets out the key concepts of functional and physical separation in identifying a planning unit. It is for the Appellants to demonstrate that there was, at the time the Notice was issued, a single planning unit, and I find that this has not been done. Functionally, it has not been demonstrated on the balance of probability that there has not been a separate residential use. Whilst its occupants would share a path down the garden to access the appeal building, the Appellants have failed to demonstrate that it is used as part of No 32 and not as a separate planning unit.

² *Uttlesford DC v SSE & White* [1992] JPL 171. *Whitehead v SOS and Mole Valley DC* [1992] JPL 171.

³ APP/B0320/D/20/3248323; APP/W1145/W/17/3190326; APP/L3815/C/16/3158037 AND 3161113; and APP/Y9507/D/15/3136599

⁴ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

17. Thus, the Appellants' case that the starting point of my assessment should be the change of use of the outbuilding to a self-contained dwelling has not been demonstrated. Therefore, their arguments that arise from this are not material.
18. Although my reasoning leads me to find that there has been a breach of planning control, I do not find that there has been deception in the manner of the *Beesley*⁵ and *Fidler*⁶ cases, as claimed by the Council. The evidence does not point to the long-term planning and choreography of those cases.
19. For the above reasons, I find that the Appellant has failed to demonstrate, on the balance of probability, that the breach of planning control has not occurred. Therefore, the Ground (b) case fails.

Ground (f)

20. An appeal under Ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, it is clear that the purpose of the Notice is to remedy the breach of planning control.
21. Where, as here, there is no Ground (a) appeal and the purpose of the Notice is to remedy the breach of planning control, any lesser step that would not remedy the breach cannot be accepted through Ground (f).
22. The Appellants suggest the amendment of requirement a) of section 5 of the Notice, allowing the retention of the building in its present form, subject to its use being restricted to purposes ancillary to that of No 32. However, this would not accord with the terms of s173(4)(a). It sets out the following options in order to remedy the breach of planning control: making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
23. I have to have regard to the judgement in *Tapecrown*⁷, which emphasised that any "obvious alternative" to full demolition which would overcome "the planning difficulties at less cost and disruption than total removal" should be considered. Here, as the decision to grant planning permission for application P/18017/000 was made on 11 May 2020, it is still extant. The evidence before me shows that the siting and external dimensions of the building that has been built accord with those of the building that was approved. Thus, the Council has accepted that a building of this form is acceptable on the land. There are differences in terms of the external design and internal layout that I have discussed, above. However, in the circumstances I can vary the first of the requirements in section 5 of the Notice, by adding the option of complying with planning permission P/18017/000 to the first requirement of demolishing the building. I will leave the second requirement in place, as this is necessary whichever option is taken.
24. The appeals under Ground (f) succeed to this limited extent

⁵ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15,

⁶ *R (oao Fidler) v SSCLG & Reigate and Banstead BC* [2011] EWCA Civ 1159

⁷ *Tapecrown Ltd v First Secretary of State and Anr* [2006] EWCA Civ 1744

Conclusion

25. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation.

Roy Curnow

Inspector