
Appeal Decision

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 Ref: APP/J0350/C/21/3288772

48 Furnival Avenue, Slough SL2 1DW

- 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 Mrs Kaur Bahia against an enforcement notice issued by Slough Borough Council.
 - The enforcement notice, numbered 2020/00418/ENF, was issued on 12 November 2021.
 - The breach of planning control as alleged in the notice is the conversion of the Outbuilding ("Unauthorised Development") as shown edged in green on the Plan, and its use as a self-contained dwelling ("Unauthorised Development").
 - The requirements of the notice are: a) Cease the use of the Outbuilding as a self-contained unit of residential accommodation; b) Remove the kitchen and shower room from the Outbuilding; c) Remove the internal walls incorporating the shower room and the bedrooms; d) Remove all plumbing, boiler and associated pipework in connection to the kitchen and shower room within the Outbuilding; e) Remove the fence panels creating the sub-division of the land; and f) 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)(f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

the deletion of the words "and shower room" in requirement b) of section 5 of the Notice 'What you are required to do'; deletion of the words "the shower room and" from requirement c) in that section of the Notice; and remove the words "and shower room" in that section's requirement d).

2. Subject to the variations, the enforcement notice is upheld.

Application for costs

3. An application for costs was made by Slough Borough Council against Mrs Kaur Bahia. This application is the subject of a separate Decision.

Reasons

4. An appeal made under Ground (f) is that 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. It is clear that the purpose of the Notice is to remedy the breach of planning control.

5. 48 Furnival Avenue is a two-storey semi-detached house set back from the road behind a front garden, in a street of similar properties. To its rear it has a fairly long garden, at the end of which lies the single-storey outbuilding, which is the subject of this appeal.
6. The Appellant states that the outbuilding was built with planning permission¹; the only small difference being internal changes that were made after the construction of the building. However, the building given permission by the Council was of a different design and its intended use was as a gym/games room and store, with a small toilet and shower room. Save for the shower room being in much the same position, its internal layout is quite different. It has a kitchen-living-dining area, a bedroom and a utility room and is a self-contained dwellinghouse.
7. A Ground (f) appeal cannot be used as a vehicle to obtain planning permission for a breach of planning control, unless made in conjunction with a Ground (a) appeal. Here, therefore, any arguments relating to the planning merits of the case cannot be taken into account. The arguments put forward in respect of issues such as: the effect on the occupiers of the building; the Appellant's agreement to pay any additional fees and Council taxes; that the height of the building is correct; that the use of the outbuilding and the access is not unneighbourly; that there is minimal effect on the surrounding environment; that the development accords with planning policies; and that there are benefits to the Appellant, cannot be taken into account.
8. The Appellant states that, instead of removing "the kitchen, shower, garden and piping equipments", she would be happy to keep the existing use and "register it". I take this latter point to mean gain planning permission for the use. As I have set out, I cannot grant planning permission for the use in this Ground (f) appeal.
9. Settled case law has determined that a Notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use. This was a factor in the appeal decision² at 61 London Road, Slough, put forward by the Council. The question here is whether the various elements listed in requirements b) to e), inclusive, of the Notice were integral to and solely for the purpose of facilitating the unauthorised use.
10. Although a shower room was allowed in the approved scheme, taken overall, I find that the one created in the building was part of the works undertaken for purposes integral to and solely for the purpose of facilitating its unauthorised use. Notwithstanding this, I am aware of the findings in the *Tapecrow*³ case, that an Inspector should bear in mind that the enforcement procedure is intended to be remedial rather than punitive. Given this, as the Council allowed a similar shower room originally, I will vary the terms of the Notice to remove reference to the shower room in requirements b), c) and d).

¹ Council reference - P/16098/002

² PINS Reference - APP/J0350/C/17/3183334

³ *Tapecrow Ltd v FSS & Vale of White Horse DC* [2006] EWCA Civ 1744

11. Therefore, the Ground (f) appeal succeeds to a limited degree.

'Hidden' Ground (g)

12. The Appellant refers to the problems that the building's occupants would have finding alternative accommodation straight away. This is an argument that is better made under Ground (g). As this point was made in the Appellant's statement of case, the Council had the opportunity to reply on the point. Therefore, dealing with it as a hidden Ground (g) appeal would not result in injustice.

13. The occupant of the dwelling would not have to find accommodation "straight away", as the Notice allows for 6 months to comply with its requirements. I have been given no details of the occupants having any particular need, nor have I been given any reasoning as to why 6 months is not sufficient time to comply with the requirements. I, therefore, find against the Ground (g) appeal.

Conclusion

14. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it.

Roy Curnow

Inspector