



Appeal Decision

Site visit made on 31 May 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd JUNE 2023

Appeal Ref: APP/J0350/C/22/3294542

Land at 5 Essex Avenue, Slough SL2 1DP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Rukhsana Shaheen against an enforcement notice issued by Slough Borough Council.
 - The notice was issued on 10 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission: The unauthorised construction of single-storey front extension (edged in yellow on the plan attached to the notice), single storey side extension (edged in purple), additional single-storey rear extension (edged in green) and conversion of outbuilding to form a self-contained dwelling (edged in blue).
 - The requirements of the notice are: (i) Demolish the front extension, the side extension and the additional single storey rear extension and make good the external walls of the main dwelling house as appropriate. (ii) Remove the kitchen and associated pipework in connection to the kitchen within the outbuilding. (iii) 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: (i) Four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
-

Decision

1. It is directed that the enforcement notice be corrected by:
 - In paragraph 3 deleting 'and conversion of outbuilding to form a self-contained dwelling (edged in blue)'.
 - In paragraph 5, step (i) deleting the second line of the sentence from 'make good...' onwards and inserting the following text: '...restore the external walls of the dwelling to their condition prior to the breach taking place'.
 - Deleting step (ii) with the consequential renumbering of step (iii) to step (ii).

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

Preliminary Matters

2. The requirement in step (i) of the enforcement notice to 'make good the external walls of the main dwelling house as appropriate' does not specify with sufficient precision what the appellant is required to do in order to achieve compliance with the notice and risks uncertainty. I shall therefore exercise the

power in s176 (1) of the Act to correct any defect, error or misdescription in the notice or to vary its terms, by requiring the external walls of the dwelling to be restored to their condition prior to the alleged breach taking place. This would provide a sufficient level of certainty, the appellant being in the best position to know what the condition of the dwelling was prior to the alleged breach. There would be no injustice to the appellant or the Council.

3. No compliance period for the requirements other than in respect of step (i) was specified in the notice. However, I shall not correct the notice to insert a period for compliance in respect of the other steps. Such a correction would make the notice more onerous and so would cause injustice to the appellant.
4. Planning merits considerations relating to the matters alleged in the notice are not before me in this appeal, as there is no deemed planning application arising from an appeal on ground (a) and the relevant fee has not been paid.

Ground (b) appeal

5. The ground of appeal is that the matters alleged in the notice have not in fact occurred. It is for the appellant to show why their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.
6. The appeal property contains a two-storey semi-detached dwelling. A flat roofed single storey enlargement is at the rear of the dwelling and a flat roofed freestanding outbuilding is located towards the end of the rear garden. The rear enlargement followed a prior approval determination in November 2013¹, planning permission being granted for the outbuilding in August 2015².
7. Single storey extensions have been erected at the front and side of the dwelling, with an additional single storey extension erected at the rear of the previous enlargement. These extensions are in the approximate positions shown on the notice plan. Therefore, as far as the extensions are concerned, the matters alleged in the notice have occurred.
8. The notice goes on to allege the conversion of the outbuilding to a self-contained dwelling. The Council stated that during a visit to the property in September 2020, the outbuilding contained a kitchen and a bathroom, such facilities still being present at a subsequent visit in September 2021. Nevertheless, the presence in the outbuilding of the facilities required for independent day-to-day living does not necessarily mean that there has been a material change of use to a self-contained dwelling; it would be a matter of fact and degree. No material change of use would occur where a separate building containing living accommodation forms part of the same residential planning unit as a dwelling, provided the planning unit remains in single family occupation and continues to function as a single household.
9. The appellant explained that the outbuilding had been used by members of the family occupying the main dwelling whilst isolating with COVID-19 symptoms during the pandemic. It is not unreasonable to infer from this explanation, in the absence of evidence to the contrary, that occupiers of the outbuilding would have been dependent on and would have continued to share their living activity in company with other family members in the main dwelling. Such a situation is not dissimilar to that of a residential annexe, which would normally be regarded as part and parcel of the main dwellinghouse use. Whilst I acknowledge the difficulty associated with investigating alleged breaches of planning control during the pandemic, for its part the Council seem to have made little attempt to establish matters pertinent to the use of the outbuilding,

¹ Council Ref: Y/15609/000.

² Council Ref: P/15609/001.

including for example the basis on which it was occupied, who occupied it and when.

10. During the visit, I saw that the outbuilding is being used for domestic storage associated with the dwelling. The kitchen worktop surface and adjacent floorspace was almost completely covered with stored items. It was evident that the outbuilding had not been used as living accommodation for some time. Use of the outbuilding for storage purposes is also depicted in photographs dating from around the time the appeal was made. That the outbuilding is no longer in use as living accommodation following the waning in severity of the pandemic increases the plausibility of the appellant's explanation.
11. Therefore, as a matter of fact and degree, on the balance of probability and given the absence of evidence to contradict or cast doubt on the explanation offered by the appellant, I am satisfied that the alleged conversion of the outbuilding to a self-contained dwelling has not, in fact, occurred.
12. As a consequence of the above findings the ground (b) appeal succeeds in part only, i.e., that part relating to the conversion of the outbuilding to a self-contained dwelling. Otherwise, the appeal on this ground fails in relation to the extensions. Therefore, it is necessary to correct the notice by deleting the part of the allegation relating to the conversion of the outbuilding to a self-contained dwelling. As part of this correction, it is subsequently necessary to delete and revise the requirements of the notice accordingly. The effect of these actions is that the allegation is narrowed down to the extensions.

Ground (d) appeal

13. The ground of appeal is that it was too late to take enforcement action against the matters alleged in the notice. The appellant also has to show why their appeal on this ground should succeed, applying the same standard of proof as set out above.
14. The effect of s171B (1) of the Act is that where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which those operations were substantially completed. The appellant accepted that the front and side extensions had been substantially completed no earlier than June 2020, i.e., less than four years before the notice was issued. Therefore, the ground (d) appeal cannot succeed for those extensions in any event.
15. The appellant claimed that the additional rear extension was erected shortly after the outbuilding in 2015, to provide an additional WC facility. However, little evidence was provided to support this proposition. The photographs of receipts for building materials purchased in late 2015 could relate to other building works at the property, such as erecting the rear enlargement and/or the outbuilding. Also, as the receipts do not show a delivery address, they could just as easily relate to works undertaken elsewhere. Accordingly, the appellant's evidence is neither precise nor unambiguous and it can only be given limited weight.
16. The Council supplied copies of aerial photographs of the property sourced from Google Earth. These included images purporting to date from June 2018 and April 2020, in which the rear enlargement is shown but the additional rear extension is not. In an image purporting to date from July 2021 however, the additional rear extension is in situ. Although the dates of the photographs are not verified, the clear inference that can be drawn is that the additional rear extension was in all likelihood substantially completed sometime after April 2020-i.e., less than four years before the notice was issued. The aerial

photography evidence therefore casts significant doubt on the appellant's claim.

17. Consequently, on the balance of probability the appellant has been unable to show that the extensions were substantially completed more than four years before the notice was issued. The available evidence suggests otherwise. It follows that the extensions are not immune from enforcement action.

18. The ground (d) appeal fails.

Ground (f) appeal

19. The ground of appeal is that the requirements of the notice are excessive.

20. An enforcement notice can have the purpose of remedying the breach of planning control, including by restoring land to its condition before the breach took place as provided by s173(4)(a) of the Act, or it can remedy any injury to amenity which has been caused by the breach as provided by s173(4)(b).

21. The notice requires nothing less than the demolition of the unauthorised extensions. Therefore, although the notice does not state as such, its purpose must be to remedy the breach of planning control by restoring the property to its condition prior to the breach taking place.

22. The appellant did not make a definitive case in relation to ground (f). Any step that stopped short of requiring the removal of the extensions would sustain the breach and would not restore the property to its pre-breach condition. This would not achieve the purpose of the notice. There are no obvious alternatives to the notice requirements that would still remedy the breach.

23. Consequently, the notice requirements are not excessive, they are a proportionate remedy involving the minimum works necessary to restore the property to its condition before the breach took place.

24. The ground (f) appeal also fails.

Conclusion

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

Stephen Hawkins

INSPECTOR