



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/22/3293726

Land at 118 Hawthorne Crescent, Slough SL1 3NQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Javid Iqbal Rashid against an enforcement notice issued by Slough Borough Council.
 - The notice was issued on 21 January 2022.
 - The breach of planning control as alleged in the notice is 1. The unauthorised construction of a single-storey rear extension (as outlined in green on the plan attached to the notice) ('the unauthorised rear extension'). 2. The unauthorised use of the single storey side extension as a self-contained unit of residential accommodation ('the unauthorised use of the side extension'). 3. The unauthorised use of the outbuilding (outlined in blue on the notice plan) as a separate dwelling ('the unauthorised use of the outbuilding').
 - The requirements of the notice are: 1. Cease the unauthorised use of the outbuilding as a separate dwelling. 2. Remove the kitchen and shower room from the outbuilding. 3. Remove the internal walls incorporating the kitchen and the shower room within the outbuilding. 4. Remove all plumbing, boiler and associated pipework in connection to the kitchen and shower room within the outbuilding. 5. Cease the unauthorised use of the side extension as a self-contained unit of residential accommodation. 6. Remove the kitchen and shower room from the side extension. 7. Create an opening between the side extension and the main dwelling house as per the approved plans pursuant to planning permission (reference P/13833/001). 8. Demolish the single storey rear extension in its entirety. 9. Remove from the land all materials, rubbish, debris, plant and machinery resulting from compliance with the above requirement.
 - 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) 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.
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Decision

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

- In paragraph 3 deleting item 2 with the consequential renumbering of item 3 to item 2.
- In paragraph 5, deleting steps 5,6 and 7 with the consequential renumbering of steps 8 and 9 to steps 5 and 6.

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

Ground (b) appeal

2. The ground of appeal is that the matters alleged in the enforcement notice have not in fact occurred. It is for the appellant to show why their appeal on this ground should succeed, the relevant test of the evidence being on the balance of probability.
3. The appeal property contains a semi-detached dwelling. A single storey extension was erected at the side of the dwelling following planning permission granted in August 2008¹. A single storey extension has also been erected at the rear of the dwelling. In addition, a freestanding outbuilding is situated towards the end of the rear garden. My understanding is that the appeal on this ground is limited to the alleged use of the side extension as a self-contained unit of residential accommodation. The appellant supplied little to suggest that the use of the outbuilding as a separate dwelling and/or erection of the rear extension were also disputed.
4. According to the Council, the side extension was self-contained and being used independently during a visit to the property in December 2020. As further details of the Council's investigation were not supplied, the basis on which that conclusion was reached is unclear. During my visit, I saw that in addition to the bathroom and WC shown on the approved drawings a kitchen worktop with a sink and drainer had been installed, together with cooking facilities. Various appliances including a washing machine and fridge/freezer had also been fitted. Even so, the presence in the side extension of the facilities required for independent day-to-day living does not necessarily mean that a material change of use to a separate self-contained dwelling has occurred; it would be a matter of fact and degree. There would be no material change of use where the living accommodation forms part of the same residential planning unit as the dwelling, provided the planning unit remains in single family occupation and continues to function as a single household.
5. According to the appellant, the side extension was occupied by a close relative, as part of the family occupying the rest of the dwelling. I acknowledge the difficulty associated with investigating alleged breaches of planning control during the pandemic. Even so, the Council seem to have made little attempt to document the extent of any physical separation between the dwelling and the side extension. Nor was the extent of any functional separation assessed, for example by establishing the basis on which the side extension has been occupied, including the identity of occupiers and whether there was a formal tenancy or licence. As Council Tax is governed by different legislation, a separate rating for Council Tax does not necessarily equate to use of the side extension as a separate dwelling for planning purposes. It is not unreasonable to infer from the appellant's explanation, in the absence of evidence to the contrary, that the occupier of the side extension would have been sharing their living activity in company with other family members in the rest of the 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.
6. During the visit, I also saw that there was an internal door opening linking the side extension to the rest of the dwelling. The position of the opening is not markedly different to that shown on the approved drawings for the side extension. It is therefore possible to pass between the side extension and the

¹ Council Ref: P/13833/001.

rest of the dwelling with relative ease. The opening is also shown in photographs dated 15 February 2022, supplied by the appellant. There is little to indicate that the opening does not date from around the time that the side extension was erected. In itself, an absence of physical separation between the side extension and the rest of the dwelling is not determinative. However, taken together with the explanation offered by the appellant it points towards the whole building as having formed part of the same residential planning unit.

7. 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 at the time the notice was served the use of the side extension as self-contained accommodation had not, in fact, occurred.
8. As a consequence of the above findings the ground (b) appeal succeeds in part only, i.e., that part relating to the alleged use of the side extension as self-contained accommodation. Otherwise, the appeal on this ground fails in relation to the erection of the rear extension and use of the outbuilding as a separate dwelling. Therefore, it is necessary to correct the notice by deleting the part of the allegation relating to the use of the side extension as self-contained accommodation. 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 erection of the rear extension and use of the outbuilding as a separate dwelling. Those matters will be assessed in relation to the other grounds of appeal.

Ground (c) appeal

9. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. It is also for the appellant to show why their appeal on this ground should succeed, applying the same evidential standard as set out above.
10. Erecting the rear extension has involved the undertaking of building operations and therefore amounts to 'development' as defined in s55 (1) of the 1990 Act. Use of the outbuilding as a separate dwelling has involved the making of a material change of use, also falling within the statutory definition of development. Planning permission is required for the carrying out of any development of land, having regard to s57 (1) of the 1990 Act.
11. No grant of planning permission for erecting the rear extension, either expressly or pursuant to the GPDO², was drawn to my attention. Furthermore, no express grant of planning permission for the use of the outbuilding as a separate dwelling was drawn to my attention. At s171A (1)(a), the 1990 Act defines a breach of planning control as carrying out development without the required planning permission.
12. Accordingly, on the balance of probability the above matters constitute a breach of planning control. The appellant has been unable to show otherwise. The ground (c) appeal fails.

² The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

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 requirement for the appellant to show why the appeal should succeed on this ground and the standard of proof are the same as in the above grounds.
14. The effect of s171B (1) of the 1990 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 time limit for taking enforcement action at s171B (2) of the 1990 Act where the breach of planning control is the change of use of a building to use as a single dwelling is four years beginning with the date of the breach.
15. The appellant supplied little evidence to show that the rear extension was substantially completed more than four years prior to the issue of the notice. The occupier of a neighbouring property stated that the rear extension had been erected on 1 June 2014. I do not doubt that the neighbour believes their statement to be a true record of events at the property. Even so, I cannot be assured of the accuracy of their recollections given that the statement was prepared for the purpose of this appeal many years after the events in question took place. The neighbour offered little explanation as to why their recollection of the exact date of a seemingly innocuous event was so precise, notwithstanding the passage of several years. For example, there was no suggestion that they had had a part in erecting the rear extension or that its erection corresponded with a momentous family or other event. Moreover, the neighbour's statement is not sworn. Therefore, the statement has limited evidential value and I attach weight to it accordingly.
16. During my visit, I saw that in the outbuilding a bathroom and WC and a kitchen worktop with a sink and drainer had been installed as well as cooking facilities. Various appliances including a washing machine and fridge/freezer, had also been fitted. In their statement, the neighbour recalled that a kitchen, the associated pipework and internal walls had been in situ when they visited on 7 December 2009. However, my reservations concerning the evidential value of their statement are set out above. In any event, in themselves such works are not conclusive of the use of the outbuilding as a separate dwelling, or of the outbuilding having been continually used as such for a period of more than four years prior to the notice being issued.
17. Documents supplied by the appellant provide little by way of clear and compelling evidence to show that the use of the outbuilding as a separate dwelling had been continuous for a period of more than four years prior to the issuing of the notice. The Building Control completion certificate dating from February 2010 clearly relates to the side extension. The Domestic Electrical Installation Certificate dated December 2009 also probably relates to the side extension, whilst the Building Regulations compliance certificate dating from December 2014 does not state exactly where in the property the gas boiler was installed. The Council Tax bills could be for the side extension, they do not relate to a continuous period of more than four years and they are not determinative of use as a separate dwelling in any event.

18. Consequently, on the balance of probability the appellant has been unable to produce sufficiently clear and precise evidence to show that the rear extension was substantially completed more than four years before the notice was issued and/or that the use of the outbuilding as a separate dwelling began more than four years before the date of the notice and was continuous thereafter. It follows that neither the rear extension nor the use of the outbuilding as a separate dwelling are immune from enforcement action.

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 1990 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 rear extension, the cessation of the unauthorised use of the outbuilding as a separate dwelling and the removal of the works, including the kitchen and shower room, which facilitate that use. 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 made no definitive case in relation to ground (f). Any step that stopped short of requiring removal of the rear extension, cessation of the use of the outbuilding as a separate dwelling and removal of the works facilitating that use would sustain the breach and so would not restore the property to its condition prior to the breach taking place. 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 remedial steps 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