

Appeal Decision

Site visit made on 29 August 2023

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date 06 November 2023

Appeal Ref: APP/J0350/C/22/3303574

Land at 23 Kent Avenue, Slough SL1 3AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended. The appeal is made by Mr Ahsan Ulah against an enforcement notice issued by Slough Borough Council.
 - The notice was issued on 14 July 2022.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of an outbuilding to form a self-contained dwelling and facilitating works at Land in the approximate location shown edged blue on the Plan.
 - The requirements of the notice are:
 1. Cease the use of the outbuilding as self-contained unit of residential accommodation.
 2. Remove the kitchen and shower room from the outbuilding.
 3. Remove the internal walls incorporating the shower room.
 4. Remove all plumbing and associated pipework in connection to the kitchen and shower room within the outbuilding.
 5. 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: 5 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appeal form did not indicate the appeal was sought under ground (b), that those matters stated in the notice have not occurred. However, the appellant's evidence put forward the case that the building was not in use solely as a self contained dwelling.
2. The appeal form did also not indicate that the appeal was sought under ground (f), 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. Nevertheless, the appellant raises concerns over the removal of the kitchen.
3. The Council has had opportunity to comment on the evidence relevant to these grounds of appeal, and I am therefore satisfied that no injustice would be caused by considering the appeal under ground (b) and (f).

The Enforcement Notice

4. During the course of the appeal, planning permission was granted at the appeal building¹ described as 'part retrospective application for a rear outbuilding for use as a bedroom/gym'. The Council subsequently varied the notice under Section 173A(1)(b) of the 1990 Act. The relevant parties were notified, and the appellant had opportunity to comment on the changes and therefore there has been no injustice caused by this. It varied the notice by deleting 'and the shower room' from paragraph 5. 2), all of paragraph 5. 3) 'remove the internal walls incorporating the shower room', and the words 'and shower room from paragraph 5. 4) of the notice.
5. Paragraph 3. of the notice referred to a 'self contained dwelling', whereas the requirement under paragraph 5. 1) stated 'self contained unit of residential accommodation'. In the interest of clarity and precision, I shall delete 'unit of residential accommodation' from paragraph 5. 1) and insert 'dwelling'.
6. I am satisfied that the variation will not cause injustice to the appellant or the local planning authority.

Reasons

The appeal on ground (b)

7. The appellant indicates that the building subject to the notice was partly in use as an office associated with 23 Kent Avenue as well as being used as a separate dwelling. Whatever the original purpose of the building, there is no clear evidence before me that there was any office use at the time of the notice being issued. Moreover, at the time of my site visit there was no apparent office element. Therefore, those matters stated in the notice have occurred and the appeal fails on ground (b).

The appeal on ground (a) and the deemed application

8. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. With a ground (a) it is incumbent on me to consider whether planning permission should be granted for the whole or part of the matters stated in the notice in accordance with Section 177(1) of the Act.

Main Issues

9. The main issues are:
 - the effect of the development on the character and appearance of the area,
 - whether the development provides appropriate living conditions for occupiers of the appeal building with particular regard to outlook, internal and external space and privacy,
 - the effect of the development on the living conditions of nearby occupiers with particular regard to privacy, noise and disturbance; and
 - the effect of the development on highway safety, with particular regard to car parking and cycle storage facilities.

¹ P/19907/000

Reasons

Character and appearance

10. Kent Avenue and the surrounding streets are characterised by linear frontage properties that address the street with their main garden space to the rear. This gives a pleasing consistency to the pattern of development and spaciousness between properties. While there are outbuildings of a comparable size in the street, no examples of any dwellings located behind the frontage properties nearby and with no outdoor space, like the appeal scheme, have been put to me. The appeal scheme unfavourably contrasts with, and erodes, the prevailing pattern of development in the area having led to a cramped appearance and discordant layout.
11. Therefore, the development has significantly harmed the character and appearance of the area. It is contrary to Policies EN1, H13 of The Local Plan for Slough (Local Plan) and Saved Core Policies 1, 4 and 8 of the Slough Local Development Framework Core Strategy (Core Strategy). These in part seek developments to be compatible, in keeping with, and related to their surroundings and prevent over development.

Living conditions - Occupiers of the appeal building

12. There is limited internal space at the appeal building and no outdoor space associated with it. This has led to a cramped and uncomfortable living environment for the occupiers.
13. The only windows in the building face 23 Kent Avenue (No 23) which is only a short distance away. As a result, No 23 dominates the outlook from the windows giving an uninviting and oppressive outlook from them.
14. As the garden of No 23 extends up to the appeal building, there are direct close range views into the rooms of the building meaning insufficient privacy is provided for occupiers of it.
15. Consequently, the development significantly fails to provide appropriate living conditions for occupiers of the appeal building with regard to outlook, internal and external space and privacy. It is contrary to Policies H13, H14 of the Local Plan and Core Policy 8 of the Core Strategy where they require appropriate and quality amenity space, as well as seek to prevent loss of privacy.

Living conditions – nearby occupiers

16. At my visit, while only a snapshot in time, I found the rear garden areas at and near the site to be relatively private and quiet spaces. To access the appeal building occupiers or visitors have to pass close to the side of No 23 and then through its garden. The comings and goings associated from a separate dwelling is untypical in this position and creates unacceptable noise and disturbance to the rear of No 23.
17. Given the presence of boundary treatments and that the only openings are on the front elevation of the appeal building, noise or disturbance from movements associated with it would not be as noticeable or unacceptable at the adjacent and other nearby properties.
18. There is no separation between the windows at the appeal building and the garden of No 23. In addition, windows at No 23 are in close proximity to those

in the appeal building. Consequently, the direct close range views from the appeal building significantly reduce the privacy for occupiers of No 23.

19. Boundary treatments and the position of the openings at the appeal building prevent any overlooking into the ground floor windows and gardens of the other nearby properties. Views towards upper floor windows would be angled and outbuildings in a similar position are not untypical. Therefore, views from such a position would not be unexpected or direct, thus preventing unacceptable effects on privacy at other nearby properties.
20. Nevertheless, the development significantly harms the living conditions of the occupiers of No 23 with regard to privacy, noise and disturbance. The development is contrary to Policy H13 of the Local Plan, where it seeks to prevent loss of amenity and privacy at existing properties.

Highway Safety

21. Occupiers of the appeal building may try to park on the drive of No 23. At my visit, I saw a vehicle parked on the drive overhanging the pavement indicating insufficient space to accommodate the requirements of the occupiers of both No 23 and the appeal building. As such, it is likely they would park on the street.
22. Given my findings regarding internal space for occupiers and the lack of any outdoor space, there would be no provision for bicycles. Therefore, the appeal scheme does not encourage the use of alternative modes of transport. This increases the likelihood of using private cars and the likelihood of vehicles needing to be parked on the street.
23. I saw many properties in the street have driveways, limiting on street parking spaces. Even so I saw several instances vehicles parked on driveways overhanging the pavement. While my visit was early afternoon, there was considerable on street parking taking place with the narrowness of the road meaning on street parking frequently involved vehicles parking partly on the pavement and near to junctions.
24. Additional vehicles associated with the appeal building add to the parking congestion. In light of the limited on-street spaces available, the appeal scheme is likely to lead to instances of dangerous and obstructive parking such as at road junctions, on footways or across driveways. This would add to existing highway congestion and as a result further compromise the safety of pedestrians and road users.
25. As such, the development has caused moderate harm to highway safety with particular regard to car parking and cycle storage facilities. It fails to accord with Policies H13 and H14 of the Local Plan and Core Policies 7 and 8 of the Core Strategy where they require appropriate access, improving road safety and be safe with sufficient parking provision while widening travel choices.

Other Matters

26. While the height of the building may be within permitted development limits for a building incidental to the enjoyment of a dwellinghouse², the appeal relates to a self contained dwelling.

Planning Balance

27. Given the scale of the scheme, the contribution towards housing supply and economic benefits associated with the development attract small weight. The evidence indicates that personal issues have led to the current occupant living at the appeal building. However, on the limited information before me in this regard and about any alternatives available to them, I give this moderate weight.
28. The development gives rise to significant harm to the character and appearance of the area, the living conditions of the occupiers of No 23, and fails to provide appropriate living conditions for occupiers of the building. There is also moderate harm to highway safety.
29. The policies the development conflicts with are consistent with the Framework and therefore I afford the conflict with them substantial weight. The proposal conflicts with the development plan as a whole.
30. The Council acknowledge they are unable to demonstrate a 5-year supply of housing land meaning that paragraph 11d) of the National Planning Policy Framework (Framework) applies. The scheme aligns with the aims of the Framework to significantly boost the supply of housing and help build a strong economy. As it relates to 1 dwelling, this attracts small weight.
31. The development is contrary to the Framework where it aims to ensure developments are sympathetic to local character, there is a high standard of amenity for existing and future users, development should be prevented on highways grounds if there would be an unacceptable impact on highway safety and where it seeks to ensure appropriate opportunities to promote sustainable transport modes have been taken up. This harm, and weight attracted by it, would be substantial.
32. Having considered the above factors, the adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

Conclusion on ground (a) and the deemed planning application

33. The development is contrary to the development plan as a whole and there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.
34. I conclude that planning permission should not be granted for the matters stated in the notice and the appeal fails on ground (a).

² Under Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015

The appeal on ground (f)

35. Since the notice requires the cessation of the use and the removal of facilitating works, the purpose of the notice is to remedy the breach. The evidence before me indicates the kitchen is integral and solely for the purpose of facilitating the unauthorised use so its removal is not excessive.
36. After the issuing of the notice, planning permission was granted for the building to be used as a bedroom/gym, which included the retention of the shower room. Section 180 of the Act states that where after the service of a copy of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.
37. Therefore, the planning permission overrides the notice to the extent that the permission authorises what is being enforced against. As such, the requirements involving the removal of the shower room, its walls and pipework are overridden by the planning permission. All other parts of the notice and the requirements to comply with it still have effect.
38. I have varied the requirements of the notice, with regard to the amended notice. The appeal succeeds to that extent on ground (f) as a result.

Conclusion

39. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

40. It is directed that the enforcement notice is varied by:
- deleting 'unit of residential accommodation' from paragraph 5. 1) and inserting 'dwelling'.
 - deleting 'and the shower room' from paragraph 5. 2),
 - deleting all of paragraph 5. 3) 'remove the internal walls incorporating the shower room'; and
 - deleting 'and shower room' from paragraph 5. 4).
41. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Stuart Willis

INSPECTOR