



Appeal Decision

Site visit made on 26 March 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27TH MARCH 2024

Appeal Ref: APP/J0350/C/22/3294356

Land at 265 Stoke Road, Slough SL2 5AX

- 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 Mr Shaukat Ali against an enforcement notice issued by Slough Borough Council.
- The enforcement notice was issued on 2 February 2022.
- The breach of planning control as alleged in the notice is conversion of outbuilding and its use as a self-contained dwelling (shown on the attached plan edged blue) and erection of dormer extension.
- The requirements of the notice are (i) cease the use of the outbuilding (edged in blue on the attached plan) as a self-contained unit of residential accommodation; (ii) remove the kitchen and shower room from the outbuilding; (iii) remove the internal walls incorporating the kitchen and the shower room from the outbuilding; (iv) remove all plumbing, boiler and associated pipework in connection to the kitchen and shower room within the outbuilding; (v) remove the side dormers and reinstate the roof line as existed prior to the unauthorised development of the main dwellinghouse, and (vi) 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 six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d), (f) and (g) 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.

Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

2. The National Planning Policy Framework was amended on 19 December 2023 (the Framework). However, it has not been necessary for me to seek comments from the main parties about the implications of the updated Framework. This is because there are no material changes in respect of the ground (a) appeal main issues below.

Reasons

Ground (c) appeal

3. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The claim made by the appellant is that the outbuilding was originally built and used for a use which was incidental to the use of 265 Stoke Road, Slough as a dwellinghouse. He states that it was then modified such that it included all the facilities needed for day-to-day private domestic existence. He comments that it has been occupied by his son and wife for more than four years. In essence, the appellant claims that residential use of the outbuilding is part and parcel of use of the dwellinghouse on the site and hence there has been no material change of use of the land.
4. In respect of the dormer extension, the appellant acknowledges that this does not meet the conditions of Class B of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) (Order) 2015 (as amended) (GPDO), but nonetheless considers that it would have been permitted development if these conditions had been met.
5. The dormer extension requires planning permission on the basis that the conditions of Class B have not been met. The appellant accepts this stating that the dormers do not have obscure glazing and there are non-opening windows less than 1.7 metres from the floor in the room. In this regard, there is an acceptance that conditions B.2.(c)(i) and (ii) were not met.
6. Article 3(5) of the GPDO states that the permission granted by Schedule 2 does not apply if '*in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful*'. As the dormer extension fails to meet conditions of Class B, it is not possible to apply permitted development retrospectively.
7. The Local Planning Authority (LPA) also states that the dormer extension is not permitted development owing to its roof volume and comments that the drawing submitted as part of the appeal does not reflect what has been built. It has not been necessary for me to pursue this matter further as the dormer extension requires planning permission for the other reasons outlined above.
8. The appellant is correct that use of an outbuilding which has all the facilities needed for day-to-day domestic existence need not in itself mean that a separate planning unit has been created, or that a material change of use of the land has taken place. This is indeed a matter that was considered in respect of the '*Uttlesford*' legal judgement.¹ It is necessary that I assess the physical and functional links between the use of the outbuilding and 265 Stoke Road when the notice was issued and consider whether a separate planning unit has been created as a matter of fact and degree.
9. In this case, the appellant states that the outbuilding has been used by his son and his wife. This is supported by a signed statement from his son and witnessed by a solicitor which states, '*I can confirm that I had been residing with my wife....in the above self-contained residential dwelling since in or around 2010 and present*'. The signed statement does not have the same force as a statutory declaration and therefore the weight that I afford it is accordingly diminished.

¹ Uttlesford DC SSE & White (1992)

10. While the evidence suggests that the outbuilding has been used by the appellant's son and wife, there is no evidence of any physical or functional link between the residential use of this outbuilding and the main dwellinghouse. The outbuilding does have all the facilities needed for private day-to-day domestic existence and the appellant's son acknowledges that he has been residing in a '*self-contained residential dwelling*'.
11. Other than the family connection, there is no other evidence before me which would lead me to conclude that when the notice was issued the outbuilding was in use for anything other than a separate dwellinghouse and as part of a separate planning unit.
12. The onus is on the appellant to provide precise and unambiguous evidence in respect of the legal grounds of appeal. The evidence does not support the appellant's claim that residential use of the outbuilding is ancillary to use of 265 Stoke Road as a dwellinghouse. As a matter of fact and degree, I find that the evidence indicates that when the notice was issued, the outbuilding was in use as a separate dwellinghouse. Hence, it constituted an act of development in accordance with section 55(2)(d) of the Act.
13. For the above reasons, I conclude that the matters alleged in the notice do constitute a breach of planning control. Therefore, the ground (c) appeal fails.

Ground (d) appeal

14. An appeal made on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
15. There is no dispute between the main parties that the outbuilding was originally used for an incidental purpose in connection with use of 265 Stoke Road as a dwellinghouse. The appellant contends that the subsequent use of the outbuilding as a single dwellinghouse has continued for more than four years and hence is immune from enforcement action owing to section 171(B)(2) of the Act.
16. The appellant states that Council Tax has been paid in respect of occupation of the outbuilding as a dwellinghouse since 2008. The appellant's evidence includes several Council Tax reminders for the period 2008 to 2019 and including a notification of a payment arrangement for outstanding payments dated 20 February and 2 April 2019. There is no evidence of Council Tax actually being paid in respect of use of the outbuilding. There is a signed statement submitted by the appellant's son, and witnessed by a solicitor, where he states, '*I can confirm that I had been residing with my wife....in the above self-contained residential dwelling since in or around 2010 and present*'.
17. On the evidence that is before me, I am not clear if or on what basis Council Tax was paid between 2008 and 2019 and who, if anyone, occupied the outbuilding at this time and for what period. While I do not doubt that the appellant's son and wife have occupied the outbuilding at least sometimes since 2010, it is my understanding that Council Tax would still have been required to be paid (even if on a discounted basis) if the outbuilding was not

occupied or was empty. The evidence is not sufficiently precise or unambiguous in respect of the latter consideration.

18. Other than the above comment and the signed statement, the appellant does not actually provide me with a detailed chronology or timeline in respect of actual use of the building as a single dwellinghouse, or with any objective or clear evidence of a continuous four-year use for this purpose. In the absence of evidence of Council Tax being paid, coupled with clear evidence of actual use for a continuous four-year period, it remains entirely possible that there were breaks in the occupation/use of the said outbuilding as a single dwellinghouse.
19. Overall, the evidence from the appellant is distinctly lacking in terms of demonstrating four years continuous use of the outbuilding as a single dwellinghouse. There is for example no information such as dated utility bills, named/dated letters, dated photographs and/or statutory declarations from visitors/occupiers of the outbuilding. The evidence is not sufficiently precise and unambiguous to demonstrate four years continuous use of the outbuilding as a single dwellinghouse. On the balance of probability, I therefore find that such a use is not immune from enforcement action by virtue of section 171(B)(2) of the Act.
20. The appellant does not make a case under ground (d) in respect of the dormer extension. Had the appellant wanted to make such a case, it would have been in respect of section 171(B)(1) of the Act, which is that in respect of building operations no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. The LPA has submitted dated Google Street-View images which show no dormer extension in August 2016, but the appeal dormer extension in situ in July 2019. The notice was issued on 22 February 2022 and hence the appellant would have needed to demonstrate that the dormer extension had been substantially completed for more than four years.
21. There is no objective evidence before me to demonstrate that the dormer extension has been substantially completed for more than four years to be immune from enforcement action and, in any event, the appellant has not sought to make this claim as part of his ground (d) appeal. On the evidence that is before me, and on the balance of probability, I find that when the notice was issued it was not too late to take enforcement action in respect of the dormer extension.
22. For the above reasons, I conclude that the ground (d) appeal fails.

Ground (a) appeal and the deemed planning application

23. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice.
24. I have considered the reasons for issuing the notice and the main issues in respect of the outbuilding are (i) its effect on the living conditions of occupiers of neighbouring properties in respect of outlook, privacy, noise and disturbance; (ii) whether there is adequate car parking and its effect on highway and pedestrian safety; (iii) its effect on the living conditions of occupiers of the building and 265 Stoke Road in respect of outlook, size, privacy, outlook and outside amenity space, and (iv) in respect of the

outbuilding and dormer extension their effect on the character and appearance of the area.

Outbuilding – living conditions of occupiers of neighbouring properties

25. The outbuilding appears to be being occupied by the appellant's son and his wife. The outbuilding does not have its own separate access and indeed it is necessary to reach it via the narrow side access of 265 Stoke Road. In this context, I find that the regularity of comings and goings from visitors and occupiers would have the potential to cause significant harm to the peaceful enjoyment of 265 Stoke Road. Indeed, I noticed on my site visit that the elevation facing the side access included several windows and a door.
26. While it may be that the occupiers of 265 Stoke Road are content with the access arrangement when the outbuilding is being lived in by the appellant's son and wife, this may not be the same if non-family members were to live in it. Furthermore, it is necessary that I consider harm that would likely arise from future new residents occupying 265 Stoke Road and the self-contained residential outbuilding.
27. My concern above is compounded because the outside amenity space associated with 265 Stoke Road has been reduced. It is very small and is not reflective of the long gardens associated with other dwellinghouses on Stoke Road. Furthermore, given the close relationship between the outbuilding and 265 Stoke Road, and the tight knit outside rear space for both properties, there is potential for respective harm to be caused to occupiers of both properties from the use of such outside space in terms of noise and disturbance. Privacy concerns could be addressed by way of some form of boundary treatment, but no details are before me, and this could potentially also give rise to some harm to the outlook of occupiers of the outbuilding.
28. For the above reasons, I conclude that the development does not accord with the living conditions and outside amenity space requirements of policies EN1, H13 and H14 of the Local Plan for Slough 2004 (LP), and paragraph 135(f) of the Framework.

Outbuilding - car parking and highway/pedestrian safety

29. I acknowledge that use of the land as two dwellinghouses rather than one is likely to give rise to the need to park additional vehicles. There is space to park three vehicles on the drive associated with 265 Stoke Road. The Council has not provided me with details of any car parking standards, but it is likely that the self-contained dwellinghouse would give rise to the need for additional car parking demand. In my judgement, such car parking from occupiers and/or visitors of the outbuilding would likely be needed on the highway.
30. While there may not be adequate off-street car parking for both 265 Stoke Road and the outbuilding dwellinghouse, I was able to see on my site visit that Stoke Road did not include double yellow lines on one side of the road. While my site visit was only a snapshot in time, there was some spare capacity to park vehicles on the road. On the evidence that is before me, I do not find that additional car parking on Stoke Road arising from the breach of planning control would lead to any unacceptable impacts on highway or pedestrian safety, or give rise to harm to the free flow of traffic.

31. In reaching the above conclusion, I am cognisant of the Council's concern about the potential for a number of outbuildings to be approved as separate dwellinghouses in the area and cumulative on-street car parking demand pressures. However, it is necessary that I determine this appeal on its individual planning merits and based on the circumstances that prevail now.
32. I do not find that there is any evidence to demonstrate that the development is unacceptable in terms of the ability to park vehicles or that unacceptable harm has been caused to highway/pedestrian safety. In this regard, the development does not conflict with the car parking, accessibility or highway safety requirements of policy H13 of the LP, Core Policies 4 and 7 of the Slough Local Development Framework Core Strategy 2008 (CS) and chapter 9 of the Framework.

Outbuilding – living conditions of occupants

33. I was able to see on my site visit that the outbuilding has three bedrooms, a kitchen, a bathroom, and a lounge. Despite trying to obtain some clarification from the main parties, the evidence is not entirely clear about the size of the outbuilding or indeed whether there is a dispute between the main parties about this matter. Nonetheless, the appellant states that the outbuilding has a gross internal floor area of 37.5 square metres. I have not been provided with any development plan policies which stipulate exactly what is an acceptable gross floor area for a three-bedroom dwellinghouse.
34. Given the above, it falls to me to consider the space standards as outlined in the Government's Technical Housing Standards – Nationally Described Space Standard 2015 (NDSS). Based on the outbuilding having three bedrooms, and the appellant's gross internal floor area calculation, I conclude that its use as a dwellinghouse fails to meet the minimum NDSS gross internal floor area requirement. In this regard, I find that it does not offer acceptable living conditions for existing or future occupants.
35. Given my reasoning above, I am unable to conclude that use of the outbuilding as a self-contained dwellinghouse accords with the amenity requirements of policy EN1 of the LP, paragraph 135(f) of the Framework and the NDSS.

Character and appearance

36. The outbuilding which is the subject of the appeal is located within the rear garden associated with 265 Stoke Road. While it could not be said to be a very small structure, I was able to appreciate as part of my site visit that outbuildings in rear gardens are not uncommon in the locality.
37. The evidence is that the outbuilding was originally used for an incidental residential purpose. There is no evidence that prior to the self-contained dwelling being formed and used, that the incidental outbuilding was unlawful. While I have found that a material change of use of the outbuilding has occurred, there is no indication that this has resulted in any material change to the appearance of the building. Indeed, the notice does not seek to attack any unauthorised external alterations or extensions to such an outbuilding. Furthermore, the notice does not require the removal of the outbuilding itself.
38. I appreciate that the use of the outbuilding has facilitated a more intensive use of outside amenity space because two dwellings are positioned on the land rather than two. In the context of the character and appearance of the

suburban locality which is characterised by mainly family homes positioned within spacious plots, I find that there is some conflict with Core Policy 4 of the CS which states that '*within existing suburban residential areas there will only be limited infilling which will consist of family houses that are designed to enhance the distinctive suburban character and identity of the area*'.

39. One may take the view that the appeal development does not comprise a 'family house', but nonetheless I do not consider that it has resulted in any discernible change to the character or appearance of the locality when compared to its previous use as an ancillary residential outbuilding. In this context, I do not agree with the LPA that this element of the breach of planning control has resulted in a cramped form of development, or that it looks materially out of place in this backland location.
40. In contrast to the above, the dormer roof extension to the host property fails to assimilate well with the character and appearance of the street-scene. I find that it appears top heavy and incongruous in respect of the host property and has an unacceptably jarring impact when experienced from Stoke Road where there is a general simplicity and pleasing rhythm to the design of the pitched roofs of the vast majority of dwellinghouses. The dormer extension has an unacceptably bulky and imposing appearance and detracts from the prevailing character and appearance of the properties in this street.
41. In respect of the self-contained dwellinghouse, I conclude that there may be some technical conflict with Core Policy 4 of the CS. This depends on whether the three-bedroom dwellinghouse is a 'family house'. For the purposes of determining this appeal, I have reached a view that there is no conflict with Core Policy 4 of the CS based on the three-bedroom property being capable of accommodating a family.
42. Even if I was wrong in terms of my interpretation of Core Policy 4 of the CS, it would not be a determinative factor in decision making terms. This is because in character and appearance terms, the self-contained dwellinghouse is not experienced in a materially different way when compared to its former use as an ancillary residential outbuilding. In this respect, I do not find that any significant harm has been caused to the character and appearance of the area.
43. Notwithstanding the above, I conclude that significant harm has been caused to the character and appearance of the area because of the dormer extension and, in this regard, this part of the breach of planning control does not accord with the design, character and appearance requirements of policies EN1 and H13 of the LP, Core Policies 1 and 8 of the CS and Chapter 12 of the Framework.

Other Consideration

44. The appellant has suggested that I consider imposing a condition which permits only ancillary use of the outbuilding, i.e., a use akin to a 'granny annexe' and occupation by the appellant's son with shared car parking and garden arrangements.
45. It has been necessary that I consider the ground (a) appeal and the deemed planning application based on the breach of planning control. This does not relate to an ancillary building but instead to use of an outbuilding as a separate self-contained dwellinghouse within a separate planning unit.

Ground (a) conclusion

46. The dormer extension causes significant harm to the character and appearance of the area. While there is no evidence that use of the outbuilding as a self-contained and separate dwellinghouse has or would cause unacceptable harm to highway safety or the free flow of traffic, or that it has resulted in any material harm to the character and appearance of the area despite any possible technical conflict with Core Policy 4 of the CS, I have nonetheless found that significant harm has been caused to the living conditions of the occupiers of neighbouring properties, including existing and future occupiers of 265 Stoke Road, arising from noise and disturbance.
47. I have also concluded that the living conditions of the occupiers of the residential outbuilding are severely compromised with reference to the appellant's claimed gross internal floor area and the minimum NDSS requirement. Even if the appellant's gross internal floor area calculation was wrong, and the development did accord with all NDSS requirements, this would not alter or outweigh the other planning harm identified which is of overriding concern. In addition, I have found that the outside amenity space for the occupiers of 265 Stoke Road has been unacceptably reduced. These harms are not outweighed by the social and economic benefits associated with the provision of a second dwellinghouse and the enlarged accommodation on the land.
48. For the above reasons, I conclude that the development does not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails.

Ground (f) appeal

49. The appeal made 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 or to remedy any injury to amenity which has been caused by any such a breach.
50. The purpose of the notice is to remedy the breach of planning control. The appellant states that the steps required in the notice are excessive but does not reasonably substantiate this point with detailed evidence.
51. The notice requires the removal of specified rooms, walls, and items from the outbuilding. The appellant does not dispute that such rooms, walls, and items facilitated the material change of use. On the evidence that is before me, I do not find that the steps in the notice are excessive. Therefore, the ground (f) appeal fails.

Ground (g) appeal

52. The appeal made on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
53. The appellant claims that a period of twelve months instead of six months is needed as *'this will allow a more sustainable method for the removal of materials. The materials could be sold or reused elsewhere'*. While it may indeed be possible to reuse or sell materials which facilitated the material change of use of the land, the appellant does not actually provide sufficient or

persuasive justification as to why six months would not be sufficient to ensure that all the requirements of the notice were met.

54. I acknowledge that the requirement to cease using the outbuilding as a self-contained unit of residential accommodation would result in the loss of a home. However, I find that upholding the enforcement notice, including a compliance period of six months, is a legitimate and proportionate response to addressing the breach of planning control in the public interest. This outweighs the loss of an independent home on the site, considering rights under Article 8 of the European Convention on Human Rights, as incorporated into the Human Rights Act 1998, which provides that everyone has a right to respect private and family life, their home and correspondence.

55. I conclude that a compliance period of six months is reasonable and hence the ground (g) appeal fails.

Conclusion

56. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR