



Appeal Decision

Site visit made on 26 March 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4TH APRIL 2024

Appeal Ref: APP/J0350/C/22/3310694

Land at Milton Road, Slough SL2 1PF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mohammed Abbas Khan against an enforcement notice issued by Slough Borough Council.
 - The enforcement notice, numbered 2022/0138/ENF, was issued on 21 October 2022.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of an outbuilding to form an independent self-contained unit of residential accommodation and facilitating works (the unauthorised use), as shown edged with a solid blue line on the annexed plan.
 - The requirements of the notice are 1) cease the use of the outbuilding as an independent self-contained unit of residential accommodation; 2) remove the kitchen from the outbuilding in its entirety; 3) remove all plumbing and associated pipework in connection to the kitchen within the outbuilding, and 4) 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) (d) 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 as amended have lapsed.
-

Decision

1. It is directed that the enforcement notice be corrected by deleting all the words in section 3 and replacing them with '*without planning permission the material change of use of an outbuilding to form an independent self-contained unit of residential accommodation and facilitating works (the unauthorised use), as shown edged with a solid blue line on the annexed plan*'. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

Application for Costs

2. An application for costs is made by Slough Borough Council against Mr Mohammed Abbas Khan. This application is the subject of a separate Decision.

The Notice

3. The breach of planning control in the notice refers to a '*change of use of an outbuilding*'. In the interests of precision, the breach of planning control should refer to a '*material change of use*' given section 55(1) of the Act. I am satisfied that the notice can be corrected, without any injustice being caused to the main parties, by deleting all the words in section 3 and replacing them with

'without planning permission the material change of use of an outbuilding to form an independent self-contained unit of residential accommodation and facilitating works (the unauthorised use), as shown edged with a solid blue line on the annexed plan'.

Reasons

4. 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.
5. The evidence is that planning permission was approved on 10 October 2017 for the construction of a rear outbuilding¹. The notice is directed at such an outbuilding, albeit in respect of its use as a self-contained dwellinghouse in a separate planning unit.
6. A Building Control completion certificate for the outbuilding was issued on 22 January 2020. While I do not have any evidence of the outbuilding being specifically used for its intended purpose, i.e., as an ancillary gym with bathroom, there is no evidence before me to indicate that the physical works of construction were not undertaken in accordance with the planning permission. It is not certain whether the 2017 planning permission was implemented from a use point of view. The appellant's agent has commented that *'I can confirm that the outbuilding was constructed in accordance with the plans approved in 2017 with the initial plan to use it as ancillary to the main house. Upon construction, the appellant's circumstances changed, and he began renting it out as a separate dwelling'*.
7. As a matter of fact and degree, and when all matters are considered in the round, I find that the evidence is that prior to the breach of planning control occurring, the outbuilding had an ancillary residential use. In other words, and, as detailed below, the evidence is that the outbuilding was built in accordance with the 2017 planning permission, and it was intended to be and capable of being used as a gym.
8. Given the above, and, on the facts of this case, I am therefore satisfied that when the notice was issued the corrected breach of planning control had occurred. Hence, in respect of this ground (d) appeal, it is necessary that I consider whether it has been demonstrated that a material change of use of the outbuilding has occurred in the form of a self-contained independent dwellinghouse use (i.e., in a separate planning unit) for a continuous period of four years.
9. Demonstrating four-years continuous use would equate to an immunity from enforcement action and hence lawfulness given section 171B of the Act which states, *'where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach'*.

¹ Planning permission P/17105/000

10. The onus is on the appellant to make his case that the material change of use of the outbuilding to an independent dwellinghouse took place for a continuous period of four years. While the Building Control completion notice refers to the description of development as a *'single storey detached outbuilding ancillary in use to the main property - not to be used as an independent dwelling'*, this does not in itself mean that a kitchen had not been installed in the outbuilding when it was being considered by the Council's Building Control service. Indeed, it is the case that Building Control officers do not always consider proposals in the same way as do planning officers who determine planning applications.
11. While the LPA raises a concern about the authenticity of the photograph submitted by the appellant showing a kitchen within the outbuilding and with a date stamp of *'4 October 2018'*, on the balance of probability I do not agree with the LPA that it has been fabricated. Indeed, in my judgement it reasonably corresponds with the *'Howdens payment summary'* for receipt of a kitchen dated 16 May 2018, and, importantly, the *'Building Control Site Progress Report'* dated 31 August 2018 which states, *'sink to kitchenette required'*. Despite comments made by the LPA, I do not consider it likely that the Building Control officer would have made comments about the kitchen sink if a kitchen had not already been installed or was in the process of being installed.
12. In addition to the above, and given the above evidence, I have no reason to doubt the authenticity of the three signed kitchen fitter labour payments dated 15 May 2018, 16 June 2018, and 16 August 2018. In respect of the appellant's signed payment dated 15 May 2018, I acknowledge that Google Earth imagery does not show that the outbuilding was constructed on the site at this stage. However, the appellant's comment that the *'builder required payment up front'* is credible in the context of the evidence that is before me.
13. The appellant states in his statutory declaration that he has owned the site since 2013 and has *'rented the building out as a separate unit of living accommodation since 1 October 2018'*. I shall address the latter point in my reasoning below, but, on the evidence before me, and, on the balance of probability, I find that the outbuilding did include a kitchen on 1 October 2018. Nonetheless, it is important to note that the provision of a kitchen does not in itself equate to evidence of a continuous four-year use of the outbuilding as an independent dwellinghouse.
14. The appellant's statutory declaration alleges that the breach of planning control commenced on 1 October 2018. To the extent that it is a statutory declaration, I afford it significant weight as part of the consideration of the ground (d) appeal. There are, however, no such statutory declarations from any of the tenants that it is alleged occupied the outbuilding since this time, or indeed from any associated visitors. The appellant states that he has been unable to obtain statutory declarations from the tenants that are claimed to have occupied the building because he has not been able to *'get hold of those who have moved away over four years ago with no forwarding address'*.
15. The appellant has, however, submitted passport and driving license information for four of the named tenants although, importantly, this does not include any formal identification in respect of the tenant which it is claimed first occupied the outbuilding from 1 October 2018 and for 18 months.
16. In respect of the above claimed tenant, the Council's Council Tax service states that she *'moved into the main property on 30 August 2018 and vacated on 1*

August 2019' and from 10 September 2019 to 1 August 2019 she then moved to '52 Cippenham Lane'. This has not been disputed by the appellant. It would seem from the evidence from the Council's Council Tax service that this happened at a time when the appellant 'vacated the above property on 30 August 2018 and moved to 98 Belgrave Road, SL1 3RB which was his parents address'.

17. The Council Tax service states that the appellant moved back into 22 Milton Road on 1 August 2019. This would appear to marry with the same time when the Council's Council Tax service states that the claimed tenant vacated the 'main' property, i.e., 22 Milton Road. The Council Tax service also states that a joint Council Tax account was opened by the claimed tenant of the outbuilding and her guarantor on 30 July 2019 and that this related to occupation of '52 Cippenham Lane'.
18. Collectively, the above evidence casts significant doubt about the appellant's claim about use of the outbuilding as a separate dwellinghouse by the said tenant. This is notwithstanding the tenancy agreements submitted by the appellant and his statutory declaration. While the appellant claims that there was a tenancy agreement in place for the period 1 October 2018 until April 2019, I agree with the LPA that the evidence indicates that this was likely related to use of the main property, i.e., 22 Milton Road.
19. Furthermore, while the appellant has submitted a building society statement showing a bank credit dated 27 October 2018 in the name of the claimed tenant and for a payment of £1,300, the evidence from the Council Tax service casts sufficient doubt about it being in respect of use of the outbuilding. Instead, it is probable that it related to occupation of the 'main' property. It is also noteworthy that at final comments stage, the appellant submitted detailed building society statements to try to prove continuous occupation after this time but failed to do so in respect of occupation of the outbuilding by the claimed tenant from 1 October 2018 until 1 April 2020.
20. The appellant has failed to provide continuous monthly rental payment records in respect of occupation of the outbuilding as an independent dwellinghouse between the period October 2018 and April 2020. It is not necessary for me to consider other building society statements or tenancy agreements submitted by the appellant after this time as the evidence for the period October 2018 to April 2020 alone, coupled with the other evidence above, provides a lack of certainty and a level of ambiguity about the appellant's claim that the outbuilding has continuously been used as an independent self-contained dwellinghouse for more than four years.
21. At best, the evidence demonstrates, on the balance of probability, use as a separate dwellinghouse after April 2020. However, as the notice was issued on 21 October 2022, the appellant has not therefore, on the balance of probability and on the evidence that is before me, demonstrated with sufficient precision and certainty that the breach of planning control has taken place for four years. Consequently, the ground (d) appeal fails.

Other Matters

22. The LPA suggests that 'deliberate concealment' has taken place in respect of the breach of planning control. It has not been necessary for me to consider this matter given my conclusion on the ground (d) appeal and my decision to

uphold the enforcement notice, although I emphasise that the Courts have held that this principle should only be applied in extreme cases.

23. I appreciate that my finding about the relevant immunity period being four years is not shared by the LPA in respect of its comments made on 22 December 2023. The LPA assert that the building was never intended to be used as an ancillary outbuilding and that it was built and used as a dwellinghouse. Hence, and despite the LPA's notice referring to four years, the LPA now claim that it is necessary for the appellant to demonstrate a continuous ten-year use of the outbuilding as a separate dwellinghouse.
24. Even if I had agreed with the LPA in respect of the above matter, it would not have been determinative in respect of the outcome of the appeal. Indeed, the breach of planning control would have been capable of being corrected without injustice being caused to the main parties. This is because the appellant's evidence is focussed squarely on four years continuous use of the building as a dwellinghouse and not ten years. Had I found that ten years was the relevant immunity period, the ground (d) appeal would not have succeeded, on the balance of probability, owing to lack of clear and unambiguous evidence relating to ten years continuous use of the outbuilding as a dwellinghouse.

Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction. I recognise that in upholding the notice, it would mean that any current occupier(s) of the outbuilding would lose their home. In this regard, I have considered 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. However, the evidence is that compliance with the requirements of the notice is a necessary and proportionate response to remedying the breach of planning control in the public interest.

D Hartley

INSPECTOR