



Appeal Decisions

Site visit made on 16 April 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 21 May 2024

Appeal A Ref: APP/J0350/C/23/3324706

Appeal B Ref: APP/J0350/C/23/3324707

62 Salt Hill Way, Slough SL1 3TS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr Sudhir Mehta and Appeal B is made by Mrs Uma Mehta against an enforcement notice issued by Slough Borough Council.
 - The notice was issued on 24 May 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection on the land of an additional single storey rear extension onto an existing rear extension (as outlined in blue on the attached plan).
 - The requirements of the notice are to: 1. Demolish the additional single storey rear extension (as outlined in blue on the attached plan) in its entirety; and 2. 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: 4 (four) calendar months.
 - The appeals are proceeding on the grounds set out in section 174(2)(d) and (f) of the Town and Country Planning Act 1990 (as amended) (the Act). 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. The appeals are dismissed and the enforcement notice is upheld.

The appeals on Ground (d)

2. The appeal on this ground is based on the claim that at the date the notice was issued, no enforcement action could be taken in respect of the alleged breach of planning control as described in the notice. Section 171B(1) of the Act provides that no enforcement action may be taken in respect any unauthorised operational development after the end of the period of 4 years beginning with the date on which the operations were 'substantially completed'.
3. The onus is on the appellants to demonstrate, on the balance of probabilities, that at the time the notice was issued, it was too late to take enforcement action in respect of the alleged breach of planning control.
4. The notice was issued on 24 May 2023 for the erection of an additional single storey rear extension onto an existing rear extension. Therefore, for the ground (d) appeal to succeed, the appellants must demonstrate that the alleged development was substantially completed by at least 24 May 2019, the material date.

5. The gist of the appellants' case is that what has been constructed is a refurbished summer house, albeit extended. The original summerhouse is said to have been in situ for some 20 years with half remaining and the rest being renovated.
6. At my visit I observed that the 'summerhouse' was a single storey extension that had been built onto the rear of the house. It was complete with plastered and painted walls and windows and doors and is in essence a single storey extension to the property as described in the notice.
7. Photographs have been provided which show the structure internally prior to the recent works. There are also photographs which show the extension under construction. In the absence of cogent evidence to demonstrate otherwise, it seems to me that most of the original extension, or sunroom, has been replaced with new timbers to the sides and roof. The structure has also been extended beyond its original footprint. There is little reference to the original structure and on the balance of probabilities I consider that what has been constructed is a new building.
8. No evidence has been advanced by the appellants to demonstrate that the alleged development was substantially completed by the material date, and thus they have failed to discharge the burden of proof that at the date when the notice was issued, no enforcement action could be taken in respect of the alleged breach of planning control.
9. The appeals on ground (d) therefore fail.

The appeals on Ground (f)

10. An appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (s173(4)(a)) or to remedy any injury to amenity which has been caused by any such breach (s173(4)(b)). The notice alleges the construction of an extension and requires that the extension is removed. Therefore, the purpose of the notice falls within s173(4)(a) of the Act and is to remedy the breach.
11. The appellants consider that the extension could be reduced to its original size. However, having considered what has been constructed, the original structure no longer exists and what has been built is a new building in place of the original 'sunroom' rather than an extension to it. Thus, new development has occurred that would have required express planning permission.
12. The courts have held that where there is no appeal on ground (a) the power available under s176(1) of the Act to vary the notice cannot be used to attack its substance. Where the restoration of the land to its former condition requires the removal of the unauthorised building, it is not open to me to substitute lesser steps that would leave the building in place.
13. Thus, given that the requirements go no further than requiring the appellant to undo what has been done, they cannot exceed what is necessary to fully remedy the breach of planning control.
14. Accordingly, the appeals on ground (f) must fail.

S A Hanson INSPECTOR