



Appeal Decision

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 24 May 2024

Appeal Ref: APP/J0350/C/23/3328134

11 Salt Hill Drive, Slough SL1 3TH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Kulvinder Singh Ruprah against an enforcement notice issued by Slough Borough Council.
- The notice was issued on 14 July 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the outbuilding with associated facilitating works and its use as a self-contained dwelling ("the Unauthorised Material Change of Use").
- The requirements of the notice are to: 1. Cease the use of the outbuilding as a self-contained dwelling. 2. Remove the kitchen and shower room from the outbuilding. 3. Remove the internal walls incorporating the shower room. 4. Remove all plumbing, boiler, 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: Six (6) calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (f) and (g) 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 has lapsed.

Decision

1. It is directed that Part 6 of the notice 'Time for Compliance' be varied by deleting "The period for compliance with the requirements is: six (6) calendar months" and substituting it with:

"The period for compliance with requirement 1 is 6 (six) months and with requirements 2, 3, 4 and 5 is 8 (eight) months."
2. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Ground (c)

3. The appeal made on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. In pursuing an appeal on these legal grounds, the onus firmly rests with the appellant, and the test is on the balance of probabilities. The planning merits of the use or operations are not relevant, and they are not an issue for me to consider under ground (c).
4. The breach of planning control as alleged in Part 3 of the notice is the material change of use of the outbuilding, with facilitating works, to a self-contained dwelling. To achieve success on ground (c) the appellant must show that either

there has been no development, or that planning permission is not required for whatever reason, or that what is alleged complies with the terms and conditions of a planning permission.

5. The outbuilding is positioned to the rear of the house and is essentially an extension to the garage. Although physically attached there is no internal access between the two buildings. At the time of my visit the garage was being used for storage and the outbuilding was fitted out to provide living accommodation consisting of a bedroom/kitchen and a separate shower room. While the accommodation provides the facilities required for day-to-day living, that alone does not in itself mean that a separate planning unit has been created, or that a material change of use has taken place.
6. There is no dispute that the outbuilding is being occupied for residential purposes, the question is does the use, within the curtilage of the main dwellinghouse, amount to development.
7. Section 55(1) of the Act provides that development includes the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of land. At s55(2) operations and uses that shall not be taken to be development are listed. One of which, under s55(2)(d), is 'the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such'.
8. The appellant has not provided any evidence to show that the main dwellinghouse and the outbuilding are occupied and used by people forming a single household, and that the use of the outbuilding is 'incidental' to the residential occupation of the main dwellinghouse. Consequently, as a matter of fact and degree, the character of the outbuilding's use has changed from an incidental use in connection with the main dwellinghouse to a self-contained single dwelling, thus forming a physically and functionally separate planning unit. This is likely to involve a definable change in terms of activity, including comings and goings, with planning consequences above and beyond that which would be normally experienced if the use was incidental.
9. In respect of the above, I consider that the appellant has failed to show, on the balance of probabilities, that the change of use of the outbuilding to use as a separate single dwellinghouse is not material and does not constitute a breach of planning control.
10. Therefore, the appeal on ground (c) must fail.

Ground (d)

11. An appeal under this ground is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control alleged in the notice. Time limits after which no enforcement action may be taken are set out in s171B of the Act. The burden to make the case rests with the appellant and the test is one of a balance of probabilities.
12. Under s171B(2), 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. The notice in this case was issued on

14 July 2023. To succeed on ground (d), the appellant must demonstrate that the alleged breach took place before 14 July 2019, and continued for a period of four years, such that the Council could have taken enforcement action at any time. Once it had acquired lawfulness, it would be too late for the Council to take enforcement action so long as the use was not subsequently abandoned, superseded by a material change of use, or a new planning unit formed.

13. The appellant's argument is that the garage contained a shower room before the extension was 'constructed' or 'refurbished' and they consider that the creation of a shower room within an outbuilding is permitted development. While the shower room may have been installed in the garage and the purpose may have been incidental to the enjoyment of the main dwelling and therefore, by virtue of s55(2)(a) of the Act, be excluded from the definition of development, there is no evidence to support this claim. Nevertheless, and notwithstanding, this claim, the alleged development attacked by the notice is the material change of use of the outbuilding to a self-contained dwelling.
14. As a case has not been made to demonstrate that the material change of use had occurred by the 14 July 2019, I consider that, on the balance of probabilities, the alleged use was not immune from enforcement action when the notice was issued.
15. The appeal on ground (d) therefore fails.

Ground (f)

16. The basis for an appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) of the Act provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case, its primary purpose is to remedy the breach by discontinuing the use of the land. For the appeal on ground (f) to succeed, the appellant must propose alternative lesser steps which would remedy the breach.
17. The appellant claims that apart from the requirement to remove the kitchen, the remaining requirements exceed what is necessary to remedy the breach and would exceed the legal requirements in s173(4) of the Act. They acknowledge that the kitchen and shower room with their associated services enable the residential use. But rely on the facts that as the installation of the shower room is not development because it was installed before the outbuilding was converted, the requirement for its removal is excessive.
18. Where an enforcement notice is concerned with a material change of use, it may not only require the removal of works which would otherwise be immune, but also the removal of those which might not amount to development at all but were integral to and had facilitated an unauthorised material change of use. However, the enforcement notice cannot require the removal of works that were undertaken for a different and lawful use, and which could be utilised in that other lawful use if the alleged unauthorised use ceased.
19. As already discussed, the appellant has provided no evidence to substantiate their claim that the shower room had been installed prior to the change of use of the outbuilding, and no information regarding why it had been installed or what purpose it served. This is particularly pertinent considering that such

facilities would undoubtedly be provided in the main dwellinghouse, and the main house is within proximity of the garage and outbuilding therefore questioning why it would be required.

20. Therefore, as a matter of fact and degree, I am not persuaded that the shower room was not installed purely to facilitate the change of use of the outbuilding to use as a single dwellinghouse. Consequently, the removal of the shower room, walls and associated pipework is deemed necessary to remedy the breach.

21. The appeal on ground (f) fails.

Ground (g)

22. An appeal on ground (g) is that any period specified in the notice in accordance with section 173(9) of the Act, falls short of what should reasonably be allowed. It is considered, by the appellant, that the compliance period should be extended to nine months. This, they consider, would be more appropriate to allow the tenants to seek suitable alternative accommodation and for the required works to be completed.

23. The need for an extension of the period for compliance must be balanced against the harm set out in the notice, which in this case is the harm to the living conditions of those who occupy the building and those who occupy surrounding properties, and the conflict with the Development Plan. I appreciate that finding suitable accommodation can be challenging however, nothing has been put forward to demonstrate that there are no other suitable options available.

24. I recognise that compliance with the enforcement notice would interfere with the tenants' rights as set out in article 8 of the Human Rights Act and dismissal of the appeal on ground (g) would have an impact on the timing and therefore impact of that interference. However, this must be weighed against the wider public interest. On the evidence before me, and with nothing to persuade me otherwise, I conclude that six months should be sufficient for the tenants to look for suitable alternative accommodation and that time is reasonable considering the reasons for issuing the notice. I am satisfied that any interference with the tenants' human rights is proportionate to the need to adhere to planning law and policy.

25. While I consider that six months is reasonable for the use to cease, I consider that a subsequent period should be allowed to carry out the works required to restore the site to its previous condition. In this case, I consider that allowing a further two months for those works to be undertaken would be reasonable, and as such there is partial success on the appeal on ground (g).

S A Hanson

INSPECTOR