



Appeal Decision

Site visit made on 9 May 2024

by C J Leigh BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th June 2024

Appeal Ref: APP/J0350/C/23/3325756

11 Ward Gardens, Slough, SL1 5ED

- 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 Armandeep Thind against an enforcement notice issued by Slough Borough Council.
- The enforcement notice was issued on 8 June 2023.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the outbuilding on the Land shown edged with a blue line on the attached plan and its use as an independent self-contained dwelling with facilitating works.
- The requirements of the notice are:
 - 1) Cease the use of the outbuilding as an independent self-contained dwelling.
 - 2) Remove the kitchen from the outbuilding.
 - 3) Remove all plumbing and associated pipework in connection with the kitchen from the outbuilding.
 - 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 from the date the notice takes effect.
- The appeal is proceeding on the ground set out in sections 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. 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.

Preliminary matters

2. An appeal on ground (a) is on the basis that planning permission should be granted for what is alleged in the notice. The appellant's submission on ground (a) refers to past use of the building but also refers to other uses that have been said to occur, as well as intended use. Such arguments regarding past use are more pertinent to, and appropriately considered, under an appeal on ground (b). Since this was raised in the appellant's initial submission on which the Council has had the opportunity to comment, I shall address this as though these grounds had been pleaded.

The implied appeal on ground (b)

3. To succeed on ground (b) it is incumbent on the appellant to demonstrate that the matters which are stated in the allegation, have not occurred, as a matter of fact. I need to reach a view on the balance of probabilities. This ground of

appeal as set out in s174(2)(b) is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the notice.

4. The Council's submissions show that visits to the property were undertaken in February and March 2023 that showed the outbuilding being self-contained, with facilities including kitchen, bathroom and bedroom, and that it was occupied by a non-family member as an independent dwelling. The appellant's submissions in this appeal do not dispute this use, but say the intention is to use the outbuilding as an annex to the main house.
5. This ground of appeal cannot succeed simply on the basis that the activities have ceased or items removed. The appellant has not provided any evidence to counter the Council's statement that there was no such occupation of the outbuilding as an independent dwelling during the period leading up to the issue of the notice. On the balance of probabilities the alleged breach had occurred by the date of the issue of the notice. If there was an appeal on ground (b) it would have failed.

The appeal on ground (a) – the deemed planning application

6. An appeal on ground (a) is on the basis that, in respect of the breach of planning control which may be constituted by the matters stated in the enforcement notice, planning permission ought to be granted. The appellant is deemed under s177(5) of the Act to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, ie in this instance a material change of use to an independent self-contained dwelling with facilitating works.
7. The main issue on this ground of appeal is whether the use of the outbuilding as self-contained accommodation provides a satisfactory standard of accommodation for existing or future occupiers. A further issue is the effect of the development on the character and appearance of the area.

Standard of accommodation

8. Use of the outbuilding as a self-contained dwelling creates a tandem form of development whereby there is a new dwelling within the original garden area of 11 Ward Gardens. Access is via the garden to No. 11 from the street, and there are shared garden areas. The outlook from both the outbuilding and the original dwelling is in close proximity, leading to a loss of privacy for occupiers of both buildings.
9. The location of the dwelling and the closeness to other properties leads to an increased intensity of use in this rear garden area. With occupants passing close to other properties and gardens there is increased noise and disturbance to neighbours, which would also be caused by occupants sitting outside the building.
10. No specific provision is made for the parking of vehicles or cycles. The property lies at the end of a cul-de-sac where I saw pressure for parking, and the absence of details for car and cycle parking, and other servicing, leads to a deficiency in the quality of the accommodation due to inadequate provision of such facilities.
11. Policy H13 of the Slough Local Plan 2004 sets out the criteria to be satisfied in order to permit proposals for small scale infill housing, including 'backland'

development. Policy H14 requires an appropriate level of amenity space for dwellings. The use of the outbuilding as a dwelling does not satisfy these policies since there is not appropriate access, amenity space or parking, and there is harm to privacy and amenity of existing occupants.

Character and appearance

12. Core Policy 8 of the Slough Local Development Core Strategy (2008) requires all development to be of a high quality design, and Policy EN1 of the Local Plan sets out the considerations to be paid regarding matters of design. These include requiring development to be compatible with the scale, layout and siting of the area, and the relationship to nearby properties. Use of the outbuilding as a dwelling creates a layout and siting of housing in the area that is not compatible with the existing suburban character of the wider area.
13. Policy H13 also seeks to ensure new housing is of a type, design and scale in keeping with the existing residential area. As noted above, the close proximity between the properties is not typical of the area, and this relationship further leads to harm to the character of the area.

Conclusion

14. The use of the outbuilding as a self-contained dwelling does not provide a satisfactory standard of accommodation for occupants of both that building and neighbouring properties, and is not compatible with the character of the area. Thus, there is conflict with the development plan policies referred to above.

Other considerations

15. The appellant sets out a proposed use as an annex to the main house. The argument is that a planning condition would be accepted to limit the use of the building solely for purposes ancillary to the main dwelling.
16. The outbuilding exists following the implementation of planning permission granted on 14 September 2018 for 'construction of a rear outbuilding' (ref P/17228/002). This permission is subject to a planning condition that the outbuilding shall only be used for domestic purposes ancillary to the enjoyment of the main dwelling, with no cooking facilities installed, and that the outbuilding shall not be used as separate self-contained residential accommodation. The possible use sought by the appellant, and control over that use, therefore exists. In contrast, the outbuilding's use as a self-contained dwelling is unacceptable in planning terms. I attach limited weight to this potential fallback.

Conclusion on ground (a)

17. On the main issues I have found that the unauthorised development conflicts with the development plan as a whole. I conclude that the appeal on ground (a) and the deemed application must fail.

The appeal on ground (f)

18. As the enforcement notice alleges the material change of use of an outbuilding, the purpose of the notice has to be to remedy the breach. The notice requires the outbuilding to cease use as a self-contained dwelling, the removal of the kitchen, and removal of plumbing and pipework associated with the kitchen. The issue, therefore, is only whether these requirements are excessive to

remedy the breach. For the steps to be proportionate they should be the minimum necessary to remedy the breach or harm.

19. The cessation of the use of the outbuilding as a self-contained dwelling is necessary to remedy the breach of planning control that has occurred.
20. As noted above, planning permission was granted for the construction of the rear outbuilding under application ref. P/17228/002). The drawings for this permission show the outbuilding to be used as a gym room and garden tool/hobby room. The Council's decision contains the planning condition setting out the use of the outbuilding to be ancillary to the enjoyment of the main dwelling.
21. From the information provided to me by both parties, and from observations at the site visit, it is evident to me that the breach of planning control has occurred through the installation of a kitchen in the outbuilding. In my view those facilities are sufficient to allow for food preparation, storage, cooking and washing to represent a domestic kitchen. It is my judgement on the evidence provided to me that those facilities were ancillary and integral to the making of the material change of use. Accordingly, I am satisfied the removal of the kitchen is necessary to remedy the breach of planning control.
22. The appeal on ground (f) therefore fails.

The appeal on ground (g)

23. The ground of appeal is that the period of time for compliance with the notice requirements falls short of what should reasonably be allowed. The notice requires compliance within 6 months.
24. The appellant asks for 12 months in order to provide time to use the outbuilding as an ancillary building to the main dwelling during renovation works. I do not see any reason why the breach of planning control that has occurred and is the subject of the enforcement notice should continue for longer than 6 months. Nor have I seen any reason why it would take longer to comply with the requirements of the notice.
25. The appeal on ground (g) therefore fails.

Conclusion

26. 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 application deemed to have been made under section 177(5) of the 1990 Act as amended.

C J Leigh

INSPECTOR