



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/23/3326045

25 Oldway Lane, Slough, SL1 5LA

- 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 A Pervez against an enforcement notice issued by Slough Borough Council.
 - The enforcement notice was issued on 14 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of an Outbuilding shown edged with a blue line on the attached plan ('the Outbuilding') to a self-contained dwelling with facilitating works.
 - The requirements of the notice are:
 - 1) Cease the use of the Outbuilding as a self-contained dwelling.
 - 2) Remove the kitchen from the Outbuilding.
 - 3) Remove all plumbing and associated pipework in connection to the kitchen within the Outbuilding.
 - 4) Remove the wooden canopy structure enclosure attached to 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 months from the date the notice takes effect.
 - The appeal is proceeding on the ground set out in sections 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice is varied by the following:
 - Delete the words '5.4 Remove the wooden canopy structure enclosure attached to the Outbuilding;'.
2. Subject to the variation, 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

3. 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 this ground addresses that matter but also contains considerable detail regarding other uses of the outbuilding that have been said to occur. These arguments 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)

4. 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.
5. The appellant's submissions set out what appears to be a wide variety of uses of the outbuilding, including working from home, leisure purposes, and for people to stay in the outbuilding including overnight. The appellant indicates that some of the matters of concern to the Council may have ceased. However, an appeal on ground (b) cannot succeed simply on the basis that the activities have ceased or items removed.
6. The Council have submitted evidence in the form of advertising of the outbuilding on Facebook for rent as a self-contained flat 1-bedroom flat, inspections by a Council Tax Inspector who noted the outbuilding was self-contained and appeared occupied, and correspondence between the appellant and the Council Tax Department regarding additional banding for the outbuilding.
7. The submissions by the appellant do not demonstrate such advertising did not occur, or 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

8. The main issue in 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

9. 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 25 Oldway Lane. This layout leads to a shared access from the street across the garden area of the host property. The garden areas are then shared, with the outlook from the outbuilding towards the main house and garden.
10. The proximity of the two dwellings and the direct overlooking of garden areas leads to a loss of privacy for No. 25 and for occupants of the outbuilding. The ability to look back towards the garden and windows of adjoining properties also leads to a loss of privacy for those adjoining occupants.
11. 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.
12. No specific provision is made for the parking of vehicles or cycles. From what I have read and seen at my site visit the appeal site does not lie in a heavily trafficked area, but there remain no details about cycle parking or other

servicing of the building. This leads to a deficiency in the quality of the accommodation due to inadequate provision of such facilities.

13. 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

14. 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.
15. 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.
16. The development also includes the wooden canopy structure at the front of the outbuilding. In itself, this is a small-scale change to the building that is not intrusive to the area as I saw a variety of outbuildings and structures in the area. But this matter does not alter my findings on the second main issue that the use of the outbuilding as a dwelling leads to a pattern of housing that is not compatible with the wider area.

Conclusion

17. 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 and so the appeal on ground (a) fails.

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, removal of all plumbing and pipework associated with the kitchen, and the removal of the wooden canopy structure. 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. Planning permission was granted for the construction of a detached rear outbuilding on 3 June 2019 (ref. P/17760/000), and the Council have provided

me with a copy of the Decision Notice and drawings. The drawings show the outbuilding to be used as a home office/play room and gym, and the Decision Notice contains a planning condition stating that use shall be incidental to the enjoyment of the dwellinghouse with no cooking facilities installed. An informative on the Decision Notice cautions against the insertion of additional residential facilities other than those incidental to that of the main dwellinghouse.

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 that the removal of the kitchen is necessary to remedy the breach of planning control.
22. Whilst the wooden canopy provides an occasional covered sitting out area for those using the outbuilding, I cannot see that the erection of that canopy was integral to enabling there to be a material change of use of the outbuilding as a self-contained dwelling: it is the internal facilities and layout that allowed the breach of planning control. The removal of that canopy is not proportionate to the breach of control, and so requiring it to be removed is not the minimum necessary to remedy the breach or harm. It would be an onerous requirement and so I have deleted this requirement, as set out in point 5.4 of the notice.
23. The appeal on ground (f) therefore succeeds, but limited to the extent I have set out above.

Conclusion

24. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation 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