



Appeal Decision

Site visit made on 22 May 2024

by S Rawle BA (Hons) Dip TP Solicitor

an Inspector appointed by the Secretary of State

Decision date: 18 June 2024

Appeal Ref: APP/J0350/W/24/3336245

77 Harrow Road, Slough SL3 8SH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Amrik Singh against the decision of Slough Borough Council.
 - The application Ref is P/17249/011.
 - The application sought planning permission for construction of a part single, part double storey rear extension to no.77 Harrow Road and construction of 1 no 3 bedroom house adjacent to no 77 Harrow Road without complying with a condition attached to planning permission Ref P/17249/002, dated 1 June 2022.
 - The condition in dispute is No 4 which states that: Notwithstanding the terms of the Town & Country Planning General Permitted Development Order 1995 (or any order revoking and re-enacting that Order), Schedule 2, Part 1, Classes A,B,C,D,E & F, no extensions to the house hereby permitted or buildings or enclosures shall be erected constructed or placed on the site without the express permission of the Local Planning Authority.
 - The reason given for the condition is: The garden(s) are considered to be only just adequate for the amenity area appropriate for houses of the size proposed. It would be too small to accommodate future development(s) which would otherwise be deemed to be permitted by the provision of the above order in accordance with Policy H14 of the Local Plan for Slough 2004.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a part single, part double storey rear extension to no.77 Harrow Road and construction of 1 no 3 bedroom house adjacent to no 77 Harrow Road at 77 Harrow Road, Slough SL3 8SH in accordance with the application Ref P/17249/011, without compliance with condition number 4 previously imposed on planning permission Ref P/17249/002 dated 1 June 2022 and subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with drawing nos PL/ASB/1, PL/ASB/2 and PL/ASB/3.

Background

2. Planning permission for the part single, part double storey extension to 77 Harrow Road (No 77) and construction of an adjacent 3-bedroom house known as 77a Harrow Road (No 77a) included a condition removing permitted rights for certain development including extensions to the permitted house and no buildings or enclosures to be erected, constructed or placed on the site.

3. It is common ground between the parties that the condition does not restrict the permitted development rights for the existing house that has been extended but does restrict the permitted developments for the adjacent newly constructed 3-bedroom house. Given the wording of the condition which refers to "the house hereby permitted", I agree with that analysis and have determined the appeal on that basis.
4. The development has already taken place at the time of the site visit. There are some differences between the development constructed on site and the approved plans. These include a first-floor front extension to No 77, the parking areas to the rear of the appeal site and an access and structure in the rear garden area of No 77a. For the avoidance of doubt, I have determined the appeal based on the approved plans.

Main Issue

5. The main issue is whether the retention of condition number 4 is necessary to protect the living conditions of the occupants of the newly constructed house with regard to the provision of adequate outside garden space.

Reasons

6. The appeal site comprises a two storey, former end of terrace property at No 77 which has been extended with the additional of a further attached dwelling at No 77a.
7. Saved Policy H14 of the adopted Slough Local Plan 2004 (LP) Local Plan for Slough 2004 sets out that the appropriate level of amenity space will be determined through several criteria, including the type and size of dwelling, the quality of the proposed space and the character of the surrounding area.
8. As outlined above, there are some differences between the development constructed on site and the approved plans and as the appellant has not asked for any changes to the approved scheme, only the removal of condition 4, I have determined the appeal on the basis of the approved plans.
9. This shows that the rear garden area is shallow and due to the parking spaces to the rear, it is of a modest size. However, I observed that the garden serving the dwelling is reasonable for the size of the house as it has an attractive front garden which looks out onto a central green and therefore overall, the quality of outside space is good. Moreover, the outside garden area remains compatible in size to the garden areas of other houses in the vicinity. As a result, I am satisfied that the existing garden areas serving No 77a is appropriate.
10. The Council highlight that the garden area of No 77a, which measures 31 square metres does not meet the guidance contained within the Residential Extensions Guidelines Supplementary Planning Document adopted January 2010 (SPD) which sets out that rear extensions shall not be permitted unless the usable retained rear garden complies with minimum guidelines which for a three bedroom house should have a depth of 9 metres or if that depth cannot be achieved, a relaxation of the standard may be allowed provided the garden size exceeds 50 square metres.
11. Although No 77a is a new dwelling and consequently the SPD is not fully relevant in the determination of this appeal, it does indicate the size of garden

the Council considers adequate for the size of No 77a. However, as outlined above, although I consider the existing garden is modest in size, I consider that it is of an appropriate size in accordance with Policy H14 of the LP.

12. Given the modest size of the garden, I have considered whether condition 4 is necessary to protect the living conditions of the occupants of No 77a. The Planning Policy Guidance – Use of Planning Conditions (PPG) is clear that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity.
13. Given that I consider that the existing garden is an appropriate size, I am not persuaded that it is necessary to restrict permitted development rights as there are already safeguards included with the Town & Country Planning General Permitted Development Order 1995 (GPDO), such as under Class A and Class E where development is not permitted if the total area of ground covered by buildings etc within the curtilage of the dwellinghouse would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse). Such safeguards would ensure that the outside garden area would not be reduced to an unacceptable size and consequently the removal condition 4 would not unacceptably harm the living conditions of the occupants of No 77a.
14. In reaching that view I have had regard to a previous appeal decision¹ that relates to the same site. That decision post-dates the planning permission that I am dealing with and involved a scheme very similar to the one before me, except it also included a single storey front extension to No 77, which outlined above has been constructed. Of particular relevance is that the garden area of No 77a shown on the approved plans that were granted by the previous appeal decision is largely the same as the approved plans subject of this appeal. Moreover, what has been built at the appeal site more closely matches the scheme granted permission by the previous Inspector as it includes the single storey extension which is not included on the approved plans subject of this appeal.
15. Importantly, the previous Inspector did not limit permitted development rights in that case. Consequently, the appellant already has planning permission for a very similar, but larger scheme which more accurately reflects what has been built on site which does not restrict their permitted development rights. This reinforces my view that it would not be reasonable to retain such a restriction as it would serve no practical purpose.
16. I therefore conclude that the retention of condition 4 is not necessary as, for the reasons set out above, the removal of the condition which restricts certain permitted development rights would not result in any material harm and would not conflict with Policy H14 of the LP.

Other Matters

17. The Council have set out their view that the appellant still needs to submit a retrospective application to realign what has been built with what has been granted planning permission. However, I have determined this appeal based on the approved plans. Any inconsistencies between what has been built with the approved plans would have to be pursued by the Council in the normal way.

¹ APP/J0350/W/23/3322820

However, any such discrepancies have not had a bearing on the determination of this appeal.

Conditions

18. By allowing this appeal a new planning permission is created. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
19. As set out above, there is a previous appeal decision which more closely matches what has been built at the appeal site including the single storey front extension at No 77. Given that the previous Inspector only imposed a condition to secure compliance with the approved plans, I do not consider it necessary or reasonable to impose any other conditions as they would serve no material purpose and given the existence of other planning permission would be hard to enforce. On that basis, for the avoidance of doubt I shall also only impose a condition to secure compliance with the approved plans.

Conclusion

20. For the reasons given above I conclude that overall, the proposed removal of a restriction on permitted development rights at the appeal site would not conflict with the development plan and therefore the appeal should be allowed. I will therefore grant a new planning permission which does not restrict such rights but subject to the specified planning condition.

S Rawle

INSPECTOR