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# Appeal Decision

Site visit made on 29 May 2024

**by Richard S Jones BA (Hons), BTP, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 July 2024**

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**Appeal Ref: APP/J0350/C/23/3317332**

**Land at 23 Kennett Road, Slough, SL3 8EQ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Bahadur Aujla against an enforcement notice issued by Slough Borough Council.
  - The notice was issued on 8 February 2023.
  - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the outbuilding for use as a self-contained unit of residential accommodation and facilitating works.
  - The requirements of the notice are to:
    - Cease the unauthorised use of the outbuilding as a self-contained unit of residential accommodation;
    - Remove the kitchen and shower room from the outbuilding;
    - Remove the internal walls incorporating the kitchen and the shower room from the outbuilding;
    - Remove all plumbing, boiler and associated pipework in connection to the kitchen and shower room within the outbuilding; and
    - 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.
  - The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 (as amended).
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## Decision

1. The appeal is allowed and the enforcement notice is quashed.

## Preliminary Matters

2. I note that the Council served a second enforcement notice on 8 February 2023, alleging a breach of planning control arising from a material change of use of the land from Class C3 residential use to a mixed residential and commercial use. I also note the representation received from the neighbour at No 21 Kennett Road stating that there has been no commercial use at the appeal property, or noise nuisance, general disturbance or pollution.
3. Having regard to the appellant's case, the Council also seeks to highlight further breaches of planning control at the appeal site.
4. However, the above matters are beyond the scope of this appeal, which relates to the alleged material change of use of the outbuilding for use as a self-contained unit of residential accommodation and facilitating works.

### **The Appeal on Ground (b)**

5. A ground (b) appeal is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. The onus lies with the appellant to make his case on the balance of probabilities.
6. The appellant disputes that the outbuilding has been used as a self-contained dwelling as alleged and argues that its use is wholly ancillary to the use of the main house. He explains that he has owned the property since 2000 and that the outbuilding was originally converted into ancillary accommodation in 2003, primarily for use as a gym and office space. He states that a shower room and a kitchen were installed in 2003, with the former being used to cook stronger smelling food, so that the smell would not affect the main house.
7. The appellant further states that in 2012 he changed the flat roof of the outbuilding to a pitched roof and constructed an extension which connects the outbuilding to the main house. That, he says is a separate space, with no direct access into the outbuilding. As part of the 2012 works, the appellant says he replaced the windows and doors in the outbuilding and upgraded the kitchen and shower room.
8. The appellant states that he removed the kitchen following investigation by the Council's enforcement team in March 2017 regarding an alleged breach arising from the use of the outbuilding as a separate dwelling. He says he immediately reinstalled the kitchen in June 2017, following the Council's email confirmation in May 2017 that the enforcement file had been closed. Again, the reason for doing so was that he wanted a 'spice kitchen' to avoid cooking certain foods within the main house.
9. The Council's photographs, which are dated prior to issuing the enforcement notice, show the outbuilding to have a fully equipped kitchen, with sink, oven and hob and extractor hood above, a microwave, kettle, toaster, fitted cupboards, fridge freezer and washing machine. The photographs also show a bathroom with shower, toilet, sink and fitted cupboards. There is also one bedroom with a double bed, fitted wardrobes, chair and trolley and another room with a television, single bed, shelving, fitted wardrobes and table and chairs.
10. Those photographs therefore clearly show that prior to issuing the enforcement notice, the outbuilding contained all of the facilities required for day-to-day private domestic existence. However, just because it had the characteristics of a dwellinghouse, it does not necessarily follow that it was being used as a self-contained residential unit.
11. The appellant argues that the outbuilding has only ever been used for ancillary residential uses such as storage, office, gym, a hangout space and as a spice kitchen. He says that on occasion it has been used as guest accommodation for visiting family and a member of staff, both on an ad-hoc, infrequent basis.
12. S55(2)(d) of the 1990 Act provides that the use of land or buildings within the curtilage of the dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such is not development.
13. Dealing firstly with the issue of curtilage, the main house physically adjoins the storage building which runs alongside the boundary to No 21, which in turn adjoins the outbuilding. Those three elements combine to create a courtyard

type arrangement within the enclosed rear garden of the appeal site. The sole entrance and only window to the outbuilding faces onto that courtyard and the rear of the main dwelling. The outbuilding therefore has a clear intimate association with the main dwelling and forms part of its curtilage.

14. The essential feature of an incidental use is that it should have a functional relationship with the primary use, and the relationship should be one that is normally found. It is implicit in the requirement for there to be some functional relationship that an incidental use will not be the same as the primary use.
15. A fully equipped bathroom would usually be comprised within the everyday living facilities of the dwelling, and thus be part of the primary living accommodation. Nevertheless, such a facility could be regarded as part of an incidental use, such as a gym, if integrated within it and subservient to it. However, there is nothing in the Council's photographs to indicate that any part of the outbuilding was being used as a gym and no evidence is provided by the appellant to that end either.
16. Similarly, whilst an office and storage use are clearly capable of being incidental type uses which are normally found, there is again no evidence of such activities taking place in the Council's photographs and the appellant has provided no evidence to show that the outbuilding was being used for those purposes<sup>1</sup>.
17. Obviously, a fully fitted kitchen would also be usually comprised within the everyday living facilities of the main dwelling. The Council's photographs show everyday type food items within the cupboards as well as mugs, plates, bowls and pans. There also appeared to be fresh fruit on the worktop. Pictures of the inside of the fridge also show everyday type items, including fresh foods such as eggs and milk. They also appear to show frozen food in the freezer.
18. Representation from the occupant at No 21 states that he moved into his property in 2013 and that since that time the outbuilding has been used as a spice kitchen (and gym). However, there is nothing in those photographs to indicate a specialist type of 'spice kitchen' as argued by the appellant (or use of any part of the outbuilding as a gym).
19. The type of food and drink items in the cupboards and fridge freezer, the two types of capsules for washing clothes on the worktop, the toiletries in the bedrooms and bathroom, the plugged-in television, the footwear on the floor, the newspapers on top of the table, the clothes drying on the radiator and what looks like pyjama bottoms on one of the beds, all point to a very high likelihood that the outbuilding was being used for residential purposes at time when the Council took its photographs. No explanation is provided by the appellant of who that was, such as family member or employee. The net curtains in the kitchen window also appear to indicate that person(s) using the outbuilding were looking to protect their privacy.
20. All aspects combined, it is more likely than not that the outbuilding was being used for residential purposes, rather than for purposes incidental to the enjoyment of the main dwellinghouse.

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<sup>1</sup> At the time of my site visit, there was a running machine in one of the rooms as well as items being stored. However, s174(2)(b) of the 1990 Act is worded in the past tense and the question is whether the breach had occurred by the date of issue of the enforcement notice.

21. In such cases, the residential use of the outbuilding may be regarded as part and parcel of (rather than incidental to) the use of the dwellinghouse, even if the outbuilding contains the facilities required for use as a self-contained residential unit, as was the case in *Uttlesford DC*<sup>2</sup>. However, a material change of use would have arisen if the main dwelling and outbuilding were sub-divided to form separate planning units. In such cases it is necessary to assess the physical and functional links between the use of the outbuilding and main dwelling and consider whether a separate planning unit has been created as a matter of fact and degree.
22. I have already found that the outbuilding falls within the curtilage of the main dwelling. It does not have any dedicated garden space or dedicated enclosure of its own. It is visually and functionally focused on both the courtyard and the main dwelling. The courtyard space is shared with the main dwelling and provides a relatively small separation between the two buildings.
23. I saw that the outbuilding has its own front door and can be accessed without having to go through the main dwelling, either via a side gate or the side boundary vehicular access to the rear hardstanding area. However, those access points also serve the main house. The appellant has not therefore sought to provide a dedicated access to the outbuilding.
24. To use the side gate would involve walking directly across the rear elevation of the main dwelling, so its use by anyone unrelated to the appellant and his family would compromise the enjoyment and privacy of that dwelling and the rear courtyard space. The use of the vehicular access point would be less intrusive but would still involve walking into the courtyard space which has an intimate association with the dwelling.
25. The above therefore supports the appellant's position that it has never been the intention to create a separate living unit from the main dwelling. Moreover, he explains that the outbuilding does not have a separate address and is not served by its own separate services or utility meters, and no evidence is provided from the Council which contradicts that.
26. As noted, the appellant acknowledges that the outbuilding is used by a member of staff, employed by him, but as a guest and on an infrequent ad-hoc basis. There is very little evidence to suggest it is anything more than that, and certainly not to an extent which points towards the subdivision of the planning unit and the creation of a separate dwelling. I have no other evidence which indicates use by someone unconnected to the family's occupation of the main dwelling.
27. I note the representation from the occupant at No 21 that there has not been a material change of use of the outbuilding for use as a self-contained unit of residential accommodation. However, his knowledge of the outbuilding is not explained and I have already found that it is unlikely that it was used as a gym or some form of dedicated spice kitchen, as indicated by the neighbour, at the time the enforcement notice was issued. In the circumstances, the representation attracts limited weight.
28. Nevertheless, the above described physical and functional relationships do not point towards the creation of a separate planning unit, as a matter of fact and

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<sup>2</sup> *Uttlesford DC v SSE & White* [1992] JPL 171.

degree. On the balance of probabilities, the residential use of the outbuilding was part and parcel of the use of the main dwellinghouse.

29. I therefore find, on the balance of probabilities, that at the time the enforcement notice was issued, the material change of use of the outbuilding to a separate self-contained residential unit had not occurred. The appeal on ground (b) succeeds.

### **Conclusion**

30. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.

31. In these circumstances, the appeal on ground (f) does not fall to be considered.

*Richard S Jones*

INSPECTOR