



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: 15 July 2024

Appeal Ref: APP/J0350/C/22/3313935

Land at 1 Quinbrookes, Slough, SL2 5RX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Zahid Khan against an enforcement notice issued by Slough Borough Council.
 - The notice was issued on 28 November 2022.
 - The breach of planning control as alleged in the notice is:
 - a) Without planning permission, the erection of a breeze-block outbuilding with attached associated wooden and metal structures and its use within the residential curtilage of the Land for Commercial use for the storage, sale and breeding of pigeons and pigeon food in the approximate position show edged Blue in the attached plan; and
 - b) the erection of a timber/plastic upvc additional single story side extension onto an existing side extension to the house shown in the approximate position edged Green in the attached Plan.
 - The requirements of the notice are to:
 - a) Cease the use of the Land for the storage, sale and breeding of pigeons and sale of pigeon food.);
 - b) Demolish the outbuilding (as outlined in blue on the Plan) and the attached wooden / metal structure;
 - c) Demolish the additional single story side extension (outlined in green on the attached Plan) in its entirety; and
 - d) 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 three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - Deleting paragraph 3.a) and its substitution with 'Without planning permission, the erection of a breeze-block outbuilding with attached associated wooden and metal structures and its use within the residential garden of the Land for commercial use for the storage, sale and breeding of pigeons and the storage and sale of pigeon food, in the approximate position shown edged Blue in the attached plan; and'.
 - Deleting the word 'story' in paragraph 3.b) and substituting it with the word 'storey'.
 - Deleting the full stops and closed bracket at the end of requirement 5a) and substituting them with a semicolon.

2. Subject to the corrections, 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.

The Enforcement Notice

3. The alleged breach of planning control refers to 'the residential curtilage of the land'. However, the term 'curtilage' simply describes an area of land that has an intimate association with a building and the extent is a matter of fact and degree judgement. The allegation should therefore be corrected to refer to residential garden.
4. The allegation also includes 'commercial use for the storage, sale and breeding of pigeons and pigeon food'. That evidently should read 'storage, sale and breeding of pigeons and the storage and sale of pigeon food'. The allegation also refers to the approximate position 'show' edged in blue which is evidently a typo and should be 'shown', and to 'single story', which should, using British spelling, be 'single storey'.
5. Also, there are two full stops and a rogue bracket at the end of requirement 5a, which should be deleted and replaced with a semicolon. I am able to make those minor corrections under the powers transferred to me by s176(1)(a) of the 1990 Act, without injustice to any party.

Preliminary Matters

6. The appellant has raised issues which amount to a hidden ground (b) appeal. The Council has had sight of the relevant submission and has had opportunity to comment. I will therefore determine the appeal with the additional ground.
7. Both the Council and the appellant refer to a planning application for a proposed side extension and outbuilding at the appeal property. The Council confirm that the application remained undetermined at the time of writing its statement.
8. The existing plans submitted with the application show a structure comprised of a store and two bird cages positioned in the rear garden alongside the boundary to No 3 Quinbrookes. The shape and position of that structure appears to be broadly consistent with the alleged breeze-block outbuilding with attached associated wooden and metal structures, shown edged in blue on the plan attached to the enforcement notice.
9. By the time of my site visit, the wooden and metal bird cage parts had been removed. The remaining breeze block store building appears to be the same as that shown in the Council's photographs from December 2021 and as referred to in the alleged breach of planning control. Nevertheless, the ground (a) appeal is made against the whole of the development as alleged in the notice, and that is what I have considered.
10. Since submission of the appeal, a revised version of the National Planning Policy Framework (the Framework) has been published (December 2023) and this is a material consideration which should be taken into account from the date of its publication. As the amendments do not materially alter the policies most relevant to the appeal, I have not reverted to the parties for comment.

The Appeal on Ground (b)

11. 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.
12. As noted, by the time of my site visit the wooden and metal bird cages had been moved from the location shown in the enforcement notice. However, it makes no difference if the alleged breach has ceased in part or in full because 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.
13. In any case, the ground (b) appeal submission is made solely in relation to the alleged sale of pigeons, which the appellant asserts as incorrect.
14. The Council say that following a complaint, a planning enforcement officer and environmental health officer visited the site in December 2021, when between 100-150 pigeons were observed on site, and that at the visit they were advised that some were for sale, some were for leisure and some were for breeding. The Council has also produced a letter from its housing enforcement officer, sent in relation to that site visit, which refers to being advised by the appellant that the COVID-19 pandemic had impacted on how many birds he could sell.
15. More tellingly, the Council has also provided evidence of commercial sales via on-line advertising, where the postcode and name matches that of the appeal site and appellant. Further evidence is provided of an on-line pigeon food shop at the appeal site.
16. The appellant has provided no evidence of his own which contradicts the above, or indeed any other evidence in support of his case.
17. I therefore find that the matters alleged in the notice, including the sale of pigeons, did occur, on the balance of probabilities. The appeal on ground (b) fails.

The Appeal on Ground (a)

Main Issues

18. The main issues are:

- the effect of the side extension and outbuilding, with attached associated wooden and metal structures, on the character and appearance of the area; and
- the effect of the outbuilding with attached wooden and metal structures on the living conditions of neighbouring occupiers.

Reasons

Character and appearance

19. The single storey extension has been erected on the side of an existing single storey side extension to the red brick, two-storey, semi-detached appeal dwelling. Due to its rudimentary construction and use of highly contrasting white shiplap cladding, it amounts to a poor form of development, which also relates poorly to the appeal dwelling.

20. Although set back from the main building line it can clearly be seen in its relatively exposed location towards the corner of Quinbrookes and Berryfield. Here, its poor design and discordant finishing draws undue attention in the street scene, appearing both incongruous and visually intrusive.
21. It is evident from the Council's photographs that the wooden and metal bird cage structures, running from the front of the blockwork outbuilding, were also of poor design and rudimentary construction and would have appeared incongruous and harmful to its suburban rear garden setting. The combined form of the structures would also have appeared disproportionately large in such a setting.
22. Moreover, because the boundary treatment between Nos 1 and 3 Quinbrookes is visually permeable, being fairly low, chain link fencing, the full extent of the combined structures would have been visible from the neighbouring property. Given its proximity, size and appearance, it would have been visually intrusive when seen from both the garden and dwelling of No 3.
23. I therefore conclude that both operational aspects of the enforcement notice result in unacceptable harm to the character and appearance of the area, contrary to the Local Plan of Slough (LP) Policies EN1 and H15, Core Policies¹ 1 and 8, the Residential Extensions Guidelines Supplementary Planning Document² (SPD) and paragraph 135 of the Framework. Those state, amongst other things, that development proposals are required to reflect a high standard of design and must be compatible with and/or improve their surroundings.

Living conditions

24. As noted, at the time of the Council's site visit, it estimated there to be approximately 100-150 pigeons being kept in the structures in the rear garden of the appeal property. That is a significant number within the context of a residential garden in such close proximity to other neighbouring properties.
25. The concern of a neighbouring resident over the amount of pigeon mess in his garden is therefore unsurprising and understandable, as it is likely to have compromised his enjoyment of the same.
26. The keeping, sale and breeding of pigeons and the storage and sale of pigeon food would also likely have generated a significant amount of comings and goings to and from the outbuilding and a duration and intensity of use which would not normally be found. That activity would likely have taken place in close proximity to the garden of No 3 and because of the largely open nature of that boundary there would have been little or no mitigation to the associated noise and disturbance.
27. Although not particularly loud, the constant cooing and fluttering of the birds in such close proximity to No 3 would also have materially added to the general disturbance arising.
28. Moreover, the Council's housing enforcement officer noted that large amounts of waste could accumulate from cleaning the pigeon enclosures. She states that

¹ Slough Local Development Framework Core Strategy Development Plan Document 2006 -2026

² Slough Local Development Framework Residential Extensions Guidelines Supplementary Planning Document Adopted January 2010

at the time of her site visit, the appellant advised her that he paid for it to be collected and disposed of. However, no evidence is provided to that effect. Nor is any rebuttal given to the concerns of a neighbouring resident that the appellant lights bonfires in his garden to burn pigeon waste, the odour from which he states prevents him using his own garden. At the time of my site visit I actually saw and smelt the end of a bonfire in the appellant's garden.

29. I note the objection from a neighbouring occupant that in the past four years or more his garden has been infested with rats and that he has attempted to control the same through blocking tunnels and through the use of traps and poison.
30. Whilst I have no reason to question those submissions, the letter to the appellant from the Council's housing enforcement officer (dated 15 December 2021) states that at the time of her visit she did not see any evidence of a rat infestation in the appellant's garden and that she did not see any food being stored out in the open that may attract pests. On that basis she was satisfied that no further action was needed by the appellant. The evidence before me therefore does not point to the appeal development being the source of infestation in the objector's garden.
31. Nevertheless, I find that the combined form of the breeze-block outbuilding with attached associated wooden and metal structures and its commercial use for the storage, sale and breeding of pigeons and the storage and sale of pigeon food, would have amounted to an unduly intensive and unneighbourly form of development which would have resulted in unacceptable harm to the living conditions of neighbouring occupants, contrary to LP Policies H15 and EMP4, the Residential Extensions Guidelines SPD and paragraph 135 of the Framework. Those state, amongst other things, that proposals for extensions to existing dwelling houses will only be permitted if specified criteria are met, including that there is no significant adverse impact on the amenity of adjoining occupiers.

Other Matters

32. The Council's reasons for issuing the notice also cite conflict with LP Policies H8 (loss of housing), T2 (parking restraint), H13 (backland/infill development), H14 (amenity space) and Core Policies 4 (type of housing) and 7 (transport). However, I find those policies to have limited relevance to the main issues identified.

Conclusion

33. For the reasons given above, I conclude that the appeal development is contrary to the development plan as a whole, and that material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The ground (a) appeal should not therefore succeed. I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

The Appeal on Ground (f)

34. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or, as the case may be, the injury to amenity caused by the breach.

35. The appellant makes no ground (f) case in relation to the additional side extension but argues that to completely demolish the outbuilding is excessive and that lesser measures can be taken to comply with the enforcement notice. However, it is not explained what those lesser measures could be and the requirements to cease the use of the land for the storage, sale and breeding of pigeons and sale of pigeon food, and to demolish the outbuilding with attached wooden/metal structure, logically follow from and tallies with the allegation, as corrected. Those requirements are not therefore excessive for the purposes of remedying the breach of planning control.
36. I note that the aforementioned planning application includes a larger outbuilding either in or in the general location of the existing blockwork outbuilding, without the pre-existing wooden and metal structures. I do not know whether that planning application has subsequently been approved. If it has, then s180(1) of the 1990 Act provides that where planning permission is granted after the service of an enforcement notice for any development already carried out, the enforcement notice shall cease to have effect insofar as it is inconsistent with the planning permission. This means that a planning permission overrides an enforcement notice to the extent that the planning permission authorises what is being enforced against.
37. Nevertheless, for the reasons explained the ground (f) appeal fails.

Richard S Jones

INSPECTOR