**SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Planning Committee **DATE:** 3rd July 2019

**PART 1**
**FOR INFORMATION**

## PLANNING APPEAL DECISIONS

*Set out below are summaries of the appeal decisions received recently from the Planning Inspectorate on appeals against the Council's decisions. Copies of the full decision letters are available from the Members Support Section on request. These decisions are also monitored in the Quarterly Performance Report and Annual Review.*

**WARD(S) ALL**

| Ref | Appeal | Decision |
|---|---|---|
| 2017/00298/ENF | 9, Mortimer Road, Slough, SL3 7SE<br><br>Alleged unauthorised development P/16100/000 also HMO - 8 bed with kitchens | Appeal Dismissed<br><br>28th May 2019 |
| P/05539/003 | 3, Huntercombe Lane South, Taplow, Maidenhead, Berkshire, SL6 0PQ<br><br>Construction of a two storey front, side and rear extension in connection with the creation of a two storey dwelling. | Appeal Dismissed<br><br>19th June 2019 |
| P/05323/002 | 207, Cippenham Lane, Slough, SL1 5AG<br><br>Construction of a detached bungalow with associated works | Appeal Dismissed<br><br>19th June 2019 |
| Y/17448/001 | 22, Leeds Road, Slough, Berkshire, SL1 3PU<br><br>The erection of a single storey rear extension, which would extend beyond the rear wall of the original house by 6.0m, with a maximum height of 3.5m, and an eaves height of 2.95m | Appeal Part Dismissed / Part Approved<br><br>19th June 2019 |
| 2017/00273/ENF | 29, Merton Road, Slough, SL1 1QW<br><br>Alleged unauthorised fence over 1m in height | Appeal Dismissed<br><br>21st June 2019 |
| 2017/00297/ENF | Flat 1, 96, Upton Road, Slough, SL1 2AW<br><br>Alleged unauthorised development of an outbuilding | Appeal Upheld<br><br>21st June 2019 |

The Planning Inspectorate

# Appeal Decision

**by Ken McEntee**

**a person appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 28 May 2019**

**~~Appeal ref: APP/J0350/C/18/3217365~~**
**Land at 9 Mortimer Road, Slough, Berks, SL3 7SE**

- 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 brought by Mr Saghir Malik against an enforcement notice issued by Slough Borough Council.
- The notice was issued on 26 October 2018.
- The breach of planning control as alleged in the notice is "(1) Without planning permission, the erection of a single storey side and rear extension to the dwelling house shown edged blue on the annexed plan 2 ("the Unauthorised Extension") (2) Without planning permission, the material change of use of the Land from a single dwelling house to use as two separate self-contained dwelling houses ("the Unauthorised Use").
- The requirements of the notice are: "1. Cease the Unauthorised Use of the Land. 2. Demolish the Unauthorised Extension. 3. Upon compliance with the above step (2), repair the affected areas of the dwelling house with matching materials, bricks, mortar and bonding method to the original dwelling house. 4. Remove from the Land all materials, rubbish, debris, plant and machinery resulting from compliance with above steps (1) and (3). as described in the annex to this decision".
- The period for compliance with the requirements of the notice is: "Three (3) months after the notice takes effect".
- The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

**Summary of decision**: **The appeal is dismissed and the enforcement notice is upheld without variation.**

## Reasons for the Decision

1. The appellant's stated reason for requiring more time to comply with requirements of the notice is that he intends to submit a retrospective application for the unauthorised development and use. He has not suggested how much further time he requires for this to happen. However, there is no evidence before me that such an application has been submitted; whether one will be in the future can only be considered as a matter of speculation at this stage. It would appear that the appellant has had ample time since December 2017 to remedy the breach and I am also mindful that some 6 months have elapsed since the appeal was submitted with enforcement action effectively suspended. In these circumstances, I am not satisfied there is good reason to extend the compliance period further and consider the 3-month compliance period to be adequate. The ground (g) appeal fails accordingly.

## Formal decision

2. For the reasons given above, the appeal is dismissed and the enforcement notice is upheld.

*K McEntee*

The Planning Inspectorate

# Appeal Decision

Site visit made on 6 June 2019

**by D J Barnes MBA BSc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 19th June 2019**

**Appeal Ref: APP/J0350/D/18/3216095**
**3 Huntercombe Lane South, Slough SL6 0PQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Robert Palmer against the decision of Slough Borough Council.
- The application Ref P/05539/003, dated 8 August 2018, was refused by notice dated 9 October 2018.
- The development proposed is the erection of front and first floor extensions.

## Decision

1. The appeal is dismissed.

## Main Issues

2. It is considered that the main issues are the effects of the proposed development on (a) the character and appearance of the property and the streetscene and (b) the living conditions of the occupiers of 1 Huntercombe Lane South

## Reasons

*Character and Appearance*

3. The appeal property is an altered detached bungalow with accommodation within the roofspace. The property forms part of a predominately linear form of residential development of detached bungalows and 2-storey houses that front Huntercombe Lane South. The proposed development includes an extension at first floor level to provide additional accommodation.

4. By reason of scale and design, the proposed development would not represent subservient and proportionate additions to the original property. For these reasons, when appeal scheme is assessed as an extension to the property, there would be a conflict with Policies H15 and EN2 of The Local Plan for Slough 2004 (LP) and the *Residential Extensions Guidelines Supplementary Planning Document* (SPD), particularly guidelines DP1, DP2 and EX27. The scale of the existing and proposed alterations to the original bungalow would, in effect, result in the creation of a 2-storey dwelling of a materially different design to the current property. The appeal scheme has also been assessed on this basis.

5. When viewed from the road, the current configuration of the property appears disjointed with 2 single storey gable additions with a link between and a dormer above. The property's side elevation can be seen because of the drive

which provides access to another dwelling and rear gardens. The proposed development's design would result in a cohesive building form which would improve the appearance of the front and side elevations when viewed from the road. In making this assessment, account has been taken of the central gable element and of the proposed front elevation with balconies either side.

6. Rather than there being a consistency to the character and appearance of the dwellings fronting the road they are of varying types and designs. By reasons of the variation which exists, the design, massing and form of the appeal scheme would not be a particularly prominent or visually dominant form of development so as to result in an incongruous addition to the streetscene. The appeal scheme would both respect and be compatible with the residential character of the streetscene.

7. Although resulting in a 2-storey dwelling, the proposed development would not materially alter the footprint of the property and the plot would not be overdeveloped. Instead, the appeal scheme would result in a 2 storey property sited within a plot of similar proportions to the other dwellings fronting the road.

8. On this matter it is concluded that the resulting 2-storey dwelling would not cause significant harm to the character and appearance of the property and the streetscene and, as such, it would not conflict with LP Policy EN1 and Core Policy 8 of the Slough Local Development Plan Framework Core Strategy 2006-2026 (CS) concerning high quality development and proposals respecting their location, streetscene, surroundings and both the character and distinctiveness of existing buildings.

*Living Conditions*

9. No. 1 Huntercombe Lane South is a bungalow with accommodation within the roofspace and habitable windows within the ground floor rear elevation. The appeal property possesses a greater depth than No. 1 and projects further rearwards than this neighbouring bungalow. With the exception of the demolition of a lean-to style side addition, the proposed development would not alter the depth and siting of the property relative to No. 1.

10. The proposed development would alter the location of the current ridge of the main pitched roof by moving it south away from the shared boundary with No. 1. However, the height and overall bulk of the proposed roof would be greater when compared to the current roof. When assessed in combination with the existing siting and depth of the property, the height and bulk of the proposed development would result in an increased sense of enclosure for the occupiers of No. 1.

11. Further, by reason of the increased bulk and siting of the existing property which is to the south of this neighbouring bungalow, some reduction in levels of sunlight and additional overshadowing would be experienced by the occupiers of No. 1. These matters alone would not be a reason for this appeal to fail but they add to the concern already identified.

12. For the reasons given, it is concluded that the proposed development would cause unacceptable harm to the living conditions of the occupiers of 1 Huntercombe Lane South and, as such, it would conflict with LP Policy EN1 and CS Core Policy 8. Amongst other matters these policies require development to

consider its relationship to nearby properties and the design of all development within the existing residential areas to respect the amenities of adjoining occupiers. Following the approach identified in the first issue, the appeal scheme has not been assessed against the specific policies and SPD concerning extensions to dwellings.

**Conclusion**

13. Although the proposed development would not cause significant harm to the character and appearance of the property and the streetscene, this matter is demonstrably outweighed by the unacceptable harm which would be caused to the living conditions of the occupiers of 1 Huntercombe Land South. Accordingly, it is concluded that this appeal should be dismissed.

*D J Barnes*

INSPECTOR

The Planning Inspectorate

# Appeal Decision

Site visit made on 18 June 2019

**by Helen O'Connor LLB MA MRTPI**

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

**Decision date: 19 June 2019**

**Appeal Ref: APP/J0350/W/19/3221641**
**207 Cippenham Lane, Slough SL1 5AG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Basra against the decision of Slough Borough Council.
- The application Ref P/05323/002, dated 6 August 2018, was refused by notice dated 21 August 2018.
- The development proposed is a detached bungalow including associated parking and cycle shed.

## Decision

1. The appeal is dismissed.

## Procedural Matters

2. It appears from the submitted evidence, that the Council determined the application prior to 21 days elapsing from the date of the publicity notice served on adjoining owners or occupiers under the Town and Country Planning (Development Management Procedure) (England) Order 2015. However, I am satisfied that in relation to this appeal, appropriate notice has been served on those third parties allowing sufficient time for them to comment on the proposal, and I have taken account of representations received. Accordingly, no injustice will result by my proceeding to determine the appeal.

## Main Issues

3. The main issues are the effect of the proposal on the character and appearance of the area and the living conditions of neighbouring residents, with particular regard to noise.

## Reasons

*Character and appearance*

4. The appeal site is located within a residential enclave at the junction of Cippenham Lane with Twinches Lane. Whilst there is some variety in the form and materials used in the dwellings, there is a coherent order to the layout that contributes positively to the legibility of the surrounding area. Houses are generally arranged fronting onto the street, with a discernible set back to the building line. There is a clear distinction in hierarchy between the more formal, prominent front elevations of the dwellings in contrast to the secondary role of outbuildings, which are generally located at the end of fairly long rear gardens.

This results in a well ordered, reasonably pleasant sub-urban character to the area.

5. 207 Cippenham Lane is a semi-detached dwelling that sits comfortably within the established layout. In common with other properties in the vicinity it has a garage building at the rear, accessed via a rear lane. The appeal site forms part of the long rear garden of the property, the design of which respects, and forms part of, the layout characteristic of the area.

6. The proposal would introduce a detached dwelling in a tandem arrangement behind No. 207. Its principal elevation would face south towards the back of the properties in Cippenham Lane and consequently, would not front onto the road. In addition, although facing away from the rear access lane, the built form would align with the linear row of outbuildings and garages. In this context, the development would be a somewhat confusing addition at odds with the secondary nature and subordinate appearance of the rear access lane. As such, the proposal would dilute the distinctive regular form and hierarchical layout within the discrete residential area.

7. The appellant asserts that there have been similar backland developments in Slough, and points specifically to the bungalow at 203 Cippenham Lane as an example. No.203 is located to the west of the appeal site behind 205 Cippenham Lane and as such, I accept that it is similar in this regard. However, the plot is significantly larger than the appeal proposal and is at the end of the access lane, set noticeably apart from nearby outbuildings. In addition, it is situated on the western edge of the residential enclave adjacent to a school field, thereby allowing views to the property from Cippenham Lane. It is therefore notably different to the scheme before me in these respects, and consequently, is of limited weight as a direct comparison. In any event, I have determined the appeal proposal on its own merits.

8. Accordingly, I find that the proposed development would be harmful to the character and appearance of the area and is therefore, contrary to Core Policy 8 of the Slough Local Development Framework Core Strategy 2006-2026, Development Plan Document, 2008 (CS) which, amongst other matters, requires the design of new development to respect its location and surroundings. In addition, it would conflict with saved policies H13 and EN1 of the Local Plan for Slough, 2004 (LP) which in addition to other matters, include objectives that new development should be in keeping with the surrounding area.

*Living Conditions*

9. The proposed dwelling would be served by an access drive onto Cippenham Lane, located between Nos. 205 and 207, directly adjacent to the boundary with No. 205. Although the built form of No. 205 that presents hard onto the boundary does not contain windows, the driveway would nevertheless extend for the entire length of the rear garden serving the property. In addition, the parking and turning arrangements for the proposal would result in associated vehicle movements and activity taking place close to the boundaries with the rear gardens of 209 and 205 Cippenham Lane.

10. The location of the parking and turning area would be likely to introduce regular vehicular movements into an area presently used as a domestic garden. I noted at my site visit that the rear garden of the neighbouring

property provided quieter relief from the busy, noisier Cippenham Road at the front. As a result, noise from vehicle engines and movement within a relatively confined site in such proximity, would be particularly noticeable, and therefore, likely to disturb the occupants of the properties either side when using their gardens. In addition, disturbance would be caused to the occupants of No.209, as the property has two first floor bedroom windows facing southwards relatively close to the parking area for the appeal site. Whilst the modest scale of the proposal would limit the frequency of vehicular movements, unacceptable harm to the living conditions of nearby residents would nevertheless result.

11. Reference is made to development in nearby Oakfield Avenue where a vehicular access point has been created between 31 and 35 Oakfield Avenue to serve 4 recent dwellings. The Council confirms this permission was granted in 2008 and involved the demolition of 33 Oakfield Avenue. Furthermore, the flank wall and rear garden of 30 Oakfield Avenue is located directly adjacent to more significant recent development at Hayling Close.

12. I was able to see both examples at my site visit, which in both cases would have resulted in an additional number of dwellings than the appeal proposal, thereby providing greater benefits to the overall supply of housing. However, in my view, they serve to demonstrate that having parking and access arrangements so close to rear gardens is likely to result in harm to the living conditions of nearby residents. It follows that these examples do not constitute a reason to allow similar development.

13. Accordingly, I find the proposal would result in unacceptable harm to the living conditions of 205 and 209 Cippenham Lane due to noise disturbance from vehicle movements that would be generated by the additional dwelling. It therefore conflicts with Core Policy 8 of the CS and saved policy H13 of the LP, which amongst other matters, share an objective to safeguard the living conditions of existing nearby residents by preventing unacceptable noise disturbance.

*Other Matters*

14. I note that Cippenham Lodge, a Grade II listed building with a Grade II listed wall is opposite the appeal site on the south side of Cippenham Lane. I am required to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess. Neither party suggests that the proposal would adversely affect the significance of these heritage assets and given their distance from the appeal site, with the intervening Cippenham Road, I have no reason to consider otherwise.

## Planning balance and conclusion

15. The Council indicates that at present they are unable to demonstrate a five year supply of deliverable housing sites, although this is not a matter relied expressly upon as part of the appellant's case. Paragraph 11(d)(ii) of the National Planning Policy Framework (the Framework) indicates that where the local planning authority cannot demonstrate a five year supply of deliverable housing sites the presumption in favour of sustainable development means granting permission unless any adverse impacts of doing so would significantly

and demonstrably outweigh the benefits when assessed against the policies of the Framework when taken as a whole.

16. The main benefit of the proposal would be the provision of an additional dwelling towards the overall housing supply in an accessible location. Furthermore, some economic benefits would arise from the construction and economic activity associated with future occupants. However, considering the modest scale of the proposal such benefits would be limited in nature, and therefore, only attract limited weight. Balanced against that, is the harm arising from the adverse impact to the character and appearance of the area and living conditions of nearby residents. In my view, the adverse impact of the development would significantly and demonstrably outweigh the modest benefit accrued from the provision of one dwelling.

17. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

*Helen O'Connor*

Inspector

The Planning Inspectorate

# Appeal Decision

Site visit made on 18 June 2019

**by Helen O'Connor LLB MA MRTPI**

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

**Decision date: 19 June 2019**

**Appeal Ref: APP/J0350/D/18/3214929**
**22 Leeds Road, Slough, Berkshire SL1 3PU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order).
- The appeal is made by Mr and Mrs O Heron against the decision of Slough Borough Council.
- The application Ref Y/17448/001, dated 13 September 2018, was refused by notice dated 25 October 2018.
- The development proposed is:
  1) The erection of a single storey rear extension which would extend beyond the rear wall of the original house by 6 metres, for which the maximum height would be 3.5 metres, and for which the height of the eaves would be 2.95 metres.
  2) The erection of a single storey rear extension which would extend beyond the rear wall of the original house by 4 metres, for which the maximum height would be 3.0 metres, and for which the height of the eaves would be 2.95 metres.

## Decision

1. The appeal is dismissed insofar as it relates to 1) The erection of a single storey rear extension which would extend beyond the rear wall of the original house by 6 metres, for which the maximum height would be 3.5 metres, and for which the height of the eaves would be 2.95 metres. The appeal is allowed and prior approval is not required under the provisions of Schedule 2, Part 1, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) insofar as it relates to 2) The erection of a single storey rear extension which would extend beyond the rear wall of the original house by 4 metres, for which the maximum height would be 3.0 metres, and for which the height of the eaves would be 2.95 metres.

## Preliminary Matters

2. The proposal seeks approval for larger household extension development permitted under Schedule 2, Part 1, Paragraph A.4 of the Order. At the time of the application Paragraph A.1 (g) stated that such development was time limited until 30th May 2019. However, this time limit has subsequently been omitted by a Statutory Instrument[1] that came into force on 25th May 2019.

[1] The Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 SI 2019 No.907

3. In my heading I have used the description on the application form which refers to extension No.2 as extending beyond the rear wall of the original house by 4 metres. Notwithstanding the subsequent description in the appeal form and references in the appellants statement to 6 metres, this does not accord with drawing reference 2018-22LR-PA-1 Revision 1.0A which refers to 4 metres.

4. There is a difference between the parties as to how the proposal should be assessed. The appellant proposes two separate extensions under the permitted development right, and the description reflects this, whereas the Council have assessed and determined the proposal as if it were one entity. I have used the description provided by the appellant in the original application form and am referred to an appeal[2] where the Inspector accepted that two separate extensions might be made within one application. Furthermore, the Technical Guidance (TG)[3] produced by the Department for Communities and Local Government for the interpretation of permitted development rights does not suggest such a limit and includes an example[4] of how three separate extensions might constitute permitted development.

5. No.1 in the description is the larger of the two extensions and would be on the western side of the property. Drawing reference 2018-22LR-PA-1 Revision 1.0A identifies this as having the greater height of 3.5m due to the proposed rooflights. No.2, on the eastern side, aligns with the original rear single storey store structure at the appeal site. A 220mm gap separates the two elements making it possible that they could be built independently of each other as discrete elements. On this basis, I shall in the first instance, consider the proposal as two separate extensions, and I shall refer to them as 1 and 2 as denoted in the description.

## Main Issue

6. The main issue is whether the proposed extensions comply with the conditions, limitations or restrictions applicable to the development permitted, with particular regard to Schedule 2, Part 1, Paragraph A.1 (j) (iii) of the Order.

## Reasons

*Paragraph A.1 (j) (iii) of the Order*

7. Schedule 2, Part 1, Paragraph A.1 (j) of the Order states that the proposal would not be permitted development if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would-

   (i) exceed 4 metres in height,

   (ii) have more than a single storey, or

   (iii) have a width greater than half the width of the original dwellinghouse.

8. There is no dispute between the parties that the extensions do not exceed 4 metres in height and would be single storey. As such, the area of dispute is in relation to A.1 (j) (iii) whether the extensions would extend beyond a wall

[2] Reference APP/G5180/D/17/3190299
[3] Permitted development rights for householders, Technical Guidance (April 2017)
[4] Diagram page 20

forming a side elevation of the original dwellinghouse and would have a width greater than half the width of the original dwellinghouse.

9. The original width of 22 Leeds Road remains largely intact and accords with the historical plan extract provided by the Council in their delegated officer report. It is clear from the submitted plan that whilst proposed extension No.2 is narrow and less than half the width of the original dwelling, this is not the case for extension No.1. Drawing reference 2018-22LR-PA-1 Revision 1.0A shows the footprint for this extension is approximately three quarters of the width of the original dwellinghouse, separated from extension No.2 by a gap of 220mm.

10. The question remains whether either of the proposed extensions would extend beyond a wall forming a side elevation of the original dwellinghouse. There is no dispute between the parties that No. 22 originally had a small rear store or lean-to projecting from the rear elevation which is shown as retained on the submitted plan. Page 23 of the TG considers Schedule 2, Part 1, Paragraph A.1 (j) of the Order. It advises that a wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall and houses will often have more than two side elevation walls. It follows that the Council correctly identify the side walls of the original rear lean-to as being side elevations of the original dwellinghouse for the purposes of Paragraph A.1 (j).

11. Extension No.1 would lie to the west of the original western side wall of the rear lean-to. I acknowledge that it does not join onto the lean-to due to the 220mm gap, nevertheless the wording of paragraph A.1 (j) does not require this, simply stating that it should not extend "beyond" a wall forming a side elevation of the original dwellinghouse. Page 25 of the TG contains an example that shows an enlargement that extends "beyond", even though it is not joined to, an original rear elevation, and therefore, does not meet the requirements of permitted development. Therefore, extension No.1 does extend beyond the side wall of the lean-to in the sense that it is to the farther side of the original side elevation. As such, given the width of extension No.1, it would not comply with all the limitations set out in paragraph A.1 (j) (iii) and so is not permitted development.

12. In contrast, drawing reference 2018-22LR-PA-1 Revision 1.0A shows extension No.2 aligns with the side walls of the rear lean-to, neither extending beyond its footprint to the east or west. As such, this extension does adhere to the requirements of paragraph A.1 (j) (iii).

13. Accordingly, I find that extension No.1 would not fulfil the conditions, limitations or restrictions applicable to the development permitted, with particular regard to Schedule 2, Part 1, Paragraph A.1 (j) (iii) of the Order, whereas, extension No.2 would meet these requirements.

14. There is nothing to suggest that extension No.2 would not otherwise meet the other relevant requirements of the Order. Furthermore, as the Council undertook neighbour consultations required under the Order and no responses were received, there is no requirement to obtain prior approval as to the impact of the proposed development on the amenity of any adjoining premises under paragraph A.4 (7). Consequently, I conclude that extension No.2 would amount to permitted development and that prior approval is not required.

*Other Matters*

15. The Council assert that the 220mm gap separating the two extensions would not be significant enough to prevent them comprising one entity. In support of this approach they refer to an appeal[5] whereby a 50mm gap was employed, and the Inspector in that case found this to be an artificial device used to circumvent the intentions of the Order. However, the gap in that case was smaller than that proposed here, and furthermore, it was determined prior to relevant changes to the Order[6] and revisions to the TG.

16. The amendment introduced Paragraph A.1 (ja) into the Order, whereby if a proposed extension is to be joined to an existing enlargement under a planning permission granted by Class A, the restrictions apply to the size of the total enlargement. I am referred to several appeals[7] which consider whether separate enlargement elements are joined or not, and consequently, whether paragraph A.1 (ja) applies.

17. From the information before me, it appears that both the elements under consideration in these cases otherwise met the restrictions of the relevant permitted development right. This is significantly different from the appeal case, where extension No.1 would fall outside of the terms of paragraph A.1 (j) (iii). As such, they are of limited relevance to the circumstances of the appeal case and which, in light of my finding above, I do not need to consider further.

**Conditions**

18. As prior approval is not required in relation to extension No.2 there is no procedure to impose additional conditions. The previous standard conditions set out in paragraph A.4 (13), (14) and (15) of the Order were omitted by a recent amendment[8]. However, attention is drawn to paragraph A.4 (11) (b) which requires the development to be carried out in accordance with the information and plans submitted for extension No.2. Furthermore, paragraph A.3 (a) of the Order requires the external materials used to be of a similar appearance to the existing dwellinghouse.

**Conclusion**

19. For the reasons given above I conclude that the appeal should be dismissed in part and allowed in part, whereby extension No.1 is not permitted development but extension No.2 is permitted.

*Helen O'Connor*

Inspector

The Planning Inspectorate

# Appeal Decision

Site Inspection on 13 June 2019

**by Graham Self MA MSc FRTPI**

Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 21 June 2019

**Appeal Reference: APP/J0350/C/18/3211324**
**Site at: 29 Merton Road, Slough SL1 1QW**

- The appeal is made by Mr Iftakhar Ahmed under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by Slough Borough Council.
- The council's reference is 2017/000273/ENF.
- The notice is dated 17 August 2018.
- The breach of planning control alleged in the notice is: "Without planning permission, the unauthorised erection of hoarding on the Land, as shown with a blue line of the Plan (for the purposes of identification only)."
- The requirements of the notice are:
  - (i) Remove the hoarding in its entirety from the Land.
  - (ii) Remove all materials, rubbish, debris, plant and machinery resulting from compliance with the above requirement.
- The period for compliance is one month.
- The appeal was made on grounds (b) and (c) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed.**

## Appeal Site

1. The appeal site lies at the east end of Merton Road next to the turning circle at the end of the cul-de-sac. There are two detached houses on the site. One is the original house. The other is a new house which has evidently been constructed after planning permission was granted on appeal in 2013. The hoarding referred to in the enforcement notice stands along the site boundary at the back of the pavement. Part of the rear of the site abuts a grassed area next to Hatfield Road.

## Ground (b)

2. In his main appeal statement the appellant stated that although he "ticked box (b)" - that is to say, he pleaded ground (b) when the appeal was lodged - he would be relying on ground (c) as his sole ground of appeal. I interpret that statement as withdrawing ground (b). That is also how the council treated the appeal, as was made clear in the council's statement, and nothing to the contrary was stated in the appellant's final comments. Therefore I do not propose to go into any detail on this ground of appeal; but to avoid any possible doubt, I find that the matters alleged in the enforcement notice have occurred, so if ground (b) had been pursued it would have failed.

**Ground (c)**

3. Under this ground of appeal it is claimed that the matters enforced against do not constitute a breach of planning control. The appellant contends that the hoarding was required under health and safety legislation relating to construction sites, that the hoarding had deemed consent coming with planning permissions and that permitted development rights applied for the erection of the hoarding.

4. The hoarding was not permitted by any specific planning permission arising from an application. The legislation at the centre of this appeal is the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the "GPDO"). Under Article 3 and Part 4 of the GPDO, certain temporary buildings and uses are permitted, subject to conditions. Class A of Part 4 provides that the following is permitted development:

> "The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land."

5. Article 2 of the GPDO defines "building" as including any structure or erection. So the hoarding falls within the definition of a building for the purposes of the GPDO.

6. The issue of whether the erection of the hoarding amounted to a breach of planning control has to be assessed having regard to the circumstances which existed when the enforcement notice was issued - that is to say, on 17 August 2018. The hoarding was apparently erected during the time when the new house at the appeal site was being built. The council say that the new house was substantially complete some time before October 2017. This contention is supported by photographs showing walls, roof and windows completed by then, and it appears that only internal work which would not require planning permission remained to be done.

7. Thus far, I judge that the council have some sound arguments, taking into account that the permission granted by Class A of Part 4 of the GPDO is temporary and is subject to a condition that when the "operations" (in this case, the construction of the new house) have been carried out, any building permitted by Class A must be removed. But it is also necessary to consider a planning permission which was evidently granted on 14 August 2018 for a rear extension to the old house at 29 Merton Road and a new pitched roof to a converted garage (application reference P/03798/008). In his final comments (submitted in May 2019), the appellant states that he "has recently started to implement" application P/03798/008. He also states that at the time the enforcement notice was issued "the development at the site is was going *[sic]*[1] and a substantial amount of building works remain in relation to planning reference P/03798/008".

8. I agree with the council that at the time the enforcement notice was issued the new house was substantially completed and in that respect (the duration of operations permitted by the planning permission for the new house) the temporary "requirement" for the hoarding under the GPDO had come to an end. Indeed, the council's photographs taken in February 2018 indicate that this situation had probably been reached well before the enforcement notice was issued. But that is not the end of the story, because of the permission granted a few days before 17 August 2018 for development at the old house. Although the development covered by this permission was nowhere near being started at that

[1] I translate the appellant's inaccurate English here ("is was going") as intending to mean that at the time the enforcement notice was issued the development was ongoing.

time, the wording of the GPDO refers to buildings "required temporarily for the duration of operations being *or to be carried out*" (my italics). I interpret this as authorising the items covered by Class A of Part 4 where required in anticipation of operations which are about to be carried out.

9. However, the courts have held in a different context that where something is "required", it should be reasonably required. In my judgment that principle applies here. It would be wrong, for example, to interpret Class A of Part 4 of the GPDO as permitting something in anticipation of development which does not happen for a long time, or perhaps never happens. Also, deciding the scale or size or extent of what is "reasonably required" cannot be left to the unfettered whim of an applicant or developer.

10. The hoarding enforced against is about 2.5 metres high. It is an ugly, visually jarring feature in an otherwise pleasant residential cul-de-sac. Mr Ahmed contends that the scale of the hoarding "is proportionate to the works that need to be carried out"; but I do not accept this claim. In my judgment a less obtrusive structure could provide adequate security and prevent trespass and fly-tipping whilst also meeting the "reasonable requirement" test.

11. This point is demonstrated by the fact that at the rear of the site, there is lower fencing, between about 1.8 and 2 metres in height measured from the outside (where the ground level varies slightly). This structure consists of normal garden-type timber fencing. Access was evidently gained at this location for equipment during the construction period. If this lower, more conventional fencing has been considered to provide adequate security from the rear, there is no good reason why something similar would not have done the same at the front - especially as the Merton Road frontage is more overlooked from neighbouring properties and there is greater intrinsic security here than at the more secluded rear.

12. Putting together the above considerations, I reach the following conclusions. Security fencing of some sort was reasonably required, and would have been permitted under Class A of Part 4 of the GPDO while the new house was being built at the appeal site. There was probably a period when the temporary permission granted by the GPDO lapsed; but by 17 August 2018 when the enforcement notice was issued, security fencing was again permitted by the GPDO because of the development "to be carried out" at the old house, following the permission granted shortly before then. Nevertheless the hoarding enforced against was not permitted by the GPDO, because a structure of such type and height was not reasonably required.

13. I conclude that the matters alleged in the enforcement notice constitute a breach of planning control. Therefore the appeal on ground (c) does not succeed.

**Other Matters**

14. Both the council and the appellant have referred to planning policies in their submissions. Policy and related considerations are not relevant to grounds (b) or (c) of Section 174(2), which have to be decided on matters of fact and law.

15. I have also noted the comments by both the council and the appellant on an appeal case relating to a site in East Sussex. The circumstances there do not appear to be directly comparable to the present case and the decision on that appeal has not influenced my decision.

16. The appellant has stated that "if the inspectorate decides that the height of the hoarding is greater than it should be then I would be willing to reduce the height as per the inspectorate's directions". I refrain from accepting that invitation, because legal complications would arise (involving deemed planning permission which could undesirably override the restrictions in the GPDO) if I were to attempt to make the enforcement notice "under-enforce" in the way suggested. In any case, the appellant has not claimed that the requirements of the enforcement notice are excessive by pleading ground (f), and there is no reason for me to interfere with the requirements of the notice.

**Formal Decision**

17. I dismiss the appeal and uphold the enforcement notice.

*G F Self*

Inspector

The Planning Inspectorate

# Appeal Decisions

Site Inspection on 13 June 2019

**by Graham Self MA MSc FRTPI**

Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 21 June 2019

**Appeal Reference: APP/J0350/C/18/3203229**
**Site at: Flat 1, 96 Upton Road, Slough SL1 2AW**

- The appeal is made by Miss Penny Deadman under Section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by Slough Borough Council.
- The council's reference is 2017/0029/ENF.
- The notice is dated 27 April 2018.
- The breach of planning control alleged in the notice is:

  "Without planning permission, the unauthorised erection of an outbuilding within the rear garden of the Land, for commercial purposes as a colon hydrotherapy treatment/clinic ('Unauthorised Building').

  Without planning permission, the change of use of the Land from a single residential dwelling house to mixed use consisting of a dwelling and the stationing of the Unauthorised Building for commercial purposes as a colon hydrotherapy treatment/clinic".
- The requirements stated in Part 5 of the notice are:
  (i) Cease the use of the Land for commercial purposes consisting of colon hydrotherapy treatments/clinic within 1 month;
  (ii) Demolish the Unauthorised Building in its entirety from the Land within three months; and
  (iii) Remove from the Land all materials, rubbish, debris plant and machinery resulting from compliance with the above requirements".
- The periods for compliance are specified in Part 6 of the notice as:
  (i) 1 month after this notice takes effect.
  (ii) 3 months after this notice takes effect.
- The appeal was originally made on ground (b) as set out in Section 174(2) of the Town and Country Planning Act 1990 as amended. Ground (a) was added later and accepted by the Planning Inspectorate. An application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary of Decision: The enforcement notice is corrected and varied. The appeal fails and the enforcement notice as corrected and varied is upheld.**

**Appeal Reference APP/J0350/W/18/3203260**
**Site at: Flat 1, 96 Upton Road, Slough SL1 2AW**

- The appeal is made by Miss Penny Deadman under Section 78 of the Town and Country Planning Act 1990 as amended against a refusal of planning permission by Slough Borough Council.

- The council's reference is P/17247/000.
- The application for planning permission was dated 16 January 2018.[1] The council's refusal notice was dated 4 April 2018.
- The development subject to this appeal was described in the application as: "Construction of domestic outbuilding (retrospective application)". In the council's refusal notice the development was described as: "Retrospective application for a detached rear outbuilding".

**Summary of Decision: The appeal fails.**

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**Procedural and Legal Matters**

1. Before considering the grounds of appeal, it is necessary for me to deal with three procedural and legal matters.

2. First, the allegation in the enforcement notice refers to two different types of development as defined under Section 55 of the 1990 Act. One is "operational development" (the erection of a building). The other is the change of use of land. The courts have held that an enforcement notice can validly make such dual allegations,[2] although for reasons which I do not propose to go into in detail here it is normally preferable to avoid combining "operations" and "use" into one enforcement notice.[3]

3. In this instance, however, the allegation aimed at the construction of the building and the allegation aimed at the change of use of the land are muddled, and the reference to the "stationing" of the building is incorrect. The term "stationing" may be suitable when referring to caravans or other mobile objects, but is not appropriate when referring to permanent structures: the building is not "stationed" on the land - it has been built. The "outbuilding" component of the development enforced against is also covered by the first part of the allegation, so the reference to the "stationing" of the building is superfluous as well as incorrect.

4. Second, in describing the "use" part of the alleged unauthorised development, the enforcement notice refers to a change of use "from a single residential dwellinghouse". This is incorrect - the property at 96 Upton Road edged red on the plan attached to the enforcement notice is divided into flats and appears to have been so when the disputed development was carried out - that is to say, it was not a "single residential dwelling house". Alternatively, the address specified in the enforcement notice refers to Flat 1, and this flat is and was also not a "dwelling house" - the flat can be described as a *dwelling* for the purposes of the law relating to the enforcement appeal, but not a *dwelling house*.

5. The flaws just described are not fatal to the notice, as I have powers under Section 176 of the Act to correct it. I have therefore decided to amend the allegation to make it legally satisfactory and for the sake of clarity, so that the first part refers to the erection of the building and the second part refers to the

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[1] The council appear to treat the application as dated 7 February 2018 - that is the date quoted as "application received" in the planning officer's report. The date of the application quoted in the summary details above is the date stated in the application form.

[2] The leading judgment on this point is *Valentina of London Ltd v Secretary of State for the Environment*, The Times May 21 1992.

[3] The reasons for this relate to the different "immunity" periods applying to the different types of development, although the differences do not affect the grounds of appeal pleaded in this case.

change of use of the land. (The term "land" here refers to the "planning unit", which in this instance is the unit of occupation, that is to say, Flat 1 and the attached land where the unauthorised building stands.)

6. Enforcement notices alleging a material change of use do not have to specify the previous use[4], so this incorrect part of the description can be omitted, and I consider it more appropriate to describe the residential component of the alleged mixed use as simply "residential". The amendments do not change the substance of the allegation and so can be made without injustice being caused to any party.

7. Third, I need to explain that part of the appellant's case is based on a misunderstanding. Miss Deadman has evidently believed that the Section 78 appeal against the refusal of planning permission and ground (a) of her Section 174 appeal against the enforcement notice relate to the same development. That is not so. The enforcement notice is directed at the erection of the outbuilding for commercial purposes as described in the allegation and at the change of use of the land. The Section 78 appeal is aimed at seeking planning permission for the construction of a "domestic outbuilding". These descriptions do not describe the same development.

8. Miss Deadman has stated in an email: "I am not seeking planning permission for the matters alleged in the enforcement notice". That statement is misguided. By appealing on ground (a) against the enforcement notice, Miss Deadman has indeed sought planning permission for the matters alleged in the notice. Under Section 174(2) of the 1990 Act, the terms of the planning permission sought by ground (a) and the deemed application are set by the allegation in the enforcement notice. It is not open to an appellant to change the allegation or the scope of the ground (a) appeal and deemed application.

9. During earlier administrative stages of these appeals before my involvement, the Planning Inspectorate appears to have accepted and processed the addition of ground (a) of the Section 174 appeal without the normal fee having been paid,[5] on the basis that it was "fee exempt" because of the existence of the planning application subject to the Section 78 appeal, for which the application fee had been paid to the council. Because the two developments are not the same, as explained above, it is doubtful whether the Inspectorate's acceptance was appropriate. However, I think it would be unfair to turn away this part of the enforcement appeal at this stage without considering it; so in the interests of fairness, I have decided to treat ground (a) of the enforcement appeal and the related deemed application for planning permission (for the development specified in the enforcement notice's allegation) as valid.

10. I now turn to the grounds of appeal. They are considered below in logical, not alphabetical, order (the reason for this being that if, for example, the development enforced against has not occurred (ground (b), planning permission would not be required and ground (a) would not need to be considered).

[4] The court judgment in *Bristol Stadium Ltd v Brown* [1980] JPL 107 held that an enforcement notice does not have to contain a direct description of the previous use. The judgment in *Westminster City Council v Secretary of State for the Environment* [1983] JPL 602 also confirmed this point.

[5] This refers to the fee for the planning application deemed to have been made under Section 177(5) of the 1990 Act. If not paid, ground (a) of an appeal under Section 174(2) if pleaded would normally lapse.

**Section 174 Enforcement Appeal, Ground (b)**

11. Under this ground of appeal, it is claimed that the development enforced against has not occurred, as a matter of fact. It is clear to me from all the evidence that the building mentioned in the enforcement notice was erected for the purpose described in the council's allegation. A council officer who saw inside the building in December 2017 noted that it was arranged as a clinic with a waiting area. The number of people seen by neighbours coming and going, using the side gate to the neighbouring property (where there is also a large outbuilding evidently used for business purposes) supports this aspect of the allegation. In the light of other evidence, I find it difficult to believe the appellant's claim that the side gate was installed merely to allow social exchange between the two properties. Other supporting evidence includes the fact that Miss Deadman is or was listed as a therapist or trainer by what appears to be a franchising company (Dotolo Europe Ltd) involved in this field, with which the neighbour at Number 98 is also linked.

12. Each item of evidence may not be conclusive by itself, but taken together, the evidence is convincing. At the very least, on ground (b) the onus of proof is on the appellant, and that onus has certainly not been discharged. No planning permission has been granted for the erection of the building, whatever its purpose and initial use. As the council has pointed out, there are no "permitted development" rights for the building.[6]

13. Businesses can sometimes be run from dwellings without triggering a material change of use; but because of its scale and nature (including the involvement of visitors) what has happened here has been more than incidental or ancillary to residential use and more than minimal - it is clear from the evidence mentioned above that there has been a material change of use of the planning unit to the mixed use alleged in the notice. Again, this amounted to development as defined in Section 55 of the 1990 Act and was not "permitted development".

14. I conclude that ground (b) of the appeal does not succeed.

**Section 174 Enforcement Appeal, Ground (a) and Deemed Application**

15. Under these parts of the Section 174 appeal, planning permission is sought retrospectively for the erection of the building for use for colon hydrotherapy treatment and for the mixed residential and hydrotherapy clinic use of the planning unit.

16. The outbuilding takes up a large proportion of the limited outside space allocated to Flat 1. It is sited where it would be quite prominently visible from dwellings nearby. There are other outbuildings in the neighbourhood, including the one at Number 98 which is evidently subject to investigation by the council, and the character of the neighbourhood has been affected by some modern housing development increasing building density; but most properties have good-sized gardens which give the area a reasonably spacious quality. The disputed building takes away some of that quality, and detracts from the area's pleasant character.

17. As a matter of national planning policy, planning decisions should ensure that development is sympathetic to local character, including the surrounding built environment. I judge that the development being considered here conflicts with the aim of this policy. This applies to both the building itself and the

[6] The "permitted development" allowances (subject to various limits and restrictions) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended do not apply here because the property at 96 Upton Road is not a single dwellinghouse.

unauthorised mixed use of the planning unit.

18. The outbuilding stands only about 5 metres from the ground floor rear windows of Flat 1 and has made the outlook from this dwelling more confined than it otherwise would have been. The rear outlook from the first floor of Flat 2 has also been spoiled by the presence of such a large-scale building at such a close distance. Obviously Miss Deadman has not objected to her own development, but one of the purposes of planning control is to safeguard the amenities of residential properties, looking at the long term irrespective of who the current occupier may be. The effect of the outbuilding in reducing the amenity space at the rear of the appeal property is also contrary to policies in the adopted development plan for Slough.[7]

19. In summary, this confined "backland" site surrounded by dwellings and their gardens in a predominantly residential neighbourhood is intrinsically unsuitable for the development enforced against, both the building itself and the operation of a business which is likely to involve visitors going into and out of the building.

20. I conclude that ground (a) of the Section 174 appeal fails and that planning permission should not be granted on the deemed application.

**Section 78 Appeal**

21. As I have explained earlier, this appeal results from an application seeking retrospective planning permission for the "construction of a domestic outbuilding"; but that is not what was built. An application made retrospectively for development which did not happen is spurious. In my view the council could probably have declined to consider the application for that reason.

22. However, there is an appeal to be determined. Even setting aside the fact that the building is unauthorised, I cannot treat the application as seeking permission for the retention of the building because the mere "retention" of a building is not development as defined by Section 55 of the 1990 Act. In my view the only way this development can be assessed is to treat the application and appeal hypothetically as seeking permission for the construction of the outbuilding, on the artificial assumption that it was built for use for purposes ancillary to the residential occupation of Flat 1.

23. The objections described above on visual and amenity grounds, including the conflict with related planning policies, also apply to the Section 78 appeal. Even on the hypothetical basis of the building having been built as a residential annex, it would still have an unacceptable impact on the character and appearance of the area, and there would be sound reasons for refusing planning permission.

24. No believable explanation has been put forward as to why the appellant wants to have a kitchen and shower room as part of an ancillary "domestic outbuilding" barely five metres from the kitchen and other facilities in Flat 1. If the presence of the normal facilities for day to day living is taken into account so that the building is treated as a separate dwelling, there would be even more reasons for refusing planning permission. For example, the room sizes would be well below the minimum set out in the council's guidance. Use as an independent dwelling would also give rise to increased noise, disturbance and loss of privacy for occupiers of nearby dwellings, contrary to local planning policies.

[7] The policies which were at one time in the Slough Local Development Plan are now apparently contained in the Composite Local Plan for Slough.

25. Thus I find that however the development is regarded, there is no reason for me to come to a conclusion on the Section 78 appeal any different to the appeal against the enforcement notice. I conclude that the appeal against the refusal of planning permission does not succeed, and this remains so even if the appeal and its related application were to be construed in a way beyond appropriate limits.

**Compliance Period and Other Matters**

26. In the enforcement notice drafted by the council (as recorded in the summary at the start of this decision), compliance periods of one month and three months are specified twice. The repetition is odd and unnecessary. It is also potentially confusing, because three steps are specified under the heading "What you are Required to Do" in three numbered sub-paragraphs, the first two of which mention a compliance period, but there are only two sub-paragraphs under the heading "Time for Compliance".

27. The appellant has not objected to the compliance period by pleading ground (g) of Section 174(2), but this aspect of the notice is flawed. I shall therefore vary the notice so that it states the compliance periods without repetition and specifies clearly which period relates to which part of the requirements.

28. From the written representations it seems that the erection of the disputed building may have been carried out without the freeholder's permission, in contravention of a lease. I do not have any jurisdiction over private legal arrangements, so I refrain from making any detailed comment on that matter.

## Formal Decisions

**Section 174 Appeal**

29. I direct that the enforcement notice be corrected and varied in the following ways:

    (i) by deleting the second of the two paragraphs under the heading "The Breach of Planning Control Alleged" and substituting: "Without planning permission, making a material change of use of the land to mixed residential and commercial use, the commercial component being use as a colon hydrotherapy treatment clinic".

    (ii) by deleting the words "within one month" from the text specifying step (i) of the requirements and by deleting the words "within three months" from step (ii) of the requirements.

    (iii) by deleting both of the sub-paragraphs under the heading "Time for Compliance" and substituting: "For step (i) above - one month; for steps (ii) and (iii) above - three months".

30. Subject to the above correction and variations, I dismiss the appeal, uphold the notice as corrected and varied, and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

**Section 78 Appeal**

31. I dismiss the appeal.

*G F Self*

Inspector