SLOUGH BOROUGH COUNCIL

REPORT TO: Planning Committee **DATE:** 14th October 2020

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
2018/00157/ENF	20, Burlington Avenue, Slough, SL1 2LD Construction of annexe to rent as a dwelling	Notice Upheld – Permission Refused 30th September 2020

https://www.gov.uk/planning-inspectorate

The Planning Inspectorate

Appeal Decision

Site visit made on 15 September 2020

by Simon Hand MA

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

Decision date: 28 September 2020

Appeal Ref: APP/J0350/C/19/3234833
Land at 20 Burlington Avenue, Slough, SL1 2LD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Mohammed Mahroof against an enforcement notice issued by Slough Borough Council.
- The enforcement notice, numbered 2018/00157/ENF, was issued on 27 June 2019.
- The breach of planning control as alleged in the notice is the unauthorised use of an outbuilding as an independent residential dwelling.
- The requirements of the notice are 1). Cease the unauthorised use of the outbuilding as a separate residential dwelling; 2) Remove the kitchen and bathroom in their entirety from the outbuilding; 3) Remove from the Land materials, rubbish, debris, plant and machinery resulting from compliance with the above requirements.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed the enforcement notice is upheld and planning permission refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. Although the appellant's agent refers to grounds (b) and (d), there is clearly no argument that the use is immune from enforcement through the passage of time and I shall assume ground (d) was meant to be (c).

The Appeal on Grounds (b) and (c)

3. The allegation is the "*unauthorised use of an outbuilding as an independent residential dwelling*". The appellants arguments are that while this use did take place it stopped in 2018 and since then the use has been ancillary to the main dwelling. This argument fits best with ground (b). If the use of the outbuilding is ancillary then the matters alleged have not occurred. A ground (c) appeal would be that there was an independent dwelling created but that its use had planning permission, which is not what the appellant argues.

4. There is no doubt that the outbuilding has been converted so that it can be used as a separate dwelling, it has a well equipped kitchen, with all the facilities require for day to day living, a separate bathroom and a bedroom and living area. However as the appellant points out, this does not automatically

mean that a separate dwelling has been created it depends on the use. It is possible to use a notionally independent dwelling in a manner that does not create a separate planning unit but is ancillary to the main dwelling.

5. In this case the appellant accepts that the first occupants of the building were tenants, who paid rent and lived there as a separate household. It would seem therefore that the outbuilding was converted in order to provide rental accommodation which is not ancillary. The Council wrote to question the use in 2018 and on receipt of that letter the letting ceased. Subsequently, the appellant's evidence is that it was occupied by his daughter and now by his father.

6. The Council's evidence is rather different in that they did suspect a residential use was being established, but after the warning letter they made a site visit (October 2018) and found the cooking facilities and white goods had been removed, so the independent residential use ceased. It is clear the appellant was well aware of the need to obtain planning permission for a separate use, and of the importance of removing various facilities to avoid such an accusation. Nevertheless, when an LDC application was made in April 2019 a further site visit by the Council found the independent residential use had recommenced. Photographs show a fully functioning kitchen with washing machine, tumble dryer and dishwasher. A further site visit in December 2019 showed a similar set up. In both cases there was evidence that a young child was staying. This, the Council argue undermines the appellant's suggestion that only his daughter and father had lived there since 2018. It seems to the Council the building was being lived in full time and not being used in an ancillary fashion.

7. The appellant's final comments throw a different light on this as he now claims that his daughter actually stayed there with her son and her partner. They were not permanent occupiers but occasionally stayed at her partner's parents' house also. Once the father became too infirm to manage the stairs in the main house he moved into the outbuilding and the daughter back into the main house. Statutory declarations have been provided from the appellant and his father, but neither mention this somewhat crucial information. The father needs to live in the outbuilding because of his health issues, but still takes main meals in the house. The only health issue that prevents him living in the house is his inability to manage the stairs, but as the Council point out, there is still a stepped access to the house from the outbuilding, and the building has not been fitted out with any aids to make life simpler for a person with mobility issues.

8. The appellant lays great stress on the fact that it has been family members who have lived in the building since 2018 but that is not particularly relevant as to the use made of the building. I am not convinced that the use made of the building at least up to December 2019 was ancillary. It seems to have been lived in as a separate dwelling. Even if the appellant's daughter and partner did occasionally move out, when they were there, they were using it as a permanent dwelling. There would appear to have been no ancillary use.

9. No date has been given for when the appellant's father moved in, but his sworn statement is dated July 2019, in other words before the Council visit in December 2019, which suggested a child was still resident. I also notice from the photographs that a number of the movable decorations, boxes and small

items remain in both sets of pictures, which doesn't suggest one family has moved out and a different one moved in. This suggests to me the appellant's evidence is not a cogent and convincing explanation as to what has happened. In my view there has been no ancillary use of the outbuilding, and the appeal on ground (b) fails.

The Appeal on Ground (a)

10. The appellant does not argue that planning permission should be granted for the matters alleged, as I assume he accepts the harm identified by the Council if the outbuilding were used as a separate dwelling. I do not need to go into that in depth but is clear that use of the outbuilding for a separate dwelling, with no restrictions, would clearly lead to much greater pressure on the rear garden. Adequate private amenity space cannot be provided for both dwellings and the use of the garden could well lead to noise and disturbance to neighbours. There are also privacy issues as the main windows that provide light to the outbuilding face into the garden. It is also out of character with the long established residential pattern in the neighbourhood and so contrary to policy 8.2 of the Slough local Development Framework and H13 and H14 of the Slough Local Plan.

11. What the appellant seeks is planning permission for a building that would be conditioned so that it should only be ancillary to the main dwelling and only occupied by the appellant's family. If the building were to be used in a genuinely ancillary manner as overflow accommodation by the appellant's family then there would be no harm caused. However, I am far from convinced this would be the case. It was originally converted for an unlawful use and continued to be unlawfully used, even after a short period when the cooking facilities were removed. I have no independent evidence concerning the needs of the appellant's father and nothing seems to have been done to accommodate those needs in the outbuilding. The appellant clams his father takes the main meals with the family in the main house, but the kitchen remains well stocked and supplied. As noted above the appellant's evidence seems to be internally contradictory and is not convincing.

12. This is quite different from the Withycombe barn appeal[1] where there was a separate application for an ancillary building and no evidence to suggest the use would be otherwise; and from the Blewbury[2] appeal, where evidence was taken on oath which convinced the Inspector there was a genuine interdependent relationship between the annex and the main house.

13. In my view on the balance of probabilities there is insufficient evidence to convince me there is likely to be a genuine ancillary use made of the outbuilding. I also note that once the notice is complied with, if the appellant wishes to use the outbuilding as ancillary accommodation, he would not need planning permission to do so and the notice would not prevent that use taking place. The appeal on ground (a) fails.

The Appeal on Ground (f)

14. This ground is that the requirements are excessive to remedy the breach. The breach is the creation of an independent residential dwelling and removing the kitchen and bathroom from that would remedy that breach so in that sense

[1] APP/C3105/C16/3157378 & 3157380 Issued June 2017
[2] APP/V3120/C/16/3147099 Issued August 2017

they are not excessive. However, as there is a ground (a) appeal, I need to consider whether it is reasonable to require their removal. From my reasoning above it is clear I am not convinced there is likely to be a genuine ancillary use for the outbuilding. The Council have a significant issue with 'beds in sheds' which seems to be exactly what this building originally was and what it could revert to if the facilities such as a bathroom and kitchen were to remain. In my view therefore it is not excessive to require the removal of the kitchen and bathroom and the appeal on ground (f) fails.

Simon Hand

Inspector