

**SLOUGH BOROUGH COUNCIL**

**REPORT TO: PLANNING COMMITTEE**

**DATE: May 2021**

**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**

<b>Ref</b>	<b>Appeal</b>	<b>Decision</b>
P/03099/003	18, Willoughby Road, Slough, SL3 8JH  Construction of a pair of semi detached houses with parking	Appeal Dismissed  3 <sup>rd</sup> March 2021
P/11457/005	DX Network Services Ltd, Lakeside Road, Slough, SL3 0EB  Permitted Development consisting of: the provision of a hard surface within the curtilage of a warehouse to be used for the purpose of the undertaking concerned under Schedule 2, Part 7, Class J of The Town and Country Planning (General Permitted Development) Order 2015 (as amended)	Appeal Dismissed  10 <sup>th</sup> May 2021



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## Appeal Decision

Site visit made on 9 February 2021

**by Adrian Hunter BA(Hons) BTP MRTPI**

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

**Decision date: 3 March 2021**

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**Appeal Ref: APP/J0350/W/20/3261882**

**18, Willoughby Road, Slough, SL3 8JH**

- 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 WIL Developments Ltd against the decision of Slough Borough Council.
  - The application Ref P/03099/003, dated 20 February 2020, was refused by notice dated 19 October 2020.
  - The development proposed is construction of a pair of semi detached houses with parking.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by WIL Developments Ltd against Slough Borough Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. For reasons of precision and clarity, I have taken both the site address and the description of development from the Council's Decision Notice.

### Main issues

4. The main issues in this appeal are:
  - The effect of the proposal upon the character and appearance of the area;
  - Whether the proposal makes adequate provision to reduce the potential for crime and anti-social behaviour; and
  - Whether the proposal makes adequate provision for on-site car parking.

### Reasons

#### *Character and appearance*

5. The appeal site comprises a large detached property and its associated substantial rear garden area. The surrounding area is predominately residential, with nearby properties comprising a mix of detached, semi-detached and terrace properties, with a mix of design styles. Properties are generally set within relatively long plots, with the dwellings located to the front of the plot, where they follow a discernible building line. Car parking is predominately on-street, although there are a few instances where off-street

parking is provided. Opposite the appeal site, properties are served by garages at the rear, accessed via a lane.

6. The proposal would introduce a pair of semi-detached properties to the rear of the existing dwelling. The dwellings would be accessed via a driveway in the existing open gap to the side of the host property. Car parking spaces would be provided directly to the front of the units, with each dwelling having a separate garden at the rear. The appeal site would be further sub-divided to provide a new, separate garden area for the host property.
7. The introduction of new development to the rear of the existing properties would be contrary to the well-established pattern of development in the area. As a consequence, it would introduce a form of development that would fail to respect and respond to the established street pattern. It would appear as an incongruous form of development, that would harm the character and appearance of the area. Furthermore, due to the sub-division of the plot, there would be less generous spacing between each dwelling and, consequently, it would appear as a cramped form of development, indicative of over development of the site.
8. For the above reasons, I therefore conclude that the proposed development would harm the character and appearance of the area and, in this respect, would be contrary to Policies 1, 4 and 8 of the Slough Core Strategy (CS), Policies H13, EN1 and EN3 of the Slough Local Plan (LP) and Paragraph 127 of the National Planning Policy Framework (the Framework). These policies, amongst other things, seek development to be of a high-quality design that respects its location and surroundings.

#### *Security*

9. Policy 12 of the CS requires all new development to be laid out and designed to create safe and attractive environments. Policy EN5 of the LP requires new schemes to be designed so as to reduce the potential for criminal activity and anti-social behaviour.
10. In their appeal submissions, the appellant has stated that they would intend on providing a secured gated access. Whilst details of the proposed security gates are not shown on the submitted appeal drawings, nor are elevational drawings provided, there would appear to be sufficient space to make provision for gates to create a safe and secure environment. Considering this, I am of the opinion that the matter can be adequately addressed through the provision of a suitably worded planning condition.
11. For the above reasons, I therefore conclude that the proposed development would make adequate provision to reduce the potential for criminal activity and anti-social behaviour and, in this respect, accords with Policy 12 of the CS, Policy EN5 of the LP and Paragraph 127 of the Framework.

#### *Parking*

12. Policy 7 of the CS seeks to ensure new development is sustainable and located in the most accessible locations, thereby reducing the need to travel.
13. From the information before me, it would appear that a number of the proposed parking spaces would fall short of the dimensions required to meet the Council's parking space standards. That said, there would appear however

to be sufficient space available within the site, to allow for the provision of sufficient spaces of the required size to accord with standards. On this basis, I consider that the matter could be addressed through an appropriately worded condition, requiring the submission of a parking scheme.

14. For the above reasons, I therefore conclude that the proposal would make adequate provision for off-road car parking spaces and, in this respect accords with Policy 7 of the CS and the Framework.

### **Other Matters**

15. I have been referred to a number of other developments, which the appellant submits are similar to the appeal proposal and provide a precedent to justify the development. I have however not been provided with full detail and background on these proposals, however having reviewed the evidence before me, I find their circumstances to be different from the appeal proposal. In any event, I am required to consider the appeal scheme on its merits.
16. The appellant has referred to the location of the site in relation to local services and facilities. I do not seek to bring this into question, however I do not consider that the benefits of the location of the site are sufficient to outweigh the harm I have found.
17. I note the Council raise no issues in relation to design, bio-diversity, trees or flooding, amongst other things. However, as these are requirements of policy and legislation, the absence of harm in respect of these matters are neutral factors that weigh neither for nor against the development.
18. Residents of neighbouring properties have raised concerns associated with their living conditions, noise and highway issues. However, these matters do not alter the main issues which have been identified as the basis for the determination of this appeal.

### **Conclusion**

19. Although I have found no harm in terms of the impact of the proposal upon crime and anti-social behaviour and parking provision, this would be outweighed by the harm from the other main issue. Therefore, for the above reasons and having considered all matters, I conclude that the appeal should be dismissed.

*Adrian Hunter*

INSPECTOR



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## Appeal Decision

Site visit made on 5 May 2021

by **P N Jarratt BA DipTP MRTPI**

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

Decision date: 10 May 2021

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**Appeal Ref: APP/J0350/X/21/3266262**

**Lakeside Road, Colnbrook, Slough, SL3 0EB**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by DX Network Services Ltd against the decision of Slough Borough Council.
  - The application Ref P11457/005, dated 8 May 2019, was refused by notice dated 4 December 2019.
  - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is sought is for permitted development consisting of the provision of a hard surface within the curtilage of a warehouse to be used for the purpose of the undertaking concerned under Schedule 2, Part 7, Class J of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. For the avoidance of doubt, I should explain that the planning merits of any use or operations are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

### The site and relevant planning history

3. The site comprises a large warehouse split into 4 units in Class B8 use for storage and distribution and within the leasehold of DX Network Services Ltd and occupied by the company in 3 divisions: DX Secure in Unit 1, DX Freight in Units 2 and 3; and DX Logistics in Unit 4. There is a large area of hardstanding for delivery vehicles, parking and external storage. A metal palisade and wooden boundary fence surrounds the site. The west boundary fence sits upon a landscaped bund set back from the hardstanding. A metal fence divides the hardstanding between Units 1 and 2.
4. In May 2013 an LDC was issued (P/15476/000) for the installation of doors and alteration of the fence lines within the service yards to accommodate a new

2.4m high palisade fence between Unit 2 & 3 and 3 & 4. This was not implemented.

### **Main Issues**

5. The main issues in this appeal are:
- i) Whether the appeal site represents a single curtilage; and
  - ii) Whether the removal of the bund represents an engineering operation necessary for the construction of the hardstanding.

### **Reasons**

6. The development involves the removal of a landscape bund, which includes lighting poles, grit storage and parts of cleared land for external storage, to provide an area of hardstanding up to an existing palisade fence on the site's western boundary.
7. Schedule 2, Part 7, Class J of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) allows PD rights for the provision of a hard surface within the curtilage of an industrial building or warehouse to be used for the purposes of the undertaking concerned. This excludes development within the curtilage of a listed building, which does not apply in this case. There are also conditions to protect groundwater from contamination and the nature of the materials to be used.
8. The Council considers that the provision of a hard surface falls outside the curtilage on the basis that the 4 units are not occupied by the same user with Unit 1 physically separated from Unit 2 by fencing and that yellow and red line demarcations visually enclose space associated with individual units. The Council therefore considers that there are 4 units within the site each with a curtilage defined by yellow tram lines and common areas traversing the site providing access routes for pedestrians and vehicles.
9. As a matter of fact, at the time of my visit I was able to observe that there appeared to be an internal door between Units 4 and Units 2 & 3 and that there were internal connections between Units 2 and 3. I therefore do not regard Units 2, 3 and 4 as being separate physical entities.
10. Unit 1 forms part of the same building as the other units but the gate and fence separation suggests that it may operate differently from the others although a notice on the door of Unit 1 directed visitors to collect passport documents/small items from Unit 4. No information has been provided to explain why fencing exists between Units 1 and 2.
11. The appellant refers to the Council's acceptance that the 4 units were all within the same curtilage in the unimplemented 2013 LDC decision and there has been no material change in the warehouse building since that time. It is also the appellant's case that the warehouse is a single building and, although comprising 4 units, its amalgamation and subdivision can be undertaken without formal planning permission.
12. Case law in respect of curtilage is extensive but the key points can be summarised as:

13. • Interpretation of the word curtilage is not a matter of law and but a judgment for the decision-maker given the ordinary meaning of words. It is a matter of fact and degree.
- For land to fall within the curtilage of a building, it must be intimately associated with the building to support the conclusion that it forms part and parcel of the building.
  - Regard should be had to three tests of (i) physical layout of the building and the land or building said to be in the curtilage, (ii) ownership (past and present) and (iii) use or function (past and present) applied.
  - Curtilage does not need to be confined to a small area although size of the curtilage relative to the building may, however, be relevant.
  - Whether the land or building said to be within the curtilage are 'ancillary' to the main building will be relevant but there is no legal requirement that the curtilage should be ancillary.
  - Physical enclosure is not necessary but the degree to which the building and claimed curtilage fall within one enclosure is relevant as an aspect of the test of physical layout.
  - Land said to be in the curtilage must have an intimate association with that undoubtedly within the curtilage.
14. In this case I am satisfied as a matter of fact and degree that the curtilage of the original warehouse building comprising the 4 units includes the whole of the appeal site. This is related to the physical layout, ownership and use. The painted lines on the hardstanding and the common areas do not distinguish different curtilages but in my interpretation indicate sensible arrangements for parking and movement which no doubt would be busy at certain times of the day and night due to the frequency of heavy goods and other delivery vehicles. The peripheral bund with its presence of lighting columns, grit storage and some external storage points to this area are clearly associated with the functioning of the warehouse. I also attach weight to the Council's interpretation of the curtilage of the building in the 2013 LDC. The existence of the fence between Units 1 and 2, whilst remaining unexplained, does not necessarily mean that a separate curtilage or curtilages have been formed.
15. I therefore conclude on the first issue that the appeal site represents a single curtilage.
16. Turning to the second issue, the landscape bund is extensive along the western boundary of the site and it is largely elevated above the level of the adjoining hardstanding, rising perhaps up to a metre in height in some places and retained in part by pre-fabricated concrete gabion-type features. There are numerous trees and other established vegetation on the bund.
17. The appellant recognises that the proposal would result in the removal of the landscape bund, but points out that this falls outside the scope of Class J which does not concern itself with the loss of any existing feature. I also note that the Council officer's report indicates that there is a lack of detail as to how the change in levels would be secured and whether this would involve work other than the provision of a hard surface, "which would possibly fall outside the scope of Class J".

18. Although the GPDO permits the provision of a hard surface this is normally interpreted as being where there is minimal operation of scraping off the top surface of the ground and laying a base course of material and a wearing course above it. In this appeal, the proposals would involve the removal of an extensive area of bunding of significant height and length in the context of the site before any hardstanding could be laid. No constructional details, levels or cross sections have been submitted to enable a full assessment to be carried out. No information is provided about how the land beyond the boundary fence would be supported on the removal of the bund.
19. In LDC appeals the onus rests with the appellant to prove a case on the balance of probabilities but this has not been done in this instance. It therefore leads me to the conclusion that due to the extent of excavation needed to extend the hardstanding the development would represent an engineering operation falling within the meaning of development in s55 and for which planning permission is required under s57. This would be outside the scope of Class J as the removal of the bund comprises part of an overall operation implicit in the construction of the hardstanding.
20. I conclude on the second issue that the removal of the bund represents an engineering operation necessary for the construction of the hardstanding.

### **Conclusions**

21. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the provision of a hard surface within the curtilage of a warehouse to be used for the purpose of the undertaking concerned under Schedule 2, Part 7, Class J of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) was well-founded, albeit for different reasons, and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*P N Jarratt*

**Inspector**