SLOUGH BOROUGH COUNCIL

REPORT TO: PLANNING COMMITTEE **DATE: October 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

Ref	Appeal	Decision
2020/00299/ENF	161, Tamar Way, Slough, SL3 8SZ Unauthorised Outbuilding	Notice Upheld 2nd September 2021
2018/00098/ENF	146, High Street, Langley, Slough, SL3 8LF COU to HMO and creation of additional dwelling	Notice Upheld 6th September 2021
P/08040/021	4 - 10A Alexandra Road, Slough, SL1 2NQ Variation of Condition 6 (Approved Drawings) seeking amendments to the approved drawings comprising the relocation of vehicular access from Alexandra Road to the lower ground floor car park (under 4-10A Alexandra Road), adjustment to the angle of the external wall in the north western corner of the building and associated external works in connection with planning permission (As Amended by Ref: P/08040/004) dated 27th June 1995 for the erection of a supermarket and 9 no. retail shops with a guest house on the first and second floors containing ancillary facilities including 2 no. staff flats, 30 no. bedrooms and offices on the Chalvey Road West/Alexandra Road junction and erection of 10 no. residential units on the Alexandra Road frontage with car parking and servicing on the land at the rear of Alexandra Plaza.	Appeal Granted 23rd September 2021
2020/00296/ENF	10, Marlborough Road, Slough, SL3 7LH Unauthorised Outbuilding	Notice Upheld in Part 30th September 2021
P/05413/006	2A, Chestnut Avenue, Slough, SL3 7DE Lawful development certificate for a proposed side dormer extension to existing roof.	Appeal Granted 20th October 2021

The Planning Inspectorate

Appeal Decisions

Site visit made on 25 August 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd September 2021

Appeal A Ref: APP/J0350/C/21/3272428
Appeal B Ref: APP/J0350/C/21/3272429
Land at 161 Tamar Way, Slough SL3 8SZ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Ravinder Kaur (Appeal A) and Mr Jagjit Singh Sandhu (Appeal B) against an enforcement notice issued by Slough Borough Council.
- The enforcement notice was issued on 1 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, erection of an outbuilding.
- The requirements of the notice are: (i) Demolish the outbuilding in its entirety; (ii) Remove from the land all materials, rubbish, debris, plant and machinery resulting from compliance with the above requirement.
- The period for compliance with the requirements is: (i) Six months after the notice take *(sic)* effect.
- Appeals A and B are proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Preliminary Matters

1. At s173(1)(b), the Act provides that an enforcement notice shall state the relevant paragraph of s171A(1) within which, in the opinion of the Council, the alleged breach of planning control falls. Paragraph (a) is appropriate where the breach consists of carrying out development without the required planning permission. Paragraph (b) is relevant where the breach is a failure to comply with a condition or limitation of a planning permission. As the allegation is the erection of an outbuilding without planning permission, the reference to s171A(1) paragraph (b) in paragraph 1 of the notice is in error. However, I am satisfied that, using the power available under s176(1)(a) of the Act, the notice can be corrected to refer to paragraph (a) without causing injustice.

2. The period for compliance with the requirement at paragraph 5 (i) of the notice is specified in paragraph 6 (i). No equivalent period for compliance is specified in respect of the requirement at paragraph 5 (ii). Given that a period for compliance is specified in relation to at least part of the requirements, s173(9) of the Act is complied with. Therefore, the notice is not a nullity. However, I do not intend to vary the notice to specify a compliance period in respect of the paragraph 5 (ii) requirement. This would cause injustice, as the appellants

would then be in a worse position than if they had not made appeals and had instead complied with the notice as issued.

3. As neither of the appeals were made on ground (a), there is no deemed planning application in respect of the outbuilding. Consequently, planning merits considerations are not before me.

Appeals A and B-Ground (c) appeals

4. The ground of appeal is that the matter alleged in the notice does not constitute a breach of planning control. It is for the appellants to show that their appeals should succeed on this ground, the relevant test of the evidence being on the balance of probability.

5. The appeal site contains a mid-terrace dwelling. The front elevation faces towards a public open space, whilst a communal service road runs at the rear. The outbuilding in these appeals has been erected across the end part of the rear garden, adjacent to the service road. The outbuilding is in the course of construction and has unfinished masonry walls with a flat roof. There is a garage style door opening together with a pedestrian doorway in the service road elevation. There is another pedestrian doorway together with two window openings in the elevation facing towards the rear elevation of the dwelling. A flat roof canopy runs across the elevation facing the rear of the dwelling. At the time of my visit, the interior of the outbuilding contained building materials and equipment.

6. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) at Article 3, Schedule 2, Part 1, Class E permits the provision within the curtilage of a dwelling of any building or enclosure, swimming or other pool which is required for a purpose incidental to the enjoyment of the dwelling as such, subject also to, amongst other matters, the relevant limitations on the size, height and location of such structures in paragraph E.1 not being exceeded.

7. According to the Courts, when assessing whether a building is required for a purpose incidental to the enjoyment of the dwelling, 'required' should be interpreted as 'reasonably required' and should not rest on the unrestrained whim of a householder. Consequently, it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and evaluate whether the outbuilding is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose.

8. In the context of a dwelling, an incidental use would generally be regarded as a subordinate activity connected with the running of the dwelling or with the domestic or leisure activities of the persons living in it but would not include use as primary living accommodation. It is mainly for the occupiers of a dwelling to determine what incidental purposes they propose to enjoy, subject to a test of reasonableness. The Government's Technical Guidance[1] advises that structures falling within Class E can include common buildings such as garden sheds, other storage buildings, garages and garden decking as long as they can properly be described as having a purpose incidental to the enjoyment of the dwelling.

[1] Permitted development rights for householders Technical Guidance: MHCLG September 2019.

9. The intended use of the outbuilding is described as a garage. Nevertheless, at around 4.4 m its internal depth is relatively limited. The internal depth is well below the 5 m minimum requirement for a garage, set out in the Council's Residential Extension Guidelines Supplementary Planning Document[2]. As a result, I have reservations over whether a vehicle could physically be accommodated. Also, given the relatively limited width of the carriageway in front of the outbuilding, I am not convinced that entering and egressing the garage with a vehicle is likely to be a straightforward affair, especially if vehicles were parked nearby on the service road. Garages erected at adjacent residential properties have been set back deeper into rear gardens further from the service road, probably in part to facilitate the ease of manoeuvring by vehicles. These factors reinforce my doubts over whether the outbuilding has a practical utility as a garage.

10. Additionally, the outbuilding is considerably wider than the garage door opening. This means that the outbuilding has an overall internal floor area which is significantly in excess of that which is likely to be reasonably necessary if the sole intended purpose is in fact to accommodate a vehicle. Whilst part of the outbuilding would also seem to be intended for use as a covered thoroughfare leading to the dwelling, the appellants did not explain any intended purpose for which the outbuilding would be used, other than as a garage.

11. Given the above factors, I am not persuaded that the outbuilding is genuinely and reasonably required for a purpose or purposes which are incidental to the enjoyment of the dwelling. The appellants have not advanced any meaningful evidence which might have led me towards a different conclusion.

12. The outbuilding does not exceed the relevant size and locational limitations in Class E at paragraph E.1 (b)-(d). Even so, the outbuilding is within 2 m of the site boundaries and the highest part of the roof is around 2.6 m above ground level. Therefore, the outbuilding exceeds the 2.5 m limitations on the overall height and the height of the eaves, at paragraph E.1 (e) (ii) and paragraph (f) respectively. The GPDO does not provide any margin for deviation; either a development falls within the relevant limitations or it does not, in which case planning permission is not granted. Where a limitation in the GPDO is exceeded the whole development is unlawful, not just the element in excess of the permitted limit.

13. As there is no express grant of planning permission in respect of the outbuilding, it is unauthorised. Although an application for planning permission was submitted, I am given to understand that it was refused by the Council on 2 February 2021[3].

14. Therefore, the outbuilding is in breach of planning control; the appellants have been unable to show otherwise and the ground (c) appeals fail.

Conclusion

15. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction.

[2] Guideline EX41, page 27.
[3] Council Ref: P/19127/000.

Formal Decision

16. It is directed that the enforcement notice is corrected by deleting "paragraph (b)" in paragraph 1 and substituting it with "paragraph (a)". Subject to the correction the appeals are dismissed and the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 25 August 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th September 2021

Appeal Ref: APP/J0350/C/20/3262847
Land at 146 High Street, Langley, Slough SL3 8LF

- 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 Ms Victoria Yao against an enforcement notice issued by Slough Borough Council.
- The enforcement notice was issued on 12 October 2020.
- The breach of planning control as alleged in the notice is (i) Without planning permission, the material change of use of the land from use as a single dwellinghouse to use as nine self-contained flats ("unauthorised use"). (ii) Without planning permission, the erection on the land of a single storey side extension shown edged green on an attached plan and an attached front timber structure on the front elevation shown edged yellow on an attached plan ("unauthorised works").
- The requirements of the notice are: Unauthorised use-(i) Cease the use of the dwellinghouse on the land as nine self-contained flats and return the dwellinghouse to its lawful use as a single dwellinghouse. (ii) Remove all kitchens, kitchenettes and cooking facilities in full from each of the nine self-contained flats but leave one kitchen remaining in the dwellinghouse. (iii) Remove from the land all materials, rubbish, debris, plant and machinery resulting from compliance with paragraphs (i) and (ii) above. Unauthorised works-(iv) Demolish the single storey side extension and the attached front timber structure on the front elevation. (v) Remove from the land all materials, rubbish, debris, plant and machinery resulting from compliance with paragraph (iv) above.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(c),(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. Step (i) of the enforcement notice requires the use as nine self-contained flats to cease, whilst step (ii) requires the removal of kitchens, kitchenettes and cooking facilities from each of the nine self-contained flats. However, the number of flats enforced against is already clearly set out in the allegation. Therefore, specifying the precise number of flats in the requirements is unnecessary. It may also lead to uncertainty as to what the notice actually requires. Consequently, I intend to correct the notice by deleting the reference to the number of self-contained flats from the requirements at steps (i) and (ii). The requirements would be sufficiently precise; the appellant would be in

no doubt as to what they had to do to comply with the notice. I am satisfied that there would be no injustice.

2. As there is no deemed planning application arising from a ground (a) appeal, planning merits considerations can have no bearing on my decision.

Ground (c) appeal

3. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control.

4. The appeal site contains a detached residential building with single storey extensions to the side and front. There was no dispute that the lawful use of the building is as a single dwellinghouse and that the use as nine self-contained flats in the allegation is in breach of planning control. Further, there was no dispute that in respect of the side and front extensions also attacked by the notice, the latter had been erected in breach of planning control. I have found no reason to come to a different conclusion on these matters. The ground (c) appeal is therefore limited to the side extension. It is for the appellant to show that their appeal on this ground should succeed, the relevant test of the evidence being on the balance of probability.

5. Erection of the side extension clearly involved building operations falling within the definition of development at s55(1) of the Act. Planning permission is required for the development of land, having regard to s57(1) of that Act. The appellant submitted that the side extension was authorised by the GDPO[1] which, at Article 3, Schedule 2, Part 1 Class A, grants planning permission for the enlargement, improvement, or other alteration of a dwellinghouse, subject to the relevant size and locational limitations and conditions of that Class being met. I was referred to an LDC[2] issued under s192 of the Act by the Council in November 2015 for a proposed single storey side extension[3]. According to the appellant, the side extension was erected between April and June 2017. Extracts from the Council's Building Control records show that building operations were undertaken at the site during the above period.

6. A small House in Multiple Occupation (HMO), whether within Use Class C4[4] or otherwise, is not prevented from being a single dwellinghouse for the purposes of the GPDO. Even so, there was little evidence to suggest that erection of the side extension and any associated internal works were undertaken other than to create a separate self-contained unit of living accommodation. For example, there was no witness account or contemporaneous documentation which showed that the side extension had been used as part of the HMO following its erection.

7. During my visit, I observed what were in effect two separate, self-contained residential units in the side extension. When a Council Officer visited the site on 1 May 2018, around a year after the side extension was erected, they recorded that it contained a living and sleeping area and kitchen as well as bathroom facilities and was functionally separate from the rest of the building. As it was also noted that an interconnecting door had been sealed off, it is highly likely that the accommodation was also physically separate from that in

[1] The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
[2] Certificate of lawfulness of proposed use or development.
[3] Council Ref: P/03578/007.
[4] The Town and Country Planning (Use Classes) Order 1987 (as amended).

the rest of the building. Given that the side extension had been substantially completed only a relatively short time before, it would in my view be surprising if erection of that structure and installation of the facilities observed during the Council Officer's visit had not been part of a single continuous building operation. In correspondence with the Council dated 21 May 2018, the appellant described the purpose of erecting the side extension as being for herself and her daughter to move into, to increase the number of tenants in the building. This reinforces my view of it being more likely that the side extension was erected as separate self-contained living accommodation. As a result, the available evidence does not support the appellant's claim of the side extension being erected in association with the use of the building as an HMO.

8. Moreover, as built the side extension is materially wider and higher than that shown on the drawings accompanying the LDC application. The width of the original building is around 8 m, whilst the side extension is almost 5 m wide. Consequently, the width of the side extension is greater than half the width of the original dwellinghouse, exceeding the size limitation at paragraph A.1 (j) (iii) of Class A. It follows that the side extension cannot be permitted by Class A in any event. No grant of express planning permission for the side extension was drawn to my attention.

9. Therefore, the appellant has been unable to show to the required standard that the side extension does not constitute a breach of planning control and the ground (c) appeal fails.

Ground (f) appeal

10. The ground of appeal is that the requirements of the notice are excessive.

11. At s173(4), the Act provides that the purpose of an enforcement notice can be to remedy the breach of planning control, including by discontinuing any use or restoring the land to its condition before the breach took place, or to remedy any injury to amenity that has been caused by the breach. Although the notice does not state as such, its purpose must be to remedy the breach. The notice requires nothing less than cessation of the unauthorised use together with the total removal of the facilitating works to restore the site to its condition before the breach took place. The requirements set out in the notice would achieve exactly that purpose.

12. Varying the notice to require something less than the demolition of the side and front extensions would not restore the site to its condition before the breach took place. A requirement to submit a further LDC application would leave the side extension in place. Such a requirement also risks being found to be uncertain, as the appellant could not tell from the notice what they needed to do to remedy the breach. Further, it fails to address what would happen if that application were to be unsuccessful. For similar reasons, more or less the same conclusions would apply to requiring the submission of a planning application for the front extension. Additionally, the requirement to remove the materials and so on resulting from the remedial works does not exceed what is reasonable for remedying the breach.

13. Be that as it may, I am mindful that following compliance with the notice the building would revert to use as a single dwellinghouse and it could therefore be enlarged with the planning permission granted by the GPDO at Article 3, Schedule 2, Part 1, Class A. The LDC provides clear evidence that in the event

the side extension was to be totally demolished, a smaller side extension could then be erected which met the relevant limitations and conditions of Class A. A replacement side extension could be erected more or less immediately following demolition of the existing structure. There is no sound reason to think that the appellant would not seek to erect such an extension, for example to replace some of the internal space lost due to the remedial works. As a result, erecting a smaller replacement side extension under Class A following the remedial works represents a realistic fallback position.

14. The Act at s173(4) also provides for remedying the breach by making any development comply with the terms, including conditions and limitations, of any planning permission granted in respect of the land. This includes where that permission is granted by the GPDO. The side extension could be modified so that it did not exceed the size limitations of Class A. The drawings accompanying the LDC application show how the side extension could be altered and reduced in size to meet the limitations and conditions of Class A. This would bring the side extension within what would otherwise be permitted by that Class. Requiring alteration and reduction in the size of the side extension as an alternative remedy would be sufficiently clear for there to be no uncertainty as to what must be done to comply with the notice. Therefore, having regard to the fallback position of what could otherwise be achieved under Class A, reducing the size of the side extension so that it complied with the planning permission granted by the GPDO represents an obvious alternative which would overcome the planning difficulties at less cost and disruption than total demolition.

15. For the above reasons, whilst I find that the requirements are not excessive, I shall vary the notice as set out above to provide an alternative remedy to part of the breach and the ground (f) appeal succeeds to that extent.

Ground (g) appeal

16. The ground of appeal is that the time specified for complying with the requirements of the notice falls short of what should reasonably be allowed.

17. The appellant and the tenants of the building have been aware throughout this appeal that the notice will come into effect and that the requirement to cease the use as self-contained flats will be upheld. Also, Government restrictions on movement and social contact associated with the COVID-19 pandemic have been eased since the appeals were made. Nevertheless, those restrictions were in place for several months following the issue of the notice. As a result, it is unlikely that the tenants would have been able to source and secure suitable alternative accommodation for much of that time. COVID-19 related legislation meant that prior to 31 May 2021, the tenants could reasonably have expected at least six months' notice from the appellant before any possession proceedings were commenced. My understanding is that the appellant would currently following termination of the tenancies still be required to give at least four months' notice in respect of possession proceedings.

18. The remedial works involved would generally be relatively small-scale and straightforward operations for an experienced small building contractor. Whilst the unauthorised use has to cease before the remedial works are carried out, that does not mean that actions cannot be taken such as securing any necessary finance, sourcing and securing a suitable contractor and arranging for the remedial works to be carried out. There was no firm evidence of any

specific difficulties currently being encountered in terms of securing the services of a suitable contractor, or of extensive delays in their availability to undertake work. To my mind, the length of time involved in undertaking the above actions, together with having the remedial works carried out, is unlikely to exceed more than a few months. This would remain the case if a new kitchen facility would also have to be provided on the ground floor. Even so, this means that the time involved in carrying out the remedial works together with that associated with ceasing the unauthorised use is likely to make complying with the notice in six months somewhat challenging. Due to the lack of certainty, it is not appropriate to rely on the Council varying the notice to extend the compliance period.

19. Taking the above matters into account, extending the time for compliance to nine months in respect of the totality of the requirements would allow the tenants a more reasonable period in which to find suitable alternative accommodation. It would also allow the appellant a more reasonable timeframe in which to secure any necessary finance, as well as to arrange for and have the remedial works carried out. Furthermore, it would provide some scope to absorb any unforeseen delays or disruption caused by the continuing effects of the pandemic. This would therefore strike a more appropriate balance between remedying the planning harm identified in the notice as soon as practicable, whilst also giving appropriate weight to the circumstances of the appellant and her tenants. In reaching this conclusion however, I also find that extending the compliance period to twelve months would perpetuate the breach and the planning harm identified.

20. For the reasons given above I conclude that a reasonable period for compliance would be nine months and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Conclusion

21. For the reasons given above, the ground (c) appeal does not succeed and I shall uphold the enforcement notice with a correction and variations.

Formal Decision

22. It is directed that the enforcement notice is corrected by:

- Deleting the following text-"*nine (9)"* in steps (i) and (ii) at paragraph 5.

And varied by:

- After step (iv) at paragraph 5 insert the following step (iv) (a):

  "*Or, as an alternative to the step at paragraph 5 (iv) above, demolish the attached front timber structure on the front elevation (as shown edged yellow on the plan attached to the enforcement notice) and alter and reduce the size of the single storey side extension (as shown edged green on the plan attached to the notice), to include reducing the width so that it does not exceed more than half the width of the original dwellinghouse, to make it comply with the terms, including the conditions and limitations, of the planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Article 3, Schedule 2, Part 1, Class A."*

- At step (v) add at the end of the sentence *"or paragraph 5 (iv) (a) above".*
- The deletion of *"six months"* in paragraph 6 and the substitution of *"nine months"* as the period for compliance.

23. Subject to the correction and variations the appeal is dismissed and the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 29 June 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd September 2021

Appeal Ref: APP/J0350/W/19/3243603
4 - 10A Alexandra Road, Slough SL1 2NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by AA & Sons Ltd. against Slough Borough Council.
- The application Ref P/08040/021 is dated 30 April 2019.
- The application sought planning permission for the consolidation of planning application P/08040/001, and DOE appeal decision ref no T/APP/V0320/A/92/204598/P7, dated 22 October 1992, with minor adjustments to internal alterations, changes to fenestration and infill adjustment to south elevation, together with the relaxation of condition 12 of planning permission P/08040/001, without complying with a condition attached to planning permission Ref P/08040/004, dated 27 June 1995.
- The condition in dispute is No 6 which states that: the development hereby approved shall be implemented only in accordance with the following plans and drawings hereby approved by the Local Planning Authority.
  a) Drawing No 2083/33A Dated May 1995
  b) Drawing No 2083/34A Dated May 1995
  c) Drawing No 2083/35A Dated May 1995
  d) Drawing No 2083/36A Dated May 1995
  e) Drawing No 2083/37 Dated May 1995
  f) Drawing No 2083/30 Dated May 1995
  g) Drawing No 2083/31 Dated May 1995
  h) Drawing No 2083/32A Dated May 1995
  i) Drawing No 0961/10 Rev B – relating to car parking
  j) Drawing No 0961/11 Rev B – relating to car parking
  k) Drawing No 0961/24 Rev D – relating to car parking
- The reason given for the condition is: to ensure that the site is developed in accordance with the submitted application and to ensure that the proposed development does not prejudice the amenity of the area.
- This decision supersedes that issued on 20 October 2020. That decision on the appeal was quashed by order of the High Court.

Decision

1. The appeal is allowed, and planning permission is granted for Variation of Condition 6 (approved drawings) seeking amendments to the approved drawings comprising the relocation of vehicular access to the lower ground floor car park (under 4-10A Alexandra Road), adjustment to the angle of the external wall in the north western corner of the building and associated external works in connection with planning permission (as amended by Ref:

P/08040/004) dated 27 June 1995 for the erection of a supermarket and 9 no. retail shops with a guest house on the first and second floors containing ancillary facilities including 2 no. staff flats, 30 no. bedrooms and offices on the Chalvey Road West/Alexandra Road junction and erection of 10 no. residential units on the Alexandra Road frontage with car parking and servicing on the land at the rear of Alexandra Plaza at 4 - 10A Alexandra Road, Slough SL1 2NQ, in accordance with the terms of application Ref P/08040/021, dated 30 April 2019, subject to the conditions in the attached Schedule.

Application for costs

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

Background & Procedural Matters

3. A Consent Order (CO) issued by the High Court on 26 March 2021 quashed the appeal decision dated 20 October 2020 and costs decision of the same date. The quashed decision letter concluded that the permission sought to be varied (Ref P/08040/004 (004) dated 27 June 1995) did not include all development permitted by permission Ref P/08040/001 (001) dated 7 June 1991. Therefore, permission could not be granted as sought by the appellant. However, the CO declared that planning permission Ref 004, includes all development permitted by planning permission 001 including "the erection of 10 no. residential units on the Alexandra Road frontage with car parking and servicing on the land at the rear of Alexandra Plaza". Notwithstanding the reference to the continued absence of a definitive red line plan, the Council has not provided any additional substantive evidence that would lead me to come to a different view to that set out in the CO.

4. It is argued by the Council that permission 001 has lapsed. However, permission 004 included a fresh 5 year implementation period. At my visit the largest building labelled Alexandra Plaza was present on site. It appeared in accordance with the approved plans and appeared of an age that the building works would have been implemented within the timescale required by permission 004. There is no substantive evidence to the contrary. I have considered the appeal on this basis.

5. The description of development in the banner heading above is taken from the planning application form. The validation letter and the CO sets out a revised description that I agree with, subject to the omission of access 'from Alexandra Road' given the access to the underground parking area is to be taken from the car park and not Alexandra Road.

6. Therefore, I have considered this proposal as 'Variation of Condition 6 (approved drawings) seeking amendments to the approved drawings comprising the relocation of vehicular access to the lower ground floor car park (under 4-10A Alexandra Road), adjustment to the angle of the external wall in the north western corner of the building and associated external works in connection with planning permission (as amended by Ref: P/08040/004) dated 27 June 1995 for the erection of a supermarket and 9 no. retail shops with a guest house on the first and second floors containing ancillary facilities including 2 no. staff flats, 30 no. bedrooms and offices on the Chalvey Road West/Alexandra Road junction and erection of 10 no. residential units on the

Alexandra Road frontage with car parking and servicing on the land at the rear of Alexandra Plaza'. This is reflected in the decision paragraph above.

7. The appeal has been submitted due to the failure of the Council to give notice of its decision within the prescribed time period. The Council subsequently provided an appeal statement setting out its position in respect of the scope of 004 and other concerns with the proposals. I have had regard to these and the representations by interested parties in setting out the main issue below.

8. The revised National Planning Policy Framework (2021) (the Framework) was published on 20 July 2021. I have given the Council and the appellant the opportunity to comment upon the implications of this.

Main Issue

9. The main issue in this appeal is whether the proposed development would provide a safe and suitable access for all modes of transport.

Reasons

10. This application seeks to amend aspects of the approved development by substituting and adding to the approved drawings listed in condition 6 of permission 004, to amend the layout of a terrace of flats. The flats form part of a wider permission area which included the erection of a now constructed mixed-use building. The proposed alterations to the flats would not change the number of units or the appearance of the Alexandra Road elevation as previously approved. However, amongst other things it would modify the north of the approved terrace by cutting back the side wall to align with the existing access road, consequently reducing the floor area of two of the flats, and the external space associated with some of the properties. The underground parking access would be moved to the rear rather than as approved on the side of the access road.

11. The Council and Highway Authority raised a number of questions in relation to initially submitted proposals, which the appellant has responded to with revisions and clarifications. These were understood to have been submitted in August 2019, since which time the Council and the Highway Authority has had further time to respond before the appeal was lodged, as well as during the appeal and re-determination process. However, I see no further objections from the Council or the Highway Authority in respect of the revised plans and clarified matters.

12. The revised plans indicate the width of the access ramp would be sufficient for two vehicles to pass and there would be 2.4m x 2.4m visibility splays from the ramp. The proposals appear acceptable in this regard. The Council has not objected to the revised proposals in respect of these matters, demonstrated any harm, or provided adopted documents containing relevant standards. Therefore, I have no reason to find the proposals unsatisfactory. I have not been provided with any standards for the internal height of the car park, but 2.1m would appear to be adequate to accommodate most types of vehicles and persons intending to use the spaces.

13. Details of ducting have not been provided, but there is nothing of substance before me demonstrating that such installations would need to materially impinge upon the internal space in any significant way. Based upon the evidence before me, the basement walls and supports appear adequate to

support the dwellings. The revised underground layout would meet the specified minimum internal width and provide adequately sized parking spaces set out in the Highway Officer consultation response. In-light of this I no longer see the need for internal tracking to be provided. There are 14 Cambridge bicycle stands proposed with adequate circulation space which could be accessed via the pedestrian steps or vehicular ramp.

14. The appeal site is well located for access to services, facilities, and public transport. Therefore, this may suppress demand for parking from new residents. Alexandra Road and some surrounding roads are Controlled Parking Zones. While my visit can only represent a brief snapshot in time, there was plenty of on-street parking available at my visit and there is no substantive evidence this was untypical. There is also no substantive evidence demonstrating parking stress in the area in the evidence before me. Therefore, I see no reason the proposed modifications would result in any harmful effects having regard to on-street parking.

15. Electronic pedestrian gates and roller shutters would provide secure and controlled access to the underground parking area. Plans of the entire surface car park indicate the refuse storage is proposed on an existing trolley parking area. The specification and capacity of the refuse storage area is not clear, and neither is the location of the revised trolley parking. While I am advised the location of trolley parking is controlled by condition under Ref P/08040/020, based upon the evidence before me there is a conflict between that permission and this appeal scheme. However, these matters could be addressed through planning condition 5 in the attached schedule.

16. The appellant has clarified they are not intending to alter the vehicular access from Alexandra Road, the details of which are shown on plan/drawing Ref P-19 Rev A approved under permission Ref P/08040/020 that I have been provided with. There are no further concerns raised by the Highway Authority in this regard. Therefore, I see no reason why the previously approved footway and splays would not be adequate.

17. Moving the underground access from the north of No 4A into the car park and cutting back of the external wall would widen the access road. It would also avoid the need for vehicles to stop close to the Alexandra Road access for any vehicles entering and leaving the underground access. Therefore, the proposals would be likely to result in improved operation of the access from Alexandra Road and would overall, reduce the potential for congestion. I see no substantive evidence that the dwellings and associated vehicle movements would result in any discernible adverse effects upon the local highway network.

18. For the reasons set out above the proposed development would provide a safe and suitable access for all modes of transport. I have not been provided with any relevant up to date development plan policies. However, the development would be compliant with paragraphs 110, 111 and 112 of the Framework. In combination and amongst other things these require that development takes opportunities to promote sustainable transport, achieves a safe and suitable access for all users, is only refused on highway grounds if there would be an unacceptable impact upon highway safety or the residual cumulative impacts on the road network would be severe, and, create places that are safe, secure, and attractive which minimise the scope for conflicts.

Other Matters

19. The development would reduce the floor area of two flats and some of the external space of some dwellings. However, they would retain an element of useable private outdoor space that would be adequate for the type, scale and location of dwellings proposed, as well as adequate indoor space. I am not provided with any substantive evidence demonstrating it would be insufficient, result in harmful living conditions for future occupiers or would result in overcrowding, and there is no objection from the Council in this regard. Therefore, I conclude no significant adverse effects would result from this aspect of the development. It would provide a good level of natural surveillance to the front and rear, so I have no grounds to conclude the development would result in conditions that could increase crime or anti-social behaviour.

20. Given the proximity of the development to neighbouring residential properties, the existing parking area, and the duration and scale of the build, a Construction Management Plan (CMP) would ensure that construction and deliveries could be managed to an acceptable level. The alterations to these previously approved dwellings, would not be likely to result in any material increase in noise, disturbance, or perceptible change in air quality once complete so I find no material harm in this regard. The existing commercial units are the subject of conditions 12 and 13 of permission Ref 004 which I have transposed into the conditions below. Subject to their re-imposition, I can see no reason why allowing this appeal would result in any materially greater adverse effect upon the living conditions of neighbouring and future occupiers from the existing commercial units.

21. The dwellings would retain the same overall height and front fenestration to those previously approved. Given the distance to neighbouring properties the development would not result in harmful living conditions to neighbouring or future occupiers in respect of privacy, overlooking or overshadowing. The development would be of a scale, design, and appearance in keeping with other dwellings to the south and east and the neighbouring commercial development to the north. Therefore, it would be in keeping with, and would not be harmful to the character and appearance of the area or constitute overdevelopment.

Conditions

22. Allowing this appeal creates a new standalone planning permission. As the development has commenced a commencement condition is not necessary. A plans condition is necessary to ensure the development hereby permitted is undertaken in accordance with the approved plans. The appellant has agreed the materials and boundary conditions should be pre-commencement. I have made minor modifications to the wording of the former to ensure it relates to the proposed dwellings and is enforceable.

23. The parties are in agreement that previous conditions 3, 4, 5, 8 and 15 would not be required in respect of the access, treatment of surface roads and landscaping. Therefore, having regard to the scope of this scheme, I have not imposed these conditions.

24. In the interests of the living conditions of neighbouring occupiers and highway safety it is necessary to impose a condition to secure a CMP. While there is an existing condition in respect of refuse, I do not consider the proposals

submitted are sufficiently detailed and it does not make provision for the relocation of the existing trolley parking area. Therefore, the condition I have imposed is necessary in the interests of the character and appearance of the area and the safe and satisfactory operation of the site.

25. I have re-imposed previous planning conditions in respect of the parking and turning area, display of goods, hours of use and deliveries at the site as these are necessary in the interests of the satisfactory operation of the site and the living conditions of neighbouring and future occupiers.

26. The Planning Practice Guidance advises that informative notes do not carry any legal weight. The matters relating to construction works are addressed by the CMP I have sought through the new planning condition. I have sought the views of the parties in respect of the planning obligation dated 20 May 1991, which given its wording I do not consider would be linked to this appeal scheme. The parties agree that the obligation does not need to be linked to the appeal scheme, which based upon the evidence before me, is a view I share.

Conclusion

27. I have been provided with no relevant policies of the development plan, and I have been offered no substantive evidence demonstrating a conflict with its provisions. I find the development would be compliant with the relevant provisions of the National Planning Policy Framework. Therefore, I conclude that the appeal should be allowed, and planning permission is granted.

Dan Szymanski

INSPECTOR

Schedule of Conditions

1) The development hereby approved shall be carried out only in accordance with the following plans and drawings:

a) Drawing No 2083/33A Dated May 1995;
b) Drawing No 2083/34A Dated May 1995;
c) Drawing No 2083/35A Dated May 1995;
d) Drawing No 2083/36A Dated May 1995;
e) Drawing No 2083/37 Dated May 1995;
f) Drawing No 2083/30 Dated May 1995;
g) Drawing No 2083/31 Dated May 1995;
h) Drawing No 2083/32A Dated May 1995;
i) Drawing No 0961/10 Rev B – relating to car parking;
j) Drawing No 0961/11 Rev B – relating to car parking;
k) Drawing No 0961/24 Rev D – relating to car parking;
l) Drawing No P-01 Rev A;
m) Drawing No P-02;
n) Drawing No P-03;
p) Drawing No P-05 Rev A;
q) Drawing No P-06;
r) Drawing No P-07;
s) Drawing No P-08 Rev A; and,
t) Drawing No P-09.

2) Samples of external materials to be used on the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority before the construction of the dwellings is commenced on site. The development shall be carried out in accordance with the approved details.

3) Before the development hereby permitted is commenced, a suitable means of enclosure shall be erected along the site boundaries, in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

4) The parking spaces and turning area shown on the deposited plans 0961/10 Rev A, 0961/11 Rev B and 0961/24 Rev D hereby submitted as previously approved shall be constructed before any part of the development is occupied or within such longer period as may be approved by the Local Planning Authority and shall thereafter be maintained exclusively for that purpose in a useable condition to the satisfaction of the Local Planning Authority.

5) Notwithstanding the submitted plans, prior to the occupation of any dwelling, details of the proposed bin & recycling storage to serve the development of 4-10A Alexandra Road, together with details of the trolley park, (to include siting, design, and external materials) shall have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be completed prior to first occupation of the development and retained for the approved purpose.

6) No demolition or development shall commence on the site of 4-10A Alexandra Road until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. The CMP shall include details of the provision to be made to accommodate all site operatives, visitors and construction vehicles loading (to a minimum Euro 6/VI Standard), off-loading, parking, and turning within the site, wheel cleaning facilities during the construction period and machinery to comply with the emission standards in Table 10 in the Low Emission Strategy guidance. The CMP shall thereafter be implemented as approved before development begins and be maintained throughout the duration of the construction works period.

7) At all times during the hours that the retail shops on Chalvey Road West are open to the public, the car parking area at the rear of the building shall be made available for customers' vehicles.

8) No goods shall be displayed or sold from the forecourt or from the car park.

9) Unless otherwise agreed in writing by the Local Planning Authority the ground floor shops, except for the supermarket and Unit One (as identified on Drawing No. 2083/32A), shall be open to the public only between the hours of:-
10.00 to 13.30 on Sundays;
08.00 to 21.00 on Fridays; and,
08.00 to 19.00 on other days of the week.

The supermarket shall be open to the public only between the hours of:
07.30 to 21.00 on Fridays; and,
07.30 to 19.30 on all other days of the week.

Unit One, as identified on Drawing No. 2083/32A shall be open to the public only between the hours of:
06:00 to 20.00 on all days.

10) Unless otherwise agreed in writing by the Local Planning Authority there shall be no deliveries or servicing within the car park or service bay between the hours of:-
Before 07.00 or after 21.00 on Mondays to Saturdays.
Before 07.00 or after 13.30 on Sundays or Bank Holidays.

End of Schedule.

The Planning Inspectorate

Appeal Decision

Site visit made on 1 September 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th September 2021

Appeal Ref: APP/J0350/C/21/3277190
Land at 10 Marlborough Road, Slough SL3 7LH

- 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 Mangal Singh Lalli against an enforcement notice issued by Slough Borough Council.
- The enforcement notice was issued on 19 May 2021.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised construction on the land of a second single storey rear extension ("unauthorised development").
- The requirements of the notice are: (i) Demolish the unauthorised development. (ii) Remove from the land all materials, rubbish, debris, plant and machinery resulting from compliance with the requirement stated at (i).
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and the enforcement notice is upheld as set out below in the Formal Decision.

Preliminary Matter

1. The revised National Planning Policy Framework (the Framework) came into force during the course of this appeal. The main parties have been given an opportunity to comment on the implications of the revised Framework in respect of the appeal and I have taken it into account in my decision.

Ground (a) appeal

Main Issues

2. The main issues in this appeal are:

   - The effect of the second single storey rear extension on the character and appearance of the area.
   - The effect on the living conditions of occupiers of adjoining residential property, having regard to outlook.

Reasons

Character and appearance

3. The appeal site contains an enlarged two storey detached dwelling. The dwelling is located in an established residential area, largely comprising rows of semi-detached and detached dwellings of a similar age and architectural style.

For the most part, the dwellings are similarly spaced and they occupy generously sized linear plots, the ample, largely open front and back gardens helping to assimilate subsequent residential extensions and outbuildings into their surroundings. The foregoing factors all contribute appreciably to the well-ordered and pleasantly spacious suburban character and appearance of the surrounding area.

4. The single storey extension in this appeal protrudes from a pre-existing single storey flat roofed enlargement at the back of the dwelling. The extension is of significant depth, running adjacent to the side boundary up to part of the tapering back garden boundary. At around 10 m, the overall depth of the extension considerably exceeds the recommended maximum of 4.25 m from the rear main wall of the original dwelling, set out in the Council's Residential Extensions Guidelines Supplementary Planning Document (SPD). This is before taking the pre-existing enlargement, which already protrudes around 4 m from the rear elevation of the original dwelling, into account. Whilst the dwelling is detached and at the end of a row of properties, given the similarities in the alignment of dwellings throughout the row and also having regard to the orientation of adjoining residential property in Blenheim Road, there is no sound reason why the SPD guidance should not be given considerable weight. Furthermore, the extension occupies about a third of the back garden width and at around 2.5 m in height, it is appreciably taller than structures on the boundaries between the site and adjoining residential property.

5. Due to its external dimensions, the extension is substantial in scale. Together with the considerable scale of the pre-existing enlargements at the rear and side, the dwelling now exhibits an appreciable sense of being subsumed by later additions. As a result, the extension appears poorly related to the dwelling and although single storey, it fails to be visually subordinate and erodes the inherent character of the dwelling. The slight difference in roof height evident between parts of the extension does not assist in offsetting its visual impact to any great degree. Whilst there are clearly other single storey flat roofed extensions in the vicinity, as far as I was made aware none have a similar overall depth or proximity to the back garden boundary compared with the extension in this appeal. Being constructed of unfinished blockwork, the west-facing external wall adds to the failure of the extension to integrate with the dwelling. Boundary planting does not significantly offset the poor external appearance of the blockwork and in any event, such planting is not a year-round, permanent solution.

6. In addition, due to the extension's scale and the proximity to the site boundaries, a much greater portion of the back garden is either occupied by or immediately adjacent to substantial built form compared with prior to its erection. The back garden is now considerably more modest in size and there is a noticeably greater sense of enclosure compared with the generally more open and expansive back gardens in the locality, thus creating a more built-up feel in the environs. This is markedly different from extensions and outbuildings at other residential property in the vicinity, which, even where substantial in scale, for the most part sit comfortably within their respective plots.

7. The above has all led to the extension being seen as an incongruous feature in its surroundings, failing to respect or reflect the character of the dwelling and appearing entirely at odds with the spacious qualities of the prevailing pattern

of local development. Whilst there might be few public views of the extension, the resulting visual harm is readily apparent from adjoining residential property. In any event, limited availability of public views is not a good reason to permit visually unacceptable development as it could be repeated too often, with further adverse visual consequences.

8. In reaching the above conclusions, I have also had regard to the planning permission granted by Article 3, Schedule 2, Part 1, Class E of the GPDO[1] to erect an outbuilding within the curtilage of a dwelling where it is required for a purpose incidental to the enjoyment of the dwelling as such, provided the relevant limitations on the size, height and location are met. In May 2019, a Lawful Development Certificate (LDC) under s192 of the Act was granted for a proposed outbuilding at the site[2]. Even so, the LDC scheme was significantly smaller than the extension. There would have been a substantial amount of space between the dwelling and the outbuilding, considerably and appreciably offsetting its visual impact. I accept that even a small gap from the enlarged dwelling is likely to mean that an outbuilding could still fall within Class E. In this respect, I acknowledge the findings of an Inspector in a recent appeal at another location[3]. Even so, there was little clear and compelling evidence to indicate that a structure with a footprint similar to or larger than the extension would be required for a purpose incidental to the enjoyment of the dwelling. In any event, the extension must be considered as a whole. The available evidence does not show that the extension was erected other than as one continuous building operation. As a result, in my judgment the adverse visual consequences of the extension are not materially similar to what would have resulted from a Class E development.

9. I also note that the GPDO Article 3, Schedule 2, Part 1, Class A provides for erecting a larger single storey rear extension. However, that is subject to prior approval being obtained. Moreover, the overall depth of the extension considerably exceeds Class A limits. Accordingly, that Class has limited relevance to the appeal.

10. For the above reasons, I find that the extension causes unacceptable harm to the character and appearance of the area. By failing to achieve a high quality design that is attractive and respects its location and surroundings, the extension does not accord with criterion in Core Policy 8 of the Slough Local Development Framework Core Strategy Development Plan Document (CS). Similarly, the failure of the extension to reflect high quality design in terms of scale, building form and visual impact does not accord with criteria in Policy EN1 of the Slough Local Plan (LP), whilst for corresponding reasons the extension does not accord with LP Policy EN2. In addition, by not being of a high quality design in keeping with the site and the character of the surrounding area, the extension does not accord with LP Policy H15. Not achieving a well-designed place means that the extension is inconsistent with the revised Framework.

11. Nevertheless, if the part of the extension approximately 2.5 m in width adjacent to the pre-existing enlargement were to be removed, physically severing the extension from the dwelling, the remaining footprint and built envelope would then correspond with that shown on the drawing accompanying

[1] The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
[2] Council Ref: P/04013/002.
[3] Appeal Ref: APP/N5090/X/20/3261594.

the LDC scheme. Modifying part of the development described in the notice, for which permission has been sought under the deemed planning application pursuant to ground (a), would be involved. At s177(1)(a), the Act provides that planning permission may be granted in respect of the whole or part of the breach described in the notice. Therefore, it is appropriate to consider whether permission should be granted for part of the extension under ground (a).

12. The above works would bring the modified extension within the size and height limitations at Class E, paragraph E.1. I am given to understand that the appellant requires a gym facility for reasons of their health and wellbeing and that of their family. Use as a home gym would be functionally related and therefore incidental to the primary residential use of the dwelling. During my visit, I observed that part of the extension equating to the footprint of the development in the LDC scheme was in such a use. The LDC outbuilding would have been used for similar purposes. Therefore, it is not unreasonable to find that an outbuilding is required in relation to the dwelling. In turn, this leads me to conclude that there is a realistic prospect of an outbuilding under Class E being erected with similar dimensions to the LDC scheme, in the event the appeal failed.

13. Given the above circumstances, requiring the extension to be totally demolished would serve no useful planning purpose, as a substantial part could simply be re-erected under Class E almost immediately after. Planning enforcement action is intended to be remedial, not punitive. Moreover, modifying the extension as set out above, with the resulting reduction in scale and the significant sense of space created between the extension and the dwelling, would also appreciably reduce its visual impact on the surroundings. Modifying the extension to physically sever it from the dwelling and comply with the LDC scheme would therefore overcome the planning difficulties at less cost and disruption and represents an obvious alternative to the requirements of the notice.

14. As a result, modifying the extension as described above would not cause unacceptable harm to the character and appearance of the area and accords with CS Core Policy 8 and LP Policies EN1, EN2 and H15, being consistent with the SPD guidance on residential outbuildings and the revised Framework.

Living conditions

15. One of the residential back gardens adjoining the west boundary of the site is that of 5a Blenheim Road (No 5a). This back garden is foreshortened. Also, an electricity sub-station wraps around part of the back garden. These factors mean that No 5a has a back garden of modest size compared to the more expansive back gardens typical of the locality. There is a garden building of relatively modest size and height towards the end of part of No 5a's back garden. Prior to erecting the extension, the pre-existing enlargement adjoined a significant part of the far end of No 5a's back garden but partly sat behind that property's garden building. However, given its overall depth the extension adjoins a much greater portion of No 5a's back garden boundary, as well as the sub-station. Whilst the extension is lower than the 3m maximum height limit in the SPD, it is considerably taller than the boundary fencing and No 5a's garden building. Neither the relatively limited distance between the rear elevation of No 5a and the far end of its back garden or the garden building assist significantly in offsetting the visual presence of the extension.

16. Due to the above factors, the extension is seen as a considerable, unrelieved expanse of built form adjacent to the boundary, appearing as a substantial and obvious built feature a relatively limited distance from the rear-facing windows and in the back garden at No 5a. Whilst there has been no significant erosion of natural light or increased overshadowing, the above has given rise to the occupiers of No 5a experiencing a substantially greater and more oppressive sense of enclosure at the back of their property, thereby considerably eroding the level of outlook that they might otherwise reasonably expect to enjoy.

17. However, complying with the LDC scheme would also create a significant amount of space between the modified extension and the dwelling, appreciably reducing the sense of enclosure experienced by the occupiers of No 5a. Consequently, as modified the extension would not cause unacceptable harm to the living conditions of occupiers of adjoining residential property. As the extension would not then have a significant adverse impact on the amenity of adjoining occupiers, it accords with criterion in LP Policy H15. In addition, providing a high standard of amenity for existing and future users would be consistent with the revised Framework.

Other matters

18. I am given to understand that the extension was erected whilst the appellant was self-isolating during the COVID-19 pandemic and that part of it had enabled him to work from home. However, such circumstances are not particularly unusual and given that the UK is at present recovering from the effects of the pandemic this carries limited weight in relation to retaining the extension as built.

Conditions

19. After seeking the views of both main parties, I intend to impose two conditions. The first condition requires the extension to be modified to comply with the drawing accompanying the LDC scheme to physically sever it from the dwelling and to give the more visible portion of the west-facing external wall an appearance which is more visually harmonious with the external walls of the dwelling. The condition is necessary to overcome the harm to the character and appearance of the area and to the living conditions of occupiers of adjoining residential property.

20. The condition is drafted in the form set out below because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the implementation of the required modification works, because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the development granted planning permission may only remain if the appellant complies with its requirements. It would be a relatively straightforward matter for an experienced small building contractor to be engaged and to undertake the modification works within a few months. The condition is precise and reference to the drawing accompanying the LDC scheme means that there is certainty in exactly what has to be done to achieve compliance. The requirement to remove demolition materials is intended to prevent external storage and does not preclude incorporating salvaged elements into other works at the site where it is reasonably necessary to do so. Accordingly, in my view the requirements of the condition are proportionate and reasonable.

21. Additionally, I shall impose a condition restricting the use of the development other than for purposes incidental to the enjoyment of the dwelling. In doing so, I am mindful that an outbuilding erected pursuant to Class E is not prevented from subsequently being used as primary living accommodation in association with the relevant dwelling. Nevertheless, in my view the condition is necessary to safeguard the living conditions of occupiers of adjoining residential property. In any event, as this is a deemed planning application arising from a ground (a) appeal, Class E does not apply.

Ground (f) appeal

22. The ground of appeal is that the notice requirements are excessive.

23. At s173(4) the Act provides that an enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place, or the purpose of remedying any injury to amenity that has been caused by the breach. Although the notice does not state as such, its purpose must be to remedy the breach. The notice requires nothing less than demolition of the extension, by which the site would be restored to its condition before the breach took place.

24. Modifying the extension to comply with the drawing accompanying the LDC scheme as an alternative to demolition has been dealt with on ground (a). In relation to ground (f), reducing the size of the extension and severing it physically from the dwelling would not remedy the breach as the entire structure was erected unlawfully. Neither would cladding part of the west-facing wall, either by itself or in combination with a reduction in size. Only total removal of the extension would remedy the breach, as only that would restore the site to its condition before the breach took place. Consequently, the notice requirements are not excessive for the intended purpose and the appeal on ground (f) fails.

Conclusion

25. For the reasons given above I conclude that the appeal should succeed in part only, namely for part of the extension, and I will grant planning permission for this part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as they are inconsistent with the permission which I will grant by virtue of s180 of the Act.

Formal Decision

26. The appeal is allowed insofar as it relates to the part of the second single storey rear extension shown on drawing number 201937-01 attached to this decision and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of that part of the second single storey rear extension on the land at 10 Marlborough Road, Slough SL3 7LH referred to in the notice, subject to the conditions in the Schedule at the end of this Decision.

27. The remaining part of the appeal concerning the part of the second single storey rear extension not shown on drawing number 201937-01 is dismissed, the enforcement notice is upheld and planning permission is refused in respect of the application deemed to have been made under section 177(5) of the 1990

Act as amended for the erection of that part of the second single storey rear extension on the land at 10 Marlborough Road, Slough SL3 7LH.

Stephen Hawkins

INSPECTOR

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall be totally demolished and all resulting demolition materials removed from the site, unless within three months of the date of this decision the following have been completed:

   a) The development has been altered and reduced in size to accord with drawing number 201937-01 attached to this decision, so that the remaining structure is physically severed from the dwelling with no part of the external walls or roof not shown on that drawing being retained, using external materials to match the external walls of the dwelling, with the resulting demolition materials removed from the site; and
   b) The west-facing external wall of the development between 1.8 m above ground level up to the eaves level has been finished with brick slips to match the external walls of the dwelling.

   Following compliance with a) and b) above, the external wall materials of the development shall be maintained.

   In the event of a legal challenge to this decision, the operation of the time limit specified in this condition will be suspended until that legal challenge has been finally determined.

2) The development hereby permitted shall only be used for purposes incidental to the enjoyment of the dwelling and shall not be used as primary living accommodation.

The Planning Inspectorate

Plan

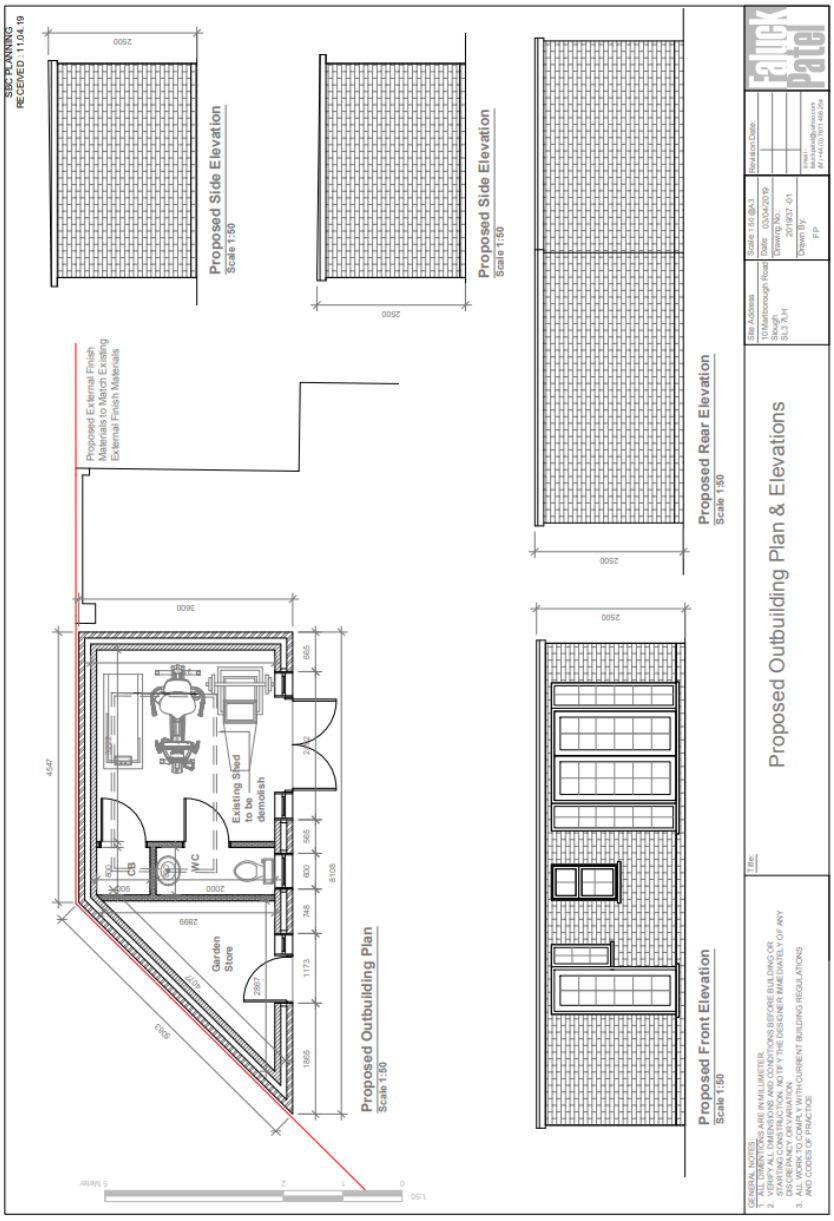
This is the plan referred to in my decision dated: 30th September 2021

by Stephen Hawkins MA MRTPI

Land at 10 Marlborough Road, Slough SL3 7LH

Reference: APP/J0350/C/21/3277190

Scale: Not to scale



The Planning Inspectorate

Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2021

Appeal Ref: APP/J0350/X/20/3266034
2A Chestnut Avenue, Slough SL3 7DE

- 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 Mr N Singh against the decision of Slough Borough Council.
- The application Ref: P/05413/006, dated 25 September 2020, was refused by notice dated 19 November 2020.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is a side dormer extension to the existing roof.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is found to be lawful.

Main Issue

2. Planning permission granted for the appeal property in 1982 (Ref: P/05413/001) included condition 8 which reads: *"Notwithstanding the provisions of the Town and Country Planning General Development Orders 1977-1981, no additional windows or other openings shall be constructed in the northern and southern elevations of the dwelling hereby approved without prior written approval of the local planning authority"*. The reason given for the condition is *"To help safeguard the privacy and visual amenity of the occupiers of adjacent properties".*

3. The appeal proposal is for a dormer extension in sloping roof on the North elevation of the house. The Council does not raise any concerns that the dormer would not meet the conditions and limitations of the planning permission granted under Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) Order 2015 for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Based on the evidence before me, I have no reason to disagree.

4. The Council is though concerned that the dormer extension would be an opening on the North elevation of the house which would contravene condition 8, thus making the proposal unlawful. I shall examine as the main issue

whether, as a matter of fact and degree, this would be the case. This is a legal determination in which matters of planning merit are not relevant.

Reasons

5. I recognise that during the construction of the extension there would be a temporary opening in the roof on the North elevation. However, the application is not for an opening in the roof, temporary or otherwise. It is for a dormer extension which the submitted plans show, as a matter of fact, when complete would not have any permanent openings or windows in its North elevation. It would be solid/blank finished with materials to match the existing property. There would be a small window in each side cheek of the extension, but they would clearly be in the East and West elevations of the dwelling.

6. Moreover, whilst matters of planning merit are not relevant, given that there would be no windows or openings in the North elevation, the purpose of the condition to help safeguard the privacy and visual amenity of adjacent residential occupiers would also be fulfilled.

7. In view of the above, the proposed development would not contravene condition 8 of planning permission Ref: P/05413/001 and there is no other reason why the development would not be lawful under s191(1)(2) of the 1990 Act. I therefore conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a side dormer extension to the existing roof was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Gareth Symons

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 25 September 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It would not contravene the restrictions of condition 8 of planning permission Ref: P/05413/001 and it would have planning permission granted by Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) Order 2015.

Signed

Gareth Symons

INSPECTOR

Date 20 October 2021

Reference: APP/J0350/X/20/3266034

First Schedule

Side dormer extension to the existing roof.

Second Schedule

Land at 2A Chestnut Avenue, Slough SL3 7DE

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 20 October 2021

by Gareth Symons BSc(Hons) DipTP MRTPI

Land at: 2A Chestnut Avenue, Slough SL3 7DE

Reference: APP/J0350/X/20/3266034

Scale: Do not scale.