

SLOUGH BOROUGH COUNCIL

REPORT TO: PLANNING COMMITTEE

DATE: October 2022

PART 1

FOR INFORMATION

Planning Appeal Decisions

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

WARD(S)

ALL

Ref	Appeal	Decision
2018/00174/ENF	19 Salt Hill Avenue Construction of a pergola over 2.5m	Appeal Dismissed 28 th September 2022
P/00662/022	141 High Street Construction of new additional floors comprising of 6no self contained units with refuse and cycle storage at ground floor level and amended access stairs to basement level.	Appeal Dismissed 30 th September 2022
P/01125/009	2a Bower Way Demolition of existing building and construction of 11 no flats. 6 x 2 bedroom flats and 5 x 1 bedroom flats with 11 car parking spaces/15 cycle storage spaces and amenity space at the rear.	Appeal Dismissed 25 th October 2022
F/01043/043	1-7 The Grove Prior Notification for a change of use from Offices (B1) to Dwellinghouses (C3) Change of use of the building at ground to 3rd floors from Class B1a offices to 71no. flats (65 x one bedroom and 6 x two bedroom)	Appeal Granted 27 th October 2022
P/06271/021	Land To The Rear Of 18-4 Stoke Road Construction of a part 1, 2, 3 and 4 storey building comprising of 9 flats (3 x one bedroom, 3 x two bedroom and 3 x 3 bedroom as amended) with associated parking and landscaping	Appeal Dismissed 31 st October 2022
Y/01014/020	Chancellor House, Farnburn Avenue Prior approval for the addition of 2 additional storeys over the existing 3 storey block of flats and creation of 8no new flats	Appeal Dismissed 1 st November 2022
Y/02069/018	337 Bath Road Prior approval for the addition of one new storey to provide 203m ² of residential floor space.	Appeal Dismissed 15 th November 2022

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Appeal Decisions

Site visit made on 8 September 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th SEPTEMBER 2022

Appeal A Ref: APP/J0350/C/21/3280562

Appeal B Ref: APP/J0350/C/21/3280563

Land at 19 Salt Hill Avenue, Slough SL1 3XP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Pritam Singh (Appeal A) and Mrs Surinder Kaur Jandu (Appeal B) against an enforcement notice issued by Slough Borough Council.
- The notice, numbered 2018/00174/ENF and SLGH-RTR001-062779, was issued on 30 June 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised construction of an additional single storey rear extension added onto an existing rear and side extension on the land shown edged in green on the annexed plan¹.
- The requirements of the notice are to:
 - 1) Demolish all of the unauthorised development as shown edged green on the plan.
 - 2) Remove from the land all materials, debris, plant and machinery resulting from compliance with step 1 above.
- The period for compliance with the requirements is four calendar months after the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (d) and (f) of the Town and Country Planning Act 1990 as amended (the 1990 Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.
- Appeal B is proceeding on the grounds set out in section 174(2)(d) and (f) of the 1990 Act.

Summary Decision: Appeal A and Appeal B are dismissed, the enforcement notice is upheld and planning permission is refused.

Ground (d)

1. An appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by the matters stated in the enforcement notice. To succeed the appellants must show that a period of four years has passed beginning with the date on which the development alleged in the enforcement notice was substantially completed. The test in this regard is the balance of probability and the burden of proof is on the appellants. It is worth noting that the date 4 years prior to the issue of the enforcement notice was 30 June 2017.

¹ Reference in the header to the 'annexed plan' or 'plan' is to the plan attached to the enforcement notice subject to this appeal.

2. The development subject of these appeals is an extension to the rear of the property occupying the appeal site. I will refer to it in this decision as the appeal extension. It has a framed construction and spans the width of the appeal site. The appeal extension is an addition to a previously constructed single storey, flat roof side and rear extension, as referred to by the parties. The height of the appeal extension is comparable to that of the previous single storey extension.
3. The appellants say that the appeal extension was built in 2014. To support this claim they have provided an undated letter from the company they say constructed the appeal extension. Whilst not particularly detailed, the letter indicates that the appeal extension was constructed in early 2014. The appellants have also provided a petition type document signed by residents of Salt Hill Avenue, which also gives the early 2014 date for the construction of the 'glass room'. A series of receipts have been provided for various building supplies, including concrete slabs, an air vent, screws, nails, sockets, etc. These date from 2014 and 2015.
4. Whilst the claim is that the appeal extension was constructed in 2014, there is little additional detail from the appellants themselves to support this. For example, the appellants have not stated themselves when in 2014 the works commenced or when the works were completed. They have instead relied on the evidence of interested parties and a series of receipts.
5. The letter from the construction company is briefly stated and has not been supported by any other documentation from this company that is likely to have been produced for the work they carried out; an invoice or payment receipt, for example. As for the list of signatures, whilst I can see that the signatories have signed to the generic statement at the start of the list, none have provided any detail to substantiate their claims. For example, none have stated how long they have lived in the street and, more importantly, how they would have known when the appeal extension was constructed. Indeed, there do not appear to be any views of the rear of the appeal site from Salt Hill Avenue or any other public vantage points, and the address of some of the signatories is some distance along Salt Hill Avenue from the appeal site.
6. In addition to the above, despite the claim that the appeal extension was constructed in 2014, the vast majority of the receipts provided are dated July, August and September 2015. Of the few receipts from 2014, these date from January, April, June and December. Notwithstanding the dates of the receipts, in the evidence there is little explanation of the type or purpose of the items listed in the receipts. Indeed, the June 2014 receipt is for a single door and a single window, whereas there are two doors and a number of windows within the appeal extension. In all, I do not have sufficient evidence to be satisfied that the items referred to in the receipts were, on the balance of probability, used in the construction of the extension.
7. Notwithstanding the above, in responding to the ground (d) appeal the Council refer to two sets of aerial photographs. It dates the first of these from June 2013, March 2014, March 2017, June 2018 and April 2020. The second set are dated by the Council as 2012, 2015 and 2019.
8. Having compared the most recent with the earliest aerial photographs, there is a clear contrast between the two. In the 2012 photographs I can see the flat roof of the previous single storey addition, which wraps around to the side of

the property. Behind this I can see the garden of the appeal site, which comprises what appears to be a hard surfaced area (a path or patio) to the rear of the previous extension. This connects to a path to the side and across the back of the lawn, as I had observed it on my site visit. This hard surfacing links the main property with the outbuilding to the rear of the site.

9. In the 2018 and 2019 aerial photographs I can see what appears to be the white frame of the appeal extension. The structure visible in the photograph spans the width of the site and is in the location of the appeal extension, as I had observed it on site, and as indicated on the plan attached to the notice. It covers (or is in the place of) the hard surfacing at the rear of the previous extension, described above.
10. With regard to the 2015 aerial photograph, I acknowledge that the quality of this is not as good as the others, and that there is a shadow cast over the land to the rear of the two storey element of the appeal property. I cannot, however, see the white frame of the appeal extension in the photograph. I can also make out the line of the path or patio area to the rear of the previous extension, suggesting that the appeal extension was not in place at the time the photograph was taken. Furthermore, the appeal extension is not visible in either of the March 2017 aerial photographs, in which I can clearly see the flat roof of the previous extension and the path or patio to the rear of this.
11. Having carefully considered the appellants' evidence, I have been unable to discern from this when the appeal extension is more likely than not to have been substantially completed. The evidence points to various dates from early 2014 to as late as September 2015². Whilst the claim is that the appeal extension was built in 2014, most of the receipts for builders' materials are dated after this date and do not, therefore, support this claim. In this regard I find the appellants' evidence imprecise and ambiguous.
12. Added to the above is the evidence of the Council. Although this is limited, it is consistent. The appellants suggest that it is unclear as to when the Council's photographs were taken, but have provided no reason for me to conclude that the dates given are not correct, other than to maintain that the appeal extension was in place in 2014. Accordingly, the Council's evidence is sufficient to demonstrate that the appellants' version of events is less than probable.
13. All things considered, I cannot be satisfied that the appellants have discharged the burden of proof in this case, particularly as the Council's evidence makes their version of events less than probable. I find it more likely than not that the appeal extension was substantially completed sometime after March 2017. Whilst this is prior to the date 4 years before the notice was issued (30 June 2017), there is nothing before me that leads me to conclude that, on the balance of probability, on the date the enforcement notice was issued no enforcement action could be taken in respect of the breach of planning control alleged in the notice. For this reason the ground (d) appeals should fail.

² The date of some of the receipts provided.

Ground (a) and the deemed application for planning permission

Main Issues

14. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
15. I note the substantive reasons for issuing the enforcement notice and from these I have identified the main issues as being the effect of the development on:
 - the character and appearance of the appeal site and the surrounding area;
 - the living conditions of the occupiers of the appeal site; and
 - the living conditions of neighbouring occupiers.

Reasons

Character and Appearance

16. The appeal extension comprises a single storey lean to structure across the width of the appeal site. The extension is part enclosed and part open to the rear garden of the property. It has a timber frame and plastic roof. The elevations of the enclosed section include a concrete blockwork plinth, as well as doors and windows (predominantly UPVC) of varying sizes and styles.
17. The extension has a particularly ad hoc appearance. Its design is organic, and the varying style and size of window openings adds to the makeshift character of the extension. The development fails to reflect the otherwise neat appearance of the main property.
18. As noted above, the appeal extension has been added to a previous flat roofed extension. Although the appeal extension has a fairly shallow depth, the combination of the two extensions results in a significant expanse of low pitched or flat roofed additions to the host property. This dominates the appeal site and causes detriment to the character of the property. In this regard the Council point to conflict with the guidance provided in the Slough Local Development Framework Residential Extensions Guidelines adopted January 2010 (SPD). At EX20 of the SPD it suggests a maximum depth of 4.25 metres for a semi-detached property. Whilst I note the appellant's comments in this regard, I find the excessive depth of the single storey additions to the property add to the inappropriate design and appearance of the appeal extension.
19. I acknowledge that there are other flat roofed or shallow pitched extensions to the adjoining properties. There may also be others in the area. However, none have been drawn to my attention that compare with the extent, design and appearance of the development at the appeal site. Indeed, I note the comments of the adjoining occupier with regard to the effect of the appeal extension on the character and form of the adjoining properties.
20. Notwithstanding my findings above, I acknowledge that the appeal extension is not widely visible from public vantage points. Indeed, it may only be visible from adjoining properties and their gardens. However, it does not necessarily follow that the appeal extension does not cause harm in the wider context of

the appeal site. A judgement on the effect of development on the character and appearance of the surrounding area is not confined to what can be seen from public vantage points.

21. I have found that the extent of development at the appeal site that results from the appeal extension causes harm to the host property, and that the scale and appearance of the development is not comparable to other properties within the area that have been drawn to my attention. Being at odds with other development in the area, I can only conclude that the appeal extension has an unacceptable effect on the character and appearance of both the site and the surrounding area.
22. For the reasons given above, the development conflicts with Core Policy 8 (Sustainability and the Environment) of the Slough Local Development Framework Core Strategy 2006 - 2026 Development Plan Document dated December 2008 (SCS), as well as saved Policy ENV1 (Standard of Design) and saved Policy H15 (Residential Extensions) of the Local Plan for Slough adopted 22 March 2004 (SLP) which require, amongst other matters, that development be of a high quality design that improves the quality of the environment, and is in keeping with both the existing property and the identifiable character of the surrounding area. The development also fails to accord with saved Policy ENV2 (Extensions) of the SLP, which requires extensions to be, amongst other matters, compatible with the design, fenestration, architectural style and proportions of the original structure. The reasons given above also mean that the development conflicts with the guidance provided in the relevant sections of the SPD.

Living conditions – occupiers of the appeal site

23. Saved Policy H15 of the SLP informs that extensions will only be permitted provided, amongst other matters, that an appropriate level of rear garden amenity space is maintained. This policy is supported by advice at DP9 of the SPD. I note that the Council has pointed to the requirements of the SPD for the provision of amenity space given at EX48. However, neither the Council nor the appellant have provided an indication of the area of garden space remaining at the site, such that I can conclude that this does not comply with the SPD standards.
24. Notwithstanding this, at the site visit I noted that the remaining garden space at the appeal site is useful in terms of its shape and relationship to the main property. Its purpose is to serve a property that is the size of a family home. Although the garden space is not large, there is sufficient space for the external activities associated with such a property. These include space for external storage, drying clothes, growing vegetables, relaxation and children's play.
25. Having regard to the above, I have been given no reason to conclude that the garden space remaining to serve the property is such that the development has an unacceptable effect on the living conditions of the occupiers of the appeal site. For this reason, I do not find the development in conflict with saved Policy H15 of the SLP or the SPD.

Living conditions – adjoining occupiers

26. It is suggested that the extension encloses and over dominates the garden of neighbouring properties. In this regard I note that the properties on both sides

have been extended and that these extensions are similar in their depth, size and proportions to the previous extension to the appeal site. As such, only the depth of the appeal extension along the boundaries (and not the full depth of the appeal extension and previous extension) can be appreciated from the adjoining properties. As noted above, the pitch of the roof of the appeal extension is shallow and I do not regard it as being excessively tall. Whilst it may result in a degree of enclosure of the adjoining gardens, this is not along a significant length of the boundary.

27. Although there are clear plastic sections in the side elevations of the appeal extension, the height of these are such that any overlooking is limited. Indeed, the Council suggests that there is only a perceived loss of privacy. Whilst the appeal extension is visible from neighbouring properties, I cannot find it unacceptable with regard to its effect on the garden space or privacy of neighbours.
28. All things considered, I cannot conclude that the development has an unacceptable effect on the living conditions of adjoining occupiers. I do not, therefore, find the development in conflict with saved Policy ENV1 or H15 of the SLP, or the guidance provided within the SPD. These inform, amongst other matters, that development is required to be of a high quality design that improves the quality of the environment in terms of its relationship with neighbours, and that extensions will only be permitted if there is no significant adverse impact on the amenity of adjoining occupiers.

Other Matters

29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. Whilst I have concluded that the development subject of this deemed planning application is acceptable with regard to its effect on the living conditions of the occupiers of the appeal site and adjoining properties, I have not concluded the same with regard to its effect on the character and appearance of the appeal site and the surrounding area. The development is, therefore, contrary to the development plan. In these circumstances it is necessary for me to consider whether there are any material considerations of sufficient weight to indicate that my determination should be made otherwise than in accordance with the development plan.
30. In this regard, the appellant has provided particular details regarding his health, which is supported by a letter from his medical practitioner. Having considered this evidence, it may well be the case that the appellant is regarded as being a person sharing a protected characteristic, which is relevant to my decision. Under the Public Sector Equality Duty (PSED) contained in Section 149 of the Equality Act 2010, I must have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
31. From the correspondence provided by the appellant I can see that he has suggested to his medical practitioner that the development benefits his health. As such, his medical practitioner suggests that he continue to use and enjoy

the development. Clearly, the benefit the appellant derives from the development adds weight in favour of the grant of permission. However, as noted by the Council, I have no reason to conclude that similar benefits cannot be derived from an alternative form of development. The Council does not discount the prospect of it finding an alternative scheme acceptable.

Planning Balance and Conclusion

32. Even having due regard to the benefits of the development, I conclude that the harm to the character and appearance of the appeal site and surrounding area, resulting from the poor design, form and scale of the development, tips the balance against the grant of planning permission. I have considered whether conditions would overcome the harm caused in this case, including those suggested by the appellant, but conclude that they would not. I have no reason to conclude that my determination of the appeal should be made otherwise than in accordance with the development plan. As such, planning permission ought not to be granted and the ground (a) appeal should fail.

Ground (f)

33. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach. Having regard to the requirements of the notice, the purpose of the notice must be to remedy the breach of planning control that has occurred.

34. I note the appellants have suggested alterations to the appeal extension, including the removal of the canopy on the western portion. I have not, however, been provided with any details of the development that would remain, nor any details of the works and materials necessary to make good the remaining structure.

35. No alternative or lesser steps have been suggested to achieve the purpose of remedying the breach in this case and, having regard to both the nature of the breach and requirements of the notice, no other steps that would achieve this purpose are obvious to me. On this basis I can only conclude that the steps required in the notice are necessary. For these reasons, the appeals under ground (f) should fail.

Overall Conclusions

36. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Formal Decision

37. The appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

J Moss

INSPECTOR



Appeal Decision

Site visit made on 31 August 2022

by M. P. Howell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Friday 30 September 2022

Appeal Ref: APP/J0350/W/21/3288411 141, High Street, Slough SL1 1DN

- 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
 - The appeal is made by Mr Chhokar (Binfield Property Investment Trust Ltd) against Slough Borough Council.
 - The application Ref P/00662/022, is dated 11 December 2020.
 - The development proposed is new additional floors comprising of 6no self-contained units with refuse and cycle storage at ground floor level and amended access stairs to basement level.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters and Main Issues

2. I note the reasons for refusal submitted with the Council's Statement of Case. While this is not the application decision as jurisdiction over that was taken away when the appeal was lodged, I have treated it as the decision the Council would have made, had it been empowered to do so.
3. In view of the above, the main issues are:
 - Whether the proposed development would provide adequate accommodation for future occupants, with regard to the internal size of the units as well as light, outlook and external space.
 - The effect of the proposed development on public open space.

Reasons

Accommodation for future Occupants

4. 141, High Street is located within a commercial high street in Slough. No 141 is single storey vacant retail unit and is adjoined to the right by unit of a similar scale. To the left is a 4-storey brick-built building with commercial at ground floor and a mix of uses above. The site faces a pedestrianised area and a vacant development plot. To the rear of the site is an elevated parking and storage area for a large shopping centre. From what I saw on site, this parking and storage area adjoins at around first floor level, but it is not a publicly accessible car park for the shopping centre.
5. The proposed development would extend the ground floor upwards to form a 3-storey extension to accommodate six flats. Three flats are proposed to the front

- of the extension, and three to the rear, with a central staircase and courtyard. The flats would be accessed via the front, and a cycle store and bin storage are proposed to the rear ground floor.
6. Core Policy 8 of the Slough Borough Council Local Development Framework Core Strategy 2008 (CS), which amongst other things, sets out that all development should be of a high-quality design that is practical, attractive, safe, accessible and adaptable, respect its location and surroundings and provide appropriate public space, amenity space as an integral part of the design.
 7. The Slough Space Standards for residential development Developers Guide Part 4 – supplement Supplementary Planning Document 2018 (Space Standards SPD) provides detailed guidance on space standards for new residential development. Based on the gross internal floor areas set out in Table 1 of the Space Standards SPD, Flats 2 and 4 are 5m² below the minimum standards. Due to its open arrangement Flat 6 is described as a 'studio flat', however, the Space Standards SPD does not differentiate between 1 bed studios and 1 bed flats. As such, I have considered Flat 6 as a two-person one bedroom flat, which would be 7.5m² below the minimum space standards.
 8. In addition to three units being below the minimum space standards, the window and door openings facing the internal courtyard would result in the flats receiving poor levels of light and outlook. Whilst no technical evidence was provided with the appeal relating to light, it appears to me having considered the plans, that there would be poor levels of daylight having regard to the configuration of the living space, the surrounding buildings, and the location and size of the windows. I acknowledge that the rear and front facing windows would provide a better level of outlook and light to the proposed flats than in other parts of the proposed development. However, this would not be sufficient to overcome the substandard internal space and the poor level of outlook and light from the remaining windows.
 9. Policy H14 of the adopted Slough Local Plan 2004 (LP) sets out criteria for consideration when determining whether outdoor space is appropriate for a proposed development. This includes having regard to the character of the area, the type of development, the qualities of the outdoor space being proposed, the provision of balconies and the proximity of public open space. The policy does not set out any size requirements, but paragraph 2.8 of the supplementary text states that in smaller schemes, such as one-bedroom flats, space is required only for drying clothes, the siting of waste bins and the provision of a sitting out area in an appropriate setting for the scheme.
 10. I have had regard to the type of accommodation proposed, its location within the city centre and the bin and cycle storage being proposed in a separate area. However, the proposed internal courtyard would be a small space, with a poor outlook and access to light. All occupants of the flats would also need to journey through this space to access their flat. The outdoor space for flat 2 is more private, but again this could be accessed by anyone within the building as well as being small and enclosed by a high wall.
 11. Having regard to the above, the proposed outdoor spaces are small with a poor outlook and access to natural light. They also appear as a more circulatory or functional space to access the flats, rather than a separate area where occupants may privately relax or hang out clothes. The proximity of leisure, and

other facilities and services would not be adequate compensation for the lack of usable private, albeit communal, space in this instance. As such, despite the type of development and its central location, the outdoor space would not be sufficient to serve the future occupiers of the proposed development.

12. Accordingly, in view of the poor internal space standards, outlook, light and access to basic outdoor space, the proposed development would result in a substandard level of accommodation, which would undermine the quality of life of future residents.
13. I therefore conclude that the proposed development would fail to provide adequate living conditions for future occupants of the proposed flats with particular regard to internal space standards, light, outlook and the provision of outdoor space. The proposed development would be contrary to Core Policy 8 of the CS, Policy H14 of LP and the advice and guidance set out within the Space Standards SPD. These policies and guidance seek to ensure living accommodation for future occupants is a high level of design and not substandard in space, outlook, light and external space.
14. The proposed development would also be contrary to paragraphs 130 (f) and 134 of the National Planning Policy Framework (the Framework). Paragraph 130 (f) of the Framework states that decisions should ensure that developments create places with a high standard of amenity for existing and future users. Paragraph 134 of the Framework also states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes.

Public Open Space

15. Policy OSC15 of the Slough LP states that all new residential development will be required to make appropriate provision, by way of direct provision or as a financial contribution, for educational (including libraries) and community and leisure facilities to meet the needs arising from such new development.
16. The Developer Contributions and Affordable Housing (Section 106) Developer's Guide Part 2017 (Developer Contributions) is an interim document, which provides more detailed guidance on developer contributions in the absence of an adopted Supplementary Planning Document. I attach moderate weight to this document when making my decision. Section 6 of the Developers Contributions document states that for high density residential schemes in or near the town centre, which have inadequate private amenity space, a financial contribution of £300 per dwelling for the enhancement of existing nearby public open space would need to be paid prior to commencement of the development.
17. The proposed development is located within the town centre and would fail to provide adequate private outdoor space. Although I accept that the density is likely to be high, Appendix 1 of the Contributions SPD has a table that refers to the type of contribution and when it is required for different types of residential development. Having regard to the table, it is not clear whether there is a requirement for a contribution for off-site POS given the number of proposed units. However, even if there was, I have found harm to living conditions relating to internal space standards, outlook and daylight, and this harm is sufficient for the appeal to be dismissed in any event.

Other Matters

18. The Council indicate that appeal site lies within 5km of the Burnham Beeches Special Area of Conservation (SAC), and this is not disputed by the appellant. This is protected as a Special Area of Conservation and is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017. Given the distance of the proposal from the SAC, and the proposed use, the proposal is likely to have a significant effect on the integrity of the SAC, either alone or in combination with other plans or projects. This is due to a potential increase in recreational activity on the SAC.
19. I am the competent authority for the purposes of this appeal. As the competent decision-making authority, if I had been minded to allow the appeal, it would have been necessary for me to complete an Appropriate Assessment for this scheme. However, I have already identified harm to the living conditions of future occupants, such that undertaking my own Appropriate Assessment would not alter the outcome of the appeal. On that basis, there is no need to examine this matter further for the purposes of making my decision.
20. Similarly, the Council has outlined that the application does not propose net gains in biodiversity. While biodiversity enhancements should be considered as part of the planning process, I have no detailed ecology information from the appellant or the Council on this matter. Furthermore, as I have already identified harm to the living conditions of future occupants, to consider this matter further would not change the outcome of the appeal. For that reason, there is no need to consider this matter further for the purposes of making my decision.
21. I acknowledge that the delay in the determination of the application and the lack of communication by the Council on the matters raised in the Statement of Case would have been frustrating to the appellant. However, the conduct of the Council and any previous discussions or decisions on the acceptability of the proposed development is not a matter that affects my findings on the main issues in this case.

Planning Balance and Conclusion

22. The Council has set out that it cannot demonstrate a five-year supply of deliverable housing land. Paragraph 11 of the Framework states that where policies which are the most important for determining the application are considered out of date, which includes where a five-year supply of deliverable housing land cannot be demonstrated, planning permission should be granted unless the application of the policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
23. Footnote 7 of the Framework includes policies regarding land designated as Special Areas of Conservation. As such, due to the lack of sufficient information on the effect of the proposed development on the SAC, the Council indicate that the proposal is contrary to these policies in the Framework, and thus, paragraph 11d is not engaged. However, even if paragraph 11d was engaged, allowing the proposed development would conflict with the policies of the development plan and the Space Standards SPD, which seek to ensure living accommodation for future occupants is a well-designed and not substandard in space, outlook, light and external space.

24. I therefore give significant weight to the conflict with Policy 8 of the CS, Policy H14 of the Slough LP and the Space Standards SPD, which are consistent with the aims of paragraph 130 (f) and 134 of the Framework. In terms of benefits, the provision of six flats would make a contribution towards the supply of housing, in an area with an under supply. There would also be social and economic benefits arising from the construction period and the potential future spending of occupants. However, the construction benefits would be short term and six flats would provide only a small uplift to the supply of housing, as well as support to services and businesses in the area. I give these benefits only limited weight.
25. As such, even in the event that paragraph 11d is engaged when assessed against the policies in the Framework taken as a whole, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits. Consequently, the presumption in favour of sustainable development would not apply.
26. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

M. P. Howell

INSPECTOR



Appeal Decision

Site visit made on 4 October 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 25 October 2022

Appeal Ref: APP/J0350/W/22/3296540

2A Bower Way, Slough SL1 5HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Raghbir Singh against the decision of Slough Borough Council.
 - The application Ref P/01125/009, dated 28 July 2021, was refused by notice dated 11 October 2021.
 - The development proposed is demolition of existing building and erection of 11 no. flats. 6 x 2 bedroom flats and 5 x 1 bedroom flats with 11 car parking spaces, 15 cycle storage spaces and amenity space at the rear.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs has been submitted by Mr Raghbir Singh against Slough Borough Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are the effect of the development on:
 - the character and appearance of the area;
 - the living conditions of the occupiers of Holly Court, with particular regard to outlook and natural light;
 - flood risk, with particular regard to surface water drainage; and
 - highway safety.

Reasons

Character and Appearance

4. The appeal site comprises a parcel of land on the southern side of Bowers Way, which is currently occupied by a commercial garage. The garage is a two-storey building with a flat roof, and includes a parking forecourt to its front. There is another commercial garage to the west of the property, but there are residential properties, including blocks of flats, opposite to the appeal site and immediately to its east. The area is therefore mixed in character.
5. The residential properties along the southern side of Bower Way comprise a mixture of flats and houses. Holly Court, a block of flats immediately adjacent

to the site, is two storeys up to eaves height. Notwithstanding the differences in property type, this allows the building to integrate effectively with the lower level residential houses further along the road, which are also two storeys in height. Conversely, the proposed development would be three storeys up to eaves level, which would introduce a notable step-change in height with these neighbouring properties. This mismatch would be further amplified by the lower level commercial garage immediately west of the appeal site, which would exaggerate the bulk and height of the proposed new flats. In turn, the development would appear dominant and uncomfortable within the surrounding context along this side of the road, which would harm the overriding street scene.

6. In design terms, the new flats would incorporate a number of front gable features which would echo the appearance of other flats along the road. The development would also utilise a similar palette of materials, which would allow it to assimilate with the design of other nearby buildings. Whilst I therefore consider that the development would be adequate in design terms, these factors would not overcome the harm to the street scene which would arise from its mismatch in height and scale with its closest neighbouring properties.
7. For these reasons, the development would harm the character and appearance of the area. It would conflict with Policy EN1 of The Local Plan for Slough (2004) (Local Plan) and Policy CP8 of the Slough Local Development Framework, Core Strategy (2006 – 2026) (Core Strategy), both of which seek to ensure new development achieves a high-standard of design, which is appropriate to its surroundings in terms of scale, height and bulk. The development would also conflict with the overarching design objectives of the National Planning Policy Framework (2021) (Framework).
8. Policy EN2 of the Local Plan concerns extensions to existing buildings, so is not directly relevant to the proposal.

Living Conditions

9. The proposed development would be located adjacent to a neighbouring block of flats known as Holly Court. Holly Court is arranged in two separate blocks, with one sited at the front of the site, and one at the back. There is a parking area within the intervening space between the two buildings. The eastern flank elevation of the proposed development would run alongside the shared plot boundary with Holly Court, and its frontage would broadly align with the rear elevation of the flats at the front of Holly Court.
10. This arrangement would effectively enclose the western side of the open parking area that sits between the two blocks within Holly Court. In turn, it would create a distinct sense of enclosure within this area, which would be felt keenly within the westernmost flats in the front block of Holly Court, particularly at ground level. Whilst I acknowledge that the outlook to these flats is already partly obscured by the existing garage, the development would be significantly taller and larger in scale. This means it would appear even more overbearing to the occupiers of these flats than currently exists, which would be to the detriment of their living conditions.
11. Given the height of the proposal, it is also inescapable that the development would, to some degree, impede levels of natural light to the windows of the westernmost flats within the front building of Holly Court at certain times of

day, particularly those located on the ground floor. Given that these windows are understood to serve habitable rooms, this reduction in natural light would be felt keenly by their occupiers.

12. The development would therefore harm the living conditions of certain occupiers of Holly Court. In turn, it would conflict with Policy EN1 of the Local Plan and Policy CP8 of the Core Strategy, both of which seek to protect neighbouring amenity as part of new development. The proposal would also conflict with the overarching amenity principles of the Framework.
13. As above, Policy EN2 concerns extensions to existing buildings (as opposed to demolition/complete new-build), so is not directly relevant to the proposal.

Flood Risk

14. The appeal site lies within Flood Zone 1, which means the area is not considered to be at high risk of flooding. During consultation, Thames Water also confirmed there would be sufficient capacity within its water infrastructure to support the proposal. On this basis, and irrespective of the adequacy of the information submitted with the appeal application, there is no reason before me to suggest that appropriate drainage arrangements for the scheme could not be secured by condition.
15. Subject to condition, I am therefore satisfied that the proposed development would not have an unacceptable impact with regard to flood risk. In this regard, the development would be consistent with Policy of CP8 of the Core Strategy, which says development must manage surface water arising from the site in a sustainable manner which will also reduce the risk of flooding. It would also align with the provisions of the Framework, which promote sustainable drainage systems as part of major new development.

Highway Safety

16. The appellant's updated site plan (drawing 2021/04 Rev D) demonstrates that visibility splays of 2.4 metres x 43 metres could be achieved at the access to the proposed development, in both directions. These visibility splays would meet the requisite standards set out in the Manual for Streets, and could be secured as part of the scheme through an appropriately worded condition. The revised site plan also shows that the development could make provision for 11 adequately sized on-site car parking spaces, which would reflect local policy requirements.
17. On this basis, and again subject to appropriate conditions, I am satisfied that the development's impact would be acceptable with regard to highway safety. The development would therefore be consistent with relevant aspects of Policy CP8 of the Core Strategy, which require new development to be practical, safe and accessible.

Other Matters

18. Whilst the appellant has cited a number of consented developments which it considers comparable to the proposal, each application must be determined on its own merits. In this instance, the development's relationship with neighbouring properties, both in terms of character and appearance and impact on neighbouring amenity, would be harmful. As such, these examples do not persuade me that development should be permitted in this instance.

19. A draft unilateral undertaking has been submitted by the appellant as part of the appeal. If completed, the planning obligation would secure payment of a financial contribution towards a Traffic Regulation Order, to facilitate a restriction against on-street parking in the vicinity of the appeal property. As I am dismissing the appeal on other grounds, I have not considered the merits nor the necessity of the proposed planning obligation. Nonetheless, as the agreement has not been signed, it would have no bearing on my decision in any event.
20. The Council cannot demonstrate a five-year supply of deliverable housing land, which means its policies relating to delivery of housing are out of date. Paragraph 11(d)(ii) of the Framework (the "tilted balance") is therefore engaged. Nonetheless, paragraph 219 of the Framework is clear that due weight should still be given to existing policies according to their degree of consistency with the Framework.
21. Paragraph 130 of the Framework is explicit that new development should function well and add to the overall quality of an area. It highlights that development should be visually attractive and sympathetic to local character and surrounding built environment. It also says development should promote health and wellbeing, with a high standard of amenity for existing and future users. The content of the Framework therefore reflects the overriding design, character and amenity principles of the Local Plan and the Core Strategy in terms of new residential development. Even accounting for the Framework's objective of boosting the supply of housing and the Council's housing land supply position, the conflict between the proposal and the relevant policies of the Local Plan and the Core Strategy should therefore be attributed significant weight in this appeal.
22. As mentioned above, the proposal would contribute to the Council's housing stock. The net addition of 11 dwellings would be a modest contribution in this instance. There would be other benefits to the scheme, including a potential reduction in noise (due to demolition of commercial garage), as well as job creation during construction, however these benefits would be minor. Together, they would not be sufficient to outweigh the significant weight which must be attributed to the harm (and associated policy conflicts) described above. Consequently, I consider that the adverse impacts of the development would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply in this instance.

Conclusion

23. Whilst I have found in favour of the appellant with regard to floor risk and highway safety, the development would harm the character and appearance of the area, as well as the living conditions of certain occupiers of Holly Court. The proposal would therefore conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should be dismissed.

James Blackwell

INSPECTOR



Appeal Decision

Site visit made on 30 September 2022

by Lewis Condé BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2022

Appeal Ref: APP/J0350/W/22/3299960

The Switch, 1-7 The Grove, Slough SL1 1QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Shaviram Slough Limited against the decision of Slough Borough Council.
 - The application Ref F/01043/043, dated 23 July 2021, was refused by notice dated 6 December 2021.
 - The development proposed is described as 'Change of use of the building at ground to 3rd floors from Class B1a offices to 71no. flats (65 x one bedroom and 6 x two bedroom)'.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use of the building at ground to 3rd floors from Class B1a offices to 71no. flats (65 x one bedroom and 6 x two bedroom) at The Switch, 1-7 The Grove, Slough SL1 1QP in accordance with the terms of the application, Ref F/01043/043, dated 23 July 2021, and the plans submitted with it.

Reasons

2. Class O of the GPDO permits development of a change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule.
3. This is subject to a number of situations where such development is not permitted, listed under paragraph O.1 and the conditions in paragraph O.2(1). It is common ground between the parties that the proposed development would meet the requirements of paragraph O.1 and that as such it would represent permitted development under Class O. There is no reason for me to take a contrary view.
4. Development under Class O of the GPDO is permitted subject to the condition that before beginning the development the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority is required. A prior approval application was received by the Council on 23 July 2021 and it was registered on the same day.
5. The GDPO establishes that where an application is made to the LPA in relation to whether prior approval is required for development under Part 3, the decision must be made by the local planning authority (LPA) within 56 days or

within such longer period as may be agreed by the applicant in writing. Paragraph W of the Order further sets out the procedure for prior approval under Part 3, Paragraph W.(11)(c) says that development must not begin before the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the LPA without the authority notifying as to whether prior approval is given or refused.

6. In this instance, extensions of time beyond the original 56-day deadline were agreed by the applicant in writing. These were agreed to enable the Council to seek independent advice from a BRE specialist to review the Internal Daylight and Sunlight Report that accompanied the application.
7. The appellant has provided an email trail to demonstrate that an initial extension of time was agreed until 15 October 2021 and then a further extension was agreed until 3 December 2021. Based on the information provided and having regard to the wording of the GPDO, the Council was therefore required to determine the prior approval application by the 3 December 2021.
8. The Council's decision notice specifies that the date of the decision was 6 December 2021. Additionally, the front page of the officer's delegated report also confirms that an extension of time had been agreed until 3 December 2021, whilst also indicating that the decision was made on 6 December 2021.
9. Consequently, in the absence of the LPA's written notice by 3 December 2021, prior approval is deemed to have been granted.

Other Matters

10. During the appeal, the Council has raised that the development may have a potential impact on the Burnham Beeches Special Area of Conservation (the "European Site").
11. Article 3(1) of the GPDO indicates that any permission is also subject to Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 ("CHSR"). In effect, Regulation 75 imposes a condition on any permission granted by the GPDO that is likely to have a significant effect on a European Site that development must not commence until a developer has received written notification of the approval of the LPA under Regulation 77. Regulation 77 requires that the LPA may approve the development only after having ascertained that it will not affect the integrity of the European Site.
12. In accordance with Article 3(1) of the GPDO, Regulations 75 to 77 of the CHSR do not prevent me finding that the proposal is permitted development under the GPDO and granting prior approval under the conditions set out at Schedule 2, Part 3, Class O. However, that is not to say the development can take place as that will be dependent on the outcome of the separately required Regulation 77 application under the CHSR.

Conditions

13. Any planning permission granted under Article 3(1) and Schedule 2, Part 3, Class O of the GPDO is subject to the condition that it must be completed within a period of 3 years of the prior approval date.

Conclusion

14. The scheme is permitted development under Schedule 2, Part 3, Class O of the GPDO, as the LPA did not serve notice on the applicant as to whether prior approval was given or refused within the required timeframe. Planning permission is therefore deemed to have been granted on the expiry of the agreed period on 3 December 2021. For the reasons identified, the appeal is allowed and prior approval is deemed to be granted.

Lewis Condé

INSPECTOR



Appeal Decision

Site visit made on 4 October 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Appeal Ref: APP/J0350/W/21/3287265

Land to the rear of 18-24 Stoke Road, Slough SL2 5AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Shall Do Stoke Road Limited against the decision of Slough Borough Council.
 - The application Ref P/06271/021, dated 19 June 2020, was refused by notice dated 1 October 2021.
 - The development proposed is construction of a building comprising 9 flats (3 x 1 bedroom, 4 x 2 bedroom and 2 x 3 bedroom as amended) with associated parking and landscaping.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development was amended by the appellant during the course of the appeal application, and accepted by the Council. I have used this updated description.
3. The Council's second reason for refusal concerned a lack of information regarding surface water drainage for the proposed scheme, which meant an increased risk of surface water flooding could not be ruled out. Following submission of drainage details, the Council has indicated that, subject to condition, this reason for refusal has been adequately addressed. I have therefore not considered this matter further.
4. The appellant has submitted a signed unilateral undertaking as part of this appeal. This would secure payment of a number of financial contributions sought by the Council in connection with the proposal. These include an education contribution, a public open space contribution and a public realm improvements contribution. The contributions appear to reflect the levels requested by the Council, which were based on the Developer's Guide¹.
5. Submission of the unilateral undertaking would therefore conceivably overcome the Council's third reason for refusal, which was imposed due to a lack of planning agreement to secure these infrastructure contributions. However, as I am dismissing the appeal on other grounds, I have not considered the detail of the planning obligation in further detail, nor have I have considered whether the obligations would meet the tests of fairness, necessity and relatedness.

¹ Developer Contributions and Affordable Housing (Section 106), Developer's Guide Part 2, November 2008 (updated September 2017)

Main Issues

6. In this context, the sole main issue is the effect of the proposed development on the living conditions of the occupiers of Abbey House, with particular regard to natural light.

Reasons

7. The proposed development would be located approximately 17 metres from the rear elevation of Abbey House, which is a block of flats recently converted from a former office building.
8. The appellant commissioned a Daylight and Sunlight Report² as part of its evidence. This was to assess the potential impact of the development on the occupiers of Abbey House with regard to natural light. The report adopted guidance and methodologies contained in the BRE Guidelines³, which is often used as a baseline for determining the acceptability of development schemes, in terms of effect on neighbouring daylight and sunlight amenity.
9. For context, two of the key measurements used to assess daylight in the BRE Guidelines are the Vertical Sky Component (VSC) and daylight distribution (also referred to as the no sky contour). The VSC is the extent of sky which is visible from a given point within a property (usually a window). The daylight distribution is the area of a particular room that can see the sky (at desk height).
10. Whilst intended as guidance only, the BRE Guidance indicates that a building in close proximity to a new development will generally retain good levels of interior light, if the proposed scheme would subtend less than 25 degrees from the horizontal, when measured from the lowest habitable room windows. In cases where this will not be achieved (as is the case here), then good daylight can still be achieved in neighbouring properties, provided that the VSC is in excess of 27% (or is reduced by less than 20% from its existing level), and if the daylight distribution is reduced by less than 20% of its existing area.
11. The Daylight and Sunlight Report demonstrates that these baseline levels would be breached by the development in a number of flats in Abbey Court, specifically at ground floor and lower ground floor level. Indeed, eight combined Living/Kitchen/Dining rooms (LKDs) in these flats would experience a reduction of between 31% and 63% in daylight distribution when measured against existing levels. Seven habitable rooms at lower ground floor level would also retain a VSC significantly below 27%, which would also be more than a 20% reduction when measured against existing levels.
12. Whilst the impact of the development would be limited to just a handful of flats within Abbey Court, for those affected, the impact would be severe. Indeed, of those flats affected at lower ground floor level, the levels of daylight and sunlight would breach both the recommended VSC, and the level of daylight distribution. Given that these reductions are concentrated to the principal living spaces to these units (being the LKDs), the loss of light would be felt acutely by their occupiers.

² Abbey House, Slough, Daylight and Sunlight Report, June 2021 (Waldrans)

³ Building Research Establishment's Site Layout Planning for Daylight and Sunlight: a Guide to Good Practice (2011)

13. This would be especially problematic, given that some of the affected units are understood to be small, only just meeting minimum space standards. Moreover, the outlook to these units is already impaired by their habitable room windows facing out on to a lightwell at subterranean level. This means their existing amenity standards are already compromised. In turn, any additional deterioration of living standards, particularly reductions in natural light, would compromise living conditions to an unacceptable degree.
14. I acknowledge that the BRE Guidance should be used flexibly. This is particularly the case for development in urban settings, where higher density housing is commonplace and lower levels of natural light may be acceptable. Nonetheless, the breaches of daylight and sunlight standards would be very significant in respect of a number of units within Abbey House, and such a flexible interpretation of the guidance would therefore not be warranted in this instance.
15. The proposed landscaping, and specifically the landscape buffer between the residential units and the parking area, would likely improve the outlook from the residential units at ground floor level. I am therefore satisfied that this element of the scheme would be acceptable. Nonetheless, this in itself would not be sufficient to overcome the harm to the lower ground floor units in terms of natural light.
16. For these reasons, the development would severely harm the living conditions of a number of occupiers of Abbey House. The development would therefore conflict with Policy EN1 of the Local Plan for Slough (2004) (Local Plan) and Policy CP8 of the Slough Local Development Framework, Core Strategy (2006 – 2026) (Core Strategy), which require new development to have a good relationship with nearby properties, ensuring it respects the amenity of neighbouring occupiers. The development would also conflict with the overarching amenity principles set out in the National Planning Policy Framework (2021) (Framework) and the National Design Guide. I find no conflict with Policy EN3 of the Local Plan, which seeks to secure appropriate landscaping as part of new development schemes.

Other Matters

17. The appellant has cited a number of developments within the Council's area, where lower levels of natural light have been accepted by the Council than now proposed. Nonetheless, each case must be assessed on its own merits. In this instance, the harm to the occupiers of Abbey Court, particularly to those living on the lower ground floor, would be especially acute. This is because the significant loss of natural light would further compound the existing shortcomings of amenity standards for these units, owing to their modest size and impaired outlook. I also note that examples referred to by the appellant were for significantly more units, whereby the associated benefits of the scheme (in terms of contribution to the Council's housing stock) would have been greater. In turn, this factor may have weighed more heavily in their favour. Either way, these examples do not persuade me that the development, as currently proposed, should be permitted.
18. The Council cannot demonstrate a five-year supply of deliverable housing, which means its policies relating to delivery of housing are out of date. This means paragraph 11(d)(ii) of the Framework (the tilted balance) is engaged. Nonetheless, paragraph 219 of the Framework is clear that due weight should

still be given to existing policies according to their degree of consistency with the Framework.

19. Paragraph 130 of the Framework is explicit that new development should function well and add to the overall quality of an area. It highlights that development should promote health and wellbeing through a high standard of amenity for existing and future users. The content of the Framework therefore reflects the overriding amenity principles of the Local Plan and the Core Strategy in terms of new residential development. Even accounting for the Framework's objective of boosting the supply of housing and the Council's housing land supply position, the conflict between the proposal and the relevant policies of the Local Plan and the Core Strategy should therefore be attributed significant weight in this appeal.
20. The net addition of nine dwellings would make a modest, yet welcome contribution to the Council's housing supply. The development would also re-use a vacant brownfield site, which would likely improve the character and appearance of the immediate area. Nonetheless, these benefits would not be sufficient to outweigh the significant harm to the living conditions of a number of occupiers of Abbey House. Consequently, the adverse impacts of the development would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply in this instance.

Conclusion

21. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should be dismissed.

James Blackwell

INSPECTOR



Appeal Decision

Site visit made on 30 September 2022

by **Lewis Condé BSc (Hons), MSc, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 1 November 2022

Appeal Ref: APP/J0350/W/22/3299835

Chancellor House, Farnburn Avenue, Slough SL1 4EH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 20 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.
 - The appeal is made by Mr Taghi Oraee, Euroreach Limited, against the decision of Slough Borough Council.
 - The application Ref Y/01014/020, dated 10 March 2022, was refused by notice dated 25 April 2022.
 - The development proposed is Prior approval for the addition of 2 additional storeys over the existing 3 storey block of flats and creation of 8 no. new flats.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the proposed development in the above banner heading is taken from the Council's decision notice as opposed to the appellant's original application form, as this more accurately and succinctly describes the proposal. I note the appellant has also used this description on the appeal form. It is on this basis that the appeal has been determined.
3. The appeal proposal relates to a prior approval notification made under Schedule 2, Class A, Part 20 of the Town and Country Planning (General Permitted Development) Order 2015, as amended (GDPO). This permits development consisting of up to two additional storeys of new dwellinghouses on detached blocks of flats, where (amongst other matters) the existing building is more than two-storeys in height.
4. One of the Council's reasons for refusing the prior approval application was that it was unable to meet the conditions for permitted development specified at paragraph A.1 of Class AA (*sic*), Part 20, of the GDPO. This was due to the building being considered to not measure more than two-storeys in height, as well as a proposed bike store being located in an area that was considered beyond the curtilage of the site. The Council has subsequently confirmed that this reason for refusal was included in error, as the appeal property is indeed a 3-storey building, whilst it is not contesting the location of the cycle parking falls within its the curtilage. From the evidence before me and my observations on site, I find no reason to disagree with the Council's updated position.

5. Accordingly, the dispute before me solely centres on Condition A.2(1)(g) of the GDPO, concerning whether prior approval should be granted having regard to the proposal's impact on the amenity of neighbouring premises.
6. Development plan policies and the National Planning Policy Framework (the Framework) can be considered relevant in prior approval cases, but only insofar as they relate to the development and prior approval matters. I have proceeded on this basis.

Main Issue

7. In light of the above, the main issue is whether prior approval should be granted having regard to the impact on the amenity of neighbouring premises in relation to overlooking, privacy and loss of light.

Reasons

8. The appeal site is a modern, detached block of flats, set within an urban context. The immediate surrounding area is predominantly residential in character and the site shares a relatively close relationship with surrounding residential properties. This includes 177 to 183 Farnham Road, which are located on the upper floors of Ambassador House directly to the east, a mix of two and three storey dwellings located on Silverhill Court to the south, and two-storey dwellings along Farnburn Avenue to the west.
9. Additionally, residential development is currently taking place opposite the site to the north of Farnburn Avenue, following a grant of planning permission (ref: P00419). I understand that the development involves the delivery of a four-storey block of flats (referred to as 'Fieldview Court').
10. The appellant has provided a Daylight and Sunlight Report (the report) that considers the proposed development's potential impacts on neighbouring properties in respect of light. The report has been prepared based on the good practice guidance¹ of the Building Research Establishment (BRE) and appears to have been prepared by a suitably competent surveyor. It is noted that the design of the proposal was amended from the scheme that the report was based upon, albeit confirmation has been received that due to the minor nature of the changes, the findings of the report would not be materially affected.
11. Notably, the report finds that windows serving several neighbouring properties would not achieve the recommended levels of daylight and sunlight under BRE tests. Twelve infringements of the vertical sky component test (VSCT) have been identified concerning windows at 177 to 183 Farnham Road and the emerging Fieldview Court development. Under the terms of the VSCT, two of the affected windows (a living room window and 'domestic' window) would experience significant reductions of daylight in excess of 30% against current conditions (0.68 ratio). The BRE guidelines indicate a permissible target as being a reduction of 20% (0.8 ratio).
12. In terms of the daylight distribution test, the report demonstrates that second floor windows at 177 to 183 Farnham Road, serving a living/dining/kitchen, would experience a 28% reduction in daylight compared to existing conditions (0.72 ratio), which is a sizeable reduction compared to with the BRE guidelines

¹ Building Research Establishment (BRE) guide 'Site Layout Planning for Daylight and Sunlight: a guide to good practice, 2nd Edition' by P J Littlefair 2011.

- of 20% (0.8 ratio). A further bedroom at first floor level of the building would also experience a reduction in daylight of the order of 22% (0.78 ratio).
13. It is also indicated that the proposal will affect sunlight to three windows serving both a bedroom and living rooms in the emerging Fieldview Court building, which would not meet BRE guidelines in relation to total annual probable sunlight hours (APSH). The affected living room windows are shown to have a generally low baseline provision of total sunlight hours, while the proposal would exacerbate this further, beyond the identified BRE parameters.
 14. It is recognised that BRE guidelines, are guidance that should be applied sensibly with some flexibility. I also acknowledge that where windows have failed the relevant tests, some of the associated shortfalls against the BRE guidance are generally modest in nature. Nevertheless, the BRE guidelines contain nationally applicable best practice and provide the most appropriate basis on which to assess the proposal's impacts in terms of loss of light. Furthermore, in this case, the loss of daylight and sunlight to several identified windows would be significant and therefore unacceptably harmful to the amenity of adjoining premises in terms of loss of light.
 15. Only limited weight is given to the appellant's arguments that the predominant impact would be on bedrooms, which the BRE guidelines state are less important. The appendices to the submitted Daylight & Sunlight Report demonstrate that some of the windows that would be most acutely affected serve living rooms. In several instances, windows that would not meet the BRE recommendations are stated as being for 'domestic' purposes, as their use is not known. Additionally, the level of potential loss of light to some of the identified bedroom windows remains significant.
 16. Accordingly, based on the evidence before me, it is considered that the proposed development would result in harm to the amenity of neighbouring premises through a loss of light.
 17. Turning to overlooking and privacy, the appeal property and neighbouring Ambassador House building already share a close relationship, with windows of residential properties on the upper floors of the two buildings facing towards one another. Consequently, there is already a high degree of overlooking between dwellings in the two buildings. The proposal would marginally increase the overall level of overlooking experience by some of the properties within Ambassador House. However, it would not significantly exacerbate the current relationship or result in a harmful degree of overlooking or loss of privacy.
 18. The Council also refer to overlooking and a loss of privacy to the rear gardens of 1 and 3A Farnburn Avenue. Again, these garden spaces are already significantly overlooked both from existing units within the upper floors of the appeal property, and other neighbouring residential properties. As such, the limited increase in overlooking that would arise from the proposed development would not result in a significant change in existing circumstances.
 19. I do not have full details of the planning permission in respect of the emerging Fieldview Court development to the north of the appeal site. However, at the time of my site visit, the external extent of the building appeared to be substantially complete. Therefore, the relationship between the appeal site and that development could largely be appreciated. With respect to overlooking and loss of privacy, I understand that the Fieldview Court development is set to be

four-storeys with balconies that face towards the three-storey appeal site. The current proposals to add a further two storeys to the appeal property would therefore result in the relationship between the two sites being of a very similar nature to the emerging arrangement. As such, the current proposal would not result in harmful overlooking or loss of privacy to the emerging neighbouring development.

20. No specific concerns have been raised by the Council in respect of overlooking and loss of privacy to the properties at Silverhill Court or any further neighbouring properties. From my observations on site and due to the design of the proposal, I see no reason to disagree with the Council.
21. Whilst I have not found that the proposed development would result in harmful effects in terms of overlooking or loss of privacy, the proposal would cause harm to the amenity of neighbouring premises in relation to loss of light. Therefore, overall, the proposal would not comply with the condition set out at paragraph A.2(1)(g), Class A, Part 20 of Schedule 2 of the GDPO.
22. Whilst not determinative, in so far as it is relevant to the appeal, the proposal would conflict with Core Policy 8 of the Core Strategy and Saved Policies EN1 and EN2 of The Local Plan for Slough (adopted 2004). These policies amongst other matters seek to deliver high-quality development that respects its surroundings, including ensuring that extensions to buildings do not result in significant loss of sunlight. Similarly, the proposal would conflict with paragraph 130 of the Framework which seeks, amongst other things, that planning decisions should ensure developments create places with a high standard of amenity for existing and future users.

Other Matters

23. It is recognised that the purpose of introducing the permitted development rights (PDR) under Part 20 was to contribute towards the supply of new homes. This is both through helping to increase housing densities and speed up delivery by providing developers with greater levels of certainty. Similarly, given that the PDR allows for up to two additional storeys, it is recognised that developments of this scale would come forward.
24. However, the PDR do not provide complete freedom for qualifying development, hence, the requirement for prior approval which includes the consideration of site-specific conditions. The fact that the Council has not sought to introduce an Article 4 direction to remove permitted development rights only reinforces that site specific circumstances should be considered through the prior approval process.
25. The proposal will provide economic and social benefits associated with the provision of additional housing, while I am aware that the authority cannot demonstrate a five-year housing land supply. However, my consideration of the case is solely limited to matters set out in the GPDO.

Conclusion

26. As the proposal would not comply with the requirements of Schedule 2, Part 20, Class A of the GPDO, prior approval cannot be given for the proposal and the appeal should therefore be dismissed.

Lewis Condé

INSPECTOR



Appeal Decision

Site visit made on 28 October 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2022

Appeal Ref: APP/J0350/W/22/3298114

Chiltern House, 337 Bath Road, Slough SL1 5PR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 20 Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mr Bernard Marguiles (BMR London Limited) against the decision of Slough Borough Council.
 - The application Ref Y/02069/018, dated 15 December 2021, was refused by notice dated 23 February 2022.
 - The development proposed is single storey roof extension to provide 5x self-contained flats above Chiltern House.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Schedule 2, Part 20, Class AA of the GPDO permits development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the topmost storey on a detached building in commercial or mixed use.
3. Development is permitted under Class AA subject to the limitations set out under Paragraph AA.1. and the conditions set out under Paragraph AA.2., which include matters in respect of which the developer must apply to the local planning authority for prior approval.
4. The Council contends that the proposal would fail to accord with the limitation at Paragraph AA.1.(a), in that the building is less than three storeys in height above ground level. The Council has subsequently argued, following the publication of relevant case law, that the proposal would not be acceptable in respect of the prior approval matter of external appearance.

Main Issues

5. The main issues are:
 - i) Whether or not the proposal would constitute permitted development under Schedule 2, Part 20, Class AA of the GPDO;
 - ii) If permitted development, whether prior approval should be granted having regard to the effect of the proposal on the external appearance of the building.

Reasons

6. The appeal relates to a detached building, granted permission in 1985 (Ref P/02069/010). The Council contends that the dwelling is two storeys in height with a mansard roof above, within which there is a third floor of accommodation. The Council points to the original approved plans which refer to a mansard roof.
7. The appellant contends that the building is three storeys in height, pointing to the original description of development on the 1985 decision notice as 'Erection of a three storey building...'. The appellant also points to the sectional drawing of the building showing a full height third floor within the mansard roof and a separate roof void above it.
8. Part 20, Paragraph C of the GPDO sets out interpretations to be used for Part 20. Paragraph C.(2) states:-

'In Part 20 references to a "storey" do not include—
(a) any storey below ground level; or
(b) any accommodation within the roof of a building, whether comprising part of the original building or created by a subsequent addition or alteration, and accordingly, references to an "additional storey" include a storey constructed in reliance on the permission granted by this Part which replaces accommodation within the roof of the existing building.'
9. I have considered the evidence of both parties with respect to the form of the existing building. Having observed on site, I am satisfied that the building has a mansard roof above the first floor level. This is clearly understood from the sloping form which extends from the eaves level above the first floor windows, and is present on all four sides of the building. I recognise that the mansard roof is tall and likely to have been designed as such to accommodate a third floor of internal accommodation. I can also understand the original description of development referring to three storeys given the internal accommodation proposed. However, on the evidence before me, this internal accommodation, and the shallow void above, forms part of a single mansard roof to the building. Paragraph C is explicit that accommodation within the roof of a building, even if an original part of that building, does not fall within the definition of a 'storey' for the purposes of Part 20.
10. Applying this interpretation, the building comprises two storeys above ground level. Therefore, the building does not accord with the limitation at Paragraph AA.1.(a). Consequently, the proposal does not amount to permitted development under Schedule 2, Part 20, Class AA.
11. In light of this conclusion, there is no need for me to go on to consider the prior approval matters set out in paragraph AA.2.(1), or other matters raised, as this would not alter the outcome of the appeal.

Conclusion

12. For the reasons set out, the appeal is dismissed.

K Savage

INSPECTOR