
Appeal Decision

Site visit made on 5 December 2016

by Thomas Shields MA DipURP MRTPI

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

Decision date: 5 January 2017

Appeal Ref: APP/N4205/C/16/3158370

2 Park Street, Bolton, BL4 7PH

- 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 Act).
 - The appeal is made by Mr Billy Naheed (Acamba Systems Ltd) against an enforcement notice issued by Bolton Metropolitan Borough Council.
 - The notice was issued on 7 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission external alterations to the elevation of the property fronting Park Street consisting of the removal of a security shutter, walling up the opening and the installation of a window.
 - The requirements of the notice are:
 - (i) Render and paint the existing exposed blockwork at ground and first floor level so that it is similar in texture and colour to the render on the remainder of the building;
 - (ii) Remove the window frame at first floor level and wall up the opening using blockwork. Render and paint the blockwork so that it is similar in texture and colour to the render on the remainder of the building.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice in section 5 be varied by deleting the words "28 days" and substituting instead the period of "two months".
2. Subject to the variation the appeal is dismissed and the enforcement notice is upheld.

The appeal on grounds (b) and (c)

3. It is important to note that the determination of legal grounds of appeal (grounds b, c, d and e) are based on the development as it existed on the date the enforcement notice was issued and I have therefore determined the appeal on that basis.
 4. The grounds of appeal are (ground b) that the matters referred to in the alleged breach of planning control in the notice have not occurred as a matter of fact, or, (ground c) if they have occurred do not constitute a breach of planning control. The onus of proof in legal grounds such as these is on the appellant and the test of the evidence is on the balance of probability.
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5. The appellant did not submit a statement and therefore the appeal case is as set out in the Grounds and Facts of the appeal form submitted to the planning Inspectorate on 11 September 2016.
6. The appellant acknowledges that he removed the roller shutter door and housing box for safety reasons but argues that its removal is not development. Also, that behind the roller shutter the existing opening was already bricked up and the first floor window was in situ. He goes on to say that before the owner bought the property two years previously the building had not been occupied for some time. On that basis it is argued that the alterations were carried out more than four years before the notice was issued and therefore there has been no breach of planning control.
7. In effect the appellant is arguing that all the works in the allegation, other than the removal of the roller shutter door and housing box, pre-existed and were immune from enforcement action because they were more than four years old by the time the notice was issued. That is an appeal under ground (d). I will therefore determine the appeal also taking account of ground (d).
8. The Council have provided photographic evidence of the building at various times which show the works described in the notice allegation. Given that the works described in the notice have clearly been carried out I conclude that they have occurred as a matter of fact and the appeal under ground (b) must fail.
9. Taking all of the works together, including the shutter door and housing box, they constitute alterations to the building which materially affect the appearance of the building as a whole. They are therefore development within the meaning of section 55 of the Act and hence require planning permission. Since planning permission has not been granted for the works the alterations thereby constitute a breach of planning control. Therefore the appeal on ground (c) must also fail.
10. The appellant has not provided any evidence that the works were carried out on or before 7 September 2012 (four years before the notice was issued). As set out previously, the onus of proof is upon the appellant. Given the lack of evidence in support of this ground of appeal I therefore find on the balance of probability that the works are not more than four years old. Hence they are not immune from enforcement action. Therefore the appeal on ground (d) also fails.

The appeal on ground (f)

11. This ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary. The appellant states that the removal of the window is excessive because it was original to the building. I have already dealt with the argument that it pre-existed under grounds (b), (c) and (d) above.
12. The notice requires no more than to remove the unauthorised alteration. Any lesser step would not remedy the breach of planning control. Therefore it is not an excessive requirement.

The appeal on ground (g)

13. The appellant is entitled to wait until the outcome of the appeal before arranging any contractors or ordering and purchasing materials. On that basis I

agree with the appellant that 28 days is too short a period to require completion of the notice requirements.

14. The appellant seeks a period of two months which in my view is not an unreasonably long period of time for completion of the requirements. Therefore, the appeal succeeds to this limited extent and I have varied the notice accordingly.

Thomas Shields

INSPECTOR