



Appeal Decision

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal Ref: APP/W4705/C/19/3241230 & 3241231
39 Melrose Street, Bradford BD7 3EW

- 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 Mrs Maymunah Qadir & Mr Moin Mahabat against an enforcement notice issued by the City of Bradford Metropolitan District Council.
 - The enforcement notice was issued on 8 October 2019.
 - The breach of planning control as alleged in the notice is the construction of a rear dormer window.
 - The requirements of the notice are:
 - i. Demolish the dormer window.
 - ii. Reinstall the roof plane of the building using materials to match the existing roof.
 - iii. Remove all arising materials from the land.
 - iv. Make good any damage to the property arising from compliance with the requirements.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

COVID-19

2. In response to the travel restrictions currently in place due to the pandemic, I consider that this appeal can be determined without the need for a physical site visit. This is because of the particular nature of the appeal and the information provided by the main parties. Having been advised of this intended course of action, neither party has objected to the appeal proceeding on this basis.

Reasons

3. Ground (d) is a legal ground of appeal, distinct from any planning merits. The Courts have held that in such an instance, the onus on proving it lies with the appellants. The test for the evidence is the balance of probability.
4. In order for the appeal to succeed it has to be demonstrated that at the time the enforcement notice was issued it was too late to take enforcement action. In particular, it has to be shown that the development in question was substantially complete more than 4 years before the notice was issued. The relevant date in this instance is 8 October 2015.
5. No evidence regarding just when the dormer window was constructed has been put forward by the appellants who indicate that they only acquired the appeal

property in July 2019. And, while it is also advised that the work was carried out by the previous owner, evidence from this party, which may have helped shed further light on the matter, has not been forthcoming either.

6. The only material concerning the property before the notice was issued is contained in the submissions made by the Council. However, rather than pointing to success on ground (d), this evidence tends to indicate otherwise. Neither of the aerial photographs, both of which are dated after 8 October 2018, show the presence of the dormer in question. And, while Building Control records indicate that building works did take place at the property, the works seemingly did not begin until the latter part of 2016. Again, this is after the relevant date.
7. The foregoing factors lead me to conclude that it has not been demonstrated on the balance of probability that at the time the notice was issued it was too late to take enforcement action. I am not satisfied that the burden of proof that rests with the appellants has been discharged.
8. I appreciate that the appellants' predicament appears to have stemmed from work undertaken by another party and, for whatever reason, they appear to have been unaware of the impending enforcement action when they purchased the appeal property. Be that as it may, while I have a good deal of sympathy with the position the appellants have found themselves in, taking a view on the matters raised in this respect lies outside my remit. My decision has to focus on the particulars of the appeal before me. For the reasons given above, the appeal fails.

D H Brier

Inspector