



Appeal Decision

Site visit made on 8 September 2020

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th October 2020

Appeal Ref: APP/N4720/C/20/3254660

Land at 55 Copgrove Road, Gipton, Leeds LS8 2ST

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Zafar Iqbal against an enforcement notice issued by Leeds City Council.
 - The enforcement notice was issued on 21 May 2020.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a part two storey and part three storey rear extension.
 - The requirements of the notice are:
 - Step 1. Demolish the part two storey and part three storey extension in its entirety.
 - Step 2. Remove all the debris and detritus from the demolition associated with Step 1 from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in sections 174(2)(d), (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 is corrected by the deletion of the words "Without planning permission the erection of a part two storey and part three storey rear extension" and the substitution of the following words "Without planning permission the erection of a part two storey, part three storey rear extension, two storey side extension, side gable extension and rear dormer window" in paragraph 3 of the notice.

Subject to the correction, the appeal is allowed, and the enforcement notice is quashed.

Preliminary matter

2. Drawing number: 1657-1 revision A dated April 2016 with a revision date of 7 July 2016 ("the Plan"), entitled "Proposed double storey side, rear extension & loft conversion", formed part of application submission 16/02737/FU ("the 2016 PA"). That application was for development described as "Retrospective application for part three, part two storey side/rear extension; side gable extension with dormer window to rear forming rooms in roof space". The Plan also shows the installation of 3 roof lights to the front roof plane of the dwelling on the proposed floor plan but not on the elevation plan. I saw at my site visit that the development carried out corresponds with the details shown on the Plan, including the provision of the roof lights in the front roof slope.
3. The 2016 PA was refused planning permission in July 2016 and an appeal against that refusal was dismissed in November 2016. The inspector had no concerns regarding the two-storey side extension or the side gable extension.

However, the part two storey, part three storey extension and the rear dormer window were determined to have a significant adverse impact upon the living conditions of the occupiers of 57 Copgrove Road and to have an unacceptable impact upon the character and appearance of the area.

The notice

4. It is clear from the evidence submitted that the operational development that constitutes the breach of planning control is that shown on the Plan. The Council confirms that the two storey side extension, side gable extension and rear dormer window would not have been development permitted by the GPDO¹ as all of the elements of the development are interlinked. I have no reason to disagree with the Council's assessment and I am satisfied that all the elements identified on the Plan formed one operation in planning terms.
5. The allegation, set out in Paragraph 3 of the notice, fails to identify the full extent of the operation which represents the breach of planning control. Normally, where the Council is seeking to under enforce, as in this case, those elements of the allegation not addressed in the requirements would be treated as having been granted planning permission by virtue of S73A, once the notice is complied with². The determination of this appeal, with the allegation as set out in the notice, would leave matters unresolved in respect of those other elements against which the Council is not seeking to enforce. To address the ambiguity relating to the planning status of the excluded elements, the allegation shall be corrected to include the full extent of the operation that constitutes the breach of planning control.
6. Having regard to what is shown on the Plan, the descriptions of development set out in the refusal notice and the Appeal decision, the full extent of the operation would be more accurately described as "the erection of a part two storey, part three storey rear extension, two storey side extension, side gable extension and rear dormer window". I shall correct the allegation accordingly. I am satisfied that no injustice would arise from this correction as the Council could have taken enforcement against all the elements making up the full extent of the operation. I shall proceed on this basis.

Ground (d)

7. The basis of this appeal is that at the date the enforcement notice was issued it was too late to take enforcement action against the breach of planning control due to the passage of time. The relevant date for the purposes of assessing immunity of the alleged breach of planning control is 4 years prior to the date of issue of the notice, which is 21 May 2016.
8. In pursuing an appeal on ground (d) the burden of proof is on the appellant. The appellant must demonstrate, on the balance of probability, that the development described in the amended allegation was substantially completed³ before 21 May 2016.
9. In support of the appellant's claim a statement of events has been provided, along with receipts and installation details for the kitchen and windows. According to the appellant, the external works were completed by March 2016,

¹ Town and Country Planning (General Permitted Development) Order 2015 as amended

² Section 174(11) of the Town and Country Planning Act 1990 (as amended)

³ Section 171B(1) of the Town and Country Planning Act 1990 (as amended)

the windows, internal floors, ceilings and plaster board were installed during April 2016, the wiring was completed during early May 2016, and the kitchen was fitted between 12 and 19 May 2016. The appellant's wife and children had moved out during the building works but moved back to the extended dwelling on 19 May 2016.

10. The Council contend that photographs, which they say were taken in June 2016, show the extensions to be incomplete as the scaffolding is in situ, and the Inspector's decision letter dated 18 November 2016 confirms that internal works were "on going" at the time of their visit. Furthermore, the Building Inspector has provided a statement confirming that they visited the site on 3 May 2016 and 13 June 2016, at which time "the extensions were definitely not in a habitable condition and a long way from being complete from a Building Regulations point of view". A building control completion certificate was issued on 3 June 2020.

Assessment of the evidence

11. There is no statutory definition of "substantially completed" and the Court, in Sage⁴, has found that a holistic approach should be taken. This means that the development should be considered as one operation, which includes the external and internal works. The corrected allegation confirms the full extent of the operation to include all the extensions.
12. The appellant advises that the development was commenced in August 2015 with foundations being laid in September 2015 and works being progressed swiftly over the next few months. He recalls that the Council's enforcement officer visited the site in March 2016, advising him that as the development did not accord with planning permission approved under application reference 13/03392/FU, a further planning permission would be required. The 2016 PA was submitted to the Council in May 2016.
13. Following the planning officer's site visit in respect of the 2016 PA, the appellant was requested to provide an amended plan that accurately showed the development that had taken place. The Plan was submitted, which provides a true representation of the external appearance of the development. While I do not know the date of the planning officer's visit, it would be reasonable to conclude that the external works shown had been completed for the Council to accept the Plan as an accurate representation of the development that had been carried out and what had been seen by the enforcement officer. The Building Inspector's statement confirms that when they visited the property, the "shell of the extensions were more or less complete". Given that their first visit was 3 May 2016, this goes some way to corroborate the appellant's statement of events.
14. Photographs provided by the appellant and the Council show the external fabric of the development to have been completed by early June 2016. All the photographs show that the external fabric of the development included walls, doors, windows and roofs. The presence or absence of scaffolding has no bearing on the stage of completion that the development had reached. While these photographs were taken after the relevant date, there is a noticeable lack of building materials and other building paraphernalia around the development, which would suggest to me that building work had ceased some time before

⁴ Sage v Secretary of State for the Environment, Transport and the Regions and Maidstone BC [2003] UKHL 22

they were taken. I am satisfied, on the balance of probability, that the external fabric of the development was substantially completed before 21 May 2016.

15. In respect of the internal fabric of the development, the appellant claims that the internal works had been completed to a stage where wiring, plumbing, plaster boarding, door frames and kitchen installation had been completed by week ending 19 May 2016, when his wife and children moved back home. He also advises that internal works relating to the dormer and decorating remained to be completed. While the appellant's statement is not a sworn declaration and is not signed, I consider the appellant's statement of events to be credible as his working and living arrangements were affected by the development on a daily basis. Furthermore, it is corroborated to a limited extent by the kitchen and blind invoices and receipt. I give the appellant's evidence significant weight.
16. The Building Inspector's email of 1 July 2020 sets out their recollection of their visits under taken in May and June 2016, which states that "the extensions were definitely not in a habitable condition and a long way from being complete from a Building Regulations point of view, for example no insulation was in place and no areas were plaster boarded or decorated from what I remember". More than 4 years have passed since the Building Inspector's visits and their recollection is not corroborated, for example by file notes or photographs that they may have taken during their visits. I find it unlikely that no insulation had been fitted as this would predominantly be located within the cavity walls. Furthermore, their reference to decoration not having been carried out suggests to me that it is likely that there were areas within the development that were ready to be decorated. Decoration does not however contribute to the completion of the building operation. I give limited weight to the Building Inspector's recollection.
17. The Inspector's decision letter, dated 18 November 2016, refers to "internal works continuing" at the property at the time of their site visit. They do not expand upon what works are being undertaken but do confirm that "the development has substantially taken place". While this decision was made some time after the relevant date, it also goes some way to corroborate the sequence of events set out in the appellant's evidence and I give this some weight.
18. The Council state that a Building Control Completion Notice was not issued until 3 June 2020. S171B(1) does not require that the building operations were completed in their entirety, only that they be "substantially completed". Furthermore, there is no statutory obligation for a Building Control Completion Notice to be issued upon the completion of development works. A Completion Certificate is only issued if the developer requests and pays for a copy. I consider the date upon which the Completion Certificate was issued to be irrelevant in respect of establishing whether the operational development had been substantially completed.
19. Based on the evidence submitted, I am satisfied that the external building works and the majority of the internal fixtures and fittings, including the fitted kitchen, had been completed by 19 May 2016. While internal works may still have been ongoing in respect of the loft conversion, this forms only a small element of the overall development. Taking a holistic approach, I find the operational development was substantially completed on the relevant date and

would be immune from enforcement action as the four years period had lapsed when the notice was issued.

Conclusion

20. On the balance of probabilities, the appeal on ground (d) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on grounds (f) and (g) do not need to be considered.

M Madge

INSPECTOR