



Appeal Decision

by S Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2020

Appeal Ref: APP/P4605/C/20/3253846

64 Wake Green Road, Moseley, Birmingham B13 9PG

- 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 Mahesh Sagu against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice, numbered 2017/1201/ENF, was issued on 9 April 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of an enclosed glazed porch in the approximate position marked in green on the attached plan.
 - The requirements of the notice are i. Demolish the enclosed glazed porch and remove all demolished materials from the premises ii. Erect a timber framed open porch similar in appearance and design to that of the original timber framed structure that was in place before the breach of planning control occurred.
 - The period for compliance with the requirements is 12 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.

Procedural Matter

2. In light of the Covid-19 coronavirus pandemic, the consequent travel limitations, and following consideration of the basis of the appeal and the submitted evidence, I consider that this appeal can be determined without the need for a site visit. This is because I am able to reach a decision based on the information already available. Both parties were invited to comment on this matter. The Council agreed to the appeal proceeding on this basis and no comments were received from the appellant.

The appeal on ground (d)

3. In an appeal on ground (d), the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the notice was issued, it was too late to take enforcement action in respect of the alleged breach of planning control. Section 171B(1) of the 1990 Act sets out the relevant time period for taking enforcement action. In the case of a breach involving building operations it is four years. For the development to be immune from enforcement action, it is necessary for the appellant to demonstrate that the enclosed glazed porch was substantially complete at least four years before the date the notice was issued. In this instance, that date is the 9 April 2016.

4. The appellant's case rests on a receipt which he has provided (which it states has been paid in full) for a uPVC porch door and side combinations dated 20 March 2015 from City Glazing. A letter from said company, dated 4 May 2019, states that the firm's payment policy is for the full account to be settled on the completion of works and confirmation that the appellant had the enclosed glazed porch installed on 20 March 2015.
5. Having initially taken this evidence on face value, the Council subsequently received evidence that discredited the information provided by the appellant and issued the enforcement notice.
6. The Council have produced an image from Google Street View taken July 2015 which shows the original porch in situ at that time. Further to this image, photographs from interested parties involved in a project gathering information to support a comprehensive survey¹ of the St Agnes Conservation Area in April 2016 have also been supplied. This information was originally sent to the Council's Conservation Officer in an email dated 20 April 2016. The email contained information detailing an index of 1200 photographs which were taken within the area, and the date when each photograph had been taken. The email notes that the photographs had been given to the Council's Conservation Officer the previous week. Supporting documentation purports the photographs of the appeal site to have been taken on 5 April 2016. The photographs of the property frontage show the original porch in situ. The appellant has provided no rebuttal to support his case that the alleged enclosed glazed porch had been installed on 20 March 2015.
7. The information before me, particularly that which has been supplied by interested parties, casts considerable doubt on the veracity of the appellant's limited evidence. Having regard to this evidence and without further supporting evidence to the contrary, I conclude that, on the balance of probabilities, the alleged enclosed glazed porch was not substantially complete on 9 April 2016.
8. Thus, the breach of planning control is not immune from enforcement action and the appeal on ground (d) therefore fails.

S Hanson

INSPECTOR

¹ Undertaken by the Moseley Society Planning Group and the St Agnes Residents Association