



Appeal Decision

Site visit made on 27 November 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 7 December 2020

Appeal Ref: APP/P4225/C/20/3256022

24 Grandidge Street, Rochdale OL11 3SA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Miss Saima Mahmood against an enforcement notice issued by Rochdale Metropolitan Borough Council.
 - The enforcement notice was issued on 12 June 2020.
 - The breach of planning control as alleged in the notice is operational development comprising:
 - i The demolition of a two storey rear outrigger and the construction of a two storey rear extension with a flat overhanging roof;
 - ii The construction of a single storey rear and side extension;
 - iii The construction of a single storey front and side extension;
 - iv The alteration and enlargement of a front dormer extension and the demolition of a rear dormer and the construction of larger rear dormer, including a further addition to the roof slope in the form of a parapet wall; and
 - v The alteration to the first floor side wall to add timber batons and foil cladding.
 - The requirements of the notice are:
 - a) Demolish the unauthorised two storey rear extension and flat overhanging roof;
 - b) Demolish the unauthorised single storey rear and side extension;
 - c) Demolish the unauthorised single storey front and side extension;
 - d) Demolish the unauthorised rear dormer and the parapet wall to the rear roof slope;
 - e) Remove all extensions and alterations to the front dormer;
 - f) Remove the timber batons and external insulation from the first floor side elevation;
 - g) Restore the land to its condition prior to the breach taking place as shown on the attached Google Street View photographs dated October 2014 (marked Plan 1). For the avoidance of doubt the dormers must be set no higher than the original ridge height and clad in slate;
 - h) Remove all materials and items resulting from compliance with requirements (a) – (g), from the Land.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the 1990 Act as amended.
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Decision

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

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as 'legal' grounds of appeal is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted.

3. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

Reasons

4. The ground (d) appeal is made on the basis that, at the date when the notice was issued, no enforcement action could be taken. Section 171B(1) of the 1990 Act as amended provides that - where there has been a breach of planning control consisting in the carrying out without planning permission of building operations....*"no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed"*. In this case, the relevant date is 12 June 2016.
5. The appellant states that the matters alleged in the notice were completed before 16 May 2016 when she acquired the property. Although this evidence is provided in the form of a 'witness statement', the document has not been properly sworn as a statutory declaration¹, which limits the weight I can attach to its content. A further unsworn statement from the former owner of the appeal property says the property was sold in May 2016 with the completed construction of a two-storey rear extension, a single-storey rear and side extension, a single-storey front and side extension and a replacement front and rear dormer. However, it is acknowledged that the exact date of completion is unknown which renders this evidence imprecise.
6. The Council disputes the account of the appellant and provides contradictory evidence. Firstly, the photographs from a building control site visit, taken on 13 May 2016, show the two-storey rear extension and rear dormer were under construction on that date. The front dormer was in place but appears incomplete in terms of cladding, fascia and rainwater goods. Further external photographs dated 3 and 6 March 2017 show the rear and side extensions remained incomplete. Photographs of part of the ground floor internal areas, taken on 6 March 2017, showed the plastering and wiring had yet to be carried out and, in some areas, the ceiling was not boarded out and windows were not fitted. Photographs dated 26 March 2019 show the relatively large front and side extension was not in place at that date but it appears in later photographs dated 16 April 2020. The above photographs are corroborated to a large extent by a 'Google Earth' image dated 24 March 2017, which shows several of the extensions under construction, aside from the front and side extension which appears later.
7. The appellant's evidence in relation to this matter is very limited, confined to witness letters as opposed to sworn evidence. It does not support a finding that the structures were substantially completed four or more years prior to the issue of the notice. There is no documentary or photographic evidence to support the appellant's version of events. In contrast, the Council's evidence is extensive and contradicts the dates provided by the appellant. The appellant has not sought to dispute the Council's photographic evidence.

¹ The Statutory Declarations Act 1835 provides for the use of declarations in place of oaths in specified circumstances. These are made in front of a person with appropriate authority as set out in the 1835 Act (usually an independent lawyer) and are classed as sworn evidence.

8. As set out above, the onus is on the appellant in this type of appeal and I am not satisfied that sufficient information has been provided. Moreover, the Council has submitted evidence of its own which contradicts the appellant's arguments. The appellant's evidence is imprecise and ambiguous and does not show, on the balance of probability, that the matters alleged were substantially completed on or before 12 June 2016.
9. Therefore, the appeal on ground (d) must fail.

Conclusion

10. For the reasons given above I consider that the appeal should not succeed.

Debbie Moore

Inspector