
Appeal Decision

Site visit made on 23 February 2022

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2022

Appeal Ref: APP/P4605/C/21/3279077

22 Wellesbourne Road, Birmingham, B20 3TH shown edged red on the attached plan and hereinafter referred to as "the land".

- 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 Nizkat Khan against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice, numbered 2017/0266/ENF, was issued on 16 June 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a side and rear dormer in the approximate position marked in green on the attached plan.
 - The requirements of the notice are 1. Remove the side and rear dormer in its entirety and restore the roof of the house to its condition prior to the development and 2. Remove from the land all building materials and rubble arising from requirements 1 above.
 - The period for compliance with the requirements is 6 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 (the Act). Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Main Issue

2. The main issue is whether the rear extension enforced against was substantially completed more than four years before the date of the issue of the enforcement notice, i.e. more than four years before 16 June 2021, so as to be immune from enforcement.

Reasons

3. The appeal on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
4. The breach of planning control relates to the erection of a side and rear dormer which I was able to see on my site visit. Taking into account Google images and photographs, the Council accepts that the development was substantially

completed at some point between April 2017 and October 2017. To be immune from enforcement action, the development would need to have been substantially completed by no later than 16 June 2017.

5. A complaint was received by the Council on 31 August 2017. The complainant states that *'he is in the process of extending his loft and now extending to the side of the property'*. I accept that one might interpret this as suggesting that the works were ongoing. However, the complainant does also say *'now with this new extension he has a number of windows on the side of the house'*. While the inclusion of windows does not in itself automatically mean that the development was substantially completed, it is reasonable to take the view that windows are generally provided at the latter stages of a development project. In other words, it adds some weight to the appellant's contention that the development was substantially completed in May 2017.
6. In considering the above further, I have taken into account the various building receipts provided by the appellant. Some of the receipts refer specifically to *'22 Wellesbourne Road'* and others refer to a different address. In that sense, it is reasonable to take the view that the vast majority of the receipts do relate to the appeal site. It is also reasonable to form the view that these receipts did relate to the appeal development particularly given the dates in May 2017. Indeed, those that relate to the appeal property are dated between 2 May 2017 and 30 May 2017.
7. The 30 May 2017 receipt includes building materials for the roof. Again, and like the windows, works to the roof are likely to take place towards the end of a development project. In respect of the windows, I also note the receipt from UK Just Glazing with a *'due date'* of 16 May 2017 and referring specifically to *'22 Wellesbourne Road'*. The complainant referred to the existence of *'windows'* on 31 August 2017. While I cannot be sure if this meant window frames or window openings, it is conceivable that the window frames were installed soon after 16 May 2017 and certainly during the month of May 2017.
8. I recognise that the complainant has made reference to the continued erection of scaffolding on 31 August 2017. There is no dispute between the parties that scaffolding was in place at this time. However, the existence of scaffolding does not in itself automatically mean that the appeal development was not substantially completed. The appellant has commented that the scaffolding was in place as *'other works needed doing including a leaking roof'*. The invoice from SHIV Construction Ltd, dated 25 August 2017, does appear to reflect these comments in so far that it *states 'remove and replace leaking EPDM rubber roof – 4.35 square metres' and 'remove and replace 8 ridge roof tiles'*. The Council has no evidence of its own to refute what the appellant says about the need for the continued erection of the scaffolding after May 2017.
9. Taking into account the above, coupled with the statutory declarations from other interested parties including the occupier of No 46 Beaudesert Road and No 20 Wellesbourne Road which respectively state that the development was *'finished'* and *'completed'* in May 2017; the statement from the occupier of No 30 Wellesbourne Road where he says that he visited the site in May 2017 and *'was impressed with the works he completed'*; and the 10 May 2017 receipt from Heritage Carpets referring to the appeal site and with details including *'supplied and fitted'* and *'two attic rooms'*, I find, on the balance of probability,

that the development was substantially completed prior to 16 June 2017 and hence was immune from enforcement action.

Conclusion

10. For the reasons given above, I conclude that the appeal should succeed on ground (d). Accordingly the enforcement notice will be quashed.

D Hartley

INSPECTOR