



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 November 2022

Appeal Ref: APP/J0405/C/21/3275089

Mount Pleasant Farm, High Street, Burcott, Leighton Buzzard LU7 0JS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Harnak Aujla against an enforcement notice issued by Buckinghamshire Council - North Area (Aylesbury).
 - The notice, numbered 20/00375/EN1, was issued on 19 April 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a white clad side extension.
 - The requirements of the notice are to: 1. Remove the unauthorised white clad side extension (outlined in blue on the attached plan. 2. Remove any debris from the Land that comes as a result of complying with Step 1 of this Notice.
 - The period for compliance with the requirements is: 3 (three) 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 have lapsed.
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Decision

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

Preliminary matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the appeal documents, a decision can be reached on the papers. Both parties were informed and offered the chance to respond. No comments were received.

The appeal on Ground (d)

3. An appeal on ground (d) is on the basis that, at the date when the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This is a legal ground of appeal, and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
4. Section 171B(1) of the Act sets out the relevant time period for taking enforcement action. In the case of a breach involving a change of use, it is ten years and for operational development, it is four years. For the development to be immune from enforcement action, it is necessary for the appellant to demonstrate that the extension, which is the subject of the Notice, was substantially complete on 19 April 2017.
5. The appellant argues that the extension has been 'around for almost six years' and that works to fix the roof to make it watertight and repair the partially collapsed roof have taken place at some point during the past 4 years. 'No

alterations have been made to the structure frame and the structure has only been repaired and replacement to the cladding carried out'. Evidence submitted includes an undated aerial image from Google Maps, which the appellant considers shows the building to be in place 'more than 4 years ago'. There is also a picture of chickens and the partial façade of a wooden coop which is fenced, and an image of some chicks inside some form of building. This image is dated December 2016. Neither photograph of the chickens/chicks provide any context to demonstrate that the birds were being housed in the appeal building. Moreover, the wooden coop bears little resemblance to the appeal building. While these submissions are signed by three 'witnesses', this is unsworn evidence and as such can only be accorded limited weight.

6. The council's submissions provide dated and annotated photographs of the site from 2016. These include a photograph of the house dated '2016' where there are no buildings to the side, and the front elevation of the bungalow is clearly visible. The photograph dated 'December 2016' shows the construction of a large single storey extension to the side of the property. These coincide with information provided by a third party.
7. Aerial imagery from Google dated 25 March 2017 shows only the large single storey side extension to the side of the house. Another dated 7 May 2018 shows some form of linear structure running parallel to the bungalow and the timber pergola structure which is over part of the patio to the front of the bungalow. A photograph provided by a third party and dated '30/9/2017' shows this from the ground level where the height of the structure is seen to be lower than the side extension and towered over by the pergola. There are also clear views towards the front elevation of the bungalow. The pergola is also shown on the Connells Estate Agents photo which is dated '2019' by the council. I note the appellant disputes this date and considers it to be earlier, having taken it himself. However, I have not been provided with any convincing evidence to support this stance.
8. A further aerial image dated '25 March 2020' displays the similar form of a structure as was in situ on 7 May 2018. However, in comparison to the development as shown on these aerial photographs, the appeal development as shown in the council's photographs dated 20 August 2020 is significantly wider and displays a different shape. Photographs from ground level also show the difference in height and finished materials of the structure. In its present form, its sheer scale has almost obscured views towards the bungalow, it has replaced the pergola and it is substantially taller than the single storey side extension to which it adjoins.
9. While the council's photographs do not display a date stamp, I have no reason to doubt their validity. Furthermore, the images from Google provided by the council are officially dated and these support the council's claims. Overall, I find the limited evidence submitted in support of the appellant's case has failed to demonstrate, on the balance of probabilities, that the appeal building was substantially complete on 19 April 2017, the necessary period of four years prior to the date of issue of the enforcement notice. The appellant's evidence falls short of discharging the burden proof. The breach of planning control is not immune from enforcement action and the appeal on ground (d) therefore fails.

S A Hanson INSPECTOR