



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22 December 2022

Appeal Ref: APP/N4205/C/22/3294318

1 Hunger Hill Avenue, BOLTON, BL3 4SD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by HAZLOCHO LIMITED against an enforcement notice issued by Bolton Metropolitan Borough Council.
 - The notice, numbered 21/0488/01, was issued on 11 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey extension at the side of the property.
 - The requirements of the notice are to: i. Demolish the single storey side extension; ii. Remove from the land all building materials and rubble arising from the demolition of the single storey side extension; and iii) Make good to the host dwelling any damage caused by the demolition.
 - The period for compliance with the requirements is 90 days.
 - The appeal is proceeding on the ground 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 and the enforcement notice is upheld.

Ground (d)

2. This appeal is brought on the basis that at the date when the notice was issued (11 February 2022) no enforcement could be taken in respect of the erection of a single storey extension at the side of the appeal property. Section 171B of the 1990 Act 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 are substantially completed. The onus of proof lies with the appellant who must therefore prove on the balance of probabilities that the side extension was erected and substantially completed before 10 February 2018. For the appeal to succeed on this ground, the whole of the development alleged, i.e. the single storey side extension as it existed at the date of the notice, must have been substantially completed throughout the four year time period.
3. The appellant's case is that the side extension was substantially completed before March 2018 but does not give a precise date. The appellant has provided two photographs from Googlemaps, an aerial photograph which is dated March 2018 which shows a flat white area in the location of the single storey extension, and a street view photograph dated June 2018 of the appeal property and extension which is partially obscured by a large tree in leaf.
4. Whilst the aerial photograph appears to show a flat, white surface it is not possible to tell whether it is a flat roof, or if so whether that roof or the rest of the extension is finished or even fully built. The street view photo which is

shown dated June 2018 does not show a completed flat roof across the whole extent of the extension as there appears to be either an unfinished element or pitched roof above the garage door at that time. This is materially different to the continuous flat roof as shown in the later photographs and as it was at the date of the notice. In any event, March 2018 and June 2018 are not more than four years before the issue date of the notice and the appellant has therefore not provided sufficient evidence to support their claim on balance.

5. The appellant's evidence is not precise and unambiguous enough to show that it is more likely than not that the extension was substantially completed four years before the notice was issued, and the appeal therefore fails.

Zoë Frank

INSPECTOR