



Appeal Decisions

Site visit made on 29 January 2024

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 February 2024

Appeal Ref: APP/N4720/C/23/3322800 30 St Wilfrids Circus, Leeds LS8 3PF

- 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 Ms Robina Akhtar against an enforcement notice (EN) issued by Leeds City Council (the LPA).
 - The enforcement notice was issued on 26 April 2023.
 - The breach of planning control, as alleged in the notice, is the erection of a front porch and canopy.
 - The requirements of the notice are as follows:
 - Step 1 Demolish the unauthorised front porch and canopy.
 - Step 2 Remove entirely from the land all materials used in connection with the erection of the front porch, canopy and all debris resulting from the demolition operations.
 - The period for compliance with the requirements is Four months.
 - The appeal is proceeding on ground (d) only as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. 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 dismissed. See formal decision below.

Matters of clarification

2. As indicated above the appeal is proceeding on ground (d) only. This is made on the basis that, at the time that the notice was issued on 26 April 2023, the front porch and canopy already been in place for 4 years. It is contended, therefore, that it is immune from enforcement action.
3. In this case the onus is upon the appellant to clearly demonstrate that the porch and canopy had been substantially completed by 26 April 2019.
4. There is no appeal on ground (a) and no deemed application under section 177(5) of the Act. I am not empowered, therefore, to consider whether or not planning permission should be granted for the retention of the porch and canopy. It follows that, in considering the legal ground (d) only, the policies of the development plan, as set out by the Council, are not relevant.

The Appeal site and its surroundings

5. The appeal site is a brick-built, two-storey, semi-detached property, on the inter-war residential garden estate in Gipton, which lies to the north-east of Leeds City centre. It is on a prominent corner plot on St Wilfrids Circus and has a small

garden to the front. It is set back from the highway with a larger plot to the rear and is surrounded by estate dwellings of similar sizes and design.

Background information

6. A planning application had been made in 2018 (18/04338) which included extensions to the side and rear of the property. The Council received complaints regarding non-compliance with the approval and wrote to the appellant indicating that the works carried out at the front did not fall within permitted development rights and that planning permission would be required. The appellant submitted a retrospective planning application, reference 22/03814/FU, for the retention of the porch and canopy as built, on 30 May 2022. This was refused planning permission on 25 of October 2022. The Council again wrote to the appellant indicating that the development remained unauthorised and was considered to be unacceptable in planning terms.

7. The Council required the whole of the front porch and canopy to be dismantled and removed within 28 days. Following a further visit to the site, and because the porch and canopy remained in place, a 'letter before action' (enforcement action) was issued. The porch and canopy remained in place and the Council then considered it expedient to issue the enforcement notice on 26 April 2023.

The Appeal on ground (d)

The gist of the case for the appellant

8. The appellant acknowledges that the porch and canopy had not been included in the planning application for other works at the property. It is indicated that she was unaware that planning permission was needed for the porch and canopy and had been advised that, as a minor development, permission was not needed. It is indicated that the works carried out to the property had been carried out by multiple builders, with whom she had had many issues. The stress of the development had resulted the appellant suffering ill health and having to cease employment.

9. It is indicated that the porch and canopy works were commenced at the same time as the approved rear/side extension in early January 2019. It is stated that the roof was added after the '*metal poles*' (presumably scaffolding) were removed and that the canopy '*was made a few months after this*'. Following advice relating to the statute of limitations for taking enforcement action, the appellant contends that the notice was issued outside of the statutory time limit and that the appeal should succeed on ground (d).

The gist of the case for the Council

10. The Council does not accept that the issuing of the notice was time-barred. It is stressed that the appellant has failed to provide any evidence to demonstrate that the porch and canopy had been completed 4 years prior to the issue of the notice. It is stressed that the burden of proof, of establishing that the porch is immune from planning control, lies with the appellant.

11. It is indicated by the Council that there is no documentary evidence to prove the porch and canopy had been substantially completed 4 years prior to the service of the enforcement notice on 26 April 2023. Furthermore, it is also stressed that the Council's own investigations reveal that the porch has not been in situ for the required 4 years. Reference is made to the submitted Google maps information (and photographs) which show a clear time-line and this evidence indicates that the works had not been carried out in August 2019.

12. It is further indicated that a Council officer had visited the site on 29 April 2022 and that the unauthorised works had not been substantially completed and that the roof above the front door '*was open to the elements*'.

My assessment

13. From the evidence submitted I can only share the Council's conclusion that the unauthorised works had not been substantially completed by the required date of 26 April 2019.

14. In a ground (d) appeal the onus is on an appellant to conclusively demonstrate, in a clear and unambiguous way, that the works had been substantially completed 4 years prior to the issuing of a notice. In such circumstances it is normal for an appellant to submit documentary evidence in the form of invoices/receipts etc, and/or photographic evidence showing the works at a certain date.

15. Unfortunately, there is no such evidence before me and the Council's submissions with regard to the Google information and the site visit in April 2022 cannot be disputed. Even if works to the front had been commenced at the same time as the rear and side, it remains the case that the evidence indicates that the porch and canopy could not possibly have been substantially completed 4 years before the enforcement notice was issued on 26 April 2023.

16. I acknowledge that the appellant had issues with the 'multiple builders' involved in the works to the property. But no detail of the issues or any information from builders has been submitted as evidence. Nor has any evidence from anyone else, who might have been able to confirm the appellant's building programme and timing of the works, been submitted. I can only conclude, therefore that the unauthorised works were not completed on or before 26 April 2019 and, therefore that the appeal must fail on ground (d).

Other Matters

17. I note that the appellant disagrees with the Council's view that the porch and canopy are excessive in size and scale; that they are poorly designed; that they are 'alien and incongruous' and thereby harmful to the character and appearance of the existing dwelling and this part of Leeds. In this regard it may well be that the porch alone could be acceptable to the LPA. However, there is no appeal on ground (f) to suggest that lesser steps would overcome the harm.

18. As indicated above, I cannot consider the merits of the works carried out. Neither can the fact that there are other porch additions to dwellings in the area alter my conclusions on the ground (d) matters outlined above.

19. I sympathise with the Appellant with regard to her health issues; the disputes with the various contractors and the predicament in which she now finds herself. However, this is a clear case whereby the LPA was not barred from taking enforcement action against the combined porch and canopy as built. As referred to above, it may well be that an amended porch without the canopy could be acceptable to the Council. However, this would be a matter for the appellant to consider and to liaise with the Council accordingly.

Formal Decision

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

Anthony J Wharton

Inspector