



Appeal Decision

Site visit made on 26 February 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Appeal Ref: APP/D3830/C/22/3311320

Land at 18 The Grange, Hurstpierpoint, Hassocks, West Sussex BN6 9FD

- 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 Yvonne Tyler against an enforcement notice issued by Mid Sussex District Council.
 - The enforcement notice was issued on 13 October 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction and installation of a dormer window to the rear roof slope of the dwelling.
 - The requirements of the notice are: To either: (1) Dismantle and remove the dormer windows on the rear roof slope and reinstate the roof in materials to match the existing roof. Or (2) Implement and construct the dormer window as approved under planning permission DM/21/1393 in accordance with the conditions imposed and plans. (3) To remove from the land all waste and materials as a result of either step (1) or (2).
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

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

Application for Costs

2. An application for costs was made by Ms Yvonne Tyler against Mid Sussex District Council. This application is the subject of a separate Decision.

The ground (d) appeal

3. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice. The latest date for the substantial completion of the dormer window would thus be 13 October 2018 (the relevant date).
4. The appellant has submitted a signed statutory declaration stating that the dormer extension was substantially completed by 2 October 2018. Various correspondence relating to invoices have also been provided pertaining to a substantial completion in early October 2018.
5. The Council advises it does not hold documentation that casts doubt on the statutory declaration. It however highlights that an earlier statutory

declaration¹ gives a substantial completion date of 8 October 2018. In response, the appellant asserts this discrepancy is explained by them having revisited their documentary evidence and so clarifies that substantial completion was 2 October, with a ready for occupation date of 8 October 2018. Either way, this is more than 4-years prior to the issue of the notice.

6. The Council also highlights two applications, which, on the application forms², give completion dates of 1 October and 18 December 2018 respectively. This casts some doubt in my mind, albeit the latter date may have been conflated with a building regulation approval.
7. However, contemporaneous evidence in the form of an email from the builder on 5 October 2018 states that '*...we are nearly complete, other than snagging, dimmer switches and the like. We are decorating the external walls of the balcony today.*' Such an advanced level of works would therefore demonstrate on the balance of probabilities substantial completion by this date for the purposes of my assessment.
8. The Council also has its own evidence in the form of a site visit from its building control department on 15 October 2018. Whilst this is just after the relevant date, it corroborates the appellant's evidence that substantial completion had been achieved in early October 2018. Even if I am wrong, it does not contradict it. A completion certificate was then not issued until 18 December 2018 however this does not undermine the evidence of the October site visit and thus what existed on the ground.
9. Despite some inconsistencies, taken as a whole, there is a considerable body of evidence that is sufficiently precise and unambiguous to demonstrate the substantial completion of the dormer window prior to the relevant date.
10. As a matter of fact and degree the appellant has therefore discharged the necessary burden of proof to demonstrate on the balance of probabilities that it was too late to take enforcement action against the dormer window.
11. The appeal on ground (d) therefore succeeds.

Conclusion

12. For the reasons given above I conclude that the appeal should succeed on ground (d). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Formal Decision

13. The appeal is allowed, and the enforcement notice is quashed.

Paul T Hocking

INSPECTOR

¹ Submitted pursuant to Council ref DM/22/03037

² Submitted pursuant to Council ref DM/22/2336 and DM/21/3509