



Appeal Decision

Site visit made on 4 December 2020

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 December 2020

Appeal Ref: APP/X1165/C/20/3249945

2 Redgate Close, Torquay TQ1 3UG

- 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 Bob Knox against an enforcement notice issued by Torbay Council.
 - The enforcement notice was issued on 10 March 2020.
 - The breach of planning control as alleged in the notice is: The erection of solar panels, solar thermal panels, associated supporting structures and screening fence ("the Unauthorised Development") within the area shown edged and hatched blue on the Plan.
 - The requirements of the notice are: Restore the Land within the area hatched blue on the plan to the condition it was in before the Unauthorised Development by removing the solar panels, solar thermal panels, associated supporting structures and screening fence from the land to which the notice relates.
 - The period for compliance with the requirements is: 3 months.
 - 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 (EN) is upheld.

Main Issue

2. An appeal on this ground is based on the claim that, at the date when the EN was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In this case, under s171B(1) of the 1990 Act no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. As such, the main issue is whether the development attacked in the EN was, on the balance of probability, substantially completed on or before 10 March 2016, that being four years before the EN was issued. I shall refer to this hereafter as the material date. The burden to make out the case in legal grounds of appeal such as this rests with the appellant.
3. Under this single ground of appeal I cannot consider the planning merits of the development carried out, such as the appellant's efforts to reduce his and his partner's carbon footprint and the extent to which the solar array may or may not be visible or noticeable in the street scene. Nor are matters of how the Council may have handled the process of investigation relevant.

Reasons

4. I note the appellant's evidence comprising delivery details and receipts for various solar equipment from 2015, which predates the material date. I have also read what the appellant says about the course of events dating back over five years, including the shielding/shading effect of the tall trees and foliage that used to be in front garden. However, the Council has submitted two aerial photographs. In the one dated 15 August 2016 there is no sign that there were any solar panels in the front garden of the appeal property. Even with the extent of foliage present then, given the reflective and shiny nature of the upper surfaces of solar/thermal panels, and the extent of the array that by then it is alleged was there, I would have expected to see at least some hint of the apparatus. This is not apparent.
5. There may have been some panels, as noted by the Council, but it is the current set up that comprises the development which the enforcement notice is attacking. It is that which the appellant needs to show was substantially completed before the material date. With this in mind, I have also reviewed the appellant's photographs dated 4 July 2015. They show a corner of what may be a row of panels parallel with the pavement edge and what could be an angled array attached to the front wall of the house. However, they do not clearly show anything else. The panels next to the pavement also seem to be in a different position to those now closest to the front garden boundary and there is no 'screening fence' in place which is part of the overall development that the EN alleges is in breach of planning control. The appellant's photographs do not show with the required clarity that the development was substantially complete by the material date.
6. The Council's other aerial photograph dated 4 November 2017 in contrast shows very clearly, even with the distance involved in an aerial image, an extensive array of panels that resembles what is there now. These undisputed photographs are telling evidence that show the array was probably more likely substantially completed between 15 August 2016 and 4 November 2017 which is a time period after the material date. The appellant's evidence does not as a matter of fact and degree show otherwise.
7. Therefore, the appellant has not discharged the burden upon him to show that no enforcement action could be taken in respect of the breach of planning control which may be constituted by the matters alleged in the EN. Therefore, the ground (d) appeal cannot succeed and the appeal is dismissed. I shall uphold the EN.

Gareth Symons

INSPECTOR