



Appeal Decision

Site visit made on 31 May 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2022

Appeal Ref: APP/N1730/C/22/3290512

35A Basingbourne Road, Fleet, GU52 6TG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
 - The appeal is made by Mr Neil Weston against an enforcement notice issued by the Hart District Council.
 - The enforcement notice was issued on 30 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a single storey outbuilding shown for identification purposes edged and coloured black on the attached plan.
 - The requirements of the notice are:
 - (i) Cease the use of the unauthorised outbuilding for residential purposes;
 - (ii) Demolish the unauthorised outbuilding;
 - (iii) Remove any materials arising from the demolition of the outbuilding from the land and;
 - (iv) Reinstall the land to its former condition by levelling the land.
 - The period for compliance with requirement (i) is 6 months, and for the requirements (ii), (iii) and (iv) is 7 months.
 - The appeal proceeds on the grounds set out in section 174(2) (c), (f) and (g) of the Act.
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Decision

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

Appeal Building and Background

2. The appeal building is a single storey pitched roof building located immediately to the front of the main dwelling house. It has a pedestrian access door into a hallway, a shower room, and windows serving three internal bedrooms.
3. The grounds of appeal initially included grounds (a) and ground (d) but these were withdrawn during the appeal process.

Appeal on Ground (c)

4. For an appeal on ground (c) to succeed it must be shown that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof in a ground (c) appeal falls to the appellant and the test of the evidence is on the balance of probability.
5. There is no dispute that the building constitutes "development" within s55 of the Act. The substance of the appellant's case is that it sits on the foundations of the former double garage that it replaced and is not materially larger.

6. However, the appellant himself acknowledges¹ that the pitched roof appeal building is larger than the former flat roofed garage. The Council have also supplied copies of historic plans² submitted for the property which show the former double garage with a smaller footprint. Their photographic evidence³ taken during site inspections also clearly show a larger building under construction. The evidence points strongly towards the erection of a new building.
7. Even if it were taken to be the existing building, there has been a substantial increase in footprint and height, also with removal of double garage doors and replacement with domestic sized windows which, taken together, materially affect the external appearance. As such, it does not fall within the exclusions at s55(2)(a) of the Act as *maintenance, improvement or other alteration* of an existing building.
8. Consequently, on the balance of probability, I find it to be a new building, rather than comprising alterations to an existing one.
9. Given that construction of the appeal building constitutes “development” within s55 of the Act it thereby requires planning permission. Since no planning permission has been granted for the building it constitutes a breach of planning control.
10. The appeal on ground (c) therefore fails.

Appeal on ground (f)

11. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach. In this regard the notice requires the removal of the building and the return of the land to its condition prior to the breach taking place. It is clear therefore that the purpose of the notice is to fully *remedy the breach of planning control*.
12. The appellant states that he has sought to address the Council’s concerns but the Council has been uncooperative and uncommunicative with him, also misrepresenting him in correspondence. However, these are not matters I can deal with in the scope of the specific grounds of appeal against the notice.
13. The appellant has referred to the potential of carrying out alterations to the building to make it more acceptable. However, there are no detailed plans of such alterations before me. Moreover, there is no appeal on ground (a) such that planning permission could be granted for an alternative scheme. Simply returning the roof back to a flat roof form would not fully remedy the breach.
14. The appellant argues that the requirements would necessitate the rebuilding of the original garage. However, that is not the case. The demolition of the garage down to ground level did not require planning permission. The breach only commenced thereafter with the construction of the appeal building. Hence, demolishing the building and restoring the land to its former condition by levelling the land, or, in other words; simply undoing what has been done without planning permission, would go no further than remedying the breach.

¹ Appellant’s Final Comments paras. 1 and 5

² Council Statement of Case - Appendices 3 and 4

³ Council Statement of Case – Appendices 2 and 5

15. It is not unreasonable for the notice to require the removal of the materials used in the construction of the unauthorised building from the land, given that they were integral to the breach of planning control itself.
16. The appellant suggests there is a possibility of bats roosting in the building and that complying with the notice by demolishing it could result in him committing a criminal offence. However, he has not provided any evidence of bats roosting, but refers to comments from neighbours of bats being in the area. Should bats be found the appellant would need to obtain specialist advice and, if necessary, a licence for roost relocation prior to demolition. However, the possibility of these circumstances arising does not render the notice requirements excessive in terms of remedying the breach of planning control.
17. The appellant also states that demolition of the building would force him to cease using the building for residential purposes, thereby rendering his university-aged children homeless. He considers this may breach the family's rights under Article 1 of the First Protocol 1, Article 8 and Article 14 of the European Convention on Human Rights, now incorporated into UK law in the Human Rights Act 1998.
18. However, human rights are not relevant to the legal grounds of appeal against an enforcement notice where the questions are whether or not, as a matter of fact and law, the EN was properly served – ground (e); the matters occurred – ground (b), the matters are a breach of planning control – ground (c); or immune from enforcement – ground (d). Additionally, ground (f) only relates to the narrow question of whether the requirements are excessive in remedying the breach or the harm to amenity. This does not allow for consideration of the effect of the decision on individuals and their rights.
19. For the reasons set out above, I conclude that the requirements are not excessive since they do not go beyond the minimum necessary to remedy the breach of planning control.
20. The appeal on ground (f) therefore fails.

Appeal on Ground (g)

21. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed.
22. The notice requires compliance for removal of the building within 6 months and restoration within 7 months.
23. The appellant has not suggested an alternative period of time for compliance, but considers that sufficient time should be allowed for a planning application to be considered by the Council. At the time of writing I understand that is likely to be fairly soon. Should the application be approved by the Council the new planning permission would override the requirements of the notice insofar as the notice may be inconsistent with that permission by virtue of s180(1) of the Act.
24. No detailed evidence has been provided as to why 6 months would be an inadequate period of time for securing alternative accommodation for 3 adult occupiers, and with regard to the possibility of bats being present there is no substantive evidence of such habitation before me. Notwithstanding these

factors the Council has its own powers under the Act to extend the compliance period if they subsequently consider it necessary to do so.

25. To conclude, I am mindful that the breach of planning control should be remedied as soon as possible. In this regard I consider that 7 months is a reasonable amount of time for fully complying with the notice requirements and I see no reason to extend it any further.

26. The appeal on ground (g) therefore fails.

Thomas Shields

INSPECTOR