

Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 31st August 2023

Appeal Ref: APP/Q3630/C/22/3301785

Land at 1 Hurst Lane, Egham, Surrey TW20 8QJ

- 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 Thomas Henry Ball against an enforcement notice issued by Runnymede Borough Council.
 - The enforcement notice was issued on 25 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a building as shown outlined and crosshatched blue on the Plan attached to the notice.
 - The requirements of the notice (in Section 5) are to:
 - 5.1 Demolish and remove from the Land the building outlined and crosshatched blue on the Plan.
 - 5.2 Remove from the Land all materials, debris, plant and equipment associated with requirement 5.1 above.
 - 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 (the Act).
-

Decision

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

Procedural Matters

2. It was not necessary for me to undertake a site visit to determine this appeal due to the nature of the legal ground pursued, and as there were no planning merits to consider. A decision has been made on the evidence in the papers.
3. Further to comments made by the appellant as to the way he considers he has been treated by the Council in its decision to issue the notice, there is no scope for me to consider human rights or equality implications in an enforcement legal ground of appeal. It is also outside of my jurisdiction to consider whether or not it was expedient for the Council to issue the notice.

Ground (d)

4. For an appeal to be successful under this ground, the burden of proof is upon the appellant to satisfy me on the balance of probabilities that at the date the notice was issued no enforcement action could be taken in respect of any breach of planning control constituted by the matters alleged in the notice.
5. Section 171B(1) of the Act provides that, in respect of the operational development constituting the breach of planning control in this appeal, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.

6. Accordingly, it is for the appellant to demonstrate to the required standard of proof that the building targeted by the notice was substantially completed by 25 May 2018.
7. The appellant's case is that, following serious storm damage, he has re-built a building that had previously existed on the site for approximately 40 years. He has satisfactorily evidenced the pre-existence a building.
8. However, while I accept that the current structure sits upon the same concrete base and that many of the original building's materials may have been re-used, it is very clear from photographs submitted by the Council that a new building has been constructed as a matter of fact and degree. I find that the aerial photography taken on 7 May 2018 shows that the pre-existing building had, by any reasonable interpretation, ceased to exist (notwithstanding the few remaining traces of its structure). The construction of the new building – which I further note to be accepted by the appellant to be of a different height and footprint than the original building – constitutes a new act of operational development which goes far beyond what could be reasonably described as the repair, alteration, refurbishment or improvement of an existing building.
9. Further, photographs taken in June 2018 show the new building under construction and without its roof. I find therefore that the new operational development had not been substantially completed by 25 May 2018.
10. Accordingly, the appellant has not demonstrated on the balance of probabilities that it was too late for the Council to issue the notice when it did. The ground (d) appeal fails.

Conclusion

11. For the reasons given above I consider that the appeal should not succeed.

Andrew Walker

INSPECTOR