

Appeal Decision

Site visit made on 14 March 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 25 April 2017

Appeal Ref: APP/Q1445/C/16/3163997

11 Balsdean Road, Brighton BN2 6PG

- 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 Mrs Susan Ashley against an enforcement notice issued by Brighton & Hove City Council.
 - The enforcement notice was issued on 18 October 2016.
 - The breach of planning control as alleged in the notice is without planning permission,
 - (i) The installation of cedar cladding on all dormers at the property;
 - (ii) The installation of new grey windows in the front, side and rear dormers at the property;
 - (iii) The change in the dimensions of the front dormer window; and
 - (iv) The installation of solar panels on the roof of the side and rear dormers, which project more than 0.2metres beyond the plane of the roof slope when measured from the perpendicular with the external surface of the wall or roof slope.
 - The requirements of the notice are
 - Remove cedar cladding from all dormers and tile to match existing roof.
 - Remove grey windows in all dormers and replace or repaint to match existing white windows.
 - Return the front dormer to former dimensions, BH2015/04453 – existing plans and elevations – dwg.no.1306/E/01 dated 9 December 2015.
 - Reduce the projection of the solar panels from the roof to no more than 200mm
 - The period for compliance with the requirements is 24 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (e) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Background

2. The appeal relates to a detached bungalow which has a wrap-around dormer on three sides and a single entity dormer on the front elevation all of which are clad in wood. These replaced tile-hung dormers with uPVC fascia boarding which previously existed on each roof slope.
3. The Council have submitted a copy of a previous appeal decision¹ which sets out some of the background to this case.

¹ Ref: APP/Q1445/D/16/3150084 dated 16 August 2016

The ground (e) appeal

4. Under a ground (e) appeal the onus of proof is on the appellant to show that the notice has not been served as required by section 172 of the 1990 Act. S172(2) states a copy of the enforcement notice shall be served on the owner and on the occupier of the land to which the notice relates. The appellant is the owner of the property and her name is Susan Heather Ashley. However, the notice was served on 'Shirley Heather Ashley'. The Council advise that this was a simple typographical error.
5. Section 176(5) of the Act says the Secretary of State may disregard incorrect service where there has not been substantial prejudice. In this case the appellant has been able to lodge an appeal against the notice. The Council's unfortunate mistake has therefore resulted in no prejudice and the appeal on ground (e) fails.

The ground (c) appeal

6. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been breach of planning control. The appellant's submissions in relation to this ground of appeal are made only in relation to the first allegation which is concerned with the cedar wood cladding of the dormers.
7. A breach of planning control comprises the carrying out of development without the required planning permission. The appellant claims that the cedar wood cladding of the dormers does not breach planning control on the basis that the material used is of a similar appearance to existing materials used on the bungalow.
8. The meaning of development is set out in section 55(1) of the 1990 Act and includes the carrying out of building, engineering, mining and other operations, in, on, over or under land. S55(1A) confirms that such operations include rebuilding, structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on business as a builder.
9. S55(2) of the Act goes on to clarify at subsection (a)(ii) that the carrying out of works that do not materially affect the external appearance of the building shall not be taken to involve development of the land. Therefore a judgement needs to be made depending on the facts of the case. It has been held that it is the effect of the development on the external appearance of the building and not just the exterior of the building which must be considered. Furthermore, judging the effect must be in relation to the building as a whole and not by reference to a part of the building taken in isolation.
10. I consider that the installation of cedar wood cladding on all the dormers has clearly affected the exterior of the building. Balsdean Road is situated on a steep incline and the tiled roof of the bungalow can be clearly seen from the public domain whether looking up or down the road. The steeply pitched, hipped gabled roof of the bungalow is one of the principle features of this building and the modern appearance of the cedar wood cladding is in marked contrast to not only the traditional roof tiles but also the traditional appearance of the bungalow. There has therefore been a noticeable change to the appearance of the building.
11. The appellant refers to condition B.2.(a) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO). This requires

the materials used in any exterior work to be of a 'similar appearance' to those used in the construction of the exterior of the existing dwelling. She also refers to the Department for Communities and Local Government Technical Guidance (TG)² and quotes from the opening paragraph dealing with Class B.

12. The TG explains how the GPDO should be interpreted and I have taken that Guidance into account in dealing with this ground of appeal. The second bullet point after the opening paragraph explains further how the condition should be interpreted and states 'So the materials used for facing a dormer should appear to be of a similar *colour and design* (my emphasis) to the materials used in the main roof of the house when viewed from ground level'.
13. The appellant's submissions, which include photographs of the roof in different weather conditions, seek to emphasise that the cedar wood changes in colour depending on whether it is wet or dry, rather like the roof tiles. She also states that it has weathered in appearance since it was first installed. However, this does not address the 'design' compatibility of the chosen material which I find has a smooth finish in terms of its appearance and fixing compared to the overlapping and ridged profile of the existing roof tiles. I therefore consider that the cedar wood cladding does not have a 'similar appearance' to the existing roof tiles.
14. Having regard to all of the above considerations, I conclude, as a matter of fact and degree, that significant alterations have been made to the exterior of the building with the installation of cedar wood cladding to the dormers. These alterations are visible from the public domain and amount to a material change to the external appearance of the building. The alterations therefore amount to development within the meaning of s55 of the Act, for which planning permission would be required. Class B of the GPDO permits development in certain circumstances but the development in this case conflicts with the condition attached to the development given permission by Class B. The appeal on ground (c) therefore fails.

The ground (f) appeal

15. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council require the dormers to be re-clad in tiles, the dormer windows to be replaced or painted to match the existing windows, the dimensions of the front dormer to match previous plans and the projection of the solar panels to be reduced. The purpose of the notice must therefore be to remedy the breach of planning control.
16. The appellant's submissions on this ground are essentially limited to re-iterating that the Council's requirements are excessive. However, the onus is on the appellant to state the precise details of any lesser steps otherwise it is not possible to judge whether the Council's requirements are excessive or not. This has not been done and the appellant has only referred to the lack of an opportunity to discuss the matter with the Council. Unfortunately, in the absence of any stated lesser steps the appeal on ground (f) fails.

² Department for Communities and Local Government Permitted Development Rights for Householders, Technical Guidance April 2016, updated April 2017

Conclusion

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

D Fleming

INSPECTOR