



Appeal Decision

Site visit made on 20 December 2011

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 9 January 2012

Appeal Ref: APP/Q1445/C/11/2160535

Land at 7 Greenways Corner, Greenways, Ovingdean, BN2 7BQ

- 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 Miss CL Bosker against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2011/0017.
- The notice was issued on 1 September 2011.
- The breach of planning control alleged in the notice is: On 19 March 2010 planning permission BH2009/02424 was granted for a two storey extension at rear of property subject to conditions. One of those conditions was that "The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building". It appears to the Council that that condition has not been complied with because the materials used for the roof tiles and hung tiles on the two storey side extension do not match those on the existing building.
- The requirements of the notice are: Remove the roof tiles and hung tiles on the two storey side extension and replace them with tiles that match those on the original house.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The ground (b) appeal succeeds and the enforcement notice is quashed as set out below in the Formal Decision.

Procedural Matter

1. The principle of building the two storey extension, including matters such as effects on residential amenity, was previously considered when planning permission was granted for the extension in March 2010. The particular grounds of appeal now made do not allow me to consider or revisit the general planning merits of the scheme. Therefore, many of the concerns raised by the adjoining neighbour cannot be taken into account. Also, even if the appeal had failed, the enforcement notice does not require the extension to be demolished and I could not have made the requirements any more onerous anyway.

The appeal on ground (b)

2. An appeal on this ground is based on the claim that, as a matter of fact, the breach of planning control alleged in the notice has not occurred.

3. The Council has suggested that the clays used to produce the old and the new tiles may be different. As such the new tiles have a shinier and smoother finish. It is therefore unlikely that the new ones will weather down to match the old tiles. Admittedly it is possible, at the moment, to distinguish between the old and new tiles. However, the appeal building probably dates from the early part of the last century. Over this time the surfaces of the original tiles will have degraded due to significant weathering. As such the old tiles have lost much of their original finish. Given that the new tiles have been in place for no more than about 18 months it is not surprising, irrespective of any clay differences, if this is the case, that the new and old tiles are distinguishable.
4. Nevertheless, in all other regards the new tiles used match the shape, size and profile of the original tiles. They also have a brindle hue. This not only tones down the natural orangey redness of a brand new clay tile, but also reflects the patchy and mottled appearance of the old tiles no doubt caused by varying degrees of exposure to the elements on different parts of the building.
5. It seems to me that the new tiles do match the old tiles and, over a longer period than just 18 months, the newness of the tiles will dull and blend with the appearance of the much older external appearance of the building. As such, the purpose behind a matching materials condition, which is to safeguard the character and appearance of an area, will have been met.
6. Having regard to all other matters raised, I find that as a matter of fact the alleged breach of planning control has not occurred. The appeal on ground (b) therefore succeeds and I intend to quash the enforcement notice. Consequently there is no need for me to consider the ground (f) appeal.

Formal Decision

7. I direct that the enforcement notice be quashed.

Gareth Symons

INSPECTOR