The Planning Inspectorate

Appeal Decision

Site visit made on 18 January 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 20 January 2017

Appeal A Ref: APP/Z0116/C/16/3154188
39A Shaftesbury Avenue, Bristol BS6 5LT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by The Shaftesbury Partnership against an enforcement notice issued by Bristol City Council.
- The notice was issued on 26 April 2016.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the cladding of the eastern roof slope with metal sheet cladding.
- The requirements of the notice are: remove the metal sheet cladding to the eastern roof slope and reinstate the roof tiles to match the western roof slope.
- The period for compliance with these requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Act.

Appeal B Ref: APP/Z0116/W/16/3151436
39A Shaftesbury Avenue, Montpelier, Bristol BS6 5LT

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
- The appeal is made by The Shaftesbury Partnership against the decision of Bristol City Council.
- The application Ref 15/04510/F, dated 3 September 2015, was refused by notice dated 30 October 2015.
- The development proposed is re-roof rear (east facing) roof slope with metal sheeting.

Appeal A: Formal Decision

1. It is directed that the enforcement notice is varied by:
    - the deletion of the phrase "*and reinstate the roof tiles to match the western roof slope*" in paragraph 5 of the notice; and,
    - the replacement of the phrase "*4 months*" in paragraph 5 of the enforcement notice with "*12 months*".
2. Subject to these variations the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Appeal B: Formal Decision

3. The appeal is allowed and planning permission is granted to re-roof rear (east facing) roof slope with metal sheeting at 39A Shaftesbury Avenue, Montpelier, Bristol BS6 5LT in accordance with the terms of the application, Ref 15/04510/F, dated 3 September 2015, subject to the condition set out in the attached *Condition Schedule*.

Appeal A: Procedural matter

4. Under the ground (f) head the Appellant claims that the notice is a nullity. This is not an argument that can be left to that stage because if the notice were to be found to be a nullity there is, in effect, no notice at all and therefore nothing that can be corrected or, indeed, form the basis of an appeal. For this reason I have to deal with this argument before considering any grounds of appeal.

5. A notice is a nullity if it is missing some vital element, such as a requirement or a date for compliance, and so is defective on its face. This does not apply to this notice, which is similar to the example notice in the Planning Practice Guidance [the Guidance][1]. The argument is more subtle insofar as it is said that the requirement cannot be achieved because the tiles are not obtainable.

6. Case law determines that the relevant test is whether a notice is hopelessly ambiguous and uncertain so that the recipient could not tell with reasonable certainty what steps they had to take to remedy the alleged breach. In this case, on the Appellant's own argument, it is clear that they are in no doubt as to what they are required to do to comply with the notice. I am absolutely clear that in these circumstances the notice is not a nullity. Whilst I propose to examine the arguments made in my substantive reasoning, and that might be a basis to vary the requirement, it is no basis for saying the notice is a nullity.

Appeal B: Procedural matters

7. I have taken the description of development from the original application form, rather than that set out in Section E of the appeal form, because the latter appears to have been taken from the modified description on the Council's notice of decision. However "*Retention*" is not a form of development known to the Act and so in my view it is more appropriate to use the original description.

8. In section H of the planning appeal it says: "*Costs application to be submitted when LPA's statement received*". However, having double checked with The Planning Inspectorate [PINS] Appeals Officer, I am satisfied no application for costs has been received. I propose to deal with this appeal on this basis.

Appeal A: Ground (c)

9. Under this ground of appeal the Appellant needs to show that: "…*there has not been a breach of planning control*" [as per section E. (c) of the appeal form]. This is based on the claim that the works undertaken do not materially affect the external appearance of the building and hence do not involve development by virtue of section 55(2)(a)(ii) of the Act. Reference is made to the principles set out in the case of *Burroughs Day v Bristol City Council* [1996] 1 PLR 78, which held that the test is whether any alterations to the exterior of a building materially affect its external appearance. A judgment is required as to whether any change is to the external appearance of the building as a whole rather than a part taken in isolation; the degree of visibility by an observer outside of the building; the nature of the building; and, the nature of the alterations or works.

10. My site inspection revealed that the alterations to the roof are visible from a number of public and private vantage-points. The alterations are most visible in the public realm when seen from Banner Road, including the vicinity of its junction with Norrisville Road. The alterations to the ridge can be clearly seen

[1] See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/548727/17b-061-20140120_example-enforcement-notice-operational-development.pdf

from the east end of Banner Road and because there is no conventional ridge tile the works have the appearance of a sheet that appears to be held down by approximately 15 protruding bolts or screws. By virtue of the unconventional finish near the highest point of the building, the works are conspicuous in the street scene and do materially affect this main public face of the building. In reaching this view it is significant that the building stands at the end of Banner Road and that all highway users travelling east along it pass either on the road or the footways facing towards the building on the appeal site. The building therefore terminates views for highway users and the ridge of the building is seen as the skyline in those public views, which makes it relatively prominent.

11. To the limited extent that the building is otherwise seen in the public domain, the main vista is of the central part of the northern gable from Shaftesbury Avenue, which is visible along the entrance to the building, between houses. In this view it is the different colour, rather than materials, of the barge board that marks out the roof alterations. However the building itself is set back from the main street and there is not even a clear view of the entire gable such that the change is perceived to be to a very small part of the building in isolation. Although there is a public right of way along the access to the building, which runs up the steps to the north-west of the building, this does not alter my view that the alteration to the barge board does not materially affect the external appearance of the building.

12. I viewed the building from the first floor bedroom window and the ground floor living room window of No 64 Albert Park Place. The former gives an overview of the eastern elevation of the roof of the building, as revealed in one of the photographs that has been provided as part of the occupier's representation during the course of the appeals. I note that the occupier says "*numerous*" residential properties in Albert Park Place and Shaftesbury Avenue would be able to view the rear roof slope. Whilst I acknowledge that I did not view the roof from any other private viewpoint, it is self-evident from that photograph that there are a number of windows and potentially gardens that would, to a greater or lesser extent, permit views of the substantive works to the roof. My view on this is corroborated by the fact that the occupier of No 27 Shaftesbury Avenue has written to PINS in this matter, albeit supporting the development.

13. When seen from the living room window of No 64 it is the metal barge board that is seen on the other gable, rather than the alterations to the main roof. I regard this limited private view to affect the external appearance of only a very small part of the building in isolation, rather than the building as a whole.

14. Notwithstanding my view that the alterations to the gables are not material, I find that the alterations to the roof do materially affect the external appearance of the building when seen from public vantage-points along Banner Road to the west and from at least one private vantage-point to the south. I have given reasons why the eastern roof slope is likely to be visible in other private views. In reaching this view I have taken account of the simple and rather functional design of the building and the fact that it appears to be in use as a carpenters and joiners[2]. However neither this nor any other matter raised in the appeal submissions alters my conclusion that the alterations to the roof do constitute development within section 55 of the Act and so the ground (c) must fail.

[2] The letter from M&P Joinery says they share the tenancy with another working unit but I have no information before me as to the nature of the other business. However the building as a whole is clearly in commercial use.

Appeal A, Ground (a) and Appeal B: *Preliminary observations*

15. The Appellant has lodged the appeal on, amongst others, grounds (a) and (f). However I consider that some of the arguments advanced under the latter ground could only be achieved by the imposition of planning conditions, which can only be delivered under ground (a) and/or in Appeal B. It is not possible to impose a '*scheme to be agreed*' type requirement to specify, by way of example, the modern metal covering to which my attention has been drawn on another building in the area. Case law has held that such a requirement renders a notice a nullity because the recipient could not tell with reasonable certainty what steps they had to take. For this reason I have approached the deemed application holistically, taking account of some of the arguments raised under ground (f). This is line with the Act, which says that planning permission can be granted "*in relation to the whole or any part*" of the matters alleged in an enforcement notice and subject to conditions that meet the policy tests.

Main issue

16. The main issue that is common to both the deemed planning application in Appeal A and to the merits of Appeal B is the effect of the development on the character and appearance of the host building and whether it would preserve or enhance the character or appearance of the Montpelier Conservation Area [CA].

Planning policy

17. The Development Plan [DP] includes the Bristol Development Framework Core Strategy [CS] and the Site Allocations and Development Management Policies Local Plan [LP], which were adopted in June 2011 and July 2014, respectively. Applying advice in paragraph 215 of the National Planning Policy Framework [the Framework] I attach significant weight to CS Policies BCS21 and BCS22, which are cited on the face of the enforcement notice and the decision subject of Appeal B. Relevant LP Policies DM26, DM30 and DM31 should be given full weight because the LP has been adopted post issue of the Framework. It must follow that the LP policies are consistent with national policy because that is one of the tests for soundness set out in paragraph 182 of the Framework.

Reasons

18. Map 10 of the CA Appraisal identifies the building as an unlisted building of merit. I appreciate that the Appellant disagrees with that assessment but this is not the appropriate forum to adjudicate on that issue. What is noticeable from that map is that the vast majority of buildings in the CA that are not listed are so defined. As a result almost all the buildings in the vicinity of the appeal site are so designated. Paragraph 7.6.3 of the CA Appraisal says unlisted buildings of merit are considered to make a positive contribution to the special interest of the CA and their unsympathetic alteration will normally be resisted.

19. The Appellant's unchallenged assertion is that the CA Appraisal does not refer to the building on the appeal site individually. Instead Paragraph 7.6.5 of the CA Appraisal says many of the buildings would not be considered to be "of merit" individually, but are significant in maintaining the character of the CA, particularly as they are more often than not in groups.

20. In the context of my ground (c) finding, paragraph 7.3.4 of the CA Appraisal says roof profiles are fundamental to the architectural character of a building

and contribute greatly to the character of an area. It says alterations at roof level can consequently have a significant impact on an individual building and its context. Paragraph 7.3.5 of the CA Appraisal is focussed on chimney stacks and pots being a striking feature when seen against the skyline. That is true to an extent on this building because of the chimney above the southern gable, but in a more general sense my earlier finding that the ridge of the roof defines the skyline and is seen by all highway users along Banner Road is significant.

21. As the Appellant acknowledges the building has the appearance of a single storey building when viewed from Banner Road because of the difference in topography with Shaftesbury Avenue. The CA Appraisal recognises a general problem with graffiti in the area, as a result of which the Appellant says the entire west facing wall of the building has been painted with a bright, modern street art mural. The Appellant says this is entirely alien, but it is distinctive and it serves to emphasise the visual importance of the roof of the building.

22. I acknowledge that most of the houses around the building on the appeal site have terracotta tiles, rather than the more modern diamond shaped tiles that make up the majority of the west [public] face of the building. However I am not convinced that renders those tiles alien as, amongst other things, they do provide a subtle visual interest. Taken together with the mural the tiles mark the building out as different, which it is in this largely residential context.

23. Even allowing for the razor wire around the base of the roof, the alterations to the upper part and ridge of the western face of the roof have a harmful effect on the character and appearance of the building when seen from the public realm. In my view the sheeting, with its protruding bolts or screws, looks like a temporary fix rather than a durable, long-term solution. Contrary to CS Policies BCS21 and BCS22 it cannot be considered to be a high quality urban design and would not safeguard the heritage asset. Contrary to LP Policies DM26, DM30 and DM31 this aspect of the development would: (i) fail to take the opportunities available to improve the character and quality of the area; (ii) not respect the details and overall design and character of the host building; and, (iii) fail to conserve the heritage asset, respectively. For these reasons the alterations have had an adverse effect on the host building and thereby fail, at a minimum, to preserve the character or appearance of the CA.

24. Notwithstanding the above, the substantive works on the eastern face of the building are not visible in the public realm. Such private views of that part of the roof are seen in the context of the many multi-coloured buildings in the area, including blue, pink, yellow and turquoise dwellings, and the green, black and white roof over the single storey part of the building on the appeal site. There is no reason to doubt the Appellant's statement that the roof sheets are terracotta, rather than red lead primer. At the site inspection my attention was drawn to the original colour of the tiles on the western face of the roof that is evident on the verge, which appears to be similar to what has been used on the eastern roof face. The corrugated form of the roof material appears to have a similar finish to the single storey part of the building. For these reasons the substantive part of the roof alterations are not unsympathetic to the host building and preserve the character and appearance of the CA. No conditions are needed because the existing materials and colour reflect the character of the building and the diverse and vibrant colours of buildings in the wider area.

25. For the reasons given under the ground (c) head the barge boards on the respective gables of the building have an insignificant effect on the external appearance of the building. For reasons explained elsewhere the materials and the colour are acceptable. As such, the alterations to the barge boards are also sympathetic to the building and preserve the CA's character and appearance.

26. In my view, overall, the roof alterations have resulted in less than substantial harm to the significance of the CA. Paragraph 134 of the Framework says that where a development leads to less than substantial harm to the significance of a designated heritage asset, such as this CA, this harm should be weighed against the public benefits of the development. The Guidance says: "*Public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in the National Planning Policy Framework (Paragraph 7). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and should not just be a private benefit*"[3].

27. The public benefit that has been identified by the Appellant is that the works were necessary following an act of vandalism, which necessitated utilising the existing diamond shaped tiles from the rear of the building to make good the public face and thereby ensure its continued economically beneficial use. There is no reason to find the works were not essential to keep the building, which is used by a small business, weatherproof and secure. However, noting that the works appear to have been completed within 2 days[4], this is a factor to which I attach limited weight because there appears to be an alternative solution that might be capable of addressing the identified harm. I conclude that there are no public benefits that outweigh the harm to the designated heritage asset.

28. To sum up, my only concern relates to the crude manner of affixation and finish on the west face of the building and I consider that this might be capable of being addressed by the imposition of a planning condition to require a scheme of works to be agreed with the Council. It is likely that such a scheme would need to include agreement as to a new line of ridge tiles. However it is unclear whether that alone would mask the edge of the sheeting and the bolts or screws. It might be possible that lead work might be able to cover a small area, but a larger area might need lead flashing. Alternatively the bolts or screws and the edge of the sheeting might need to be raised up the roof and perhaps some of the existing tiles re-positioned to make a clean finish. The precise details are ultimately a matter to be agreed between the parties.

29. However I am conscious that agreement is by no means a foregone conclusion. It is possible for example that the bolts or screws cannot be moved if they are fixed into a narrow roof beam and that any solution to cover them up might have an unacceptable appearance on this face of the building. What I have therefore decided to do is to dismiss the deemed planning application but allow Appeal B subject to a suitably worded condition. If agreement is reached and the planning permission can be implemented, section 180 of the Act will come into play and the notice, subject to any variations to be considered under grounds (f) and (g), would cease to have effect so far as inconsistent with the permission. Conversely if no agreement is reached and any appeal is dismissed

[3] Source of quote: paragraph ID 18a-020-20140306.
[4] Dates given in section 3 of the planning application form confirm this.

the permission cannot be implemented and the notice will have taken effect. In either scenario the identified harm would be addressed.

30. For these reasons, on the main issue, I conclude the development would harm the character and appearance of the host building and fail, at a minimum, to preserve the character or appearance of the CA in conflict with the DP as a whole. However the harm and conflict with policies could be overcome by the imposition of a condition in Appeal B only, for the reasons outlined above.

Other matters

31. I have taken account of all other matters raised in the representations in reaching my findings. Dealing initially with the concerns of a local resident, I have no reason to doubt that the Council was initially told that the whole roof would be re-tiled in a suitable material, but plainly that has not happened to date and I am charged with dealing with these appeals in the alternative. It does appear to be an alternative option that remains open to the Appellant. However the notice does not require the roof to be fitted with second hand clay double roman roof tiles, or natural slates, and with timber barge boards, and nor could it do so. That would involve betterment, rather than returning the land to its condition before the breach, which is the most a notice can require

32. Turning to the Appellant's representations, I appreciate that the CA Appraisal shows that there are existing commercial buildings elsewhere in the CA with corrugated sheet roofs and similar barge boards. The recent development at Woodmancote Road is however materially different in my view because whilst it has a contemporary metal roof, it has a very different appearance to the more utilitarian feel of the east roof of the building on the appeal site.

Overall conclusion on the planning merits of the development

33. For the reasons given above and having regard to all other matters raised in the representations I conclude overall that the ground (a) appeal, the deemed planning application, should fail. However for the reasons given I shall allow Appeal B subject to a condition to require a scheme of works to be agreed.

Appeal A: Ground (f)

34. The Appellant's substantive argument under this ground of appeal is that the modern diamond shaped concrete tiles are not obtainable second-hand. Although there is no independent evidence thereof and no indication of the steps taken, whether using online searches or via established stockists, to try to trace those tiles, I am prepared to accept the argument at face value. This, alone, leads me to vary the requirement by striking through the second clause.

35. In my view such a finding is not inconsistent with the Council's objective in issuing the notice, which appears to have been to remedy the breach of planning control by restoring the land to its condition before the breach took place. In this instance that would appear to have been the building after the original roof tiles had been removed. That is consistent with the statement of the Appellant which records, in paragraphs 5.4 and 5.10 thereof, that part of the original east facing roof was only covered with roofing felt.

36. I appreciate this might dictate that a longer-term solution might be required, such as that discussed at paragraph 31 above. However that is a matter for the Appellant and the variation that I propose to make is a direct consequence of the grounds of appeal and so would not cause injustice to either party.

37. Painting the roof would fail to remedy the breach by restoring the land to its condition before the breach took place. This remedy appears to have been advanced on the basis of remedying any injury to amenity, but this is not a case that falls to be assessed against section 173(4)(b) of the Act. This remedy could only be achieved by the imposition of planning conditions, which is why I have examined it under ground (a). There are no obvious alternative lesser steps that could be set out with precision in a requirement of the notice.

38. In the circumstances I conclude that no reason is advanced as to why the requirements of the notice, as proposed to be varied, exceed what is necessary to remedy the breach which, for the reasons explained, is the limited scope of the ground (f) appeal in this case. As such, this ground of appeal fails.

Appeal A: Ground (g)

39. The Appellant seeks 6 months on the basis that access to the rear roof slope is anything but simple which, I have no doubt, is true because, amongst other things, of the need to erect scaffolding on third party land. In the scenario that Appeal B cannot be implemented for whatever reason that provides a sound basis for extending the period for compliance.

40. Moreover because of the timetable that I propose to build into the condition that I intend to impose in Appeal B, I consider that the period for compliance should be extended to 12 months. This would allow for a realistic timetable for the condition to be discharged. I intend to allow 2 months for the scheme to be submitted to the Council, 8 weeks, or approximately 2 months, for the scheme to be determined by the Council and 6 months for an appeal to be lodged either against the failure to determine the detailed scheme or against any refusal. That alone gives rise to a 10-month period, potentially before any appeal is heard or any period for implementation of the approved scheme.

41. In specifying 12 months I therefore make clear that in the scenario that the Council has refused the submitted details and that an appeal is pending, that the Council should consider exercising its powers in section 173A of the Act. However that would appear to be a worst case scenario. In the alternative scenario that the details are submitted and approved within the timescale set out in the condition that would then allow 8 months to undertake the approved works which is potentially generous, albeit only in that scenario. Amongst other things it is material that the works to the ridge and west face might not require access across the garden of 39 Shaftesbury Avenue, as previously required. For these reasons the ground (g) appeal succeeds and the notice will be varied to allow 12 months to comply with the requirements of the notice.

Both appeals: Conclusion

42. For the reasons given, and having regard to all other matters raised, I conclude that Appeal A should be dismissed and I shall uphold the varied enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act. However for the reasons given, and having regard to all other matters raised, I conclude that Appeal B should be allowed subject to a condition to reflect my earlier reasoning.

Pete Drew

INSPECTOR

Appeal B: Condition Schedule

1) The alterations to the roof of the building hereby permitted shall be removed, and all materials resulting from their removal shall be removed from the land, within 2 months of the date of failure to meet any of the requirements set out in i) to iv) below:

   i) Within 2 months of the date of this decision a scheme of works for the alteration to the ridge of the roof and its western face including, but not limited to, the removal of the visible bolts or screws, or their incorporation into the submitted scheme, shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.

   ii) If within 10 months of the date of this decision the Local Planning Authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

   iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

   iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

   In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.