
Appeal Decision

Site visit made on 21 February 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 21 March 2017

Appeal Ref: APP/P1940/C/16/3158168

**Land and buildings at 1 Bridge Road, Hunton Bridge, Kings Langley,
Hertfordshire, WD4 8RQ**

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Donald Brian Davey against an enforcement notice issued by Three Rivers District Council.
 - The notice was issued on 11 July 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission, the application of roughcast white render to all external elevations of the dwellinghouse.
 - The requirements of the notice are:
 1. Remove the roughcast render from all elevations of the dwellinghouse (elevations marked "A", "B", "C" and "D" on the attached plan labelled "Site Map").
 2. Following compliance with Step 1, apply a smooth white rendered exterior to all elevations of the dwellinghouse (elevations marked "A", "B", "C" and "D" on the attached plan labelled "Site Map").
 3. Following compliance with Steps 1 and 2 above, remove from the Land all debris and waste materials resulting from these actions.
 - The period for compliance with the requirements is 8 months.
 - The appeal is proceeding on the grounds set out in s174(2)(b), (c) and (f) of the Act. 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.
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Decision

1. It is directed that the enforcement notice be varied, in paragraph 5, by:

- (i) Insertion of "Either:" before step 1.
- (ii) After step 3, the insertion of:

"Or:

4. Remove the roughcast render from all elevations of the dwellinghouse (elevations marked 'A', 'B', 'C' and 'D' on the attached plan labelled 'Site Map') and remove from the Land all debris and waste materials resulting from this action."

Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Preliminary matter

2. Grounds (b) and (c) are amongst those known as the “legal grounds”. In a legal ground of appeal the burden of proof is upon the appellant. The test of the evidence is one of balance of probability.¹

The appeal on ground (b)

3. An appeal on ground (b) is that the matter alleged has not occurred as a matter of fact.
4. At my site visit I saw that the building had roughcast white render to all elevations. The Council’s officer had photographed the rendering works whilst in progress. The appellant also appears to acknowledge that the previous pebble-dash render had been taken off and replaced with white render. He sought (unsuccessfully) to regularise the matter through the submission of a retrospective application.
5. In all these circumstances I conclude, on balance of probability, that an act of development has occurred to apply roughcast white render to all elevations as alleged in the enforcement notice as a matter of fact. The appeal on ground (b) fails.

The appeal on ground (c)

6. An appeal on ground (c) is that the matter alleged (if it occurred as a matter of fact) does not amount to a breach of planning control, for example because it is not development or is permitted development.
7. There are photographs of the building taken before the works were carried out when the elevations were pebble-dashed. The building now, with its bright white textured render applied in a swirling pattern, is materially different from the building as it appeared previously with its more muted and understated elevations. The works have amounted to an act of development within the meaning as set out in s55 of the Act.²
8. Within a conservation area the rights enjoyed by householders to carry out works without the need for express planning permission [commonly known as “permitted development” rights] are more limited. Amongst other things, development involving the cladding of any part of the exterior of a dwellinghouse with render is excluded from permitted development within a conservation area.³

¹ Balance of probability concerns “likelihood”. In other words, it means that the assertion being made is more likely than not to be true.

² S55 states that “development” means (amongst other things) the carrying out of building or other operations. Under s55(2)(a) the carrying out of works which do not materially affect the external appearance of a building shall not be taken to involve development. In the appeal case, the works do materially affect the external appearance of the building and are not, therefore, excluded from the meaning of “development” by this proviso.

³ At the time the works were carried out the Town and Country Planning (General Permitted Development) Order 1995 (as amended) [the 1995 GPDO] was in force. One of the limitations under Class A to Part 1 of Schedule 2 (A.2(a)) stated that, in the case of a dwellinghouse in a conservation area, development was not permitted by Class A if it consisted of the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble-dash, render, timber, plastic or tiles. The 1995 GPDO has since been replaced by the Town and Country Planning (General Permitted Development)(England) Order 2015 although this particular limitation is unchanged.

9. I therefore conclude that the application of roughcast white render to the external elevations of the dwellinghouse was development and was not permitted development. The works, therefore, amounted to a breach of planning control. There are no counter arguments put by the appellant. The appeal on ground (c) fails.

The appeal on ground (f)

10. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity that has been caused by the breach.⁴ The words "as the case may be" indicate that the main purpose of the notice should fall within one or the other category.
11. The subject notice alleges the application of roughcast white render and its first requirement is to remove the roughcast white render. This is not a notice where the Council has under enforced to overcome harm to amenity. The main purpose of the notice is to bring about a complete remedy of the breach. My consideration on ground (f) must, therefore, focus upon whether the steps exceed what is necessary to achieve that purpose.
12. S173(4)(a) of the Act states that remedy of the breach can be achieved by (amongst other things) restoring the land to its condition before the breach took place. However, the Council has not sought the re-instatement of pebble-dash to the building's elevations. Instead it has required smooth white render although that would not restore the building to its former condition.
13. On the face of it, I consider that the requirement for smooth white render could fall within the legal provisions of s173 when taking into account that the enforcement regime is intended to be remedial rather than punitive. Read with the other requirements it simply seeks (as the Council sees it) an acceptable solution.
14. However, when looking at what is necessary to remedy the breach the requirements of the notice should match the allegation. In order to reverse what is alleged a simple requirement to remove the render is all that is necessary. Without such a lesser requirement in the alternative, the requirement to apply smooth white render would go too far.⁵
15. For this reason I intend to vary the notice by introducing an alternative requirement to simply remove the roughcast render and resultant debris and waste materials. The appeal on ground (f) succeeds to this limited extent.

Other matters

16. I acknowledge that the appellant has occupied and maintained the property for many years. I note the circumstances within which the rendering works came to be undertaken following structural works and the involvement of the insurance company. I also understand that considerable expense has been incurred by the appellant. However, these are not matters which can influence the conclusions I have reached on the issues which are before me in this appeal.

⁴ These provisions are set out in s174(1)(f) of the Act. They reflect the purposes of an enforcement notice that are set out in s173(4).

⁵ Any finish to the elevations, other than smooth white render which is provided for in the notice, would be a matter for the Council and the appellant in the first instance and may need to be the subject of a planning application.

Conclusion

17. For all the reasons given above, and except to the limited extent identified under ground (f), I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variation.

Susan Wraith

Inspector