

Appeal Decision

Site visit made on 20 September 2019

by K E Down MA (Oxon) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2019

Appeal Ref: APP/R3705/W/19/3225313
13 New Street, Baddesley Ensor, CV9 2DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mrs Charlotte Knott, Rockwarm Insulation Ltd against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2019/0054, dated 28 January 2019, was approved on 5 March 2019 and planning permission was granted subject to conditions.
 - The development permitted is "Provision of cream insulated cladding panels to front of property".
 - The condition in dispute is No 3 which states that: "The finished render colour/type of cream Permarock Silicone Ultra K Palazzo 180 will be maintained".
 - The reason given for the condition is: "In the interests of the amenities of the area and the building concerned".
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Decision

1. The appeal is allowed and the planning permission Ref PAP/2019/0054 for cream insulated cladding panels to front of property at 13 New Street, Baddesley Ensor, CV9 2DW, granted on 5 March 2019 by North Warwickshire Borough Council, is varied by deleting conditions 1, 2 and 3.

Background Information

2. In January 2019 external wall insulation (EWI) was installed at the appeal property. The Council advised that planning permission was required for EWI to the front elevation because previously this had not been painted or rendered and retained the original red brick finish. A planning application was submitted for the provision of cream insulated cladding panels to the front wall. As part of the supporting information details and a sample of the cladding were provided.
 3. Planning permission was granted on 5 March 2019. There is no dispute that the cladding used is that specified in Condition 3. However, the appellant considers that the wording of Condition 3 would prevent the current or a future occupier of the appeal dwelling from changing the colour or type of the cladding without express planning permission.
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Main Issue

4. There is one main issue which is the effect on the character and appearance of the appeal property and the surrounding area if Condition 3 was deleted to remove the requirement to maintain the existing colour/type of render.

Reasons

5. The appellant contends that Condition 3, in effect, removes permitted development rights to paint a building or clad a dwelling, as set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 and that this is unnecessary and unreasonable because such rights have not been removed from other dwellings in the street. The appellant points out that the exact same cladding may not be available in the future and that a future occupier may, in any case, wish to change the colour of the cladding.
6. The appeal property is a modest, semi-detached, early 20th century house set behind a small front garden enclosed by a low red brick wall. It has a bay window at ground floor under a tiled canopy that continues across the pair of dwellings. The attached pair is similar but has not been rendered, retaining the original red brick finish.
7. The street as a whole comprises other dwellings of a similar age and style to the appeal dwelling, arranged in semi-detached pairs and short terraces, together with detached and more recent additions of various sizes and design. There is no common building line but most dwellings have small front gardens. The dwellings are predominantly of red brick although the bricks are not uniform. A number having been partly or wholly rendered. The majority of these have a cream or white finish but there are also examples of pebble dash, other cladding and other colours. There is a general store and a large red brick building housing a social club near the appeal dwelling.
8. Overall the character of the street is one of harmonious variety with red brick as the dominant external material. I agree with the Council that where dwellings are rendered this is mainly coloured cream or white but I do not find that where other finishes have been used they detract from the street scene. On the contrary, in this non-uniform street, pockets of individuality provide diversity and interest which enhance the character and appearance of the area.
9. The Council points out that the appearance of buildings is a material planning consideration that applies universally and not only in the case of Conservation Areas or Listed Buildings. I agree. Nevertheless, whilst a cream or white finish might be in keeping in New Street, as argued by the Council, I am not convinced by the evidence that other finishes or colours at the appeal dwelling would fail to harmonise with or enhance the varied street scene.
10. It is therefore concluded on the main issue that there would be no materially harmful effect on the character or appearance of the appeal property or the surrounding area if Condition 3 was deleted to remove the requirement to maintain the existing colour/type of render. In consequence, Condition 3 is not necessary and its deletion would not conflict with Policy NW12 of the North Warwickshire Local Plan Core Strategy, 2014, or Section 12 of the National Planning Policy Framework (2019) which, taken together, expect new development to improve a settlement's character, appearance and

environmental quality through being visually attractive and sympathetic to the local character and history.

11. The Council suggests that Condition 3 is reasonable because the appellant specified the product in the original application and was represented by an agent. However, specifying proposed materials and finishes in an application is commonplace but the requirement, through a planning condition, for the retention and/or maintenance of those materials and finishes is not justified unless there are sound planning reasons. The Planning Practice Guidance (PPG) makes clear that conditions should be kept to a minimum and must satisfy the six tests which include being necessary and reasonable. Moreover, it makes clear that even a condition suggested by or agreed to by the applicant should not be used unless it satisfies the six tests.
12. The Council also suggests that because there is a procedure for dealing with any need to vary the terms of the condition, through the submission of an application, the condition does not prejudice the appellant or future occupiers. I disagree. The requirement to submit a planning application is onerous and carries a cost. Moreover, the outcome cannot be guaranteed. If, in the absence of the condition, changes could be made to the property without an application then it appears to me that the condition is an encumbrance which in this case is not justified.
13. The PPG advises that area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. I consider that the same reasoning would apply where such freedoms are removed from one dwelling, as in this case, without a clear justification whilst others nearby continue to benefit.
14. I therefore conclude that Condition 3 is neither necessary nor reasonable and I shall delete it.
15. The appellant points out that Conditions 1 (commencement) and 2 (requiring the development to be carried out in accordance with the approved plans and design statement) were not necessary because the development had been completed prior to the grant of planning permission. The Council suggests in evidence that these conditions should now be deleted. I agree that they do not serve a planning purpose and I shall delete them from the planning permission.
16. For the reasons set out above and having regard to all other matters raised the appeal is therefore allowed and I shall vary the planning permission by deleting disputed Condition 3 as well as Conditions 1 and 2.

KE Down
INSPECTOR