
Appeal Decision

Site visit made on 9 November 2021

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 17th December 2021

Appeal Ref: APP/X1165/C/21/3279760

The Pines Studio, Cockington Court, Cockington Lane, Torquay TQ2 6XA

- 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 Mr Damian Offer, Torbay Coast and Countryside Trust against an enforcement notice issued by Torbay Council ('the Notice').
 - The enforcement notice, numbered 2019/0003/en, was issued on 25 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the replacement of an existing timber roof with a roof made of fibre cement slate ("the unauthorised works") as shown on the attached photograph.
 - The requirements of the notice are remove the synthetic slate roof, and overlay a corrugated fibre cement sheets over existing larch sheeted roof in accordance with planning permission P/2019/1107.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

Ground (a)

2. An appeal made under this ground is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.
3. The Main Issue in this appeal is the effect that the development has on the character and appearance of the Cockington Conservation Area ('CCA'), a designated heritage asset.
4. The assessment of the appeal requires that the terms of Section 72(1) of the Planning and Listed Buildings Act 1990 are followed; namely, that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area, ('the statutory test').
5. The Cockington Conservation Area Appraisal, November 2005, ('the Appraisal'), describes the CCA as having three character areas. These, whilst being distinct from one another, combine to make a single coherent entity. The appeal site lies within character area 1, 'Cockington Court and the Landscaped Park'.

Central to this character area is the grade II* listed Cockington Court, its complex of associated outbuildings and the parish church. The settings of any of these listed buildings would be unaffected by the proposal.

6. The majority of this character area is made up of planned parkland, dating from the early 19th century. Its owners through the nineteenth and twentieth centuries protected the area from development as much as possible. Although it lies within the urban area of Torquay, as the Appellant's Heritage Appraisal and Impact Assessment ('HAIA') sets out, it retains a very strong sense of *rus in urbe*, the illusion of countryside within an urban area. Whilst relatively new housing development has been developed close to the edge of the CCA, and is seen from some vantage points within it, it does not detract from this strong sense.
7. The Pines Studio ('the Studio') is a building that dates from 2012 located close to a road that runs to Cockington Court. The road runs through a wooded area and, despite its proximity, the Studio is little seen from it, if it is seen at all. A public car park is accessed from this road, from where a small part of the gable end of the Studio can be seen. However, its roof covering is not appreciated from there. It is, however, readily visible to those visiting the Studio.
8. When originally built, the Studio's roof was clad in timber. I have not been provided with photographs showing this roof covering in-situ. However, I did see the timber from the roof on-site when I visited in respect of an earlier appeal¹. That covering might have had a crisp form when first applied, reflecting the design of the Studios, as suggested in the HAIA. However, being timber, I have little doubt that this crispness would become eroded over time in much the same way as the corrugated cement used on the roofs of Cockington Craft Studios has. In any event, I do not find that providing a crisp roof covering is essential to the success of the architecture of the Studio.
9. The Appraisal uses the adjective 'rustic' on many occasions to describe the architecture and materials within the CCA. Although it is subjective, I find that this term would apply to both the original timber cladding and corrugated cement boards. In my earlier appeal decision relating to the use of fibre cement tiles on the roof of the Studio, I found that they were not rustic, and I find no reason to change my mind on this point.
10. The use of both the timber boarding and fibre cement slate appears to be unique to the CCA. However, the boarding was appropriate to the *rus in urbe* setting in a manner that the uniform and shiny appearance of the fibre cement slates are not. The latter lack the variety that is found in the natural slate roofs that are seen elsewhere in the CCA.
11. That the fibre cement slates provide a horizontal emphasis reflective of the timber boarding does not outweigh the harm that they cause. Notwithstanding the distinctive design of the Studio, the vertical emphasis of fibre cement sheeting would not have a harmful effect on its character or appearance. Those sheets would sit comfortably on it.
12. As the Studio is well-screened, the roof covering is not seen until one is relatively close-by. However, this is not sufficient justification to allow a material that appears alien in the CCA. In any event, given the uses it has been

¹ APP/X1165/W/19/3224522

put to, people do visit the building and would appreciate the ill-effects of the fibre cement slates that I refer to, above. Furthermore, given the coherence of the character area and the CCA as a whole, even minor developments to small and relatively well-hidden buildings like the appeal site take on a heightened degree of importance.

13. The HAIA assesses the Evidential, Historic, Communal and Aesthetic Values of the building before concluding that the Studio has a very low significance in the CCA. Given the Studio's small scale and relatively secluded location, there is some merit in this argument, and I acknowledge that not all buildings in a conservation area are of equal importance. However, much of the coherency across the CCA is derived from the materials that have been used on its buildings. As I determined in my earlier decision, using materials appropriate to its *rus in urbe* setting is very important.
14. As the Evidential Value assessment in the HAIA sets out, the CCA has been well protected from change that would alter its character and where change has been allowed, it has been well-managed. This would not be the case were the use of fibre cement slates to be allowed. These neither preserve nor enhance the character or appearance of the CCA. Therefore, their use, fails the statutory test, and is contrary to Policies SS10 and Policy DE1 of the Torbay Local Plan 2012 to 2030, adopted December 2015. Amongst their terms, the former mirrors the statutory test and the latter requires developments to be well-designed and to respect and enhance Torbay's special qualities.
15. This harm would be "less than substantial", in the words of the National Planning Policy Framework ('the Framework'). Nevertheless, such harm needs to be given considerable importance and weight.
16. As set out in the Framework, where a proposal would result in less than substantial harm to the significance of a designated heritage asset this harm should be weighed against the public benefits of the proposal including, where possible, securing its optimum viable use.
17. The HAIA opines that whilst there would be a low degree of harm to the CCA, this is outweighed by the public benefit of keeping the building functional and operational, though it does not give further explanation of this point. The Appellant's Statement of Case goes a little further, referring to the potential disruption to the important economic benefits provided by the business run by the building's occupants. Whilst I acknowledge the economic public benefit put forward, it is my finding that this does not outweigh the harm that arises to the CCA.
18. For the reasons given above, the appeal made under Ground (a) is dismissed.

Ground (g)

19. An appeal on this ground is made on the basis that the time given for compliance with the requirements of the Notice falls short of what should reasonably be allowed.
20. The Appellant states that a 24-month period would be required; its case is based on the following points. The state of the roof overlain by the fibre cement tiles is unknown and additional work to allow it to be overlain by the fibre cement sheeting. Dependent on what is required, this might mean that the Studio's occupant has to move out for the duration of works and finding

alternative accommodation would take time. The costs of any necessary works would be borne by the Appellant, a charity, and time would be required to raise the funds for this. Lastly, although it is not thought this would be the case, the works might uncover the presence of protected species and this would lead to delays to allow the required surveys to be undertaken and licences to be gained. Such surveys might not be possible in winter when, in addition, the weather would not be likely to be suited to roof replacement works. To a limited degree, the Appellant's case was based on this decision being issued in late summer.

21. The Council considers that a period of 12 months is more than adequate to comply with the terms of the enforcement notice. I give little weight to its reference to the Appellant having already had the benefit of the period between the present roof covering being affixed and the time of the Notice being issued to address the long-term viability of the roof. Here, having made a Ground (a) case, the appellant was entitled to assume success on this and, thus, that it would not have to undertake the works.
22. The Appellant's points are well-made. However, its case is based on the possibility of things occurring, rather than on actual evidence that they will. Allowing the breach to remain for the period sought would call into question whether it was expedient for the LPA to issue the EN in the first place. I find that 12 months is a reasonable period to comply with the requirements of the Notice. As the Council has alluded to, it has a discretionary power under s173A(1)(b) of the Act to extend any period for compliance. However, this is a matter between it and those with an interest in the Studio.
23. For the reasons given above, the Ground (g) appeal fails.

Conclusion

24. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow

Inspector