



Appeal Decision

Site visit made on 18 January 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2024

Appeal Ref: APP/W1715/C/23/3314562

Land at 15 Wylve Close, West End, Hampshire SO18 3LF

- 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 Allison Conduct against an enforcement notice issued by Eastleigh Borough Council.
 - The enforcement notice was issued on 12 December 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of blue cladding to the principal elevation and part side elevation of the dwelling.
 - The requirements of the notice are: 1. Remove from the property the unauthorised cladding from the principal and side elevation of the property. 2. Deposit all waste to an authorised place of disposal.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with corrections.

Preliminary Matter

2. As only a ground (c) appeal has been lodged, I am unable to consider the planning merits of retaining the cladding, other examples of cladding in the area, or any other benefits that may be considered to arise.

The Enforcement Notice

3. Whilst not formally raised by the appellant, it is highlighted that the cladding is grey as opposed blue. This can therefore be corrected in section 3 of the notice without injustice.
4. In respect of the requirements in section 5 of the notice, reference is made to 'property' as opposed 'dwelling', which is the term used in section 3. Injustice however does not arise from making such corrections in the interests of consistency. Furthermore, it has been held that a notice cannot require waste to be deposited at an authorised place of disposal, as for amongst other reasons, other legitimate options might be available. Again, injustice does not arise from making such corrections.

The ground (c) appeal

5. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.
6. The cladding is affixed at the first-floor level to the front and part of the side elevations of the dwelling. The evidence before me is that it was installed in around September 2020. Whilst it might be considered a cosmetic treatment to the outside of the dwelling, the cladding is physically attached and has been for a considerable period of time. It has therefore not been demonstrated on the balance of probabilities that the cladding is temporary, even though it would be possible to remove it.
7. The cladding then materially affects the external appearance of the dwelling, given the remainder is brickwork, and so development for the purposes of s55 of the planning Act has been undertaken.
8. Class A of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, allows for certain enlargement, improvement or other alterations to be undertaken to dwellings without the need for a planning permission. It is a statutory instrument, then known as a permitted development right.
9. In respect of cladding, Class A concludes that it would be a permitted development right, given the property is not in a conservation or other such area, providing that:

'the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse'.
10. Whilst I appreciate the cladding is now the same colour as the front windows and door of the property, this was not the case when the cladding was installed. In any event, the relevant materials used in the construction of the exterior of the existing dwelling is that of brickwork. Given the cladding clearly is not of a similar appearance to the brickwork, it therefore cannot be a form of permitted development.
11. The appellant contends that the installer has confirmed in writing that planning permission is not required. That letter is not before me, but in any event, it would not be determinative as it cannot override a statutory instrument, and therefore the permitted development rights that are actually available.
12. As a matter of fact and degree, the appellant has therefore not discharged the necessary burden of proof to demonstrate that there has not been a breach of planning control.
13. Planning permission is therefore required for the cladding, and none has been brought to my attention.
14. The appeal on ground (c) accordingly must fail.

Formal Decision

15. It is directed that the enforcement notice be corrected by:

- substituting the words '*grey cladding*' in section 3 of the notice;
- deleting the words in section 5.1 of the notice and replacing them with the words: '*Remove the unauthorised grey cladding from the principal and side elevations of the dwelling as marked blue on the attached plan.*'
- deleting the words in section 5.2 of the notice and replacing them with the words: '*Remove all waste materials from the land affected.*'

16. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR