



Appeal Decision

Site visit made on 19 August 2024

by D Hartley BA (Hons), MTP, MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th AUGUST 2024

Appeal Ref: APP/Z4718/C/24/3336217

14 Huddersfield Road, Birstall, Batley, WF17 9AA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Ayaz Ashraf of Evelex Ltd against an enforcement notice issued by Kirklees Metropolitan Council.
 - The notice was issued on 22 November 2023.
 - The breach of planning control as alleged in the notice is without planning permission, an alteration to the roof consisting of the removal of grey concrete tiles and the installation of red tiles.
 - The requirements of the notice are to a) remove the existing red double pantile roof tile and replace it with smooth grey concrete tiles matching what existed prior to the development taking place (see appendix 1), and b) remove any debris resulting from step a).
 - The period for compliance with the requirements is 90 days.
 - 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). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by deleting the words *'remove the existing red double pantile roof tile and replace it with smooth grey concrete tiles matching what existed prior to the development taking place (see appendix 1)'* in section 5a) and replacing them with *'remove the existing red tiles and replace them with smooth grey concrete tiles matching what existed prior to the development taking place (see appendix 1)'*. Subject to the variation, 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.

Preliminary Matter

2. The Government consulted on reforms to the National Planning Policy Framework 2023 (the Framework) on 30 July 2024 (Consultation Draft Framework). The consultation closes on 24 September 2024. I afford the Consultation Draft Framework limited weight in decision making terms as a material planning consideration. Considering the deemed planning application main issue below, there are no proposed reforms in the Consultation Draft Framework which have a material bearing on how this appeal should be considered. In this regard, it has not been necessary for me to seek comments from the main parties in respect of the Consultation Draft Framework.

The Notice

3. Requirement 5a) of the notice does not precisely match the allegation in the notice. Moreover, it refers to the removal of a tile rather than tiles. It is clear from the allegation and the reasons for issuing the notice that the notice is attacking all the unauthorised roof tiles. The ground (a) and (g) appeals have been considered by the respective main parties on this basis. Without injustice being caused to the main parties, I shall vary requirement 5a) of the notice by deleting all the words and replacing them with '*remove the existing red tiles and replace them with smooth grey concrete tiles matching what existed prior to the development taking place (see appendix 1)*'.

Ground (a) appeal and the deemed planning application

Main issue

4. An appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the notice and the main issue is whether the unauthorised development preserves or enhances the character or appearance of the Birstall Conservation Area.

Reasons

5. The appeal site comprises a traditional, detached, stone-built building. It falls within a mixed commercial and residential area and occupies a prominent position within the Birstall Conservation Area (CA) alongside Huddersfield Road which is a busy route. It is in a part of the CA where there are several other more traditional and natural stone-built properties at a busy road intersection and climbing up Nelson Street. The evidence is that prior to the unauthorised red double pantiles being installed on the property it had a smooth grey concrete tiled roof. The breach of planning control was considered as part of the submission of a refused retrospective planning application in July 2021¹.
6. The significance of this part of the CA relates to the existence of a number of traditional buildings, most of which are built with natural stone walls and have either natural stone slab roofs or slate roofs. Where non-traditional roofing materials exist in the CA, they are generally finished in a dark colour and have a smooth finish, thereby assimilating well with the more traditional and distinctive roofing materials in the rest of the CA. While the building close to the junction of Gelderd Road and Nelson Street (a former public house), which is occupied by New Brooklyn Dental Care, includes a red roofing material, most of the roofing materials in the CA are of muted tones and colours and, in this regard, the CA is therefore experienced as having a pleasing and characterful design synergy.
7. In the context of the above, the red double pantile roof which is the subject of this appeal appears as a stark and incongruous addition in this part of the CA. Owing to its colour and design, it has a harmful jarring impact when experienced by passers-by, particularly when seen from higher ground on Nelson Street.
8. I acknowledge that the appeal building did not previously include a natural stone slab or slate roof. However, the evidence is that it previously included a

¹ Planning application reference 2021/62/90907/E

smooth concrete slate tiled roof, and, in this regard, it blended in with the appearance of other buildings in the CA. It is noteworthy that in terms of the requirements of the notice, the Council is simply requiring the building to be returned to its appearance prior to the unauthorised development taking place.

9. For the reasons outlined above, I conclude that the breach of planning control does not preserve or enhance the character or appearance of the CA. In the context of paragraph 208 of the Framework, I find that the development has resulted in less than substantial harm being caused to the significance of the CA.
10. I do not doubt that re-roofing the property was part and parcel of the renovations which led to bringing the former vacant building back into use and, in turn, that this has led to some employment benefits. I have considered the appellant's quotation from a roofing contractor to undertake works to ensure compliance with the requirements of the notice. I acknowledge that this is not an insignificant amount of money. However, this is a matter which must be tempered by the fact that development was carried out without first obtaining the necessary planning permission.
11. The appellant asserts that if the red double pantile roof must be removed, and replaced with a new roof that matched the one that existed previously, it would mean that the occupying business would 'likely' have to fold with the loss of six jobs. This claim is not supported by any objective evidence from the appellant such as company accounts or other financial information.
12. In any event, harm has been caused to the CA and it is noteworthy that paragraph 205 of the Framework states that when considering the impact of development on the significance of a CA, great weight should be given to its conservation. In this case, I do not find that the public benefits outlined by the appellant are sufficient to outweigh the less than substantial harm caused to the significance of the CA. Furthermore, the evidence does not indicate that a red double pantile roof is the only means of securing the optimum viable use of the appeal building.
13. For the reasons outlined above, I find that the development does not accord with the design and conservation requirements of policies LP24 and LP35 of the adopted Kirklees Local Plan 2019 and chapter 16 of the Framework.

Other considerations

14. The appellant has commented that a long period has elapsed between the retrospective planning application being refused and enforcement action being taken. Furthermore, he comments that only one complaint has been made to the Council in respect of the unauthorised development. He asserts that the grant of planning permission is therefore justified.
15. The above matters do not alter or outweigh my conclusion on the main issue. I have determined this appeal on its individual planning merits and have exercised my own planning judgement. I do not know why the Council took some time to issue the notice following its refusal of planning permission. However, given my conclusion on the ground (a) appeal, I do not find that the Council acted disproportionately in deciding that it was expedient to take enforcement action.

Ground (a) appeal conclusion

16. For the reasons given above, I conclude that the development does not accord with the development plan for the area taken as a whole and there are no identified material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails.

Ground (g) appeal

17. The appeal made on ground (g) is that the period specified in the notice in accordance with section 173(9) of the 1990 Act (as amended) falls short of what should reasonably be allowed.
18. The claim made by the appellant is that more than ninety days is needed as the required works would cost over £28,000 and would *'most likely to result in the appellant's business folding. As such, there may be insufficient funds to carry out the re-roofing works and the building would need to be put up for sale'*. The appellant therefore requests six months.
19. The above comments are not supported with any objective evidence. I have not been provided with any accounts or other financial information from the appellant which might justify extending the compliance period to ensure that the business remains viable and/or that existing jobs are reasonably protected. Furthermore, the comments made by the appellant's agent, which include the words *'most likely'* and *'may be'*, are not persuasive.
20. On the evidence that is before me, I find that a compliance period of ninety days is reasonable. If it transpires that it can be reasonably justified that a longer period is needed to deal with the requirements of the notice then under Section 173A(1)(b) of the Act the local planning authority can *'waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9)'*.
21. For the reasons outlined above, I conclude that the ground (g) appeal fails.

Conclusion

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

D Hartley

INSPECTOR