



Appeal Decision

Site visit made on 28 January 2025

by **R Merrett Bsc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 February 2025

Appeal Ref: APP/W0734/C/24/3348319

Land at 4 The Crescent, Middlesbrough TS5 6SE

- 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 Abdul Akbar against an enforcement notice issued by Middlesbrough Borough Council.
- The enforcement notice was issued on 27 June 2024.
- The breach of planning control as alleged in the notice is Installation of artificial slate roofing tiles; Installation of 2 no. rooflights on front roof slope; Painting stone window surrounds a different colour (light green to dark grey); Right hand ground floor side bay window (previously fixed,) has been removed and replaced with an opening casement window; Central first floor window (previously fixed) has been removed and replaced with an opening casement window and the window frame has been widened.
- The requirements of the notice are (i) Remove the artificial slate roof tiles and replace with natural slate (to either match those there previously or a type specifically agreed in writing with the Local Planning Authority; (ii) Remove the 2 no. rooflights on front roof slope and reinstate the roof covering; (iii) Re-paint stone window surrounds in the same colour as those at No 2 The Crescent; (iv) Remove the two side windows (previously fixed, now opening casements) in the right-hand ground floor bay window and the central first floor window (which now has a wider frame) and replace with timber-framed, vertical sliding sash windows as found in No. 2 The Crescent.
- The period for compliance with the requirements is 24 weeks.
- The appeal is made on the grounds set out in section 174(2)(a), (c), (f) 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.

Summary of Decision: The appeal succeeds in part and the notice is corrected to delete the relevant allegation and requirement, and permission is also granted in part, but otherwise the appeal fails and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appellant has appealed on ground (c), namely that there has not been breach of planning control. However, in reality, this element of the appeal is that the alleged unauthorised windows were completed more than 4 years prior to the issue of the enforcement notice. This is therefore an appeal on ground (d), namely that there can be no enforcement due to the passage of time, rather than an appeal on ground (c). I have dealt with the appeal accordingly below.

The appeal on ground (d)

2. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control. S171B(1) of the 1990 Act provides that no enforcement action may be taken in respect of any unauthorised operational development after the end of the period of

four years¹ beginning with the date on which the operations were ‘substantially completed’. As set out above the ground (d) appeal is confined to the unauthorised front elevation windows, as described in the alleged breach of planning control.

3. In order to succeed on this ground, in accordance with Section 171B(1) of the 1990 Act, it would therefore be necessary for the appellant to show, on the balance of probability, that the alleged windows were substantially completed by 27 June 2020. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
4. In support of this element of the appeal, the appellant states that the windows were in place at the time they purchased the property in December 2019. Whilst this statement is not corroborated by irrefutable evidence, the appellant has provided ‘before and after’ photographs, purporting to demonstrate the windows were changed between June 2018 and 20 August 2020². The Council has provided a photograph, dating from a site visit in January 2019, which shows the alleged windows had not been changed at that time. However, this serves only to narrow the purported installation time period, rather than contradict the appellant’s point that the windows were in place by December 2019.
5. The Council argues that had the windows been installed by the time the appellant purchased the property, it would have expected to see supporting evidence in the form of photographs on the relevant sales particulars. However, the appellant responds to this point, stating the sale procedure was foreshortened because his interest in the property was previously registered on an agent’s waiting list, therefore obviating the need to promote the property through wider marketing. I have no reason to doubt this explanation.
6. The date stamp on the appellant’s latter photograph, as referred to above, persuades me that its date is genuine. Therefore, despite the Council referring to a more recent drawing showing the mid-height glazing bars on the unauthorised windows to be absent³, I am not persuaded the windows targeted by the notice had not been installed by 20 August 2020, and therefore by the time the said drawing was submitted to the Council in December 2020.
7. I have taken into consideration the Council has not been able to provide any compelling evidence to contradict the photograph showing the unauthorised windows to have been implemented by 20 August 2020. Also, that this would leave only a relatively short time period within which the breach could have taken place, whilst enforcement immunity would not yet have accrued⁴. This reduces the likelihood of the development having occurred within the enforceable time period, when also taking into account that the most recent evidence of the windows prior to being changed was January 2019.
8. Therefore, when taking the available evidence, in the round, the credibility of which I have no reason to doubt, I conclude on the balance of probability the alleged windows were substantially completed more than four years before the notice was issued. The ground (d) appeal therefore succeeds to this extent and the notice will be corrected accordingly to delete the relevant allegation and requirement.

¹ Insofar as it relates to breaches of planning control that have taken place before 25 April 2024.

² See paragraph 3.9 of the appellant’s statement of case.

³ See Image 1 of the Council’s statement of case.

⁴ 27 June 2020 – 20 August 2020.

The appeal on ground (a)

Main Issue

9. The appeal on ground (a) is that planning permission ought to be granted. The main issue is the effect of development on the character and appearance of the host dwelling, and the wider Linthorpe Conservation Area (CA).

Reasons

10. The appeal building comprises a large, two storey, red-brick dwelling, set in spacious grounds, and features ground floor bay windows, symmetrical curved stone surrounds to the upper floor front windows and courses of decorative brickwork. It is part of a group of four adjoining properties, in a prominent suburban location at the junction of The Crescent and The Avenue. Notably, similar features including symmetrical curved stone surrounds and decorative brickwork, are replicated on the parallel front elevation of the adjoining dwelling (No 2). This gives a sense of visual cohesion between the two properties.
11. This part of the CA is characterised by large red brick buildings, set back from the highway, with mature trees inside prominent boundary walls. The tall vegetation gives a verdant feel to the street scene and provides a degree of screening. However, there are still sufficient gaps to ensure the appeal building remains prominent from the public highway.
12. From my visit it was apparent there remains a strong representation of traditional slate roof tiles on properties within the CA, including on the other three buildings with which the appeal building forms a group.
13. The main roof of the appeal dwelling has been replaced with tiles constructed from a non-traditional material. These have a relatively thick profile and lack the sensitivity to the traditional characteristics of the building, brought about by the elegant and slender joins of slate tiles. The roof is prominent and appears at odds with the traditional slate covering on the adjoining properties.
14. I note that the tiles would be consistent with the roof covering on the adjoining single storey side extension, and that reference to their durability has been made. However, I am not persuaded this justifies the loss of slates on the more prominent and larger scale roof of the main dwelling, when also taking into account the adjoining properties. The introduction of artificial roof tiles serves to erode the representation of natural roofing material in the CA.
15. The curved window surrounds have been painted a dark grey colour, and are in stark contrast both with the white colouring of the window frames, and with the more subdued, cream shade of the window surrounds on the adjoining frontage at No 2. The darker shading draws the eye, and detracts from the visual cohesion both of the front elevation and between the two buildings. It is not justified by variations in exterior painting elsewhere within the CA.
16. I concur with the Council that the previous light green colouring was more subdued. I consider that it would be appropriate to restore the surrounds to that previous more subtle shade, even though this would not match the colour used for No 2, in order to at least strengthen the visual harmony of the two dwellings, in the interests of protecting the character and appearance of the area. The light green colouring would also be more in keeping with that on the upper part of the entrance porch.

17. I conclude that the installation of artificial roof tiles and the painting of the window surrounds, both as independent acts of development and in combination with one another result in harm to the character and appearance of the dwelling and the CA.
18. The rooflights on the appeal building are relatively small and, orientated flush with the plane of the roof, would not tend to draw the eye. Furthermore, whilst only a small number of properties within the immediate area feature front facing rooflights, this is not a completely alien feature. Accordingly, I am sympathetic to the view that this specific alteration has not resulted in harm to the character and appearance of the dwelling and CA.

The ground (a) appeal conclusion

19. In accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 I have a statutory duty under Section 72(1) to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. For the reasons set out above, I conclude that the roofing tiles and painted window surrounds cause less than substantial harm to the character and appearance of the dwelling and wider CA. However, in terms of the guidance in the National Planning Policy Framework (the Framework), there would still be real and serious harm, which is a consideration of great weight.
20. In such circumstances, where harm is identified to the significance of a designated heritage asset, in this case the CA, the Framework requires that this harm is weighed against the public benefits of the proposal. A convincing case has not been made that there would be public benefits from the scheme sufficient to outweigh the harm I have identified.
21. For the aforementioned reasons these developments would be in conflict with the Framework and also with Policies CS4, CS5 and DC1 of the Middlesbrough Core Strategy 2008 and with the Council's Urban Design Supplementary Planning Document 2013 insofar as they seek to promote high quality design and protect and enhance historic heritage. Equally, I have concluded that the rooflights do not result in such harm. Accordingly, these alterations would not conflict with the aforementioned policies.

The appeal on ground (f)

22. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). The 1990 Act sets out that the breach may be remedied by making the development comply with the terms of any planning permission granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
23. With regard to the unauthorised development, insofar as the objectives of the notice are to secure the removal of various operational developments and use replacement materials to match those previously in place, the objective is to restore the land to its condition before the breach took place. It follows that the purpose of the notice, in this regard, is to remedy the breach of planning control. To require that much does not, therefore, exceed what is necessary.

24. The appellant's ground (f) appeal is specifically that it is excessive to require the repainting of the stone window surrounds and the removal and replacement of the targeted front elevation windows.
25. I have concluded that the dark grey painted window surrounds should not be granted planning permission. Therefore, their repainting to restore the previous colour, undisputed to be light green, would not be an excessive requirement. However, the Council's requirement is for the colour to match the window surrounds at the neighbouring property, No 2 The Crescent. Where planning permission has not been granted for the development, the power is simply to restore the land to its previous condition. There is no statutory power to require the appellant to undertake works which would result in an improvement to or variation from that previous condition.
26. The requirement is therefore excessive. However, I consider that the notice can be corrected, to require the window surrounds to be restored to their condition before the breach took place, without resulting in injustice to the parties.
27. I have concluded above that planning permission ought to be granted for the rooflights in the front roof slope. That permission will therefore override the corresponding requirement in the notice, by virtue of s180 of the 1990 Act. I have also concluded that the targeted windows in the front elevation ought to be omitted from the notice, due to success in relation to the ground (d) appeal.
28. Whilst not specifically part of the ground (f) appeal, the requirement in relation to the roof tiles is to replace with a natural slate to match those there previously, or alternatively a type specifically agreed with the Council. However, the requirement for agreement to be reached is 'open-ended' and therefore not sufficiently certain. Again, I consider that the notice may be corrected in order to eliminate this optional element of the requirement, without resulting in injustice to the parties.
29. The ground (f) appeal therefore succeeds to a limited extent to reflect the above findings.

The appeal on ground (g)

30. The appeal is that the compliance period falls short of what should reasonably be allowed. When taking into account that I will grant planning permission for the roof lights and that the front elevation windows will be omitted from the notice, following its correction, the requirements of the notice will essentially be limited to replacing the artificial roof tiles with natural slate and re-painting the stone window surrounds.
31. The notice allows a compliance period of 24 weeks. There is no evidence before me to indicate that the necessary arrangements could not be made to secure compliance within this timescale. The ground (g) appeal therefore fails.

Overall conclusion

32. For the reasons given above I conclude that the appeal should succeed in part only. The notice is corrected to delete the relevant allegations and requirements for part of the matters the subject of the notice (the alleged front elevation windows).
33. Furthermore, in accordance with s177(1) of the 1990 Act, I will grant planning permission for part of the matters the subject of the enforcement notice (the two rooflights on the front roof slope) but otherwise I will uphold the notice, with

corrections, and refuse to grant planning permission on the other parts (the artificial slate roofing tiles and painting of the stone window surrounds). The requirements of the upheld notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the 1990 Act.

34. Consequently, the notice ceases to have effect with regard to the two rooflights because they will benefit from planning permission and are therefore lawful for planning purposes.

Formal Decision

35. It is directed that the enforcement notice is corrected at Paragraph 3 by the deletion of the following wording, describing part of the breach of planning control, in its entirety:

"Right hand ground floor side bay window (previously fixed,) has been removed and replaced with an opening casement window

Central first floor window (previously fixed) has been removed and replaced with an opening casement window and the window frame has been widened."; and

That it is corrected at Paragraph 4 by the deletion of the wording at part (i) in its entirety and substitution of the following wording instead:

"(i) Remove the artificial slate roof tiles and replace with natural slate to match those there previously"; and

That it is corrected at Paragraph 4 by the deletion of the wording at part (iii) in its entirety and substitution of the following wording instead:

"(iii) Re-paint stone window surrounds to match the light green colour they were painted prior to the breach of planning control"; and

That it is corrected at Paragraph 4 by the deletion of the following wording at part (iv) in its entirety:

"(iv) Remove the two side windows (previously fixed, now opening casements) in the right-hand ground floor bay window and the central first floor window (which now has a wider frame) and replace with timber-framed, vertical sliding sash windows as found in No. 2 The Crescent"; and

That it is corrected at Paragraph 5 by the deletion of the words "paragraph 5" and their substitution with the words "paragraph 4".

36. Subject to the corrections, the appeal is allowed in part and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the installation of 2 no. rooflights on the front roof slope at 4 The Crescent, Middlesbrough TS5 6SE.

37. The appeal is dismissed, and the enforcement notice is upheld, as corrected, and planning permission is refused in respect of installation of artificial slate roofing tiles and painting stone window surrounds a different colour (light green to dark grey) at 4 The Crescent, Middlesbrough TS5 6SE on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R. Merrett

INSPECTOR