



## Appeal Decision

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By **A L McCooey BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Decision date: 02/11/2023

Appeal reference: CAS-02433-D0C4X4

Site address: 101, Port Road West, Barry

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- 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 Daniel Phillip Cooper against an enforcement notice issued by Vale of Glamorgan Council.
  - The enforcement notice, numbered ENF/2021/0300/PC, was issued on 1 December 2022.
  - The breach of planning control as alleged in the notice is:  
Without planning permission, the carrying out of operational development in the form of re-roofing the original dwelling and roofing the side extension to the original dwelling with grey tiles and the erection of a 1.80 metre boundary wall/fence (“the Boundary Structure”), in the approximate location highlighted in blue on the Plan.
  - The requirements of the notice are to:
    - (i) Permanently remove the grey cement roof tiles on the original dwelling and replace them with a suitable alternative that matches, as far as practicable, the colour and concrete texture/profile of the tiles on the original dwelling and adjoining property.
    - (ii) Permanently remove the grey cement roof tiles on the two-storey side extension and replace them with a suitable alternative that matches the colour and concrete texture/profile of the tiles on the original dwelling and adjoining property.
    - (iii) Reduce the 1.8m high Boundary Structure to a height of no more than 1m above ground level
    - (iv) Permanently remove from the Land all of the waste materials resulting from the taking of steps (i) – (iv) above from the site.
  - The period for compliance with requirements (i) and (ii) is 6 months, for requirement (iii) is 3 months and for (iv) is 1 month following the individual completion of each of the steps set out in (i), (ii) and (iii).
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended.
  - A site visit was made by the Inspector on 25 October 2023.
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## **Decision**

1. It is directed that the enforcement notice (EN) be corrected in Section 3 by the addition of the words “artificial slate” between “grey” and “tiles”.
2. The appeal on ground (g) is allowed, and it is directed that the enforcement notice (EN) be varied by the deletion of “6 months” and the substitution of “9 months” as the period for compliance with steps (i) and (ii) in Section 6 of the notice.
3. Subject to these variations and corrections the enforcement notice (EN) is upheld and the planning application is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## **The Notice**

4. The Local Planning Authority has described the roofing material as grey tiles in Section 3 of the EN and in submissions as grey cement tiles. I consider that the appellant’s description of the tiles as artificial slate (whatever the specific composition may be) is more accurate. I shall exercise my powers to correct the allegation in the notice. As this matter has been addressed in the submissions of the parties, I am satisfied that such a correction would not give rise to any injustice.

## **Background**

5. Planning permission was granted for a two storey side extension, rear extension and alterations to a garage on 9 November 2020. That planning permission was subject of a condition that the development be carried out in accordance with the approved plans. The appellant’s wife contacted the Local Planning Authority in April 2021 stating that replacement Marley tiles to match the existing were either not available or would take some months to be delivered. The appellant’s intention was to change the roof tiles to slate to better the look and durability of the house. The Local Planning Authority confirmed that planning permission would be needed for this change of roof covering. This change would be of concern to the Council due to the impact on the character and appearance of the area. Notwithstanding this the appellant has proceeded to re-roof the dwelling and extension with artificial slates.
6. A letter from the roofing contractor was supplied for the Planning Committee meeting in July 2022, which confirmed that the re-roofing had to be undertaken quickly because of adverse weather. It is not explained how the roof came to be in this state or why a temporary cover could not have been used until the approved roofing materials were available.
7. The appellant also supplied a letter from a structural engineering firm stating that the roof structural members are not capable of withstanding increased loading for heavier roof coverings such as concrete tiles. Having to change these would further add significantly to the overall costs. It is claimed that this opinion was supported by the Council’s Building Control Officer. However, as the Local Planning Authority points out the letter clearly states that the roof was designed in April 2021 on the basis that artificial slate would be used. This was contrary to the approved plans.
8. The original plans were for a 1.8m tall boundary treatment along the side boundary. During the processing of the application the Local Planning Authority had concerns about this element and it was removed from the scheme by the appellant. This change was shown on the revised Plan PR01 A dated 30 October 2020. Despite this the appellant has gone ahead with a 1.8m high wall with inset fencing panels and returns to front and rear.

**The Appeal on Ground (c): that there has not been a breach of planning control**

9. The appellant's first argument is that the re-roofing of the existing main roof of the dwelling was permitted development. The permitted development rights referring to alterations to the roof of a dwelling under Classes A, B or C of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (whichever applies) are all subject to a condition that "the appearance of the materials used in each element of any exterior work must so far as practicable match the appearance of the materials used in the equivalent element of the existing dwellinghouse". The appellant contends that as the materials on the whole roof were replaced then there was nothing for the replacement roofing materials to match. However, the above condition clearly refers to the dwelling as existing prior to any works taking place and requires that the roofing materials used must match those on the existing dwellinghouse in order for the works to be permitted development. The existing materials in this case are the brown concrete tiles and the grey artificial slate materials used do not so far as practicable match the existing. I conclude that the change in the materials of the original roof is not therefore permitted development under the above Order.
10. The second point relates to the approved plans. Condition 2 on planning permission 2020/01082/FUL requires that the development shall be carried out in accordance with the following approved plans and documents: Proposed plans and elevations- Revision A received 2 November 2020. The appellant submitted three plans with the application: a site location plan (OS01); Existing Plans and Elevations (SV01) and what is clearly the proposed plans and elevations but is confusingly also called Existing Plans and Elevations but with a different plan number of PR01. Plan PR01 was revised on 30 October 2020 to omit the higher boundary wall and reduce the extension by 0.5m. Condition 2 clearly refers to Plan PR01 as this was the plan revised on that date and annotated accordingly.
11. Plans SV01 and PR01 have the existing finishes shown as brown concrete tiles for the roof. The drawings show the existing main roof and that of the extension in brown. My interpretation is that Plan PR01 shows the materials of the extension to match those on the existing dwelling. This was also the appellant's understanding because his wife contacted the Local Planning Authority to seek agreement to change the approved tiles. Notwithstanding the comments of a Councillor at the Planning Committee meeting (referred to by the appellant), the Committee proceeded to authorise the service of the EN. Whilst the naming and annotations on the appellant's submitted plans are confusing, I consider that the plan stipulated in condition 2 has been clearly identified. That plan shows the materials to be used as matching the existing materials, which are clearly indicated on plans SV01 and PR01A.
12. I conclude that the re-roofing of the existing dwelling in grey artificial slate would not have been permitted development. I also find that condition 2 of planning permission 2020/01082/FUL refers to Plan PR01 Revision A and this plan shows the proposed roofing material as matching the existing materials. For these reasons I conclude that there has been a breach of planning control. The appeal on ground (c) is dismissed.

**The appeal on ground (a) – that planning permission ought to be granted**

13. The main issue is the effect of the development on the character and appearance of the host dwelling and the wider streetscene. The most relevant policy is contained in Policies MD2 and MD5 of the Vale of Glamorgan Local Development Plan (LDP) supplemented by advice in the Residential and Householder Development Supplementary Planning Guidance (the SPG).

*The alterations to the roof*

14. The dwelling is in a prominent position at the end of a row of similar semi-detached properties fronting Port Road West. The roofs of these dwellings are hipped and have a similar brown concrete tile roofing materials. The appeal property has been extended and the entire roof covering has been changed to a grey artificial slate. This has a smooth and shiny appearance that contrasts sharply with the adjoining roof and others in the area. The contrasting slate finish has introduced a discordant feature in a prominent position close to a major thoroughfare in north Barry. The roof as constructed is detrimental to the character and appearance of the dwelling, the adjoining dwelling and to the wider streetscene. This is contrary to Policies MD2 and MD5 which require development to be sympathetic to the context and character of its surroundings and the advice in the SPG to replicate the materials used on the original property.
15. The appellant argues that the Local Planning Authority has focussed too narrowly on the adjoining property and those in the same row and that there are several examples of properties in the vicinity which have different roofs.
16. I visited the two semi-detached properties on Colcot road, which is on the other side of Port Road. I consider that the new roofing material used there matches the attached roofs of the adjoining properties in terms of colour and profile. The differences in appearance are due to the tiles being new and not yet weathered with age. The nearby property on Highlight Lane is a detached dwelling not semi-detached with a different roof form with gables. The concrete tiles are a similar profile but a different colour to the adjoining dwellings. I do not consider that this example sits on all fours with the appeal development. The property at Port Road East is some distance away from the appeal site and is in a less prominent position. The relevant planning permission was for an extension and garden room to the rear and did not involve re-roofing the main roof. As the planning permission did not authorise the new roof and the context of that site is very different, I do not consider that the circumstances are comparable to the appeal development. Whilst there are several variations in roof coverings in the wider area, brown concrete tiles are the prevailing roof covering. The context of the dwellings with contrasting roofs differs and no information on the planning history has been provided. For these reasons I do not consider that the other examples referred to would justify approval of the appeal development.
17. The appellant also refers to a retrospective planning application for replacement roof tiles on 3 Council owned houses in St Nicholas that was approved at the same Planning Committee meeting as an example of inconsistency. In that case the original tiles could not be sourced without a 3 month delay and so a different tile was used. The report states that whilst the roof tile is of a larger format than the original tiles that they have replaced, it is still a small plain tile which together with the head lap used, will have a similar character and appearance on the roof to the original tiles, when viewed as a whole, particularly from the public realm within the conservation area. There is some minor variation to the colour used, however any replacement roof tile would not realistically be able to exactly replicate weathered tiles of this age and the roof as installed will weather in time. This is a case that was considered on its own merits and as the differences in appearance were minor it was considered that no harm would be caused to the "County Treasures" in a Conservation Area. The circumstances of that case distinguish it from the appeal development.

*The boundary wall*

18. The wall is set back in line with the front elevation of the dwelling. The impact is therefore to the side and rear of the dwelling along Highlight Lane. The enclosure of the side garden presents a contrast to other properties along this part of Highlight Lane, which mostly have more open plan front gardens with low walls. This forms part of the character of the area and the wall with fencing panels at such a height in close proximity to the edge of the footpath represents a dominant feature. I note the desire to provide privacy and security to the side and rear garden rather than the front as in most other dwellings, and the issues of security for children and pets. The EN has only required that the wall be reduced to 1m high, and these considerations do not outweigh the objections to the wall/fence in terms of its visual impact and its adverse effect on the established character of the area.
19. The appellant has referred to three examples of corner plots nearby that have been enclosed in a similar manner. The Local Planning Authority points out that no planning permission has been granted for these means of enclosure and no complaints were received from the public. Two of the examples adjoin each other on Ridgeway Road. This is a shorter road and the two properties involved are the only houses on that side of the road. I consider that the context is therefore different to the appeal site, where the fence is on a longer road with more open frontages. I judge that the three quoted examples of development undertaken without planning permission do not justify approval of the appeal development. I conclude that the wall with fencing panels has an adverse impact on the character and appearance of the area and is therefore contrary to LDP Policies MD2 and MD5, and the Residential and Householder Development SPG.

**The appeal on ground (g)**

20. The appellant seeks more time to comply with requirements (i) and (ii) in Section 6 i.e. those relating to re-roofing the property. The appellant's financial circumstances and the costs involved mean that extra time would be needed to raise the necessary funds. It is also claimed that the works would require strengthening of the roof timbers. The Local Planning Authority has pointed out that there may be a cheaper lightweight alternatives available that match the colour and texture of the original tiles. However, given all the circumstances involved I am minded to allow the Local Planning Authority's suggested compromise of 9 months rather than 6 months to comply with requirements (i) and (ii). The appellant does not seek any variation of the period to comply with requirements (iii) and (iv).

**Conclusions**

21. For the reasons set out above, and having taken into account all matters raised, I conclude that planning permission should be refused. I consider that the period for compliance with steps (i) and (ii) in Section 6 of the notice should be extended to 9 months and I shall vary the notice in this respect prior to upholding it.
22. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives.

*A L McCooey*

**INSPECTOR**