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APP	E.O.	D.P.	D.C.	S.C.	S.S.	FILE

Anthony Bowhill and Associates
4 Leathermarket Street
London SE1 3HN

12 MAR 1999

Your reference

JA/4473

Our reference

T/APP/A1910/C/98/1010693

Date 11 MAR 1999

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEAL BY MRS E HODGES
LAND AND BUILDINGS AT 43 GREEN LANE BOVINGDON

1. The Secretary of State for the Environment, Transport and the Regions has appointed me to determine your client's appeal against an enforcement notice issued by the Dacorum Borough Council concerning the above mentioned land and buildings. I have considered all the written representations together with all the other material submitted to me. I inspected the site on 9 February 1999.
2. The details of the notice and the grounds of appeal are as follows:
 - (a) the notice was issued on 22 July 1998.
 - (b) the breach of planning control as alleged in the notice is the unauthorised erection of a dwelling house and double garage.
 - (c) the requirements of the notice are to permanently remove Redland Regent (Farmhouse Red) tiles from the dwelling house, replace with plain brown concrete tiles, demolish the double garage and permanently remove materials arising from the demolition.
 - (d) the period for compliance with the requirements is six months.
 - (e) the appeal was made on the grounds set out in section 174(2)(a),(f) and (g) of the 1990 Act as amended by the Planning and Compensation Act 1991.
 - (f) the deemed application for planning permission to retain the dwelling house and double garage has built also falls to be considered.

Site and surrounds

3. The appeal site comprises a detached two-storey house, a double garage and garden located on the east side of Green Lane within the village of Bovington. West of Louise Walk (where the appeal site lies) the properties are generally large detached houses and

bungalows set well back from the road. The double garage which has a pitched roof stands 2.8 m from the grass verge bordering the Lane.

Background

4. On 16 September 1996 planning permission was granted for the erection of a two-storey dwelling and double garage on the appeal site in place of the existing bungalow. Condition 5 of the permission required the submission of details of materials for approval before development began. The house and garage were built without the approval of the materials. The garage was also built in a different position from that approved. The approved position is 6.2 m from the highway edge. Permission to retain the house and garage as built was refused and an appeal against the refusal was dismissed.

The Development Plan

5. The relevant part of the Development Plan is the Decorum Borough Local Plan adopted in 1995. Policy 8 of the plan states that development will not be permitted unless it is appropriate in terms of design and materials on the site itself, in relation to adjoining property and in the context of longer views and respects the general character of the area in which it is set.

Validity of the notice

6. The notice requires the removal of "Redland Regent (Farmhouse Red)" tiles. This was the description of the tiles given in the application the subject of the Section 78 appeal. You contend (and the Council does not dispute) that the tiles used are in fact Marley Bold Rolled English. I do not accept however that this misdescription invalidates the notice. There are powers to correct a notice where, as in this case, correction can be made without injustice to either party. The notice will be corrected if I decide to uphold it.

The ground (a) appeal and the deemed application

7. From my inspection of the site and my reading of the representations I consider that the main issue is the effect of the garage and of the tiles on the character and appearance of Green Lane.
8. As to the garage, I saw on my site visit that on this side of the road the buildings are generally well set back from the road. By contrast the appeal garage stands close to the road. It is a substantial structure and, particularly on the approach down the hill, it is a prominent feature in the street scene. Because of the distance it stands from house and its proximity to the road it is seen as a distinct building from the house rather than as an ancillary structure. In this respect it differs significantly from the garage at No 49 which, though close to the road, is seen in conjunction with the dwelling. The garage at No 49 is also screened by mature landscaping, even in winter, from most public vantages. Because of the location of the appeal garage close to the road it looks out of place in this part of Green Lane characterised by buildings set back from the road. I conclude that the garage does not respect the character of Green Lane.
9. As to the tiles, most of the houses in this part of Green Lane have tiles on the roof. Those nearby have plain tiles of a subdued reddish brown colour. The tiles used on the appeal dwelling and garage are of a vibrant red colour. They are not plain tiles. They are strongly

profiled and give the roof surfaces a lively texture. The lively texture and colour of the tiles are at odds with the restrained texture and subdued colour of the tiles used for nearby houses. They are out of character with their surrounds.

10. The development is therefore contrary to policy 8 of the Local Plan. I appreciate that the appellant was not aware of the breach of planning control when the property was purchased. But neither this nor the asthmatic condition of the appellant's son are matters which would justify an exception to the Development Plan where harm has been caused to the character of an area. ***The ground (a) appeal fails and permission will be refused on the deemed application.***

The ground (f) appeal

11. You argue that the steps stipulated by the notice go beyond what is reasonably required in this case. You argue that part of the existing structure can be retained to form part of the approved garage. You also contend that the requirement to replace the existing tiles with plain brown tiles ought to be made more flexible by allowing for the submission to and approval by the Council of other types of tile. You also point out that the final requirement would prohibit the re-use of materials from the existing garage in the building of the approved garage.
12. In my view however this is not a case where an existing structure can be adapted to accord with the approved plans. The present structure and the approved garage, despite the overlap, are separate structures. The notice rightly requires the demolition of the existing garage. The requirement to replace the existing tiles with plain brown tiles is clear and precise. A variation to allow for the submission to and approval by the Council of other types of tile would introduce an unacceptable degree of uncertainty (*Kaur v SSE and Greenwich LBC* [1990] JPL 814). I do agree however that materials (other than the tiles) used in the construction of the existing garage may be re-used in the construction of the approved garage. I propose therefore to vary the notice so to require only the removal from the site of the unauthorised tiles. I intend also to correct the misdescription of the tiles. ***To this extent the ground (f) appeal succeeds.***

The ground (g) appeal

13. The Council argue that, in view of the time required for the building of the garage and the dwelling house (8 months), a period of six months for the demolition of the garage, the replacement of the roof tiles on the house and the clearance of the site is reasonable. However I bear in mind that the works required by the notice have to be carried out while the dwelling is occupied. It may also be necessary for the appellant's son to find accommodation elsewhere, while the works are being carried out, because of his asthma. I propose therefore to extend the period for compliance to nine months. ***To this extent the ground (g) appeal succeeds.***
14. I have taken into account all other matters raised with me. None of these however alter the conclusions I have reached on the grounds of appeal before me.

Formal decision

15. For the above reasons, and in exercise of the powers transferred to me, I:

(a) correct the notice by the deletion of the contents of paragraph 5(1) and the substitution of "*permanently remove the Marley Bold Rolled English tiles from the dwelling house*";

b) vary the notice by the deletion of the contents of paragraph 5(4) and the substitution of "*permanently remove from the site the tiles arising from the demolition of the garage*" and

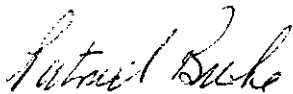
(c) vary the notice by the deletion of the word "six" from paragraph 6 and the substitution of the word "*nine*".

Subject to this correction and these variations I dismiss the appeal, uphold the notice and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act

Right of appeal to the High Court

16. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal against my decision to the High Court are enclosed for those concerned.

Yours faithfully



P J Burke BA(Oxon) Solicitor

Inspector