



ADDED TO THE AGENDA BY VIRTUE OF SECTION 100 (B) (4) (b) OF THE LOCAL GOVERNMENT ACT 1972

Policy and Resources Committee – 12 March 2012

Roofing Materials at 85 Main Road Collyweston

Purpose of report: - To seek Members' agreement to provide funding of up to £27k to cover the potential costs involved in progressing this matter. Due to the timescales involved the Chairman has accepted that this report be dealt with as a matter of urgency.

Attachments

Appendix A: - Report to the Development Control Committee meeting held on 1 March 2012.

Appendix B: - E-mail from the developer dated 7 March 2012

Appendix C: - E-mail from Mr Richard Cooper dated 12 March and earlier exchanges of e-mails

1.0 Background

- 1.1 The Development Control Committee considered the attached report at its meeting on 1 March 2012.
- 1.2 At that meeting Members resolved not to accept the advice of officers that the Council should adhere to the decision to allow the use of blue slate on the properties at no 85 Main Road. Whilst accepting that the first property at the site at no 85 Main Road had already been roofed in natural blue slate (in accordance with the approved condition), they requested that officers go back to the developer as a matter of urgency to ascertain his preparedness to use replica Collyweston slates for the roofing of the second property.
- 1.3 Officers have now discussed the matter with the developer of the properties at no. 85 and he is not prepared to change the proposed roofing materials. This is because not only does he consider that the change will affect the appearance of the properties, which have been designed as a pair, but also that he has followed the correct procedure and gained written approval from the Council for the use of blue slate. An e-mail from the developer setting out his position is attached at Appendix B.

2.0 The Implications

- 2.1 Members at the Development Control meeting decided that the use of blue slate for the roofing of the second property should not be permitted.
- 2.2 In order for this to be done the Council will have to revoke this part of the consent and pay the costs associated therewith.
- 2.3 The relevant section of the Town and Country Planning Act 1990 is section 97, which states that 'the Council can revoke or modify a permission it thinks it is expedient to do so, having reference to the development plan and all other material considerations'.
- 2.4 Should the developer object to the proposed order, as is likely to be the case, then the confirmation of the Secretary of State would be required. The potential for the applicant to request the Secretary of State to hold a hearing in relation to the matter is then available.
- 2.5 The key issue in determining the reasonableness of the approach is the test of 'expediency'. As noted this needs to be exercised with reference to the development plan and all other material considerations.

2.6 In the circumstances it is considered that external legal advice is required with regard to the expediency of taking action. Upon receipt of this advice, a further report may need be taken to the next available Development Control Committee.

2.7 There are costs associated with this and agreement is sought from Members to funding the costs of such legal advice (up to £2K) together with up to £25k for the likely costs associated with pursuing this action, including the likely compensation payable to the developer, assuming the legal advice confirms that this represents a robust and justifiable approach. The money can be found from the contingency fund.

3.0 Equality and Diversity Implications

3.1 There are no known equality and diversity implications arising from this report.

4.0 Legal Implications

4.1 There are legal implications and these are set out in section 2.

5.0 Risk Management

5.1 There is a risk that the Council may incur significant costs if the developer lodges an objection with the Secretary of State and an appeal is upheld after a hearing, so it is important that an urgent legal opinion is sought. However, there is also a risk that the developer will have completed building the second property before the Council is able to get that legal opinion and revoke the consent, should the legal opinion confirm that this revocation is expedient.

6.0 Financial Implications

6.1 The financial implications are set out in paragraph 2.7.

7.0 Corporate Outcomes

7.1 The relevant corporate outcomes in relation to this case are:-

- High Quality Built Environment
- Effective Management (of risk).

8.0 Recommendations

8.1 a) That external legal advice is sought urgently on the issue of expediency of taking action in relation to this case.
 b) That funding of up £27k be set aside to cover the costs of the legal advice, the remedial works that may be required and the likely resultant compensation claim from the developer, these costs to be met from the contingency budget.

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Legal	Power: Town and Country Planning Act 1990
	Other considerations:
Background Papers:	Planning Applications:- EN/07/02435/FUL, EN/07/02301/FUL and EN/11/00052/FUL Report to Development Control Committee 1 March 2012
Person Originating Report:	Trevor G Watson Head of Planning Services. tgwatson@east-northamptonshire.gov.uk
Date: 07 March 2012	
CFO	MO
	CX

Development Control Committee –1 March 2012

Roofing Materials at 85 and 95 Main Road Collyweston

Purpose of report: To clarify Members' position in relation to the approach taken to the agreement of roofing materials at the above sites, together with the likely future approach to roofing materials in Collyweston.

Attachment(s) Neighbour letter 7 February.

1.0 Background

- 1.1 Members may recall that permissions have recently been granted for the redevelopment of the former garage site (95) and also for the development of two houses at 85 Main Road Collyweston. The most recent proposal for the former garage site was permitted in March 2011 and the development at no 85 was allowed on appeal in August 2008 (following a refusal of permission in March 2008). Both of these sites are located outside of the Collyweston Conservation Area.
- 1.2 Development has now commenced on the site at 85 and an application has been received to discharge the conditions at no 95. An issue has arisen following the receipt of a complaint regarding the approach taken in relation to the agreement of the roofing materials at the respective sites.

2.0 The Details - 95 Main Road Collyweston

- 2.1 The developer for the former garage site, which comprises 2 dwellings on the road frontage with a further 7 units to the rear, proposed as part of the application submission the use of replica Collyweston slates on the frontage properties, blue slates on the middle 3 units and then pantiles on the 4 properties to the rear.
- 2.2 Officers were happy with the proposed material selection and accordingly reported the initial application to committee in June 2008 with a recommendation of approval. However, at the meeting Members took the view, partly in response to an objection from the Parish Council, that blue slates should not be used anywhere on the development. Proposed condition 2 on the decision notice was therefore amended following the meeting.
- 2.3 Subsequent to this, in March 2011 an application seeking minor amendments to the previously approved scheme was reported to Committee. This comprised an alteration to the site boundary, the modification of the design of a couple of the plots and the removal of a garage from within the site. Whilst the officers' report set out (as per the initial report) the proposed palette of materials (which included the use of blue slate), the application was approved with the same conditions as previously, i.e. with the materials conditions precluding the use of blue slate.
- 2.4 The site has been cleared and the developer has submitted materials in compliance with the conditions, but no new development has started on the site as yet.

3.0 The Details - 85 Main Road Collyweston

- 3.1 This application for the development of 2 houses was submitted in November 2007. It was subsequently refused by Committee in March 2008. An appeal was lodged and the appeal was allowed in August 2008.
- 3.2 As part of the approval the Inspector imposed a condition requiring the submission of sample materials to be used in the construction, prior to development commencing.

The developer initially submitted proposals for the use of Barley Harlow Slate Duets which were not considered acceptable by officers. In refusing permission for the use of this material, two possible alternatives were suggested. These comprised either blue slates or imitation Collyweston slates.

- 3.3 The developer subsequently proposed natural blue slates and these were accepted by officers in a decision letter dated 12 November 2010. Development has now commenced on site and the first house has been roofed. Following on from this a complaint has been received from a neighbouring occupier arguing that the use of such a roofing material is completely inappropriate and does not fit at all well with the properties' location opposite the Conservation area.
- 3.4 Officers have responded to the complainant on a number of occasions and have also attended a public meeting organised by the Parish Council to explain their position. The complainant's latest letter is appended to this report. Officers remain of the view that the use of blue slate for the roofing of these buildings is acceptable. The primary issue in this case is not the roofing material but the bulk, scale, massing and overall prominence of the buildings, issues the Inspector considered to be acceptable when granting permission on appeal.

4.0 The Issues

- 4.1 It is clear from the above that different approaches have been taken in relation to the above sites. Part of the reason for this is that different case officers dealt with the initial proposals in relation to both sites (both officers have now left), and the renewal at 95 and the clearance of the materials at 85 were also dealt with by different officers. Therefore, in suggesting the use of blue slate as a satisfactory alternative roofing material for the site at 85 Main Road, the case officer was unaware of Members' position in 2008 in relation to the site at no 95.
- 4.2 As set out above, officers remain of the view that the use of blue slate is an acceptable roofing material, particularly as the development is taking place outside the conservation area.
- 4.3 The complainant continues to demand that the agreement to the use of blue slate be rescinded and has pointed out the Council's inconsistent approach to the two sites.
- 4.4 The developer at 85 has followed due process in gaining approval for the use of blue slate and has now carried out the work in relation to one of the properties. Should Members take the view that that decision was not correct, the Council would need to rescind the permission and compensate the developer accordingly. This would include, but not be limited to, the costs involved in removing the blue slates from the house that has already been roofed, paying for new roofing materials for both properties e.g. replica Collyweston, and compensating the developer for their time and trouble together with the costs of associated construction delays. The financial implications of this would be likely to be at least £50k and the officers do not consider this to be a necessary or justifiable course of action. That having been said the issue is how the site at no 95 should be dealt with.
- 4.5 As stated above, it is the officers' professional view that refusing to allow the use of a natural material for the roofing of new buildings in locations such as this is not justifiable or defensible. The reasons for this are that firstly blue slate is a natural material that has been widely used throughout the country for the last 150 years or so. Secondly it is accepted practice that natural materials should be used in preference to replica materials wherever possible. Thirdly there is already a precedent for the use of blue slates both along Main Road and also within the conservation area. While the developer of the site at no 95 has not challenged the material restriction, if they were to do so officers believe that it would not be defensible at appeal for these reasons. Members cannot now amend the materials condition imposed upon the site at 95 Main Road, as the decision has been issued, however it is considered that, should the developer seek to vary this condition to allow the use of blue slate, (at least on some

of the properties as originally proposed), such a variation should be permitted.

4.6 Members also need to decide what approach should be taken in future, should further new development take place outside the conservation area but in similar circumstances to the two sites in question. As officers believe that there are no planning grounds for refusing the use of natural materials such as blue slate, it is proposed that blue slate be specifically permitted as an acceptable roofing material in such situations.

5.0 Equality and Diversity Issues

5.1 There are no equality and diversity implications arising from the proposal.

6.0 Legal Implications

6.1 There are legal implications associated with the decision as, if Members decide that the use of blue slate is not acceptable in either case, the current permission for its use at no 85 would need to be rescinded.

7.0 Risk Management

7.1 There are risks associated with the decision as there is the clear potential for the complainant pursuing the matter to the Ombudsman, and the Ombudsman criticising the Council for its inconsistent decision making.

8.0 Financial Implications

8.1 As set out in paragraph 4.4 above, there are significant financial implications should Members take the view that the consent for the use of blue slate at no 85 should be rescinded.

9.0 Corporate Outcomes

9.1 The key corporate outcomes relevant to this report are sustainable development, strong communities and high quality built environment.

10.0 Recommendations

- 10.1 That Members resolve that
- The use of blue slate is an acceptable roofing material for properties outside the Collyweston Conservation Area.
 - the Council will not seek to rescind its decision to allow the use of blue slate on the properties at No. 85 Main Road;
 - Should the developer of the site at 95 Main Road seek to vary the condition preventing the use of blue slate, agreement should be given.
 - The complainant is advised of the Committee's decision.

Legal	Power: Planning and Compulsory Purchase Act 2004			
	Other considerations:			
Background Papers: Planning applications:- EN/07/02435/FUL, EN/07/02301/FUL and EN/11/00052/FUL.				
Person Originating Report: Trevor G Watson Head of Planning Services tgwatson@east-northamptonshire.gov.uk 01832 742218				
Date: 13 February 2012				
CFO		MO		CX

BEAUFORT HOUSE, COLLYWESTON, STAMFORD,
LINCOLNSHIRE, PE9 3PW.

Mr David Oliver,
East Northamptonshire Council,
Cedar Drive,
Thrapston,
Northants NN14 4LZ.

7th February 2012

Dear Mr Oliver,

Collyweston/new houses on main road

Thank you for your letter yesterday and I appreciate the sentiments you have expressed.

We obviously need a sensible and practical solution to this problem regarding the blue/black slates. I have a proposal to make based on the simple premise that we should preserve as best we can in the Home of Collyweston slate a consistent public image of roofs in and immediately adjacent to the Conservation Area. If you could see your way to support it and our Parish Council would also do so I would hope it might help the Planning Committee in its deliberations.

I think the main principle should be that any building immediately adjacent to the Conservation Area (including all buildings bordering the Main Road and opposite the Conservation Area) must have imitation properly coursed Collyweston slates if natural ones are not available/economic. The other side of the coin would be that any building which is not immediately adjacent to the Area may (possibly subject to the following subsidiary principle) have blue/black tiles. The subsidiary principle might be that any building which is not immediately adjacent to the Area but is clearly visible from any public part of the Area should also have such imitation Collyweston slates. There might be some grey areas as to clear visibility but in most cases it should be self-evident. Planning/Conservation Officers would rule where there was any dispute. I would not expect this situation to arise much if at all so the issue is unlikely to be problematic in future.

Applying this to the two sites on the Main Road currently at issue blue/black tiles would be allowable on the old garage site at No 95 for the buildings at the back of the site where they are not clearly visible as described above but they would not of course be allowable at No 85. In other words there would be a less restrictive condition for part of the garage site at No 95 but a more restrictive one for No 85.

The practical implication of this for the current situation is of course that the black/blue tiles at No 85 would have to be removed from the existing house at a certain cost. Although your Planning/Conservation officers have responsibility for allowing the tiles in the first place I am very much of the view that the Developer must also take some responsibility. GP Construction must have known that the Hardrow tiles they were proposing were not imitation Collyweston slates and its application to use them was a try on and disingenuous bearing in mind their Design Statement which stressed its intention to use imitation Collyweston slates to fit in with adjacent buildings. This should not be only bad news for the Developer because the two houses when properly roofed should attract more purchasers and of course the black/blue tiles removed will have a resale value. As you know I have written to Mr Allmand at GP Construction about this some time ago but so far have had no response.

One thing which I feel most strongly about is that the final decision on this issue must be made on the basis of what is right in principle and not what is the cheapest short term solution for the Council and the Developer. The argument that because one house has already been roofed with the black/blue tiles the other must also be is just not acceptable. These roofs at No 85 which are far higher than they ought to be must fit in with the buildings next to and opposite to them.

If you or your Planning/Conservation Officers would like to meet up with me to discuss this idea I would be very happy to do so. In any event I would be grateful if you would forward this letter to the Planning Committee to consider at its meeting in March.

I hope you will agree that my proposal is reasonable and I look forward to hearing your views on the matter shortly.

Yours sincerely,

Richard Cooper
Cc: Collyweston Parish Council

APPENDIX B

From: Trevor G. Watson
Sent: 08 March 2012 12:13
To: Trevor G. Watson
Subject: FW: 85 Main Road Collyweston

From: Gavin Allmand
Sent: 07 March 2012 20:18
To: Trevor G. Watson
Subject: RE: 85 Main Road Collyweston

Without Prejudice

Dear Trevor

I am writing to confirm our most recent discussion.

I have thought of little else in recent days and have now sought some legal advise on the matter. I am advised that as I have done nothing wrong, have followed all due process as you have confirmed both in email and also in the report to the Development Control Committee, that there is no reason why I should stop my contractors from continuing to build at Collyweston as all necessary permissions are in place. The roof materials in question are as approved, and as you know this particular material, the blue slate was in fact proposed by yourself as an acceptable material in a letter dated 18 May 2010.

I am advised that unless I am served with any stop notice or such similar instruction any delays in my build would be at my own cost as such costs could not be recovered or reimbursed as I would have voluntarily stopped work to allow the council to come to a decision. However should I be instructed to stop work at that time any costs associated with such a request and beyond would form part of any claim etc. I feel therefore I have no alternative but to continue works.

For reference I seek to clearly advise that my works programme is such that the commencement of the roofing works is anticipated to begin in 3-4 weeks from today with roof trusses followed by roof coverings, these being the blue slate. Some material is already procured and other items are on order or shall be by the end of the week to ensure they are available for when the roof stage is ready to commence. I am also informed that any instruction to change roof material to the replica Collyweston slates is likely to materially affect the roof structure and integrity of the roof as the current roof is designed with the current material in mind. The replica product is in my initial understanding significantly heavier and as such the roof structure would need to be redesigned probably with heavier duty trusses, potentially structural steels etc. Any cost to replace will therefore be significant as it is not merely substituting the roof covering.

I know you understand my situation. It is absolutely essential this situation is resolved soon as the uncertainty is not assisting in selling the properties and a serious concern is that the houses will become "tainted" locally because of adverse comment and opinion as to the roof materials. Such feelings will drive down the resale value of the houses, when I as the developer have done nothing wrong and have followed due process etc.

To conclude therefore I am advised I should continue to build in accordance with the valid and current planning permissions that I hold. If the council wishes me to delay whilst it makes a decision all direct and indirect costs would need to

be compensated and these would include professional and legal fees. I would like this uncertainty to be concluded quickly. It is unacceptable that I am under pressure when I have followed all correct procedures. If my permission is to be rescinded and the properties have to have the roofs changed, then make that decision and agree to the significant cost this will be including all related costs of delays, financing, etc etc.

If this is not to be the case could the matter be dropped and I be allowed to complete the development without such a "cloud hanging over it"

Yours sincerely

Gavin Allmand
GP Construction & Developments Ltd

APPENDIX C

From: Richard Cooper
Sent: 12 March 2012 09:00
To: David Oliver
Cc: Collyweston Parish Council; Sharn Matthews; Trevor G. Watson;
Barbara Wiggins
Subject: Re: Collyweston slates for Collyweston

Dear Mr Oliver,

Thank you for your prompt response.

You must of course follow due legal procedure. However this should not be at the expense of common sense a matter which the Members of the Committee stressed at the last Meeting. Councillor Hughes asked why the Council had not entered into discussions with the Developer before knowing that the error had been made for some time. He said that they should start immediately to prevent further claims e.g for materials ordered. Have discussions with the Developer taken place and what was the outcome?

As to the Minutes of the Meeting we will review them when they are published on 14th March and get back to you if they do not correspond with the notes and recollections of the Collyweston villagers who were at the Meeting. It would be sensible to avoid future disagreements on these Minutes.

There is already one potential problem. I and the other Collyweston villagers present at the last Meeting remember very well that the Panel was asked whether the Developer was present at the Meeting. Mr Watson said that he had been informed of the Meeting but did not say that he was at it. On further discussion the Meeting concluded that he was not present. You now say that he was. If this is so the Committee was obviously misled and he must have been in hiding because he was not seen by any of our villagers present who knew him through previous contact.

Another of course goes to the main issue unresolved in this case being whether or not the first house should be re-roofed. We do not recall the Committee making any decision on this. This of course presupposes that the Committee had then or indeed has in future the power to make such a decision. I would be grateful if you would advise on this and clarify who in your Council has the ultimate responsibility for making the decision. Clearly there would be cost implications arising from the Revocation Order needed and the Committee wanted these to be examined by the Policy and Resources Committee so they could be taken into account. An examination of costs limited to the second house makes no sense. There should be no costs for your Council. The house has yet to be roofed and as I have said before the Developer will not be prejudiced by using imitation Collyweston slate on the roof of the second house. That was precisely what he wanted in the first place and he cannot now be unjustifiably enriched as a result of a genuine fundamental error of your Council which he brought upon himself..

The decision still to be made involves one of principle. Bearing in mind that a fundamental error of substance and procedure has been made

by your Council on these roofs and that it requires a Revocation Order to be issued should your Council accept the full logical consequences of the error or should it, against public wishes, accept a cheap Faustian compromise with the Developer whereby the practical consequences of the error are allowed to persist to the ongoing detriment of Collyweston and its famous Collyweston slate heritage. As Members of the Planning and Development Committee repeatedly said at the Meeting 'Collyweston is Collyweston slate'. Imitation Collyweston slate is infinitely preferable to a cheap black/blue uniform shiny tile more suited for a supermarket roof in shopping centres and business parks. We sincerely hope that your Council will not allow these unsuitable tiles to be used on either house and that we can move on amicably with sensible and consistent planning decisions in our area and beyond in the future.

Finally I would be grateful if you would ensure that the Members of the Policy and Resources and Planning Development Committees are given copies of this recent correspondence between us in order that they can take our perspective properly into account and make fully informed decisions.

Yours sincerely,

Richard Cooper

On 3/9/12, David Oliver wrote:

> Mr Cooper,

>

> The minutes of the Development Control Committee are not yet
> available. The draft minutes will be made public when the papers for
> the next DCC meeting on 21st March are published, which will be on
> 14th March. They are then subject to approval at that meeting.

>

> It is evident that you are not familiar with the process that we have
> to follow in relation to this issue. We cannot issue a 'stop
notice'.

> That can only be done in the case of a development that does not have
> planning permission. In this case the developer has a valid consent
> issued by this Council. The decision by DDC on 1st March that it
> should be revoked in respect of the second property does not alter
> that fact. Whether there has been 'a fundamental mistake' or a
> difference of opinion between planning officers and others as to what
is acceptable is, I'm afraid, irrelevant.

> What is relevant is that the Council must now issue a Revocation
Order

> in respect of the existing consent, and the developer can (and no
> doubt will) object to that order, in which case the matter must be
> referred to the Secretary of State.

>

> I think I need to point out that I am not advocating anything in
> respect of the roofs. My last e-mail simply set out my understanding
> of what the Committee decided. I have confirmed with both the Head
of

> Planning Services and the Committee Clerk that the Committee's
> decision was to prevent the second property being roofed in blue

> slate, not to require the developer to re-roof the first property.
>
> I note your comments as to what costs you consider the developer can
> and cannot claim. Needless to say we will be seeking to minimise the
> cost to the Council.
>
> Finally, of course matters are not being left as they stand. As I
> made clear in my last e-mail, a report is being taken to the Policy &
> Resources Committee on Monday as an urgent item, and we will seek to
> implement the Committee's decision. What would be unconscionable and
> against the public interest would be to do so without following the
> due legal process. I trust that you, as a Barrister, will appreciate
that.
>
> Regards
>
> David Oliver
> Chief Executive
> East Northamptonshire Council
> 01832 742105
> doliver@east-northamptonshire.gov.uk<<http://www.doliver@east-northamptonshire.gov.uk>>
> onshire.gov.uk>
>
> From: Richard Cooper > Sent: 09 March 2012 08:55
> To: David Oliver
> Cc: Collyweston Parish Council
> Subject: Re: Collyweston slates for Collyweston
>
> Dear Mr Oliver,
>
> Please would you email me by return the Minutes of the Meeting a week
> ago today. It seems you and your Team are making another error. It
> would have been much better if you had responded to me sooner.
>
> The Meeting certainly agreed that a fundamental mistake had been made
> both in principle and procedure as I said in my email a week ago and
> that the roofing of the second house with the black/blue tiles had to
> be stopped immediately. Have you sent out the Stop Order?
>
> What you are now advocating is another fundamental error. It is
flawed
> for the simple and obvious reason that if black/blue tiles are not
> acceptable in principle for the second house they must be
unacceptable
> in principle for the first one. Therefore the first house must be
> reroofed properly. For your Council to abrogate its clear
> responsibility to ensure this is done would be the triumph of
expediency over principle as I said at the Meeting.
>
> The other inconsistency in your email is this. There should be no
> costs paid by your Council to the Developer for imitation
Collyweston
> slates to be used on the second house. The Developer will be in no
> worse position than he would have been under his original Design
> Statement. He has brought this situation on his head by his
> disingenuous behaviour. I sincerely hope you will not be wasting hard

> earned tax payers money on this. Certainly your Council will have to
> bear some cost for reroofing the first house and that is the only
> reason the Policy and Resources Committee needs to look at cost
implications for the Council and its insurance cover.
>
> What is needed is some backbone in your Council and acceptance of
> responsibility for your damaging mistakes . Some common sense and
> skill in negotiating an arrangement with the Developer would also be
helpful .
> Incidentally if the Developer was at the Meeting it was certainly
> cowardly of him not to defend and justify himself bearing in mind the
> allegations he knew had been and would be made against him. I assume
> you are not seeking to justify any of the Developer's actions in this
sad affair.
>
> Please may I have a response by return email. It would be
> unconscionable and against the public interest for matters to be left
> as they stand and I do not intend to allow that to happen.
>
>
> Yours sincerely,
>
>
> Richard Cooper