

DELEGATED DECISION REPORT

SMD/2025/0456
Valid 06/11/2025

38 WELLINGTON STREET
LEEK

**CERTIFICATE OF
LAWFULNESS FOR EXISTING
ROOF TILES THAT WERE
REPLACED WITH A NEW
TYPE OF TILE WHICH ARE
SIMILAR TO THOSE USED IN
THE STREET**

**(CERTIFICATE OF
LAWFULNESS - EXISTING)**

MAIN ISSUES

- Have the replacement tiles materially affected the external appearance of the building and did that result in development requiring planning permission?

DESCRIPTION OF SITE

A mid terrace red brick dwelling house. 19th century property on Wellington Street in the Leek conservation area. The properties in the row and on the opposite side of the road are of the same dwelling type. The distance between dwellings is narrow, either side of the street and pavement, at 8.5m. The application dwelling and its immediate neighbours are two storey.

THE APPLICATION

The previous owner of the dwelling replaced the tiles with modern concrete tiles. The dwelling is in an area where an Article 4 direction means that works of alteration and householder development that would have ordinarily been permitted by the GPDO 2015, require planning permission.

The current owner of the property now wants to sell the property, and the purchaser has raised the question of whether the replacement tiles were granted or required a planning permission, a question not raised when the current owner bought the property.

The applicant, therefore, and current owner/vendor, seeks a certificate of lawfulness to confirm that the replacement tiles were not an act of development and did not require planning permission because they did not have a material effect on the external appearance of the building.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

Article 4 Direction 1975-1994 External cladding of walls not to be permitted.

Article 4 Direction (2013) Effectively all Class A development not to be permitted

CONSULTATIONS

Publicity

Press Advert: Leek Post and Times expires 10th December 2025

Public Comments

None

Town / Parish Comments

Leek Town Council: Support officers judgement

OFFICER COMMENTS

The alteration that has taken place is the replacement of the dwelling's roof tiles with concrete 'modern' tiles. The operation took place within a period of 4 years prior to the date of the application and was carried out by the previous owner.

The application claim is that the alteration did not require planning permission because it did not result in development.

For the purposes of the Act, Section 55(1) defines "development" as:

"the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."

Under s.55(2)(a):

"the carrying out of works for the maintenance, improvement or other alteration of any building which—

- (i) affect only the interior of the building, or
 - (ii) do not materially affect the external appearance of the building,"
- does not constitute development.

The legal point for determination, therefore, is whether the alteration has materially affected the building's external appearance. If not, then under s.55(2)(a)(ii) the alteration is not development and does not require planning permission.

Replacement roof tiles that do result in a material alteration to the external appearance of the dwelling would ordinarily be development permitted by Part 1 of the GPDO. However, in this case the dwelling is in the Conservation Area where a direction under Article 4 is in place.

There is no submitted evidence to confirm the tile type that was on the roof before they were replaced, this would have been difficult because the alteration was not carried out by the applicant and current owner.

The dwelling is a late Victorian/19th Century terraced workers cottage. On balance of probability, it is assumed that they would have been the original Staffs blue plain clay tiles that are evident on some of the other roofs nearby and common to this dwelling type. The replacement tiles are said to be concrete 'Marley' moderns. There might be

concern that such a replacement would not have the shape, irregularity, sizing, colouration and refinement of a clay tile.

However, the question of whether the tile replacements has had a material effect on the building's appearance rests on a matter of fact and degree. It is at the discretion of the decision makers judgement having regard to logic based on visibility and significance. The effect must be material, not merely detectable with careful scrutiny.

The basic test is simple, comparing the physical appearance of the building immediately before the works with its appearance afterward, has the building's external appearance changed in a way that is more than trivial?

From the roadside and pavement, it is not possible to get a clear view of the roof plain to clearly identify the replacement tile type or appreciate its detail – the dwelling is a mid-terrace, and the buildings on each side of the street are close together because the road is narrow. The roof pitch is steep, and the tiles can only be seen at an angle from a position that is close to the building and underneath the roof. This is highly relevant. Case law supports the idea that if a change cannot realistically be seen or noted by an ordinary passer-by, it is unlikely to materially affect external appearance.

From the angles and viewpoints that parts of the roof can be seen, it appears that the replacement tiles are to some extent an assimilation of Victoriana Staffordshire blues. The roof slope is not readily visible from public vantage points, but from what can be seen, the replacement tiles do appear to be similar in colour, profile, and overall appearance to what are, reasonably, assumed to have been the previous tiles.

Overall, the change does not alter the building's character or appearance when viewed externally and an ordinary person would not perceive that the building looks different. The character, shape, profile, or architectural expression of the building has not changed. The effect on external appearance, therefore, is considered minimal and not material. This is particularly because the detail of the roof tiles is not readily visible from public vantage and, on the whole, the effect and presentation of the replacement tiles is similar in character, colour, pattern and texture to the tiles that would have been replaced.

CONCLUSION / PLANNING BALANCE

On a question of fact and degree and having regard to the specific circumstances of this case, the replacement tiles have not had a material effect on the external appearance of the building and by virtue of s.55(2)(a) did not result in development for the purposes of the Act. Planning permission is not required, and the operation is lawful.

OFFICER RECOMMENDATION : APPROVE

Case Officer: Ben Hurst

Recommendation Date:

X *J Curley*

Signed by: Jane Curley

On behalf of Staffordshire Moorlands District Council