
Appeal Decisions

Site visit made on 10 January 2017

by **P N Jarratt BA DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 January 2017

23 Royal Crescent, Bath, BA1 2LT

Appeal A - Ref: APP/F0114/C/16/3151502

- 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 Peter White against an enforcement notice issued by Bath & North East Somerset Council.
 - The enforcement notice, numbered 15/00412/NONCOM, was issued on 3 May 2016.
 - The breach of planning control as alleged in the notice is the unauthorised replacement of the existing flat roof with a lead slated pitched roof to summerhouse/orangery with alterations to parapet in the approximate position marked with an 'X' on the plan attached to the notice.
 - The requirements of the notice are to implement the summer house/orangery roof in accordance with the details set out on drawing RCDROOF3/B dated 8 December 2014 and approved under applications 14/05567/FUL and 14/05568/LBA.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
 - **Summary of decision: appeal allowed, notice quashed and planning permission granted.**
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Appeal B - Ref: APP/F0114/F/16/3151503

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Peter White against a listed building enforcement notice issued by Bath & North East Somerset Council.
 - The enforcement notice, numbered 15/00412/NONCOM, was issued on 3 May 2016.
 - The contravention of listed building control alleged in the notice is the unauthorised replacement of the existing flat roof with a lead slated pitched roof to summerhouse/orangery with alterations to parapet in the approximate position marked with an 'X' on the plan attached to the notice.
 - The requirements of the notice are to implement the summer house/orangery roof in accordance with the details set out on drawing RCDROOF3/B dated 8 December 2014 and approved under applications 14/05567/FUL and 14/05568/LBA.
 - The period for compliance with the requirements is 6 months from the date that the notice takes effect.
 - The appeal is made on the grounds set out in section 39(1) (e) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
 - **Summary of decision: appeal allowed, notice quashed and listed building consent granted.**
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Appeal C - Ref: APP/F0114/W/16/3151504

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
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- The appeal is made by Mr Peter White against the decision of Bath & North East Somerset Council.
 - The application Ref 15/05518/FUL dated 7 December 2015 was refused by notice dated 10 March 2016.
 - The development proposed is a new slate roof to summerhouse with alterations to the parapet to supersede previous approval.
 - **Summary of decision: appeal allowed and planning permission granted.**
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Appeal D - Ref: APP/F0114/Y/16/3151505

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Peter White against the decision of Bath & North East Somerset Council.
 - The application Ref 15/05519/LBA, dated 7 December 2015, was refused by notice dated 10 March 2016.
 - The works proposed is a new slate roof to summerhouse with alterations to the parapet to supersede previous approval.
 - **Summary of decision: appeal allowed and listed building consent granted.**
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Procedural Matters

1. In Appeals C and D, the Council changed the appellant's description of development to 'Replace existing flat roof with lead proof slated pitched roof to summer house with alterations to parapet (Revised partially retrospective proposal). However I have retained the appellant's description set out in the banner headings as this adequately describes the works.
2. The appellant points out that in Appeal A the compliance period is six months from the date of the notice and in Appeal B, the compliance period is six months from the date that the notice takes effect. The compliance period cannot run from the date of the notice but only from the date that the notice comes into effect. I have the power to correct or vary notices, so long as there would be no injustice to the parties, which I consider the case in this instance and I intend to correct the notice in Appeal A by deleting the time for compliance and replacing it with "Six months from the date that this notice takes effect".

Appeal Site

3. The appeal site is 23 Royal Crescent which is a Grade I listed terrace set within the Bath Conservation Area and World Heritage site. The appeal relates to the alterations to the roof of an existing building within its curtilage described as an orangery/summerhouse situated at the end of the rear garden of No 23. A hipped roof has been partially constructed over the former flat roofed building (which had a lantern) although work on this has ceased pending the outcome of these appeals. Adjoining the rear of the appeal building are flat roofed garages accessed from the street through a courtyard.
4. I was able to view the appeal site from a number of vantage points including the interiors and gardens of Nos 12, 22, 24 as well as from No 23. I also viewed the site from the surrounding streets which provided the context of the built form.

Relevant Planning History

5. Permission for the summerhouse was granted in 2002. Planning and listed building approvals were granted for a pitched roof in 2014 and the scheme was amended and approved under 14/05567/FUL and 14/05568/LBA.

Policy Background

6. Section 16 of the LBCA requires special regard to be paid to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses, before granting listed building consent. In addition to the duties under the Act referred to above, the policies of the 2014 Core Strategy for Bath and North East Somerset and the saved policies of the 2007 Local Plan are also material considerations in these cases.
7. Policies CP6 and B4 of the Core Strategy refers to environmental quality and the World Heritage site and saved Policies BH.2 and BH.6 of the Local Plan refer to the protection of listed buildings and their settings and to conservation areas. Saved policies D.2 and D.4 refer to general design and townscape considerations.
8. These policies are also broadly in accordance with the aims of the National Planning Policy Framework (the Framework) which is also a material consideration in these cases. Paragraphs 132 and 134 of the Framework note that great weight should be given to conserving the significance of heritage assets and that any harm must be outweighed by public benefits of the proposal, including securing the optimum viable use of the building, before listed building consent is granted.

Main Issue

9. The main issue in all the appeals is whether the works subject to the notice preserve the listed building or its setting or any features of special architectural or historic interest it possesses. In Appeals A and C the effect of the proposed development on the character or appearance of the Conservation Area and World Heritage site also needs to be considered. The principle of the summerhouse is not an issue, only the change in the roof design, the roof lights and the height of the parapet.

Reasons

Appeal A - appeal on ground (a) and Appeal B – appeal on ground (e)

Appeals C and D, the s78 application and the deemed application

10. An appeal on ground (a) and (e) is that planning permission and listed building consent ought to be granted for the works.
11. Much of the significance of the Royal Crescent derives from the principal front elevation whereby the distinctive semi-elliptical façade overlooks the public lawn to the front and affords wide reaching views to the Royal Victoria Park.
12. To the rear of the Royal Crescent, the façade is also distinctive, not for the harmony of the design but from the variety of architectural treatments and window designs. Notwithstanding these differences, the rear of the Royal Crescent is imposing and the gardens represent a significant feature, being

- relatively long with some containing garden buildings which in terms of their scale and style contribute to the setting of the rear of the Royal Crescent.
13. To the rear of the gardens are a variety of buildings on Crescent Lane and Marlborough Lane, some of which represent relatively recent development such as the new residential block with mansard roofs on Crescent Lane which the Council points out represents a different Bath vernacular distinguishable from structures ancillary to the Royal Crescent.
 14. The distinctive character of the area to the rear of the Royal Crescent is its variety of building styles and roofs, some of which have pitches similar or greater than the appeal property. To the rear of No 22 is a recently constructed imposing dower house which has a 1000mm parapet, modern double glazed windows and a substantial roof.
 15. The summerhouse, the subject of these appeals, is a modern insertion in the Conservation Area with permission having been granted in 2002, albeit adjacent to curtilage listed walls. The approved roof pitches vary from between 40 to 50 degrees and have a compound hip angle of 35 degrees. The roof as constructed has roof pitches nearer 60 degrees, resulting in a compound hip angle of 50 degrees. The ridgeline is slightly longer but the ridge height is as approved. The top part of the roof is flat. In order to accommodate internal guttering to comply with the Building Regulations, the appellant states that the design was amended with a steeper pitched roof and the parapet was proposed to be raised from 40mm to 700mm to limit views of the roof from ground level. Standard Velux roof lights have also been installed.
 16. The Council considers that the building has lost its classical look and appears top heavy with the roof being incongruous and undermining the significance of the nearby heritage assets and their significance as it is at odds with the character of the traditional ancillary buildings to the rear of the Crescent. The rear gardens of the Crescent contain a number of fine surviving historic structures with interesting roofs and elevations facing the gardens, many constructed in classical pavilion and mews style with temple fronts and pediments.
 17. The summerhouse sits amongst a variety of roof forms, including mansards, tile and slate, pitched and flat roofs. Within this wider context, the roof does not look incongruous. Nor is it particularly visible from public viewpoints. Whilst it can be seen from apartments within the Royal Crescent and elsewhere, this does not mean that the roof is harmful. I do not consider that it would represent a discordant or obtrusive feature as proposed to be completed in Appeals C and D, subject to my comments below on the roof lights.
 18. The appellant maintains that the building as proposed to be completed responds to and continues the tradition of individual garden building design and would sustain the significance of the heritage assets. Some would argue that its size is not traditional but I am mindful that the principal of the building is not an issue and it is primarily the roof that is of concern. It is a fact that the roof pitches are steeper than approved and that this has bulked up the roof. However this in itself does not automatically lead to harm to the significance of heritage assets. In my view the additional bulk or the increased pitch is not sufficient to create harm either in its own right or in comparison to the approved scheme.

19. The appellant has indicated that he would install conservation roof lights to replace the Velux ones and to remove the side roof light adjacent to No 22. As the Council state, this would reduce the assertiveness of the roof although this would not overcome their objection to the roof. The Council has suggested that in the event of the appeal being allowed, the side roof light should be obscure glazed and non-opening to protect the amenities of the adjoining occupiers. However I consider that the position of this roof light introduces a discordant element and in view of the appellant's willingness to remove the roof light, such a condition would not be necessary. However a condition requiring the submission and approval of details of the conservation roof lights and removal of the side roof light within a fixed time period would be necessary to ensure that such work is carried out.
20. The Council is also concerned that the proposed increase in the height of the parapet would further disturb the proportions of the structure which was originally planned as a subservient and low key garden structure. The originally designed summerhouse was based on the classical 'golden ratio' of 1:1.618 but the appellant considers that the approved scheme lacked the necessary height to achieve these 'ideal' classical proportions. The revised scheme (in appeals C and D) reinstates these classical proportions by raising the parapet roof and it would also incorporate a band course to create a shadow line.
21. I have had regard to the detailed joint representations on behalf of Nos 21, 22 and 24 Royal Crescent in which the appellant's submissions have been criticised for not referring to the formal listing record, the 2005 Conservation Area Character Appraisal or the setting of the terrace and surrounding buildings. It also contains much peripheral or immaterial information. Reference is made to on-going work involving the analysis of rear garden areas in the Royal Crescent/Crescent Lane and an extract of landscaping and visual impacts has been submitted. This shows that the appeal property would be visible from a number of vantage points and inter-visible with historic structures. It also concludes that 'these views would be directly impacted were the orangery roofline to remain as partially constructed'. They question the appropriateness to control the height of the parapet wall by condition as suggested by the appellant. They also question the intentions of the appellant as they claim that the unauthorised works would lead to the creation of an additional level and its potential standalone residential function.
22. However, I am determining the appeals on the information before me. The appellant has submitted a detailed rebuttal of the joint representations in which he states that the intention is to use the summerhouse as an ancillary building. If at a future date the appellant wishes to alter the building or change its use and this constitutes development requiring planning permission, then that would be a matter for the Council at the appropriate time.
23. I have also had regard to the representations of the Bath Preservation Trust who express concern over the appellant's approach to the planning system and the intended use of the appeal property in addition to the adverse effects the building has on heritage assets and the appellant's statement that a higher parapet would improve the appearance of the roof.
24. I do not share the neighbours, the Trust's or the Council's assessment of the extent of harm that they feel arises through this development. I consider that

the proposed development would not adversely affect the setting of the Grade I listed Royal Crescent, nor would it harm the character or appearance of the Conservation Area or that of the World Heritage Site. In the absence of any identifiable harm, it is unnecessary for me to identify any public benefits arising from the development. It would accord with saved Policies BH.2 and BH.6 of the Bath and North East Somerset Local Plan in respect of development affecting the setting of a listed building and within a Conservation Area and with saved policies D.2 and D.4 which refer to general design and townscape considerations. The proposal also accords with the National Planning Policy Framework so far as the protection of heritage assets is concerned.

Conclusions

25. For the reasons given above and having had regard to the representations in support I conclude that the appeals should succeed on ground (a) of Appeal A and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.
26. I also conclude that the appeals should succeed on ground (e) of Appeal B and listed building consent shall be granted. The appeal on ground (h) does not therefore need to be considered.
27. Appeals C and D also succeed.
28. Condition 1 is necessary to ensure that the incomplete development is completed in accordance with the submitted plans.
29. The purpose of condition 2 is to require the appellant to comply with a strict timetable for dealing with the roof lights which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission or listed building consent for development yet to commence, in the case of a retrospective grant of permission or consent it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission or consent where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permissions and consents fall away.

Formal Decisions

Appeal A - Ref: APP/F0114/C/16/3151502

30. The enforcement notice is corrected: by the deletion in the Time for Compliance of the words "Six month from the date of this notice "and the substitution of the words "Six months from the date that this notice takes effect". Subject to this correction the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the replacement of the existing flat roof with a lead slated pitched roof to summerhouse/orangery with alterations

to the parapet on land at 23 Royal Crescent, Bath, BA1 2LT referred to in the notice, subject to Conditions Schedule 1 attached to this decision.

Appeal B - Ref: APP/F0114/F/16/3151503

31. The appeal is allowed and the listed building enforcement notice is quashed. Listed building consent is granted for the retention of a replacement for the existing flat roof with a lead slated pitched roof to summerhouse/orangery with alterations to the parapet at 23 Royal Crescent, Bath, BA1 2LT subject to Conditions Schedule 2 attached to this decision.

Appeal C - Ref: APP/F0114/W/16/3151504

32. The appeal is allowed and planning permission is granted for a new slate roof to the summerhouse with alterations to the parapet to supersede previous approval at 23 Royal Crescent, Bath, BA1 2LT in accordance with the terms of the application, Ref 15/05518/FUL dated 7 December 2015 and the plans submitted with it, subject to Conditions Schedule 1 attached to this decision.

Appeal D - Ref: APP/F0114/Y/16/3151505

33. The appeal is allowed and listed building consent is granted for a new slate roof to summerhouse with alterations to the parapet to supersede previous approval at 23 Royal Crescent, Bath, BA1 2LT in accordance with the terms of the application Ref 15/05519/LBA, dated 7 December 2015, and the plans submitted with it, subject to Conditions Schedule 2 attached to this decision.

P N Jarratt

Inspector

Conditions Schedule 1

Appeal A - APP/F0114/C/16/3151502 and

Appeal C - APP/F0114/W/16/3151504

- 1) The development approved by this permission shall be carried out in accordance the terms of the application, Ref 15/05518/FUL, dated 7 December 2015, and the plans submitted with it.
- 2) The building operations hereby permitted shall be removed and all materials resulting from the demolition shall be removed within 2 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 2 months of the date of this decision a scheme for the removal of the roof light on the east side elevation of the roof and making good the opening in the same materials as the remainder of the roof; and, the removal of other roof lights and their replacement with conservation roof lights; shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Conditions Schedule 2

Appeal B - APP/F0114/F/16/3151503 and

Appeal D - APP/F0114/Y/16/3151505

- 1) The development approved by this permission shall be carried out in accordance the terms of the application, Ref 15/05519/LBA, dated 7 December 2015, and the plans submitted with it.
- 2) The building operations hereby permitted shall be removed and all materials resulting from the demolition shall be removed within 2 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
- 3) The building operations hereby permitted shall be removed and all materials resulting from the demolition shall be removed within 2 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 2 months of the date of this decision a scheme for the removal of the roof light on the east side elevation of the roof and making good the opening in the same materials as the remainder of the roof; and, the removal of other roof lights and their replacement with conservation roof lights; shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.