
Appeal Decisions

Site visit made on 9 January 2017

by **P N Jarratt BA DipTP MRTPI**

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

Decision date: 25 January 2017

Appeal A - Ref: APP/V3310/F/16/3148707

Pathe Farm Cottage, Pathe Road, Othery, Bridgwater, Somerset, TA7 0JF

- 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 Mrs Valerie Ware against a listed building enforcement notice issued by Sedgemoor District Council.
 - The enforcement notice, numbered LBEN/E38/0015, was issued on 24 March 2016.
 - The contravention of listed building control alleged in the notice is:
 - 1 Replacement of nine windows with unpainted double glazed sash windows. Six of these were original sash windows and three were modern-style encasements;
 - 2 Removal of the staircase to the first floor and installation of a new staircase;
 - 3 Alteration to the floor plan of the first floor;
 - 4 Altering the coping stones to allow for the protection for the new gate pier;
 - 5 Extension of the left hand chimney stack by 12 courses.
 - The requirements of the notice are:
 - 1 The six unauthorised replacement windows as identified in Photograph A and B (attached to the notice) shall be removed and single glazed timber sash windows with traditional lead weights and pulley system installed. The glazing bars shall be of lamb's tongue moulding and measure 19mm in cross section. The sash windows shall incorporate chamfered horns with no decorative curved detailing. The glazing shall be secured in place using putty. All external elements shall be painted in an off-white coloured solid paint.
 - a) The two ground floor sash windows to the front elevation shall be of a ten over ten pane configuration, identified in photograph C.
 - b) The two first floor sash windows to the front elevation shall be eight over eight pane configuration, identified in photograph C.
 - c) The two first floor sash windows to the rear elevation, omitting the central window, shall be of an eight over eight pane configuration in photographs A and B.
 - 2 The existing balusters to the unauthorised replacement staircase shall be removed and replaced with balusters which are straight with no decorative detailing. The newel caps to the newel posts at both ground and first floor levels shall be removed and replaced with plain square newel caps.
 - 3 The floor plan layout to the first floor shall be reconfigured to match that shown on approved drawing 'Existing and Proposed Floor Plans (dated 19/09/14)', approved under listed building consent 38/14/00013 as attached (to the notice).
 - 4 The coping stones that have been relaid to cover the junction of the wall and gate pier shall be removed and relaid over the reinstated wall, as directed to point 1 above. The coping stones shall be bedded and repointed using a lime based mortar, no cement shall be used. The pointing shall be brushed and bagged to ensure an appropriate finish and a weatherproof seal.
 - 5 remove the additional 12 courses of brickwork that have been applied to the left hand side chimney stack, identified in Photograph D
 - The period for compliance with the requirements is 6 months.
 - The appeal is made on the grounds set out in section 39(1) (a) (c) and (e) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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- **Summary of Decision: notice corrected and varied; notice upheld in relation to windows and appeal allowed for the staircase with consent granted.**
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Appeal B - Ref: APP/V3310/C/16/3151805

Pathe Farm Cottage, Pathe Road, Othery, Bridgwater, Somerset, TA7 0JF

- 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 Mrs Valerie Ware against an enforcement notice issued by Sedgemoor District Council.
 - The enforcement notice, numbered ENOPS/E38/00015, was issued on 24 March 2016.
 - The breach of planning control as alleged in the notice is without planning permission,
 - 1) Widening the access from Pathe Road to the north of the subject property and creation of one gate pier to the north of the widened access point;
 - 2) Addition of supporting concrete buttresses due to unconfirmed structural issues;
 - 3) Erection of a glasshouse within the curtilage of a listed building;
 - 4) Erection of the wall and enclosure to the uncovered well.
 - The requirements of the notice are
 - 1) The gate pier to the north of the access drive for Pathe Farm Cottage (as identified in photograph A attached to the notice) should be removed and the width of the access drive reinstated to its previous position (as identified in photograph B). The bricks used with the gate pier should be used to recreate the removed section of the wall, and the new brick wall shall be bedded and repointed in a lime based mortar, no cement shall be used. The finish of the repointing shall exactly match the original historic pointing evident on the existing wall.
 - 2) Remove the concrete buttresses from the land edged red on the plan attached to the notice.
 - 3) Remove the unauthorised glasshouse in its entirety, and this to include the concrete slab that the glasshouse is sitting on from the land edged red on the plan.
 - 4) Remove the unauthorised wall and enclosure surrounding the uncovered well from the land edged red on the plan.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (e) and (f) of the Town and Country Planning Act 1990 as amended.
 - **Summary of Decision: notice upheld; appeal succeeds in part and planning permission granted for widening access, buttresses and glasshouse.**
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Procedural matters

1. The grounds of both appeals have changed since the appeals were originally lodged. The agent appeared to confirm that Appeal A is on grounds (a) and (c), and Appeal B on grounds (a) and (e) and (f). A number of points made by the appellant are unclear and there appears to be some confusion over the listed building and the planning issues, which has been made more confusing by the Council's appeal statements failing to satisfactorily distinguish between matters relating to the two appeals.
 2. Although the agent failed to confirm that a ground (e) appeal has been made in Appeal A, it is reasonably clear from the submissions that the appellant considers that listed building consent should be granted for the alleged unauthorised works. The parties have raised no objection to this ground being considered and I have therefore considered the listed building appeal on grounds (a), (c) and (e).
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The Notices

3. The fourth requirement in the second schedule of the notice of Appeal A states 'The coping stones that have been relaid to cover the junction of the wall and gate pier shall be removed and relaid over the reinstated wall, as directed to point 1 above. The coping stones shall be bedded and repointed using a lime based mortar, no cement shall be used. The pointing shall be brushed and bagged to ensure an appropriate finish and a weatherproof seal.' However, this requirement refers to a reinstated wall, but the demolition of a section of this wall does not form part of the allegation set out in the second schedule of the notice, but only refers to 'Altering the coping stones to allow for the protection of the new gate pier'. Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires that the notice shall specify the contravention. It is also necessary for the steps to relate to the contravention. I have the power to correct the notice so long as no injustice would be caused to the parties which is what I consider to be the case in this instance. I therefore intend to correct and vary the notice by deleting allegation 4 in the second schedule and step 4 in the third schedule.
4. It should be noted that allegation 1 in Appeal 2 refers to the widening of the access and the creation of one gate pier and I deal with that matter separately below.

Site and surroundings

5. Pathe Farm Cottage is a Grade II listed building. It is early C19 two storey, two bay dwelling with 16 and 20 pane sash windows. It sits within a former walled garden. Reference is made to a run of walling of between 2 and 3m high extending about 50m south-east along the roadside but there is about 28m of walling along the roadside that is separately listed and described as about 3m in height.
6. Although described as a former walled garden, the wall extends only around part of the site. A substantial length of the boundary is formed by the rock face of a former quarry. At the time of my site inspection I noted a freestanding domestic garage on the site, an area of grass, and an excavation that appears to be for a future pond, all of which related to the dwelling. The other part of the site contained a freestanding greenhouse sitting on concrete slabs surrounded by an area of hard core; a mobile home; paving slabs, tiles, timber, plant and equipment including a tractor, trailer and a digger.

Planning policy

7. 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 Development Plan policies for Sedgemoor are also material considerations in these cases.
8. Policy D17 of the Sedgemoor Core Strategy 2006-2027, amongst other things, seeks to conserve the historic environment, and Policy S3 sets out sustainable development principles.
9. 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.

Appeal A - appeal on ground (a)

10. An appeal on this ground is that the building is not of special architectural or historic interest.
11. The appellant has not provided any evidence to support this ground of appeal and the appeal on ground (a) therefore fails.

Appeal A - appeal on ground (c)

12. An appeal on this ground is that the matters alleged do not constitute a contravention.
13. Allegation 1 in the second schedule relates to the replacement of nine windows, six of which were original sash windows. The appellant appears to acknowledge this in that he states that the unauthorised replacement windows will be the subject of a planning application following the outcome of this appeal.
14. Allegation 2 relates to the installation of a new staircase. The appellant states that this was not original but a 1970s replacement that had rotted. The opportunity to widen the staircase was taken to make it more accessible. The appellant proposes the replacement of newel caps and balusters.
15. Allegation 3 relates to the first floor layout which is different to that approved. The appellant states that there was only one original wall on the first floor with the remainder being studwork.
16. Allegation 4 relates to coping stones being altered to protect the gate pier which the appellant states will be dealt with at the same time as any application for the windows. However, as I propose to delete this allegation from the notice, it is unnecessary for me to consider it further.
17. Allegation 5 relates to the extension of the left hand chimney stack (when viewed from the highway) by twelve courses. The appellant denies the allegation and has submitted photographs showing before and after photographs which indicate that the chimney has not been extended.
18. Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides for consent to be obtained for any works 'for the demolition of a listed building or for its alteration or extension in any manner that would affect its character as a building of special architectural or historic interest'. From the evidence before me it is clear that allegations 1 and 3 constitute contraventions. I consider that the removal of a 1970s staircase would have been unlikely to have affected the character as a building of special architectural or historic interest and I consider the effect of the new newel posts and balusters not to be significant.

19. Additionally, I consider that the Council misinterpreted the situation regarding the chimney which has been repointed, not increased in height (allegations 2 and 5).
20. For the reasons given above I conclude that the appeal should succeed on ground (c) in respect of allegations 2 and 5 only. I will therefore vary the notice to delete allegations 2 and 5 from the second schedule of the notice, and delete steps 2 and 5 in the third schedule. The appeal on ground (c) in respect of allegations 1, 3 and 5 fails.

Appeal A - appeal on ground (e)

21. An appeal on this ground is that listed building consent should be granted for the unauthorised works. The main issue is the effect of the works on the special architectural and historic building and its setting. In view of my conclusions above, it is necessary for me only to consider the effect of the replacement windows and the alteration to the upper floor layout.

Windows

22. The windows referred to in the allegation are the 4 windows on the front elevation and two upper floor windows on the rear elevation. The centre upper floor rear and windows flanking the back door of the house were of modern casement design prior to their replacement. The requirements provide a detailed specification for replacing the 4 new frames at the front and two at the rear. However, there is no requirement to return the 3 replacements for the modern casements to their original condition prior to the works being carried out. The outcome would therefore lead to a mix of window types and colours on the rear elevation.
23. The appellant states that as he had obtained permission under consent 38/14/00013 to replace the modern casement window to the first floor rear, he assumed that the same design and styling would be appropriate to replace other rotten windows on the building.
24. The Council considers that the installation of wooden sash windows with visible spacers clearly identifies the double-glazed units as non-traditional, modern fixtures, critically undermining the integrity and character of the listed building. Whilst I would agree with this view in that they appear as modern fixtures, I do not consider that they cause substantial harm when considered in the context of the building as a whole, its recent extension and the modern double glazed windows that would be retained. Nevertheless they would lead to less than substantial harm in the context of paragraph 134 of the Framework, and this harm is not outweighed by any public benefits arising from the replacement windows.
25. The Council has indicated that at a meeting with the appellant's agent in May 2016 it was agreed to invite an application for listed building consent to retain the sash boxes with traditional lead weights and pulley systems but to include the stripping back of external wood and painted in off-white coloured solid paint. The glazing would be sash through bars of 20mm with white spacers with putty glazing secured with putty. However no such application was submitted.

First floor layout

26. So far as the change in the configuration of the first floor plan is concerned I note that the Council considers that this does not reflect the simple character of a Georgian servant's dwelling and the alterations have caused substantial harm to the character and significance to the listed building. Notwithstanding this view, the Council has approved the provision of an en-suite bathroom over the staircase and for the construction of a two storey side extension which has provided an additional bedroom (under consent 38/14/00013) and the removal of a chimney stack at the rear of the cottage. I consider that these approved alterations would have changed the first floor plan to such an extent that the simple character that would have been evident in earlier times has been compromised. I therefore propose to grant consent for this aspect of the works.
27. The appeal on ground (e) succeeds so far as first floor layout is concerned but fails in respect of the replacement windows.

Conclusions on Appeal A

28. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant listed building consent for one part of the matter the subject of the notice, but otherwise I will uphold the listed building enforcement notice with corrections and variations and refuse to grant consent on the other part.

Appeal B – appeal on ground (e)

29. An appeal on this ground is that the notice was not properly served on everyone with an interest in the land. The property is in two titles in the name of the appellant. The notice was served by the Council in accordance with s172.
30. The appeal on this ground fails.

Appeal B appeal on ground (a)

31. The main issue is the effect of the development on the special architectural and historic building and its setting.
32. In respect of the widening of access the appellant states that she had permission for building a gate pier on the right hand side of the access (38/15/00012). She has widened the access by 900mm to allow for modern day vehicles and removed the six top courses of the wall, cleaned the bricks and reinstated the brickwork with lime mortar. The new pier is part of the structural element of the wall which is over 3.5m high. Buttresses were added to provide structural support for the wall which the appellant proposes to clad in brick. The appellant advises that permission for the entrance was granted in the 1970s.
33. The pier has been built to match the right hand pier and has been constructed using reclaimed materials and lime mortar. In the absence of any comment by the Council on the 1970s permission, I assume that the access is not an original feature of the wall. The wall was listed in 1987 so the access would have existed at that time and I note that the wall was listed primarily for its group value. I consider that the widening of the access and construction of the

pier to have little material effect on the architectural and historic interest of the listed buildings (the wall and the cottage) or to their setting. Indeed, the matching of the permitted pier with the new left hand pier enhances the wall and provides structural support. The lane outside the property is narrow and close to a bend and there is a public benefit in vehicles being able to turn into the site without difficulty. Although the widening of the access provides a slightly more open view of the site, any loss of enclosure is limited due to the width of the lane.

34. The Council considers that in the light of the submitted structural engineers report, the addition of concrete buttresses on the inside of the wall is considered to be acceptable and that it is unnecessary to clad them in reclaimed brick. Although these buttresses appear visually intrusive I accept that they are necessary to provide adequate lateral restraint to ensure the future structural integrity of the wall. However, they appear very stark in contrast to the listed wall and their appearance would be enhanced through them being clad in reclaimed brick with lime mortar joints to match that of the existing wall. I shall attach a condition to this effect and also require the pier to be capped with a coping stone that matches the original coping of the listed wall.
35. The glasshouse house is positioned more centrally in the site than would normally be expected with a greenhouse in a walled garden. However, the garden is only partially walled and it has very few characteristics of a traditional walled garden, due to the exposed rock faces, existing vegetation on the site, the material that is stored within it or its current use. Although the glasshouse is of generous proportions, I do not consider that it appears incongruous on the site or that it affects the setting of the listed cottage or the listed wall.
36. I consider therefore that the effect of the development on the special architectural and historic interest of the buildings and their settings is neutral and accords with the provisions of the Framework in respect of the protection of heritage assets. The development also accords with Policy D17 of the Sedgemoor Core Strategy and does not conflict with Policy S3.
37. The allegation in the notice makes reference to the erection of a wall and enclosure to an uncovered well but the appellant has removed the enclosure and covered over the well opening. However, as this remains as part of the allegations it is necessary for me to uphold the notice in so far as the well is concerned.

Appeal B on ground (f)

38. An appeal on this ground is that the steps required by the notice exceed what is necessary to remedy the breach. However, as I am granting planning permission for all matters alleged except for the erection of the wall and enclosure of the covered well, it is not necessary for me to consider the ground (f) appeal for those matters. As the appellant has already met the requirements for removing the well wall and enclosure it follows that the steps are not excessive.
39. The appeal on this ground fails.

Conclusion on Appeal B

40. For the reasons given above I conclude that the appeal should fail on grounds (e) and (f) but succeed in part on ground (a) and planning permission will be granted subject to conditions.

Formal Decisions

Appeal A - APP/V3310/F/16/3148707

41. I direct that the listed building enforcement notice be corrected by the deletion of allegations 2, 4 and 5 in the second schedule; and varied by the deletion of steps 2, 4 and 5 in the third schedule and the appeal be allowed insofar as it relates to the removal of the staircase to the first floor and installation of a new staircase and listed building consent is granted for the retention of the staircase at Pathe Farm Cottage, Pathe Road, Othery, Bridgwater, Somerset, TA7 0JF.

The appeal is dismissed and the listed building enforcement notice is upheld as corrected and varied, insofar as it relates to the replacement of six original sash windows with unpainted double glazed sash windows and listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Appeal B - Ref: APP/V3310/C/16/3151805

42. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the erection of the wall and enclosure to the uncovered well and planning permission is refused for it. The appeal is allowed insofar as it relates to the widening of the access and creation of a gate pier; the supporting buttresses and the erection of a glasshouse within the curtilage of a listed building and 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:
- i) Widening the access from Pathe Road to the north of the subject property and creation of one gate pier to the north of the widened access point;
 - ii) Addition of supporting concrete buttress due to unconfirmed structural issues;
 - iii) Erection of a glasshouse within the curtilage of a listed building; on land at Pathe Farm Cottage, Pathe Road, Othery, Bridgwater, Somerset, TA7 0JF referred to in the notice subject to the following conditions:
 - 1) The concrete buttresses attached to the listed wall shall be clad in reclaimed brick with lime mortar jointing to match the brickwork of the adjoining wall.
 - 2) The gate pier shall be capped in a material that matches the coping stones of the existing wall.

P N Jarratt

Inspector