
Appeal Decision

Site visit made on 23 January 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 27 January 2017

Appeal Ref: APP/U1105/F/16/3151471

Widworthy Barton, Widworthy, Honiton, Devon EX14 9JS

- 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 Thomas Kremer against a listed building enforcement notice issued by East Devon District Council.
 - The enforcement notice was issued on 26 April 2016.
 - The contravention of listed building control alleged in the notice is: the removal of 6 brick chimney stacks and replaced with 6 chimney stacks of greater height and built using dressed stone incorporated in chimney stacks identified modern flue lining and affixing of a satellite dish on the replacement chimney stack.
 - The requirements of the notice are as follows:
 1. Removal of each of the 6 chimney stacks to roof level identified '1' to '6' on Plan B appended.
 2. Removal of each of 2 modern flue liners within the 2 chimney stacks identified '3 and '5' on plan B.
 3. Removal of the satellite dish together with any fitting attached to the chimney stack '5' on plan B.
 4. Rebuild chimney stack '1' on plan B with a chimney stack of 810mm x 810mm x 2700mm using Ibstock Brick Swanage handmade Light Red Multi bound in mortar comprising one part lime and three parts well-graded Charstock sand and topped with a stone (or similar) slab supported by corner blocks of said brick.
 5. Rebuild chimney stack '2' on plan B with a chimney stack of 650mm x 650mm x 500mm using Ibstock Brick Swanage handmade Light Red Multi bound in mortar comprising one part lime and three parts well-graded Charstock sand and topped with a stone (or similar) slab supported by corner blocks of said brick.
 6. Rebuild chimney stack '3' on plan B with a chimney stack of 830mm x 700mm x 1600mm using Ibstock Brick Swanage handmade Light Red Multi bound in mortar comprising one part lime and three parts well-graded Charstock sand, replacing the flue lining with a flexible metal flue liner in accordance with the current Building Regulations.
 7. Rebuild chimney stack '4' on plan B with a chimney stack of 730mm x 1070mm x 2350mm using Ibstock Brick Swanage handmade Light Red Multi bound in mortar comprising one part lime and three parts well-graded Charstock sand and topped with a stone (or similar) slab supported by corner blocks of said brick.
 8. Rebuild chimney stack '5' on plan B with a chimney stack of 490mm x 800mm x 2300mm using Ibstock Brick Swanage handmade Light Red Multi bound in mortar comprising one part lime and three parts well-graded Charstock sand, replacing the flue lining with a flexible metal flue liner in accordance with the current Building Regulations.
 9. Rebuild chimney stack '6' on plan B with a chimney stack of 650mm x 650mm x
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2750mm using Ibstock Brick Swanage handmade Light Red Multi bound in mortar comprising one part lime and three parts well-graded Charstock sand and topped with a stone (or similar) slab supported by corner blocks of said brick.

10. Remove from the land all building materials and rubble arising from compliance with the requirements above.

- The period for compliance with the requirements is 12 months.
 - The appeal is made on grounds (d) and (i) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The appeal is dismissed. See Formal decision below.

Matters of clarification and background information

2. The appeal is made on grounds (d) and (i) only and the merits of the case; that is, whether or not consent should be granted for the unauthorised works, do not fall to be considered. Although alternative drawings have been submitted, I cannot consider whether or not Listed Building Consent (LBC) should be granted for the works as shown on these drawings. I am only empowered to deal with the Listed Building Enforcement Notice (LBEN) as drafted and on the basis of the two grounds pleaded. If the Appellant wishes the alternative stone chimneys to be considered for LBC then it would be necessary to submit new applications to the Local Planning Authority (LPA).

3. The appeal building is a Grade II* listed building (added to the list in February 1955) which dates back to the early 16th Century, when it was built for the Chichester family. The list description describes the property as part early 16th Century, with rebuilding in the late 16th Century and early 17th Century. There have been various 20th Century alterations including new chimneys (6), which are described in the listing as 'local stone rubble stacks topped with 19th and 20th Century bricks'. The building is located to the south west of St Cuthbert's church and to the south east of a group of farm buildings.

4. The chimneys, the subject of the LBEN, were removed in 2012 when the Appellant and his late wife noted that they were in a poor state of repair, having been '*vulnerable to weathering and frost damage*'. It is stated that the materials had deteriorated and that the chimneys were considered to be in a '*dangerous condition*'. The Appellant, now acknowledges that the works were carried out without LBC, but indicates that the '*repairs*' were '*well-intentioned*' although '*incorrectly undertaken*'.

5. Retrospective Planning Permission (PP) and LBC applications were refused in 2014 for the retention of the chimney works as carried out. These were PP and LBC references 14/1168/FUL and 14/1062/LBC. The reasons for refusal referred to the form and inappropriate materials of the replacement chimneys and the fact that, in the LPA's view, they were harmful to the character and appearance of the listed building and contrary to relevant local plan policies and those of the National Planning Policy Framework (NPPF). English Heritage (EH now Historic England –HE) had commented on the application and agreed with the LPA that the works as carried out were unacceptable and harmful to the Grade II* building.

The appeal under ground (d)

6. This ground of appeal addresses situations where essential and urgent works were needed to preserve the listed building. The emphasis is on the words '*essential*' and '*urgent*'. The ground of appeal comprises three tests. The first is

whether the works were urgently necessary in the interests of safety or health; the second test is whether or not it was not practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support and the third test is whether the works carried out were the minimum measures immediately necessary to achieve the aims of safety, health or preservation. For an appeal to succeed on ground (d) all three tests must be met and the onus is on an appellant to conclusively show that this is the case.

7. On the first test, although it is stated that the chimneys had deteriorated and were considered to be '*dangerous*', there is no firm or conclusive evidence to show that they were in such a state that they were about to collapse. Normally, one would expect/require a structural survey/report in support of a case under this first test. I accept that the Appellant and his late wife must have had concerns about the chimneys and I sympathise with their predicament at that time. However, it has not been shown that the '*health and safety*' of any occupant of the house, or any other person for that matter (including members of the public), was at risk due to the then condition of the 6 appeal chimneys.

8. On the second test there is also no evidence to indicate that the works were so '*urgently necessary*' that some form of consultation (prior to the carrying out of the works) with the Council was precluded, through pressure of time. In fact the Appellant accepts that the works were carried out without LBC and, although '*well intentioned*' they were '*inappropriately undertaken*'. There is nothing to indicate that basic maintenance/repair works could not have solved the problem for a temporary period whilst a long-term solution was submitted to, and agreed, with the LPA. Such as , for instance the alternative proposals.

9. The works appear to have been carried out without any liaison with the planning or conservation officers of the Council. Thus, in my view, it has not been conclusively shown that the situation was of such a pressing nature that the works carried out were so '*urgently*' necessary for safety or health reasons.

10. Finally, on the basis of the submissions and from what I have seen, the works enforced against cannot be said to be the '*minimum measures*' necessary. Nor has it been conclusively shown that the works to the chimneys carried were '*immediately*' necessary to overcome any health or safety issue. In fact the works completely replaced the existing stone and brick chimneys. There is nothing to indicate that they could not have been stabilised temporarily whilst an appropriate solution for their repair/replacement was considered. In my view, therefore, the appeal fails on all three of the tests and cannot succeed on ground (d).

The appeal under ground (i)

11. To be successful on this ground it must be conclusively shown that the steps required by the notice, for the purpose of restoring the building to its former state, would not serve that purpose. However, again there is no evidence submitted to show that the requirements would not serve that purpose. From the Council's submissions and from my own inspection it is clear that, if the requirements are all followed, then the previous character of the listed building would be restored. The brick chimneys would clearly be restored to the state they were in prior to the unauthorised works being carried out.

12. It is evident that the existing composite brick and stone stacks were not original and I agree with the LPA and HE that it is likely that the original chimneys were constructed of similar Beer stone to the quoins and window surrounds of the house. I also agree that there are alternative preferable solutions such as building

brick stacks to be bound in lime mortar or re-building as indicated by the Appellant in a stone which matches that of the other parts of the house.

13. However, as indicated by the Council, in relation to the LBEN procedures, it can only require that the chimneys be returned to their pre-existing composite brick status, rather than requiring an improvement on what was in place. It follows, therefore, that if the requirements were to be followed then the steps required by the notice, for the purposes of restoring the character of the building to its former state, would, indeed, serve that purpose. The appeal must also fail, therefore on ground (i).

Other Matters

14. In reaching my conclusions on the two grounds of appeal, I have taken into account all of the other matters raised in support of the Appellant's case. These include the references to the condition of the chimneys which were removed; the other commendable restoration works carried out to the listed building; the initial grounds of appeal, the amended statement; the proposed plans/options showing the proposals for restoration of the chimneys and the research and restoration works carried out since 1979. However, none of these matters carries sufficient weight to alter my conclusions and nor is any other factor of such significance to change my decision that the appeal should be dismissed.

15. However, I refer again to the point I raise in paragraph 2 above, in that if the Appellant wishes to replace the chimneys in accordance with the alternative drawings submitted, then it is a matter between him and the Council. Given the compliance period of 12 months, I consider that it would be feasible for the Appellant to further liaise with the Council and HE with a view to providing an acceptable proposal for the chimney stacks on this fine Grade II* listed building.

Formal Decision

16. The appeal is dismissed and the listed building enforcement notice is upheld. Listed building consent is refused for the works carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Anthony J Wharton

Inspector