
Appeal Decision

Site visit made on 30 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: 10 February 2017

Appeal Ref: APP/C1570/F/16/3144468

Henham Lodge, Chickney Road, Henham, Bishops Stortford CM22 6BG

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Vanessa Day against a listed building enforcement notice (LBEN) issued by Uttlesford District Council.
 - The enforcement notice was issued on 22 February 2016.
 - The contravention of listed building control alleged in the notice is: the removal of 22 windows and the replacement of those windows with 22 sealed unit double glazed windows in the historic part of the Grade II listed building.
 - The requirements of the notice are to: remove all the 22 sealed unit double glazed windows in the historic part of the Grade II listed building and replace with 22 single glazed painted timber windows with slender ovolo moulded glazing bars.
 - The period for compliance with the requirements is nine months.
 - The appeal is made on grounds (e), (g), (h) and (i) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) as amended.
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Decision

1. The appeal is allowed and the Listed Building Enforcement Notice, which is void for uncertainty, is quashed.

Background information

2. Henham Lodge, which is located to the north of Chickney Road, was listed in Grade II in February 1980. It is a substantial farmhouse of two storeys and is timber framed with plastered walls. Most of the building dates back to the C16 but with part of the frame being of C15 origin. The list description refers to the windows at that time being mostly casements but with some double-hung sash windows with glazing bars. There is a two-story staircase wing and the interior is described in the list as having exposed timber framing, ceiling beams and joists. The house is accessed via a private driveway and is bounded by mature trees and hedgerows.
 3. The Council's report, seeking delegated approval of LBEN action, sets out the planning history of the building from 1985 up to 2014. Various applications relating to farm buildings and changes of use between 1985 and 2006 were granted approval. In 2008 consent (LBC) was refused for a single storey front extension and a front porch extension. In 2014 LBC (UTT/14/2828/LB) was granted conditionally for internal alterations, repairs, general remedial works and the installation of double glazing to part of the building (7 windows in a Victorian wing).
 4. At the same time LBC (UTT/14/2829/LB) was refused for the replacement of windows in the historic part of the listed building. A complaint had been made to the LPA. The original windows were described as being 1960s single glazed EJMA windows and the proposal was to replace them with '*traditional Georgian windows in double glazing*'. An appeal (APP/C1570/Y/15/3007540) against this refusal was dismissed on 14 July 2015 and, during that appeal site visit, it was noted that all of
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the windows in the historic part of the dwelling had been replaced with double glazed windows.

5. It is indicated on behalf of the appellant that, in 2013, the majority of the windows dated from 1969 (prior to listing) and were off-the-shelf '*stormproof*' type windows, with top-hung vent lights; casements which sat proud of the frames and square section glazing bars. Prior to 1969, windows are said to have been 'Crittall' windows but, other than a 1954 aerial photograph, there is no record of windows which pre-dated the 1969 replacements. It is indicated that the 1954 photograph does not show the front sash windows having glazing bars and this, it is suggested, seems to conflict with the list description.

The LBEN and the gist of the cases

6. On behalf of the Appellant the LBEN is questioned on several counts. First it is argued that the notice refers to section 38(2)(a) of the PLBCAA and that this section is inappropriate. It indicates that the LBEN shall specify the alleged contravention and require such steps as may be specified in the notice to be taken '*for restoring the building to its former state*'. It is indicated that this does not accord with the requirements of the notice, in that this requires timber windows with '*ovolo moulded glazing bars*' whereas the '*former state*' was that the majority of the windows had been EMJA '*stormproof*' windows.

7. However, the LPA indicates that it is '*of the opinion that the previous windows were undesirable*' and indicates that the LBEN was intended to fall under section 38(2)(b). This section states that, if a LPA considers that restoring to a former state would not be reasonably practicable, or would be undesirable, then they can specify further works as considered to be necessary, to alleviate the effect of the unauthorised works. In this case, therefore, the Council indicates that the notice could be amended by its correction by substituting section 38(2)(a) with 38(2)(b). I agree that this course of action would be possible and that the notice, if satisfactory on all other counts, could be justifiably corrected without causing injustice.

8. The second point raised, on behalf of the appellant, is that the notice fails to specify exactly which windows need to be replaced. It is indicated that there are 30 replacement windows in the property and that, if it is assumed that that the 7 in the Victorian section are excluded (because they have LBC), this leaves 23. It is therefore argued that it is '*totally unclear which of the windows have to be replaced*'.

9. Finally it is argued that the requirements are vague and imprecise by simply referring to '*slender ovolo moulded glazing bars*'; that these could range from 14mm to 33mm in width and that there is no reference to the key characteristics of the replaced windows. It is contended the specification for the required replacement windows is far from clear and that the Appellant has been placed in an uncertain position as to what the LPA requires.

Reasons

10. Having considered the requirements which states; '*remove all the 22 sealed unit double glazed windows in the historic part of the Grade II listed building and replace with 22 single glazed painted timber windows with slender ovolo moulded glazing bars*', I share the concerns raised on behalf of the Appellant.

11. I accept that the first part of the requirement is clear in that it requires the removal of all double glazed windows in the historic part of the building. That is, all windows excluding those already granted consent. This is clear and it matters not, in my view, whether that amounts to 22 or 23 windows. This in any case could be corrected under the powers transferred to me.

12. However, I find the second part of the requirements to be far from clear. As well as the vague and imprecise reference to the '*ovolo moulded glazing bars*', there is no indication as to the sizes of the mouldings or to exactly what is meant by the '*timber windows*'. Are these windows casements or sash and case windows? Are they of the same type, frame composition and positioning (in the openings) as the windows which have been fitted? Other than being '*timber windows*' what are their other characteristics in terms of component sizes and sections?

13. Another issue relates to the fact that the Council does not appear to have taken into account the implications of removing the double-glazed windows and the effect that this might have on the underlying structure and fabric of this listed building. In fact, as indicated on behalf of the Appellant, more harm could be caused to the listed building by replacing the windows (to a vague specification) than has been caused by the use of the double glazed units.

14. However, irrespective of this point, in my view, the requirements in the LBEN are hopelessly deficient in terms of precision and detail. A notice must be drafted so as to tell a recipient what he/she has done wrong and what he/she must do to remedy the situation. This LBEN is confusing, incomplete, imprecise and ambiguous with regard to what exactly is required of the Appellant to rectify the contravention of listed building control.

15. Although the LBEN does tell the Appellant what she has done wrong (the installation of 22 double-glazed windows), it fails to properly indicate what she must do to remedy the situation. The appropriate test in this respect is derived from the case of *Miller-Mead v MoHLG* [1963] 2 WLR 225. In that case it was held that if a recipient could not tell, within reasonable certainty, what steps he had to take to remedy a breach, a notice may be found to be a nullity.

16. The case of '*Ahearn & Simms v SSE and Broxbourne*' held that defects or errors could (and, where appropriate, should) be corrected if no injustice would be caused to any party. In this case, whilst accepting that section 38(2)(b) could be substituted for 38(2)(a) referred to in the notice (without causing injustice), this would not overcome my finding above that the requirements of the LBEN do not explain, clearly and unambiguously, what is required to be done to remedy the contravention of the PLBCAA.

17. Following the previous appeal the LPA has confirmed that it provided no formal advice to the Appellant regarding a specification for replacement windows. It is stated that the authority simply considered that, in order to carry out the remedial works, '*it would require listed building consent which could be done by way of issuing a listed building enforcement notice*'.

18. Thus, it seems to be the case that, other than what is set out in the requirements to the notice, no other specification or guidance of exactly what was expected to be done by the Appellant has been issued.

19. I have considered whether it is open to me to correct the LBEN in accordance with the powers under section 41(2) of the PLBCAA. However, these powers do not extend to replacing, re-writing or repairing fundamental defects or deficiencies in the requirements of a notice. Any attempt to do so in this case would, in my view, cause injustice.

20. It follows that I can only find the LBEN to be void for uncertainty and, therefore, have no option but to ensure that it is quashed.

21. In reaching my conclusions I have taken into account all of the submissions including the planning history of the site; the initial grounds of appeal; the Council's

appeal statement and the Appellant's detailed comments in relation to the statement. However, none of the matters raised in any of the representations changes my view that the LBEN is hopelessly void for uncertainty and should be quashed. In these circumstances the appeal under grounds (e), (g), (h) and (i) do not fall to be considered.

Anthony J Wharton

Inspector