
Appeal Decision

Hearing held on 30 November 2016.

Site visit made on 30 November 2016.

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 14 February 2017

Appeal Ref: APP/P3040/F/16/3146993

Park Lodge, Bridgford Road, West Bridgford NG2 6AT

- 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 by Mr B Sheppard of Paragon Property Development Company Limited against a listed building enforcement notice issued by Rushcliffe Borough Council.
 - The Council's reference is 15/00232/LISTED.
 - The notice was issued on 3 February 2016.
 - The contravention of listed building control alleged in the notice is abrasive blasting of the exterior brickwork to the south-west and north-west elevations of Park Lodge, for the alteration of the building by removing the fire-skins of the bricks affecting the character of the building as a building of special architectural or historic interest, contrary to sections 7 and 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
 - The requirements of the notice are to replace bricks and/or insert brick slips, re-point eroded joints and voids and apply coatings for tinting and sealing the brickwork all as specified in the Works Specification attached to the notice.
 - The period for compliance with the requirements is eight months.
 - The appeal is made on the grounds set out in section 39(1)(a), (c), (h) and (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

Application for costs

1. At the Hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary matters

2. For the purposes of this decision I have referred to Bridgford Hall as '*the Hall*', and to Park Lodge as '*the Lodge*'.
3. An appeal under ground (a) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the Act) is that the building is not of special architectural or historic interest. However, 'the building' referred to in a ground (a) appeal is the statutorily listed building itself – in this case the Hall, which is Grade II listed. It was agreed at the Hearing that there was no intention to challenge the special interest of the Hall, but to question whether the the Lodge should be considered as being within the curtilage of the Hall, and therefore as part of the listed building.

4. The most appropriate ground under which to consider the question of curtilage is ground (c) – the matters alleged to constitute a contravention of s.9(1) or (2) of the Act do not constitute such a contravention. This is on the basis that listed building consent would not be required for a building that did not form part of a listed building. I have therefore considered the curtilage question under ground (c), and not given further consideration to ground (a). I do not consider any party to be substantially prejudiced by my determining the case in this way.
5. In the event that I find the appeal property to be part of the Grade II listed building, by virtue of being part of that building as defined under s.1(5)(b) of the Act, I will pay special regard to the desirability of preserving the special architectural and historic interest of the listed building, as required by Section 16(2) of that Act.

Background matters

6. Park Lodge is a late 19th century building standing on the north-eastern side of Bridgford Road at the corner of the entrance drive into the Hall. It is built of red brick above a blue engineering brick base, and has a slate roof. The main two-storey body of the building is L-shaped in plan, with a single storey extension on the north-east side. The roof has gables facing onto the road and the drive, as well as on the south-eastern elevation. The gables have moulded brick verges sitting on similarly moulded brick kneelers, effectively forming an open-bed pediment. The gable end facing onto the drive has a bay window on the ground floor, and the windows on both floors have stone surrounds. The front entrance door is in the re-entrant of the 'L', and has a porch with a hipped slate roof.

The appeal on ground (c)

7. This ground is that the matters alleged to constitute a contravention of s.9(1) or (2) of the Act do not constitute such a contravention. S. 9(1) is relevant in this case, and sets out that a person contravening s.7 shall be guilty of an offence. S.7 restricts works affecting a listed building by requiring authorisation of any works for amongst other things its alteration in a way that would affect its character as a building of special architectural or historic interest. I should make clear that in a ground (c) appeal the merits of the works are not relevant - only the impact on the character of the building, whether positive or negative.
8. The appellant's principal argument is that the Lodge should not be regarded a part of the listed building, since it is not within the curtilage of the Hall, and that the provisions of the Act do not apply.
9. In the Court of Appeal case of *Sutcliffe Rouse and Hughes v Calderdale BC*¹ it was determined that there were three criteria to apply in assessing whether a structure lies within the curtilage of a listed building – the physical layout of the building and the structure, their ownership past and present, and their use and function past and present. This approach is closely reflected in the Historic England Advice Note 'Listed Buildings and Curtilage'. Furthermore, the parties accept that the assessment is to be made on the basis of the situation at the time of listing – in this case, December 1949.

¹ *Sutcliffe Rouse and Hughes v Calderdale BC* [1983] JPL 310.

10. In terms of layout and proximity, the Lodge is some 60-70 metres from the front of the Hall, and it stands adjacent to the principal gateway at the entrance to the drive. The drive passes through an area with mature trees, forming a part of the extensive public park, and connects into the formal ornamental garden immediately to the front of the Hall. In the context of the size of the park, I do not consider the separating distance has the effect of divorcing the buildings, and in my opinion there is a clear relationship between the two buildings, with the Lodge and gates signalling the main entrance to the Hall, with the two connected by the drive.
11. Although the Hall can only be glimpsed from the gateway, this is largely as a result intervening mature trees. I accept that the public library to the north-east of the Lodge – built in the 1930s within the Hall grounds - is a prominent and somewhat intrusive feature in the overall scene, and has become more so as a result of a recent extension. Nevertheless, neither the original 1930s library nor the recent extension has physically interrupted the drive or any pathways leading to the Hall. In my opinion the library does not intrude to the extent that the visual or physical link between the Lodge and Hall has been lost.
12. The Hall remains readily accessible from the Lodge, at a relatively short distance away. Although the front entrance door to the Lodge is outside the gates at the entrance to the drive, this is not an unusual arrangement for a gatehouse, where the gatekeeper would need to have control over those wanting to pass through the gates. Furthermore, an Ordnance Survey map of 1954 shows an arrangement with the Lodge entirely within the fence and gates of the Hall grounds.
13. The architectural organisation of the Lodge is such that the emphasised features - the stone bay window, and stone surround to the window above, and the front entrance door – face onto the drive, overlooking the gateway. It is clear that some degree of importance was attached to this elevation, indicating an intended relationship of the building to the drive, as well as serving its evident function as a gate lodge subservient to the Hall.
14. Regarding ownership, The Hall, the Lodge, and the grounds had been in the ownership of the Bridgford Urban District Council (UDC) - the predecessor to Rushcliffe Borough Council - since 1923. Prior to that the Hall and grounds had been family owned, and the Lodge had formed part of the estate since its construction in the late 19th century. Both buildings were used as the Council's main offices, and the grounds became a public park. The two buildings have remained in the Council's ownership until the present day, although the Lodge has quite recently been let on a long lease. It is clear that the Hall and Lodge had historically been in the same ownership, remained so at the date of listing, and have continued to be so for many years subsequently.
15. As to use and function, a conveyance of 1883 identifies the Lodge as an entrance lodge, and an attached map shows it to be within the grounds adjacent to the main drive. The conveyance of the property to the UDC in 1923 shows a similar situation. A minute of the UDC Park and Hall Committee of 1928 shows that a new head gardener was appointed, to be accommodated in the Lodge. A further minute of the same committee in 1973 indicates that the Lodge was then occupied by the UDC Parks Superintendent. Extracts from various census returns show that the Lodge was occupied by the head gardener

to the Hall in 1891, probably 1901, and 1911. The Lodge was occupied by the head gardener to the family until 1923, and subsequently by the UDC Park Keeper. The Park Keeper would have been responsible for the upkeep of Bridgford Park – a very similar function to that of the head gardener – and use of the Lodge for this purpose should be considered as ancillary to the use of the Hall by his employers, the UDC. Again, this was the use at the time of listing, and it continued subsequently.

16. The appellant argued that the Lodge has a garden to its south-eastern and north western sides, enclosed with various types of fencing/hedging, and therefore stands within its own curtilage, distinct from the curtilage of the Hall. While it is the case that there is a private garden area on two sides of the building – as well as a piece on the road frontage delineated by a low post and chain fence. I also saw there is a long-disused gate in the metal hairpin fence on the north-eastern boundary of the garden. This gives – or gave – access directly into the Hall grounds. In my opinion it is quite likely that a gate lodge would have its own area of private garden, and this may form its domestic curtilage – however that is a quite distinct concept from the curtilage of a listed building.
17. The appellant argues that the curtilage question should be looked at in the light of the High Court case of *Morris*². However, I note that in that case the principal listed building and the claimed curtilage outbuildings had been in different ownerships prior to the date of listing, they had been separated by a wall – preventing ready access – and were in distinctly different uses and occupations. I do not consider the case before me can be reasonably compared to the considerations in *Morris*.
18. It is argued that the Council have been inconsistent in their approach by not considering the setting of the Lodge when determining a 2009 application for the demolition and redevelopment of the library. However, I have virtually no information about that case, which is a quite separate matter from this appeal.
19. I conclude on the curtilage question that the Lodge does stand within the curtilage of the Grade II listed Hall, and is therefore a part of the listed building to which the provisions of the Act apply. It is argued that the Lodge is of no special architectural or historic interest, such that would merit it being listed in its own right. However, I very much concur with the Council's view that the Lodge makes a contribution towards the significance – and the understanding of the significance – of the Hall itself, and that this justifies bringing this building within the control of the listed building regime.
20. Regarding the alleged unauthorised works, I consider that the sandblasting has significantly altered the appearance of the building by changing the colour on two principal elevations, and the condition of its fabric by removal of the fired surface of the brickwork. I concur with the Council's view that this constitutes an alteration that has had a significant effect upon the character of the Lodge, and that such works should have been authorised.
21. I conclude on ground (c) that on the balance of probabilities the Lodge stands within the curtilage of the Grade II listed building. The appellant has caused to be executed works for alteration of a listed building in a manner that affects its character as a building of special architectural or historic interest without

² *Morris v Wrexham County Borough Council and anor* [2001] EWHC Admin 697.

authorisation. The matters alleged in the notice constitute a contravention of s.9(1) of the Act, and the appeal on ground (c) therefore fails.

The appeal on ground (h)

22. This ground is that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed.
23. The appellant argues that 12 months should be allowed, so that the likelihood of carrying out remedial work during inclement weather would be reduced. Much of the work entails use of lime mortar, and I accept that the works should preferably be done between early March and mid-October. Given the likely timing of this decision the 8 month period specified in the notice would span those months, and therefore be suitable. Extension of the period to 12 months would only have the effect of covering a further winter, when works would be inadvisable. I therefore consider the eight month period would be adequate.
24. In the event of circumstances such as non-availability of a suitable contractor, it would be open to the Council to extend the compliance period under the provisions of s.38(5)(b) of the Act. The Council have indicated they would agree to such an extension, and subject to substantiation of such circumstances I see no reason they should not do so.
25. It was also proposed that the compliance period might be extended to 3 years to allow the brickwork to weather naturally, and the effects to be monitored. However, in my opinion this proposal would leave the brickwork susceptible to further damage, and allow any harm to continue. Furthermore, a requirement to monitor the state of the building implies that the approval of the Council would be required as to whether remedial works were required or not. As a result the notice would leave uncertainty about what action should be taken, and open to challenge on the basis of nullity.
26. Overall, I conclude that the compliance period stated in the notice is appropriate and that the appeal on ground (h) should fail.

The appeal on ground (j)

27. This ground is that the steps required to be taken by virtue of s.38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building. The sandblasting has caused the loss of the fire skin on the surface of the brickwork resulting in significant changes to the texture of the brickwork surfaces, and to the colour. It is also alleged that there has been significant spalling of the brickwork faces in several areas. Furthermore, numerous vertical mortar joints (perpend) in the brickwork have been eroded to a significant depth.
28. The appellant accepts that sandblasting was not a suitable means of cleaning the brickwork, and that the erosion of the fire-skins is regrettable. Furthermore, it is agreed that the building cannot be returned to its original condition by restoration of the fire-skins, and that alleviation of the effect of the works is an appropriate course. It is also agreed that re-pointing of eroded perpend should be carried out.
29. I saw that, as acknowledged by the appellant, the sandblasted brick surface generally is gritty and rough. This is a quite different surface texture from the

original brickwork, which has a smooth hard surface. There are also areas of spalled brickwork – generally as identified in Appendix 3 to the notice – where the surface is clearly prone to further flaking. Also there are significant areas where mortar is missing from perpends. The colour has also been changed significantly from the varied dark red, ranging to almost dark blue, that is apparent in the original brickwork, to a more or less uniform light orange/red.

30. The appellant objects that the requirement to rub down the brick faces with carborundum in two stages would further abrade already damaged surfaces, and that the replacement of spalled bricks with whole bricks or brick slips could be an open-ended process that would cause further physical damage to the building to little or no effect.
31. It is also objected that the requirement to colour the brickwork would create rather than reduce risks of harm to the building. By sealing an artificial colour into two elevations the building, it would be at the mercy of unknown environmental factors. Furthermore, the final result of tinting is open to interpretation and personal choice, and is not an exact remedy.
32. The appellant maintains that it would be better to leave the sandblasted brickwork to weather naturally, and that although it might weather at two or three times the rate that could normally be expected, it would still last for very many years – 130 years is suggested - without any further intervention. At the very least, two or three years should be allowed to elapse before intervening with an irreversible chemical treatment. In this way it could be established whether the loss of the fire-skin had accelerated erosion of the surfaces.
33. It is clear that rubbing down the brick surfaces would remove more substance. However, the coarse texture of the present eroded surface inevitably tends to absorb and retain more moisture, making the surfaces more prone to frost damage. Leaving the walls exposed to the weather for several years in their present state would be likely to allow the bricks to deteriorate further. The smooth surface resulting from rubbing down would help to obviate this problem, and in my opinion would be an appropriate treatment.
34. Sealing the brickwork with ethyl silicate would assist in consolidating the surface – which is noticeably friable – and in providing greater protection from water penetration. Furthermore, I understand this material would allow the brickwork to breathe. On balance, I consider this would be an appropriate treatment, preferable to leaving the brickwork to weather and possibly deteriorate.
35. As regards the requirement to tint the brickwork, the appellants principal objection is that it would be a very artificial process, and unrealistic to match the other elevations where there has been no sandblasting, because of the variation and nature of the colouration. However, the sandblasting has already introduced an artificial, uniform appearance to the two elevations affected. I saw that the colour before sandblasting is variegated, and tinting would need to be carried out in a highly skilful way, and I very much concur with the Council view that this would be an artistic endeavour. The works specification indicates diagrammatically the way in which the required variation is to be achieved. I do not consider it would be unrealistic to mimic the original colouring reasonably accurately, and in my view the process would go a considerable way to alleviate the effect of the unauthorised works.

36. A further requirement is to replace bricks that have spalled. The relevant areas are identified on elevations within the works schedule. On inspection it was apparent that spalling has taken place on all the principal elevations, and is not limited to the sandblasted areas. The spalling appeared to be related almost entirely to areas that have at some time been repointed with cement mortar, which probably caused moisture to be retained in the brick faces, or to areas where there was excessive moisture in the brickwork, such as where a notice board was fixed to the wall. Some of the spalled areas had been patched up with coloured mortar, clearly done several years ago. Although sandblasting would have exacerbated the spalling problem to some extent, in my opinion it was not the root cause.
37. Although it would be highly desirable for the damaged bricks to be replaced in the interests of the longer term condition of the building fabric, as a matter of fact and degree I do not consider this damage can be primarily ascribed to the unauthorised sandblasting. It could be expected to be the business of a responsible owner/leaseholder to repair serious building defects such as this. However, I consider this requirement of the notice cannot be regarded as an alleviation of the effect of the unauthorised works identified in the notice, and therefore this step exceeds what is necessary.
38. Overall, I consider the requirements to re-point eroded joints and voids, and apply coatings for tinting and sealing the brickwork as specified in the Works Specification attached to the notice are necessary steps to alleviate the effect of the unauthorised works. The appeal on ground (j) fails to that extent. However, I consider the requirement to replace spalled bricks and/or insert brick slips exceeds what is necessary. The appeal on ground (j) succeeds in that respect, and I shall vary the notice accordingly.

Conclusions

39. For the reasons given above and having regard to all other matters raised, I consider the appeal should not succeed, except to a limited extent on ground (j) and I intend to uphold the notice with a variation.

Formal decision

40. I direct that the listed building enforcement notice be varied by:

OMISSION of the words '*Replace bricks and/or insert brick slips*' from the steps required as specified in the Third Schedule to the notice.

Subject to this variation, the appeal is dismissed and the listed building enforcement notice is upheld. 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.

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Simon Stanion	Solicitor, Shakespeare Martineau Solicitors.
Richard Thurling	Solicitor, Shakespeare Martineau Solicitors.
Ignus Froneman BArch CFIA IHBC	The Heritage Collective.
Ben Tebbutt	Director, Paragon Property Development Co. Ltd.

FOR THE LOCAL PLANNING AUTHORITY:

James Bate BSc MSc PDDArch(Cons) IHBC	Conservation Officer Rushcliffe Borough Council.
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DOCUMENTS

- 1 Attendance list.
- 2 The Council's letter of notification of the Hearing, dated 31 October 2016.

PLANS

- A Copies of historic Ordnance Survey map extracts from 1901, 1914/16 and 1954.
- B Ordnance Survey plan with green overlay.

PHOTOGRAPHS

- 1-4 The Lodge before sandblasting (4 no).
- 5 The Lodge during sandblasting.