
Appeal Decision

Site visit made on 18 April 2017

by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA

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

Decision date: 28 April 2017

Appeal Ref: APP/J1535/F/16/3154622

Middle Cottage, 21 Hill Hall, Theydon Mount, Epping CM16 7QQ

- 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 Lee Ryan and Ms Jane Wallace against a listed building enforcement notice issued by Epping Forest District Council.
- The enforcement notice, numbered DG/GAO/L96/15, was issued on 13 June 2016.
- The contravention of listed building control alleged in the notice is, without listed building consent, the installation of uPVC windows and doors in Middle Cottage, 21 Hill Hall, Theydon Mount, Epping CM16 7QQ.
- The requirements of the notice are:
 1. The removal of uPVC windows and French doors and to
 2. REINSTALL THE TWO SMALL WINDOWS TO THE LEFT OF THE ENTRANCE DOOR WITH
 - Flush side-hung opening casement windows
 - 6 panes
 - Single glazed
 - Glazing bars 18mm wide
 - Cream painted timber
 - No projected sills
 - No trickle vent
 3. REINSTALL LARGE WINDOW TO THE RIGHT OF THE ENTRANCE DOOR WITH
 - 20th century type side-hung opening casement
 - Fixed casement and 2 side-hung opening casements
 - 1 transom dividing the upper section (1/3) from the lower section (2/3)
 - 2 mullions dividing the window into 3 identical sections
 - Upper section: 3x4 panes
 - Lower section 3x8 panes
 - Single glazed
 - Glazing bars 18mm wide
 - Cream painted Critall steel
 - Timber sill
 - No trickle vent
 4. REINSTALL DORMER WINDOWS (FRAME) WITH
 - Flush side-hung opening casement windows
 - 6 panes with central mullion
 - Single glazed
 - Glazing bars 18mm wide
 - Cream painted timber
 - No projected sills
 - No trickle vent
 5. REAR ELEVATION – REINSTALL THE SMALL WINDOW TO THE LEFT OF THE FRENCH DOORS WITH
 - Flush side-hung opening casement windows
 - 6 panes

- Single glazed
 - Glazing bars 18mm wide
 - Cream painted timber
 - No projected sills
 - No trickle vents
6. REINSTALL WINDOW TO THE RIGHT OF THE FRENCH DOORS WITH
- Flush side-hung opening casement windows with 3x8 pane casements
 - Single glazed
 - Glazing bars 18mm wide
 - Cream painted timber
 - No projected sills
 - No trickle vent
7. REINSTALL DORMER WINDOWS (FRAME) WITH
- Flush side-hung opening casement windows
 - 6 pane casements with central mullion
 - Single glazed
 - Glazing bars 18mm wide
 - Cream painted timber
 - No projected sills
 - No trickle vent
8. REINSTALL THE FRENCH DOORS WITH
- Fanlight (1/5)
 - Lower section (4/5), 8 pane doors
 - Single glazed
 - Glazing bars 18mm wide
 - Cream painted timber
 - No trickle vent
9. All resultant debris to be removed from the Land.
- The period for compliance with the requirements is six months.
 - The appeal is made on the grounds set out in section 39(1)(a), (c), and (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The listed building enforcement notice is varied by deleting the contents of point 8 of the requirements, and replacing it with, 'Paint the French doors cream to match the remaining windows'. Subject to this variation, the appeal is dismissed and the listed building enforcement notice is upheld, 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.

Ground (a) – that the building is not of special architectural or historic interest

2. 21 Hill Hall is the middle unit of three dwellings, forming a short terrace in red brick and plain tiles, with a dormered first floor and full two storey elements either end. Besides its location in the vicinity of the Grade I listed Hill Hall, it lies within the Hill Hall Conservation Area and within a Grade II Registered Park and Garden.
3. The Council tells us that a 1932 sale catalogue, listing the entire estate, describes the building as a pair of cottages for the estate's chauffeur and electrician. The Conservation Officer's report also notes that features on the building including large bricked up openings and the ventilated ridge, suggest that the two cottages were formed in the early 20th century from a converted

outbuilding, which was then converted again into the current arrangement of three dwellings.

4. A large, continuous beam at ground floor window head height at the rear, with brickwork below of a different character to that of the rest of the building, suggests that the central part of the ground floor between the chauffeur's and the electrician's dwellings was open at the rear and in use as a workshop or garage at one time. It is not clear from the file when conversion to three dwellings took place but it may have arisen from the 1999 permission for the refurbishment and conversion of the Main Hall and associated stables and outbuildings into residential apartments and dwelling houses.
5. Historic England's advice note¹ reminds us that the courts have said that there are three key factors to be taken into account in assessing whether a structure or object is within the curtilage of a listed building. These are:
 - the physical layout of the listed building and the structure;
 - their ownership, both historically and at the date of listing; and
 - the use or function of the relevant buildings, again both historically and at the date of listing – and in particular whether the use of the structure was ancillary to the purposes of the listed building at the date of listing.

Layout

6. The appeal building is shown on 19th century maps as part of a group of outbuildings clustered around Hill Hall. Although set a little down the hill from the principal building, it was clearly part of the operation of the Hall. Visibility between the two buildings is obstructed by the lie of the land and intervening structures but on the formal approach to the Hall, the upper parts of the appeal building can be seen and, progressing towards the appeal building, one is fully aware of the presence of the Hall. This points to a fairly strong relationship to the principal building in terms of layout.
7. Although no details of the extent of the Registered Park and Garden or the Conservation Area are given, the building is almost certainly well embedded in both. This may reinforce the relationship to the principal building.

Ownership

8. The Council gives an account of ownership since 1949 which shows that the appeal building and the Hall were in common private ownership before they passed to the Home Office in 1950. The Home Office used the estate as a prison, which continued until the extensive fire of 1969. Hill Hall was Grade I listed in 1974 during the Home Office's ownership, and in 1976 peripheral parts of the estate were sold off, but not the appeal building. The remainder of the estate was transferred to the Department of the Environment. The current freeholders of Hill Hall and its outbuildings, including the appeal building, are English Heritage.
9. It seems clear that both historically and at the date of listing, the appeal building and the principal building were in common ownership.

¹ Listed Buildings and Curtilage, Consultation draft – 27 January 2017

Function

10. It is evident that there was a historic functional relationship between the principal building and the appeal building, before the estate was taken over by the Home Office. It is likely that during the estate's time as a prison, the appeal building was in a use ancillary to that of the prison. After the 1969 fire, substantive use of the Hall would have been suspended until its conversion to residential use after 1999, probably at the same time as the conversion of the appeal building to three dwellings.
11. The use of the property at listing in 1974, is not clear. However, the history of the functional relationships between the appeal and principal buildings is significant.

Conclusion

12. The appellants note that the rear wall and windows of no 21, were almost certainly added after 1948, probably as part of the conversion works following the 1999 permission. However, the 1999 permission would have taken into account the effect on the listed complex of the alteration and addition works. Moreover, there are no indications that the appeal building's front elevation, and its openings and dormer arrangements, were late additions. Indeed, it is likely that the steel Critall windows were of pre-war or immediate post-war date, well before listing.
13. Overall I consider that the appeal building is a curtilage building. The appeal fails on ground (a).

Ground (c) – that the matters alleged do not constitute such a contravention

14. The principle consideration under this ground is whether there has been a breach of listed building control. This involves the question of whether the works are such as to affect the character of the building as one of special architectural or historic interest.
15. The appellants point to the mixture of styles of windows installed in the appeal building, suggesting that they were altered and replaced over the decades as trends, fashions and availability dictated. There is, therefore, no single consistent window type characteristic of the building. Rather, the range of types was built up over the years and the uPVC windows, the subject of the notice, are part of this process.
16. The appellants note that considerable time and effort was spent investigating whether consent to replace the windows was necessary. From the information gleaned from the Council, they were under the impression that it was not.
17. Nevertheless, they were very keen to install windows matching those replaced and complementing the building. They say that the uPVC replacement windows are high quality replicas of flush fitting timber casement windows, with appropriate sections and details, and a wood grain finish intended to reduce sheen. From a few metres away they resemble those they replaced. Moreover, the large steel Critall window to the front elevation was badly corroded and could not be saved, and the rear French window was replaced in naturally finished hardwood.

18. The appellants also note that the appeal building is positioned lower than the principal building, the two buildings are some distance apart and, from the listed building and its surroundings, it is difficult to see the appeal building. The effect of the works on the setting of the listed building is, therefore, negligible.
19. Although care has been taken in their selection, I think that the uPVC windows, are not in sympathy with the curtilage building. Despite the graining, they are still of very uniform machine-like appearance, without the natural variation in form and texture of timber, and lacking the characteristic appearance of putty beaded glazing bars. Moreover the proportions of the members are not convincing, and the colour deadening. The appearance of the double glazed units, with their wide separation and black spacer gasket, is also alien.
20. A variety of window types has been installed in the appeal building, but non peculiar to a particular dwelling. As installed, the uPVC windows clearly differentiate no 21 from the flanking dwellings. Moreover, the loss of the large Critall window (that in no 22 remains), reduces the sympathetic historical layering, an aspect of special interest in the building. This layering, which can be read from the building's form and details, as a palimpsest, aids understanding of the significance of the listed complex over time. In my view, the newly installed windows erase part of this historical layering.
21. The appellants draw attention to a modern, 1960s style softwood window in the south west flank of no 20, the double glazing used at 19 Hill Hall, and the unsympathetic modern uPVC windows at nos 4 and 5 Hill Hall. However, insensitive works elsewhere do not provide grounds for harm to the curtilage appeal building. Moreover, the buildings at 19 and 4/5 Hill Hall appear relatively recent to me and, therefore, may not have the relationship to the principal building present in the appeal building.
22. Hill Hall's setting, contributing overall to its architectural and historic significance, includes its gardens and clustered buildings. Some of these buildings may not act positively as particular elements within the setting. However, the appeal building does contribute in a positive way to the Hall's significance for the reasons identified. This is so even though it cannot easily be seen from the principal building.
23. I appreciate that difficulties may have been experienced obtaining information regarding the need to apply for consent. However, it remains the responsibility of those seeking to make alterations to a listed building to obtain authorisation for the works. I find that the works harm the special interest of the listed building and therefore contravene section 9(1) of the Act as amended. The appeal fails on ground (c).

Ground (j) – *that the steps required to be taken exceed what is necessary*

24. The appellants suggest lesser measures than those required by the notice. These are, replacing the double glazed units with single glazing or very thin double glazed units, and painting the windows externally to match the cream colour of the remaining windows in the appeal building and those nearby. Although this may help to a degree, it would not reduce the harm sufficiently, and any public benefits involved in retaining the uPVC windows would not outweigh the loss of significance.

25. However, I do not find that removing the hardwood French windows in the rear elevation and replacing them with timber to a slightly different pattern is necessary. This is because, as noted above,² the infill below the beam was almost certainly post 1948 and may have been less than 20 years old. Also, it is contained by the boundaries of the rear garden, is hardly visible publicly, and has little influence on the overall character of the appeal building. However, it is important to maintain consistency of colour, which acts to give visual unity across the estate. It should therefore be painted cream externally to match the remaining windows.
26. Lesser steps would fail to preserve the character or appearance of the Conservation Area or the Registered Park and Garden, nor would they preserve the principal listed building or its setting. Subject to the limited concession regarding the French window, which is reflected in a variation to the notice, the appeal fails on ground (j).

Alan Novitzky

Inspector

² Para 12