

Appeal Decisions

Site visit made on 11 January 2017

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

Decision date: 19 May 2017

Appeal A: APP/J9497/F/16/3156412

The Old Farmhouse, Pepperdon, Moretonhampstead TQ13 8SF

- 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 Gordon Keep against a listed building enforcement notice issued by Dartmoor National Park Authority.
 - The enforcement notice, un-numbered, was issued on 11 July 2016.
 - The contraventions of listed building control alleged in the notice are (a) the insertion of two uPVC windows on the southern gable of the Building; (b) the installation of three timber-framed Georgian bar windows on the rear elevation of the Building (shown labelled A, B & C on the photograph JA01 appended to the Notice); (c) the application of cement render to the external walls of the Building; (d) the installation of plastic rainwater goods (guttering and downpipes) on the Building; (e) the installation of plastic soil stack and foul water pipework on the rear elevation of the Building; and (f) the installation of satellite dishes on the Building.
 - The requirements of the notice are (a) remove the two uPVC windows from the southern gable of the Building, including any new frames, surrounds and fixings to the walls; AND (b) install replacement windows as follows: a timber lintel to support the stonework above the apertures; a projecting granite cill below the apertures; single-glazed casement windows with casements which sit flush with the frame; each window to have balanced sight-lines and three evenly sized panes; each window to have narrow glazing bars and to use glazing putty; each window to be set back into the wall so as to provide at least 100mm external reveal over the projecting granite cill; neither window to contain drip moulds, trickle vents, expressed joints or integral timber cills; to match in design, form, materials, glazing and details the former windows as seen in the archive photograph marked JA02 appended to this Notice; AND (c) remove the three timber-framed windows on the rear elevation of the Building, labelled A, B and C on the photograph JA01 appended to this Notice, including any new frames, surrounds and fixings to the walls; AND (d) install replacement windows as follows: a timber lintel to support the stonework above the apertures; a projecting granite cill below the apertures; single-glazed casement windows with casements which sit flush with the frame; each window to have balanced sight-lines and three evenly sized panes; each window to have narrow glazing bars and to use glazing putty; each window to be set back into the wall so as to provide at least 100mm external reveal over the projecting granite cill; none of the windows to contain drip moulds, trickle vents, expressed joints or integral timber cills; to match in design, form, materials, glazing and details the former windows as seen in the archive photograph marked JA02 appended to this Notice; AND (e) remove the cement rendering from the external surface of the Building and apply rough cast lime and sand mortar mix render to cover the exposed external surfaces; AND (f) remove all plastic rainwater goods (guttering and downpipes) from the Building and replace with cast iron round and half round black rainwater goods; AND (g) remove the plastic soil stack and foul water pipework from the rear elevation of the Building and replace with cast iron pipework; AND (h) remove the satellite dishes from the Building.
 - The period for compliance with the requirements is 12 months.
 - The appeal is made on the grounds set out in section 39(1)[a], [d], [e], [g] and [j] of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Appeal B: APP/J9497/F/16/3156416

The Old Farmhouse, Pepperdon, Moretonhampstead TQ13 8SF

- 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 Gordon Keep against a listed building enforcement notice issued by Dartmoor National Park Authority.
 - The enforcement notice, un-numbered, was issued on 11 July 2016.
 - The contraventions of listed building control alleged in the notice are (a) the removal of the former corrugated sheet roof covering together with the supporting roof structure and replacement with a new roof formed from composite slate, timber battens, felt, ridge boards, soffits, fascias and pre-formed roof trusses; (b) blocking up window and door apertures in the front (north) elevation of the Building, facing onto the former farmyard; (c) installation of timber-framed windows and doors in the rear (south) elevation of the Building; (d) construction of a new first floor structure with joists and flooring; (e) erection of blockwork walls to dry-line the internal faces of the stone walls of the Building and support the new joists above; (f) insertion of red brick quoins and detailing around window and door openings; (g) installation of a soil pipe and waste water pipes projecting from the rear elevation of the Building; (h) construction of internal partitions with door frames and doors to sub-divide the internal space in the Building; (i) installation of an AGA type range cooker in the Building with associated flue; (j) installation of a central heating system including wet radiators and associated plumbing in the Building; and (k) installation of toilets, hand basins, a bath, kitchen sink, and associated plumbing in the Building.
 - The requirements of the notice are (a) remove the new roof formed from composite slate, timber battens, felt, ridge boards, soffits, fascias and pre-formed roof trusses and replace it with a sinusoidal corrugated metal or fibre cement sheet roof with timber trusses and purlins to match the existing roof which immediately adjoins the new roof to the east; AND (b) re-open all window and door apertures in the front (north) elevation of the Building, facing onto the former farmyard; AND (c) remove all timber-framed windows and doors in the rear (south) elevation of the Building and block up the apertures using materials to match the stone wall; AND (d) remove the new first floor structure, including all new joists and flooring; AND (e) remove all blockwork walls used to dry-line the internal faces of the stone walls of the Building; AND (f) remove all red brick quoins and detailing around the window and door openings on the rear elevation of the Building; AND (g) remove the soil pipe and waste water pipes projecting from the rear elevation of the Building; AND (h) remove all internal partitions, door frames and doors used to sub-divide the internal space in the Building; AND (i) remove the AGA type range cooker from the Building and the associated flue; AND (j) remove the central heating system, including wet radiators and associated plumbing, from the Building; AND (k) remove all toilets, hand basins, baths, kitchen sinks, and associated plumbing from the Building ENSURING AT ALL TIMES that the Building is properly supported so as not to present a danger or risk to any person, or cause unnecessary or unacceptable risk to the structural integrity of the Building.
 - The period for compliance with the requirements is 12 months.
 - The appeal is made on the grounds set out in section 39(1)[a], [d], [e], [g] and [j] of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Preliminary Matters

1. 'The Building' as referred to in the Notice which is subject to Appeal A is what the parties both refer to as 'The Old Farmhouse'. It is a Grade II listed building, referred to in the list description as 'Unoccupied Farmhouse at Pepperdon', which probably dates from the 16th Century, with 17th Century alterations, and an 18th Century remodelling. 'The Building' referred to in the Notice which is subject to Appeal B is an L-shaped range of barns that lies to the south of 'The Old Farmhouse'.

2. Cognisant of Section 1(5) of the Act¹, the Authority has treated the L-shaped range of barns as part of the listed building. That is clearly the correct approach given that the L-shaped range is an object or structure within the curtilage of the (listed) building which, although not fixed to the (listed) building, forms part of the land and has done so since before 1st July 1948. Correctly, the appellant does not dispute that approach.

Decision

Appeal A

3. 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.

Appeal B

4. 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.

Reasons

Appeal A

The appeal under Ground (a)

5. For an appeal under Ground (a) to succeed, it would need to be shown by the appellant that 'The Old Farmhouse' is not worthy of inclusion on the statutory list of buildings of special architectural or historic interest. While the appellant makes reference to the history of the building, there is no specific evidence directed towards a demonstration that the building is not of special architectural or historic interest.
6. I accept that alterations have been made to the building but these are part of the development of the building over its life and highlighted in the list description². In my view, as an interesting example of a moorland farmhouse, with 16th Century origins, the building is clearly of special architectural and historic interest and warrants its place on the statutory list. The appeal under Ground (a) therefore fails.

The appeal under Ground (d)

7. An appeal under Ground (d) rests on a finding that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary.
8. It is clear that several aspects of the works at issue cannot fall within the ambit of this definition. The insertion of new uPVC windows in newly formed

¹ The Planning (Listed Buildings and Conservation Areas) Act 1990 as amended

² I do not include in that assessment the more recent alterations here at issue.

openings, and the installation of satellite dishes could not have been urgently necessary for reasons of health and safety or the preservation of the building.

9. It might be argued that replacement windows in existing openings, new rendering, and the replacement of rainwater goods and foul drainage pipework, were so necessary. However, it seems to me that if these works were urgent, there is no good reason advanced as to why they could not have been done using materials and methods better reflective of the status of the listed building.
10. On that overall basis, the appeal under Ground (d) must fail.

The appeal under Ground (e)

11. In the circumstances advanced here, this relies on the assertion that listed building consent ought to be granted for the works. The starting point for testing that assertion is Section 16(2) of the Act. This stipulates that in considering whether to grant listed building consent for any works, the decision-maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses. The relevant policies of the development plan, which are material considerations, take a broadly similar tack.
12. Paragraph 132 of the National Planning Policy Framework³ says that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraphs 133 and 134 go on to deal with the decision-making process in situations where substantial, or less than substantial, harm would be caused to the designated heritage asset concerned.
13. It is evident that the works that have been carried out to the building go beyond those identified in the Notice. Having regard to Section 38(2)(a) and (b) of the Act, the degree of enforcement necessary is a matter for the Authority and I have limited my consideration here to those works included on the Notice.
14. The new openings have no cill or lintel expressed externally as one would expect to see on the building. In relation to the replacement windows, uPVC is a modern, machine-finished material that appears incongruous in an historic setting. For similar reasons, the plastic rainwater goods and other external pipework highlighted by the Authority, along with the satellite dish⁴, appear as alien, modern additions to the building. Notwithstanding that the front of the building has been rendered in the past⁵, the cement-based render that has been applied is most unsatisfactory in terms of its appearance but more so in terms of the damage it can cause to the masonry below, and the interior of the building, by its inability to allow the stonework it covers to 'breathe' effectively.
15. Altogether, these works have caused harm to the special architectural and historic interest (or significance) of the listed building (a designated heritage asset). Given that much of the special interest of the listed building survives intact, it is my view that the works identified by the Authority have caused harm to significance that is less than substantial.

³ Referred to hereafter as the Framework

⁴ At the time of my site visit, I could see only one satellite dish attached to the building.

⁵ The list description refers.

16. In those circumstances, paragraph 134 of the Framework requires that harm to be weighed against the public benefits of the proposal, including securing its optimum viable use. That said, Section 16(2) of the Act means that any harm identified must weigh heavily against a grant of consent.
17. It may be that the works have gone some way towards making the building habitable and in that way, they have brought some public benefit. However, that benefit is not sufficient to outweigh the less than substantial harm that has been caused. I reach that conclusion because there appears to me to be no good reason why the self-same benefits could not be secured by works that did not cause such a degree of harm.
18. On that basis, the works do not accord with the Framework, or the approach taken by the development plan. The appeal under Ground (e) does not therefore succeed.

The appeals under Grounds (g) and (j)

19. These Grounds are best dealt with together. To achieve success under Ground (g), it would need to be shown that the requirements of the Notice exceed what is necessary for restoring the building to its condition before the works were carried out. In terms of Ground (j), it would need to be shown that the steps required to be taken by virtue of Section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building.
20. As set out above, under the auspices of Section 38(2)(b) of the Act, the Authority clearly considers that restoring the building to its state before the works at issue were carried out would not be reasonably practicable or would be undesirable. To that end, the Authority has specified further works necessary to alleviate the effect of the works that have been carried out without consent.
21. Dealing with the windows first of all, the replacement of the uPVC windows inserted into existing openings⁶ with properly designed timber casement windows, seems to me to be entirely proportionate as, going by the 1985 archive photograph of the building supplied by the Authority⁷, which is clearly a photograph of the building at issue⁸, does the reinstatement of a timber lintel above and granite cill below.
22. The Authority is obviously minded to accept the new (or altered) opening in the rear elevation⁹ as they are able to do under Section 38(2)(b) of the Act. However, it is important that this opening reflects the detailing of the existing openings in the rear elevation (as adjusted) and to that end, not only does the window need to be of suitable material and design, but there also needs to be a timber lintel above and a granite cill below the window. A similar logic applies to the new openings the Authority is minded to accept in the south gable, and the windows installed therein.
23. In terms of the render, I accept that the list description makes reference to the granite rubble wall at the front being rendered. That is not inconsistent with the sales particulars from 1913 highlighted by the appellant that suggest the

⁶ Windows A and C on the Authority's photograph JA01 attached to the Notice

⁷ Figure 12 attached to the Authority's Statement

⁸ It appears to be the photograph from which (blown-up) photograph JA02 attached to the Notice whose provenance the appellant disputes is taken.

⁹ Window B on the Authority's photograph JA01

- building was been stone built and stuccoed. In my experience, as a means of gentrification, stucco (using a rough cast lime and sand mortar mix) was often applied to the frontage of older buildings in the 18th and indeed 19th Centuries. That is very likely to be what the list description makes reference to.
24. There is no suggestion in the list description that the rear elevation was, at the time inspected¹⁰, rendered, or the gable elevations. The archive photographs¹¹ which date from 1985 bear that out. That would be consistent with the usual approach to stucco, identified above.
 25. It may be that the appellant considers the requirements of the Authority in relation to the render excessive. However, it is important to note that the Notice only requires the removal of the cement render. If any earlier non-cementitious render to the front, or indeed anywhere else on the building, remains in place, it need not be removed. Clearly cement-based render has been applied to the building relatively recently to deal with damp ingress through the stonework. In that context, it is reasonable of the Authority to require reinstatement. However, that reinstatement needs to be undertaken in a historically appropriate manner, for the reasons set out under Ground (e) above. To that end, the requirements of the Authority are in no way excessive.
 26. As far as the rainwater goods are concerned, it is evident from the Authority's archive photographs¹² that the building was equipped with rainwater goods at the front and rear. Gutters and downpipes are very likely to have been formed in cast iron and the archive photographs of the building bear that out.
 27. In that context, a requirement that the plastic rainwater goods that have been installed are removed and replaced with cast iron fittings seems perfectly reasonable in order to restore the building to its former state.
 28. The situation in relation to the plastic soil stack and foul water pipework is more complex. The Notice requires the removal of the installation from the rear elevation and its reinstatement in cast iron, but ignores the similar plastic pipework on the south gable. It may be that the failure to make reference to the pipework on the south gable is an error. However, it is not one that I can correct without prejudicing the appellant.
 29. That said I do not believe that leads to a lack of clarity in the Notice. It makes plain that the plastic pipework on the rear elevation is to be replaced in cast iron. If the Authority is to countenance any external pipework on the rear elevation, bearing in mind the workings of Section 38(2)(b) of the Act, then it needs to be formed in a historically appropriate material.
 30. It may be that the Authority reconsiders its position in due course but as far as the Notice before me is concerned, the appellant need do nothing with the plastic pipework on the south gable. That seems very clear to me.
 31. The satellite dish(es) can be dealt with briefly. Requiring its (their) removal from the building is the only sensible way by which the building can be restored to its former state.
 32. Bringing all those points together, the appeals under Grounds (g) and (j) fail.

¹⁰ The list description dates from 1987

¹¹ Figure 12 attached to the Authority's Statement

¹² Figure 12 attached to the Authority's Statement

Appeal B

The appeal under Ground (a)

33. For an appeal under Ground (a) to succeed here, it would need to be shown by the appellant that 'The Old Farmhouse' is not worthy of inclusion on the statutory list of buildings of special architectural or historic interest. I have already concluded above that 'The Old Farmhouse' warrants its place on the statutory list. The barn at issue must be treated as part of that listed building by dint of Section 1(5) of the Act. The appeal under Ground (a) fails therefore.

The appeal under Ground (d)

34. An appeal under Ground (d) rests on a finding that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary. I accept that the range of barns may have been in a parlous state when the works were carried out. However, the works carried out are very clearly works of conversion rather than works of repair. They were obviously not limited to the minimum measures immediately necessary. The appeal under Ground (d) goes nowhere as a result.

The appeal under Ground (e)

35. This Ground depends on the suggestion that listed building consent ought to be granted for the works. I have rehearsed above the workings of Section 16(2) of the Act, the Framework, and the development plan.
36. The works that have been carried out to part of the range of barns are extensive and cannot sensibly be defined as repair. They have served to complicate the plan-form and appearance of what was a simple, functional, agricultural building and domesticated it, altering the subservient relationship with 'The Old Farmhouse'. Moreover, the works have utilised historically inappropriate materials like blockwork and structural elements like trussed rafters. All that has been to the detriment of the special architectural and historic interest (or significance) of the listed building (a designated heritage asset). Nevertheless, given that much of the special interest of the listed building survives intact, it is my view that the works have caused harm to significance that is less than substantial.
37. In those circumstances, paragraph 134 of the Framework requires that harm to be weighed against the public benefits of the proposal, including securing its optimum viable use. That said, Section 16(2) of the Act means that any harm must weigh heavily against a grant of consent.
38. It may be that the works have gone some way towards making the building weathertight and they have produced a unit of residential accommodation. In that way, they have resulted in some public benefit. However, that benefit is not sufficient to outweigh the less than substantial harm that has been caused. I reach that conclusion because there appears to me to be no good reason why the self-same benefits could not be secured by a reduced scope of works that retained the functional, agricultural qualities of the range of barns and did not cause such a harmful impact.

39. On that basis, the works do not accord with the Framework, or the approach taken by the development plan. The appeal under Ground (e) does not therefore succeed.

The appeals under Grounds (g) and (j)

40. These Grounds are best dealt with together. To achieve success under Ground (g), it would need to be shown that the requirements of the Notice exceed what is necessary for restoring the building to its condition before the works were carried out. However, what the Authority has done in the Notice is require precisely that; the unauthorised works are to be undone, and the building restored to its former state. The appeal under Ground (g) fails therefore.

41. It does not appear to me that the Authority has approached the Notice using its powers under Section 38(2)(b) of the Act. On that basis, the appeal under Ground (j) has no traction.

Conclusions

Appeal A

42. For the reasons given above I conclude that the appeal should fail.

Appeal B

43. For the reasons given above I conclude that the appeal should fail.

Paul Griffiths

INSPECTOR