
Appeal Decision

Site visit made on 6 June 2017

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date: 03 July 2017

Appeal Ref: APP/Z2505/F/16/3159870

26 West Street, Boston PE21 8QH

- 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 Julie Simmons against a listed building enforcement notice issued by Boston Borough Council.
 - The enforcement notice was issued on 23 August 2016.
 - The contravention of listed building control alleged in the notice is the execution of alterations and works ("the works") to the building, namely the installation of two UPVC (plastic) replacement windows in the first and second floor front elevation of the building.
 - The requirements of the notice are (a) remove the two UPVC (plastic) windows installed in the first floor and second (roof) floor of the front elevation; (b) install in the front first floor elevation a timber single glazed plain (one over one) sliding sash window; (c) install in the front second floor roof elevation a timber single glazed, three over three sliding sash window; (d) paint the external timbers with an appropriate external primer and white gloss finishing coat (e) repair and redecorate with like for like materials any damage caused to the building by the works carried out to remove and replace the windows.
 - The period for compliance with the requirements is 4 months.
 - The appeal is made on the grounds set out in section 39(1)(a), (c), (d) and (i) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. 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

Ground (a)

2. According to the list description 26 West Street is a grade II listed building. It is described as part of a terrace of 3 shops constructed in the mid C18 with later alterations. The terrace is a mixture of colour washed brick and rendered walls with a pantile roof. It is noted that each property has a single modern shop front at the ground floor and sash windows are identified on the upper floors of the front elevation. I consider that the significance and special interest of the building relates to its age, components, materials and the contribution the group of three shops makes to the surrounding area.

3. The appellant does not argue about the original listing of the building, but that subsequent changes have devalued the building to the extent that it no longer warrants listed status. The appellant particularly identifies the modern shop front along with a full length illuminated fascia sign which is noted to be in place to date and was a principle reason why the appellant invested in the property. She notes that the adjacent properties maintain their wooden fronts so the appeal building's shop front is very different from these and the view of the group is different from when the building was listed.
4. I acknowledge that the modern shop front is not an asset to the historic character of the listed building, but that is only a small part of the building and smaller part of the overall group of three buildings and at this stage we do not know what the shop front replaced and whether what was constructed was an improvement or not at that time. In any case, I also note that the list description acknowledges modern shop fronts and that did not trigger non listing. The age and history of the group of buildings is little affected by the modern shop front and while I consider that there is some detrimental impact to the group from the modern shopfront, overall, I consider that the historic and group value remains important and that the building is of special architectural and historic interest.
5. The appellant seems to imply that the Council did not at some earlier time treat the building as being listed, suggesting that a notice required by law was not served on the then owners. However, there is little evidence for concluding that the previous owners were not notified. I would expect that at the time of listing, had any objection to the procedure for listing of the building or proper notification occurred this would have been taken up at the time. While the Council has not produced a certificate, it is for the appellant to prove the case on the balance of probability and to my mind the evidence presented has not achieved this. The listing has been evident with the building being maintained on the statutory list, which would have come up in searches and this is the case whatever the approach of the Council has been or whether or not the Council has granted consent for some changes to the building.
6. The appeal on ground (a) fails.

Ground (c)

7. The appellant argues that the works were approved by the Council through its building control department under a building notice for replacement of six windows, and therefore in relation to Section 7 of the Listed Building and Conservations Areas Act the works are authorised. To be authorised, the works would have to receive Listed Building Consent. The certificate provided clearly notes it is from the Building Control Services and that the certificate, which is given in accordance with Section 17, shall be considered as evidence that insofar as the authority has been able to ascertain, the works described in the certificate are in compliance with the Building Regulations. It clearly does not cover Listed Building Consent.
8. Building control approval does not include granting listed building consent, so the works are not authorised and would not accord with Section 7 of the Listed Building and Conservation Areas Act.
9. The windows are a very important and prominent element of the front elevation of the building, particularly as they are very visible from the street.

While I appreciate that the fenestration arches and sill were retained and that the general arrangement of the windows follows that of the previous windows, the plastic windows installed are not sympathetic to the age, style or detailing of the listed building. The plastic sections used are bulky, some sub-divisions are simply stuck on the glass and the plastic has a machine-made, smooth finish, very different from that of a painted timber window. They are alien and incongruous features in the building and cause unacceptable harm affecting the character of the building as one of special architectural and historic interest.

10. The appeal on ground (c) fails.

Ground (d)

11. The appellant draws attention to riots in Boston in 2004 and the arrival of migrants from the European Union and that many restaurants in the area have changed to accommodate the migrant community, with other changes such as closure of the nearby public toilets. The appeal property is one of the last surviving retailers nearby and suffers because of ongoing riots from time to time. Recently 9 shop windows were smashed. One problem is noise coming up from the street which occurs over a 24 hour period, but particularly early in the morning when migrant workers are organised nearby. The appellant says that the existing double glazing is important for noise insulation.

12. In terms of riots in the streets below, I consider that it makes little difference whether the windows are plastic or timber, both are reasonably strong and effective.

13. I appreciate the benefit of the double glazed units in terms of provision of noise insulation and thermal insulation. However, noise and thermal insulation can be achieved in other ways, such as by the introduction of secondary glazing, which can be just as effective. The improvement of the windows for sound insulation can be the matter of future applications for consent. The harm caused by the plastic windows is not justified by the improved sound insulation and benefit to living conditions.

14. In addition, while I note this need, there is little to indicate that the works were urgently necessary. If the noise and disturbance was occurring, the appellant could have made an application for listed building consent for the works and been advised of how inappropriate plastic windows are in this situation and what would be more suitable.

15. The appeal on ground (d) fails.

Ground (i)

16. I have noted above that the shop front is a detractor from the appearance of the group, but the notice is intended to cover the introduction of the two windows identified and the requirements are to restore the impact of this change on the building, not to restore the whole building back to a time in the past either before or after it was listed. The later consents, where obtained, would permit the changes that have been covered by them. The removal of the current plastic windows and replacement with timber sash windows is, in my opinion, the minimum necessary and would restore the building to its former state, prior to the old windows being removed and the plastic windows inserted without consent. The appeal on ground (i) fails.

Other Matters

17. I note that grants were looked into and found not to be available just for these works, without other improvements being required. However, that does not lessen the impact that the plastic windows have or lessen the need to rectify the harm of their insertion.

Graham Dudley

Inspector