
Appeal Decision

Site visit made on 27 February 2018

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 14 May 2018

Appeal Ref: APP/X1165/F/17/3180849

The Coach House, Teignmouth Road, Torquay TQ1 4SQ

- 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 David Bullen against a listed building enforcement notice issued by Torbay Council.
- The enforcement notice, ref. 2014/0238/EN, was issued on 26 June 2017.
- The contraventions of listed building control alleged in the notice are:
 1. The installation of double-glazed windows on west, south and east elevations.
 2. The construction of a flat-roof 2-storey extension on the western side of the Building (enlarged former garage) as marked 1 on the aerial photograph, marked 'Plan A' and shown in photos 016, 1109 and 1112, all attached to the notice.
 3. The construction of a wall enclosing the garage forecourt (marked 3 on Plan A and shown in photo 1109), a 'canopied' garage-gate portico (marked 4 on Plan A and shown in photo 016, attached to the notice) and an area of hard-standing behind and north of the portico.
 4. The construction of an enclosed slate-roofed verandah on the front of the west bay of the Building (area indicated as 'lounge' on drawing No. 2775/2, marked 5 on Plan A, and shown on photo 1115).
 5. The construction of a conservatory at the south-east corner of the Building (marked 6 on Plan A; and shown in photos 011 & 013).
 6. The construction of a flat-roofed extension to the east side of the Building (marked 7 on Plan A; visible on left of photo 015, north of conservatory).
 7. The installation of solar panels on the south-facing roof pitch of the Building (marked 8 on Plan A and shown in photos 1104 & 1110).
 8. The construction of a single-storey extension to the 2-storey flat-roof structure on the western elevation of the Building (marked 9 on Plan A, shown in photo 1108 and visible to left on photo 016).
- The requirements of the notice are to:
 1. Replace the uPVC windows with timber sash windows (as on drawing No. 2775/2) on west, south and east elevations; a 6-over-6 pane exemplar is illustrated on the adjacent Lantern House (photos 012 & 015). All to be painted white.
 2. Remove/demolish the upper floor of the flat-roof 2-storey west extension (enlarged former garage) as marked 1 on Plan A and shown in photos 016, 1109 & 1112; a single-storey pentice roofed extension/garage is permitted on an enlarged footprint. The point of attachment of the pentice roof is to be made below the western eaves of the hipped roof of the Building.
 3. Remove the western enclosing wall of the garage forecourt (marked 3 on Plan A) the garage door and the 'canopied' garage-gate portico (marked 4 on Plan A and shown

in photo 016). The area of hard-standing excavated below the 1981 level may remain, landscaped in a permeable gravel to match that of the forecourt of the Watcombe Lodge complex (photo 013).

4. Remove the enclosed slate-roofed verandah from the front of the west bay of the main Building (area indicated as lounge on drawing No. 2775/2 and marked 5 on Plan A, and shown on photo 1115) and restore as on drawing No. 2775/2.
5. Remove the conservatory at the south-east corner marked 6 on Plan A (illustrated by photos 011, 012) and all supporting projections from the flat-roof east-side extension, which replaced the pentice form permitted by permission P/1981/0409 (drawing 2775/2 *ground floor plan* & photo 015).
6. Remove the flat roof east-side extension marked 7 on Plan A (visible on left of photo 015, north of conservatory), restore as on drawing No. 277⁵/₂ *south elevation*, with slate pentice roof.
7. Remove the solar panels from the south-facing roof pitch marked 8 on Plan A (photos 1104 & 1110).
8. Remove the single-storey western extension to the 2-storey flat-roof.

(All references to 1981 are to permission P/1981/0409 and the approved plans/elevations of E H Goldie, drawing no. 2775/2, dated December 1980, approved 15 May 1981).

- The period for compliance with the requirements is 12 months.
 - The appeal is made on the grounds set out in section 39(1)(a), (c), (e), (h), and (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. I direct that the listed building enforcement notice be corrected by:
DELETION of the words '*flat-roofed extension*' from paragraph 6 of the Second Schedule to the notice and paragraph 6 of the Third Schedule to the notice;
and,
SUBSTITUTION of the words '*pitched-roof extension*'.
2. Subject to that correction 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.

The listed building enforcement notice

3. Paragraph 6 of the Second Schedule to the notice refers to the construction of a flat-roofed extension to the east side of the building, as does Requirement 6 in the Third Schedule. It is readily apparent that this extension has a low-pitched slate roof. The appellant is aware of this, as are the Council. I intend to correct the allegation and requirement in this regard, and do not consider any party would suffer substantial prejudice as a result.

Preliminary matters

4. The appeal site is immediately adjacent to Watcombe Lodge and Lantern House – which are attached to each other – and are Grade II listed buildings. All stand within the Watcombe Park Conservation Area. I have therefore paid special regard to the desirability of preserving the buildings, their setting, and any features of special architectural or historic interest which they possess, and to the desirability of preserving or enhancing the character or appearance of the Conservation Area, as required under sections 16(2) and 72(1) of the

Planning (Listed buildings and Conservation Areas) Act 1990 as amended (the Act).

5. The appellant has appealed on ground (j) - that 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. However, paragraph 4 of the notice makes clear that the purpose of the requirements is framed under s.38(2)(a) – that is for restoring the building to its former state. The appellant argues that the requirements of the notice are excessive, and his appeal should more properly be made under ground (g) – that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out. Accordingly, I have treated this as an appeal on ground (g).

Background matters

6. The Coach House is of two storeys, traditionally built with rendered walls and hipped slate roofs. It stands on the northern side of the gravelled vehicle parking and manoeuvring area serving Watcombe Lodge and Lantern House over which the appellant has rights of access to Coach House.
7. The appellant bought Coach House from the owner of Watcombe Lodge/Lantern House in 1982. It is relevant that in 1981 the then owner of the Coach House had been granted listed building consent and planning permission for the conversion of Coach House to a separate dwelling with garage¹. The proposed external alterations included removal of garage doors and insertion of new timber sash windows, alterations to a window, and removal of a window on the first floor, alteration and refurbishment of a lean-to extension on the eastern end of the building, and conversion/extension of an outbuilding to the west of Coach house to form a garage.

The appeal on ground (a)

8. This ground is that the building is not of special architectural or historic interest. This is argued mainly on the basis that the list description failed to refer to any separate curtilage building, and that the Council had clearly not regarded the Coach House as being listed when preparing the Watcombe Park Conservation Area appraisal of 2005, which referred to the building as 'the unlisted Coach House'.
9. Under s.(1)(5)(b) of the Act, an object or structure within the curtilage of the (listed) building, which although not fixed to that building, forms part of the land and has done so since before 1st July 1948, shall be treated as part of the building. There is now a provision under s.(1)(5A) that a list entry may provide that an object or structure mentioned in s(1)(5)(a) or (b) is not to be treated as part of the building. However this did not become effective until June 2013, and the list entry of 1975, as amended in 1994, still stands.
10. In the Court of Appeal case of *Calderdale*² it was considered the following factors were relevant in deciding whether a structure was within the curtilage of a listed building and thereby statutorily protected:
 - a. the physical layout of the listed building and the structure;

¹ Listed building consent ref. P/1981/0516, planning permission ref. P/1981/0409, both dated 15 May 1981.

² *Attorney-General ex rel. Sutcliffe and Others v Calderdale Borough Council* [1983] JPL 310.

- b. the ownership, past and present;
 - c. the use or function, past and present.
11. In this case the principal listed building – referred to as *Lantern House Watcombe Lodge* in the list description, comprises a substantial early 19th century villa (Watcombe Lodge), and a connected building to its northern end (Lantern House). This latter building – formerly a service wing – is now a separate dwelling.
 12. The Coach House stands about a metre-and-a-half from Lantern House at its closest, and the principal southern elevation is approximately at right angles to the western elevation of the main house. The front of the Coach House faces onto a small courtyard with a wall separating it from the gravelled area to the west of the main house. The line of this wall can be seen on an Ordnance Survey map of 1882 – although I understand it was rebuilt following a landslide in 1985.
 13. The appellant argues that the courtyard wall effectively separates the Coach House from the principal building, and constitutes its own discrete curtilage. However, it appears to me probable that the wall originally existed to provide a buffer between the principal entrance to the main house and the activities of the coach house, the stables, and stable hands' accommodation on the upper floor.
 14. Furthermore, it appears from the 1981 block plan of the existing site that there was a wide opening in the wall, with gate piers and an arch – indeed one of those piers can be seen in a photograph of the original wall from 1980. Such an opening can be expected, given the need for probably quite frequent comings and goings of horses and carriages. It appears to me that the boundary wall did not constitute a complete physical barrier between the Lodge and the coach house, and as a matter of fact and degree the land of the appeal site remained as part of the overall enclosure of the main building.
 15. As a place for storage of carriages, stabling horses, and staff accommodation the building had a clear ancillary use to the main house. It is argued that in about 1958 the Coach House became a garage for motor vehicles with a flat above, and it was therefore demoted in some way from being an ancillary use – the analogy made is that the building became akin to a garage built under permitted development rights. I see little merit in this argument, since the Coach House remained as a substantial building, and was used both for garaging vehicles, and as a flat for a member of the family owning the main house. I do not consider the change to use for garaging, rather than housing carriages and horses, made the building anything other than ancillary to the main house.
 16. The overall form and construction of the Coach House retain many features that link it stylistically to the main house – notably the hipped slate roofs, and rendered walls. The original sash windows were clearly of the same pattern as those in Lantern House. The building was originally of an essentially symmetrical classical plan, with a central projecting bay and wings to either side.
 17. The map appended to the Conservation Area Appraisal showing the ages of buildings indicates the Coach House was built within the same period as the main house (1830-1860s).

18. The Coach House was in the same ownership as Watcombe Lodge and Lantern House from the time of construction until 1982 – some 7 years after the date of listing. Although it ceased use as a coach house, stabling and stable boys' accommodation, possibly as late as 1940, it was then used as an ancillary building for garaging vehicles, with residential accommodation above. I understand this probably continued until about 1978, and did not change to a separate dwelling until the 1981 consent was granted. The history of long term single ownership indicates a strong link between the main and ancillary building.
19. I appreciate that the Conservation Area appraisal states that Coach House is unlisted. However, that does not represent a proper analysis of the situation in the light of the provisions of s.(1)(5)(b) of the Act. Furthermore, I can give little weight to the argument that the 1981 application for listed building consent was made only as a precaution following a failure to apply for consent for works to Watcombe Lodge itself. Nor does discontinuance of previous enforcement actions indicate that the Council should not have concerns about other breaches of listed building control they have identified.
20. Overall, the proximity of the Coach House to the principal building, its probable age, architectural style, and long-term function as ancillary to Lantern House/Watcombe Lodge, as well as long term single ownership, indicate as a matter of fact and degree that it stands within the curtilage of the listed building. It should therefore be considered as a part of the listed building.
21. The Coach House is essentially a building of value in terms of its architectural make-up, and is a record of some importance in the historic development of the estate. It remains as a building of special architectural and historic interest. The appeal on ground (a) therefore fails.

The appeal on ground (c)

9. This ground is that that the matters alleged to be in contravention of section 9(1) or (2) of the Act - if they occurred - do not constitute such a contravention. This ground is argued only with respect to the first alleged breach - the installation of double-glazed windows on west, south and east elevations.
22. S.9(1) of the Act 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 or extension in any 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 as one of special architectural or historic interest, whether positive or negative.
23. The appellant argues that the relevant works have been carried out in accordance with consent previously granted. This is on the basis that the listed building consent granted in 1981 shows multi-pane windows in existing and newly formed openings, but does not specify the materials, opening method, glazing bar details, glazing type or colour. Furthermore, Condition no. 1 on that consent does no more than require the works to be carried out strictly with details on the approved drawings.

24. Of the windows approved under the 1981 consent, those on the ground floor to either side of the central projecting bay, no longer exist – there are now single-storey lean-to ‘verandah’ type extensions where they were. In the projecting central bay there are now two windows on the upper floor, rather than the single central window shown on the approved 1981 drawing, and on the ground floor there is no longer the two part sash window illustrated. On the eastern elevation, the two windows approved in the flank of the projecting bay are not there. Only one of the windows proposed for change in the 1981 consent still exists. However, I understand the present uPVC windows were installed in 1998, and are clearly not those installed as part of the works carried out subsequent to the 1981 consent.
25. In my opinion, irrespective of the materials of construction and glazing type, the windows now installed do not benefit from the listed building consent granted in 1981.
26. I must also consider whether the windows now in place have an effect upon the character of the building as one of special architectural or historic interest. In that regard, timber sash windows are a conspicuous feature of this group of buildings. Together with the refined detailing of the framing members and glazing bars, they make an important contribution to the elegant appearance of the buildings, and are a significant element in their architectural make-up. The new windows are of a different material, with glazing of a different type, and in some cases with windows set in the wall with little in the way of reveals. I consider they introduce a quite different building feature, with a significant effect on the special architectural interest of the Coach House, and that such works require authorisation.
27. I conclude on ground (c) that on the balance of probabilities the Coach House 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 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.
- 28. The appeal on ground (e)**
29. This ground is that listed building consent should be granted for the alleged unauthorised works. This ground is argued for alleged breaches, nos. 2, 3, 4, 5, 6, and 8, but excluding breaches nos. 1 and 7.
30. Regarding alleged breach no. 2 – the construction of a flat-roof 2-storey extension on the western side of the building – it is argued that this is set back from the front elevation at ground floor level, with a balcony above. It is set back by some 1.5 metres from the front building line, and should be regarded as subservient to the main body of the building.
31. From my observations, despite being set back, the overall flat roofed form of this extension, and the balcony above the lower part, are quite inimical in the context of the pitched/hipped roof forms of the group of buildings. I noticed that on the northern side, the flat roof is in the region of 300 millimetres higher than the gutter line of the building, resulting in a poorly detailed collision of building elements. The wall below the balcony projects beyond the face of the main block to the extent that it has become a dominant element of this elevation, competing in importance with the projecting central bay.

32. Although the walls of this extension are finished in painted render, other conspicuous features are the largely glazed first floor south elevation, the large glazed window in the western flank on the ground floor, and a sash window above. These are made of uPVC, with substantial framing members, and false glazing bars set within the panes of the double glazing. The windows in the western flank are set close to the face of the wall, and are located in visually uncomfortable positions in relation to external and internal corners of the building.
33. I consider the flat-roofed 2-storey extension is an incongruous addition to the building in terms of form, scale, and materials that causes significant harm to its special interest. It is suggested that the first floor glazing could be set back from the front edge of the flat roof – as it had apparently been pre-2015 – which might reduce the visual impact. However, this would do virtually nothing to address the incongruous form and materials, or to reduce the impact of its scale.
34. Regarding allegation 3 - the wall enclosing the garage forecourt, the 'canopied' garage-gate portico, and the area of hard-standing – the first of these comprises a screen wall incorporating a uPVC window assembly, a gate, and a beam above. The portico comprises a shallow section of slate roof, with piers to either side, and an up-and-over double garage door with a narrow side gate. To the front of these doors are decorative timber posts with knee braces. The hardstanding lies behind this door/canopy assembly.
35. I saw that the built elements have been poorly constructed, with pressed perforated metal lintels exposed to view from within the structure. The slate roofed canopy and doors beneath, together with the decorative knee braces, appear extraordinarily out of place and abrupt in the context of the quite handsome, plainly rendered, boundary wall, and the classical underlying form to the Coach House.
36. Alleged breach no. 4 concerns the slate roofed veranda to the front of the west bay – this infills between the projecting central bay and the flank of the two-storey extension. The front is largely glazed with uPVC windows and French doors. This again utilises an incongruous material, and to my mind the form obscures the original essentially symmetrical plan of the coach house. I consider this to cause significant harm to the special interest of the building.
37. Alleged breach no. 5 relates to the conservatory built at the south-east corner of the building. This extends from the southern wall of the extension on the eastern end of the building to the boundary wall. It is a metal structure with a translucent polycarbonate sheet roof. The appellant argues that the lower part of the structure is hidden from external view, and that if the view of the roof is found to be unacceptable, a condition might be imposed requiring it to be replaced with a flat roof.
38. I very much concur that the view of the conservatory roof in such close proximity is of considerable harm to the setting of the principal buildings. However, the Coach House as a curtilage listed building is worthy of protection in itself. Such protection is to safeguard the intrinsic interest of the building. This interest is independent of whether or not features of the building are publicly visible. The conservatory is built of incongruous materials, and its form obscures and diminishes the historic form of the Coach House.

Replacement of the existing highly prominent roof with a flat roof would do almost nothing to alleviate this harm.

39. Regarding the extension to the eastern side – alleged breach no. 6 – I have mentioned above that the roof is a low pitched roof rather than a flat roof. I understand this part of the building was reconstructed in about 1987 following the 1984 landslip, and positioned 1 metre further forward than originally built. The front wall is now roughly in line with the front wall of the central projection. A result of this is, that rather than being a recessive element – as was the extension proposed for refurbishment in the 1981 consent – the extension now projects in a quite prominent way, and appears as a clumsy addition, further obscuring the plan of the original building.
40. The single storey extension to the western side – subject of alleged breach no. 8 – is attached to the two-storey western extension. The appellant claims it is a re-building on the same footprint of a brick shed that stood there in the early 1980s, which was carried out during the works of 1983. However, the drawing no. 2775/1, submitted with the listed building consent application, shows the existing situation in 1981. It indicates nothing more than a small store standing about 1.5 metres from the western end of the Coach House as it then was. The scheme then approved included a garage in this location. As now built I estimated the western end of two-storey extension is roughly 5 metres from the original western end of the Coach House, and the single storey extension is attached to that. I find it unlikely that the single storey extension is a reconstruction of an earlier building in that position.
41. The single storey extension is fitted with uPVC windows and doors, which again I find to be incongruous in this context. Furthermore, the pattern of fenestration is quite out of place. Although this extension is set well back from the face of the original building, its size and configuration of inappropriate windows and doors, result in further harm affecting the Coach House and the setting of the principal buildings.
42. Overall I consider the alleged breaches nos. 2, 3, 4, 5, 6, and 8 cause significant harm to the special character of the Coach House, and to the setting of Watcombe Lodge/Lantern House. Furthermore these works significantly harm the character and appearance of the Conservation Area as a well preserved area of historic buildings in parkland. The appeal on ground (e) therefore fails.

The appeal on ground (h)

43. This ground of appeal 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. This ground is argued in respect of alleged breach no. 7 – the installation of solar panels – and it is submitted that a period of 10 years should be allowed in order for the appellant to recoup his investment in the installation.
44. However, the solar panels are a prominent and incongruous further addition to the Coach House. I appreciate that the appellant probably acted in good faith by applying to the Council's Building Control Department about their installation in 2012. However, listed building matters are subject to a quite other regime than building control, and the proposals would not have been scrutinised or consulted on in that light. Although the appellant would have

been aware of the Council's concerns following the listed building enforcement action initiated in 2008, he did not make the appropriate enquiries.

45. To allow the solar panels to remain for a further 10 years – a total of 16 years from the time of installation – would mean that they were effectively permanent, and the harm to listed building interests would also continue. I do not consider such a prolongation is justified. The appeal on ground (h) therefore fails.

The appeal on ground (g)

46. This ground is that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out. It is argued with respect to requirements nos. 3 and 5 – to remove the enclosing wall of the garage forecourt, the canopied portico, and works to the hardstanding, and to remove the conservatory.
47. With regard to requirement no. 3, it is argued that removal of the western enclosing wall is unnecessary since it has no impact on the building's special interest. However, this is effectively an attempt to re-run the ground (e) appeal. Retention of this structure would continue to harm the character of the building. Removal of the uPVC glazed panel and infilling with rendered blockwork would similarly allow the harm to continue.
48. With regard to the conservatory, it is argued that entire removal of the structure would be unnecessary, and that replacement of the polycarbonate sheet pitched roof with a flat roof would be sufficient. However, as I have concluded above, it is the harm caused to the building as one of intrinsic special interest that is of importance. Removal of the entire structure is necessary to remedy this harm.
49. I do not consider the suggested lesser steps would be sufficient to overcome the harm to listed building and conservation area interests that I have identified. The appeal on ground (g) therefore fails.

Conclusions

50. For the reasons given above I conclude that the appeal should fail, and the listed building enforcement notice upheld with the correction noted above.

Stephen Brown

INSPECTOR