
Appeal Decision

Site visit made on 24 April 2018

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2018

Appeal Ref: APP/M1595/C/17/ 3181752

28 Bata Avenue, East Tilbury, Essex RM8 8SD

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Valerie Sewell against a listed building enforcement notice (LBEN) issued by Thurrock Borough Council (the LPA).
 - The notice was issued on 3 July 2017.
 - The contravention of listed building control alleged in the notice is the installation of uPVC windows.
 - The requirements of the notice are as follows:
 - i. Remove the existing uPVC windows and replace with timber framed windows to match the finish and design of the original listed dwelling and paint peppermint green in colour.
 - ii. Repair and reinstate with appropriate materials any damage caused to the building arising from step (i) above.
 - iii. Remove all resultant materials arising from step (i) above from the area shown edged red on the attached plan.
 - The period for compliance with the requirements is 3 months.
 - The appeal is made on grounds (c), (e) (f) and (h) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The appeal is allowed in part on ground (h) only and requirement 6.i is varied, as is part 7. Otherwise the appeal is dismissed. See formal decision below.

Queries about the notice

2. In the appellant's representations it is contended that the notice is not clear in indicating exactly what is required to be done (section 6). In the first instance it is stated that there were no front, rear and side elevation plans attached to the notice. However, there is no doubt that the LBEN relates to all of the uPVC windows. This is also clear from the 2016 application (16/1645/LBC) which went to appeal (see below) in July 2017.

3. A second argument is that '*peppermint green*' is not a British Standard or any other clearly recognised colour. However, again I do not consider that this renders the LBEN invalid. In my view it is evident that the Council requires the windows to be painted in the same colour as the majority in the Avenue including those at No 25. I consider, therefore that the notice can be varied to make this clear (see formal decision). In my view, therefore, no injustice will be caused in dealing with the LBEN on the basis of how it has been drafted subject to an appropriate variation.

Background information

4. The appeal building (no 28) is a two-storey, flat roofed, semi-detached dwelling on the north side of Bata Avenue. Like the other houses in the Avenue it has a

rectangular bay window to the front and a main entrance door to the side. It was listed in Grade II in December 1993 and its listing cross-references it to the listing of No 4. It is stated to be '*Identical to nos 4 and 6 Bata Avenue. Forms a group with nos 2-34 (even) Bata Avenue*'. It also lies within the East Tilbury Conservation Area (ETCA).

5. This part of East Tilbury was developed, between the 1930s and the 1960s, as a purpose-built industrial village for the British Bata Shoe Company Ltd and has a unique character and form which combines Garden City planning and Modernist architecture. Some of the former factory buildings are in the process of being restored and/or converted.

6. Within Bata Avenue, I have noted the appellant's contention that no 4 is the '*most significant building in this group*' and that alterations to it have been permitted by the LPA, including a side extension and French doors (to the rear), which are considered to have destroyed the unity of the group. However, when a group of buildings are listed together, each and every one of them is deemed listed in its own right and is subject to the same requirements under the PLBCAA.

7. Furthermore I do not accept the contention that the LPA should have liaised with Historic England (HE) to '*get the wording of all of these listings changed*'. Despite the alterations, in some cases unauthorised, the flat-roofed, staggered pairs of houses are still distinctly recognisable from their respective list descriptions and I do not agree that the uniformity of the group has been changed.

8. As referred to above an application to retain the uPVC windows was refused by the LPA in January 2017 and a subsequent appeal (APP/M1595/Y/3168942) was dismissed in July 2017. After this appeal was lodged the appellant submitted a LBC application (17/01326/LBC) to fit to No 28 double-glazed windows of the type recently fitted to 14 of the 22 houses in Bata Avenue. This was granted consent on 21 November 2017.

The appeal on ground (f)

9. This ground was added at a later stage and was confirmed as a one of the grounds in an e-mail from The Planning Inspectorate case officer to the appellant and dated 29 January 2018. The notice was served by the Council on Valerie Ann Sewell; the occupier and the owner, all at No 28 Bata Avenue. Mrs Valerie Sewell is the appellant and is clearly aware of the contents of the notice and its implications. There is no evidence to suggest that anyone else should have been served a copy of the notice and the appellant has not been prejudiced.

10. The appellant was given the opportunity to comment further on the ground (f) appeal and referred back to the previous arguments that the LBEN failed to achieve what it was supposed to achieve and, therefore, that it had not been served properly. However, this is an incorrect assumption. The validity of a LBEN is quite separate from whether or not it was served correctly in the first instance. I have already dealt with the validity issue above under '*Queries about the notice*'.

11. The appellant has been able to make a valid appeal against the LBEN. It cannot be claimed, therefore, that prejudice was caused by non-service. In any case Section 176(5) of the 1990 Act is clear in setting out that the Secretary of State (and therefore an appointed Inspector) may disregard the fact that a notice might not have been served correctly, if no one has been substantially prejudiced by the failure to serve. There is no evidence that this is the case. No injustice has been caused and the appeal on ground (f) fails.

The appeal on ground (c)

12. To be successful on this ground of appeal it must be successfully argued that the works carried out have not altered the character of the listed building and therefore that there has not been a contravention of section 7 of the PLBCAA. Section 7 of the PLBCAA states that '*Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special or architectural or historic interest unless the works are authorised*'. Section 8 sets out when works to a listed building are authorised.

13. In a ground (c) appeal the merits of the works are not considered. The question to be asked relates solely to whether or not the character of a listed building has been changed by the works carried out. This is irrespective of whether or not such works have been harmful to the listed building. The full merits are considered below in the appeal on ground (e).

14. Having seen the appeal windows from both near and distant viewpoints I agree with the LPA that they have changed the basic character of the building. They have a completely different appearance to the majority of the timber windows along Bata Avenue. Instead of the fine sharp lines of the timber windows the uPVC replacements have a flat, bland and rounded appearance. The casement hinges, so obvious in the timber windows, are not at all visible in the flat faced frames of the uPVC windows.

15. I have noted the appellant's submitted drawing which shows the comparative section sizes of the timber and uPVC components and I acknowledge that there is not much difference in terms of overall section size (uPVC sections shown red and timber sections shown black). However, one of the most defining elements in the timber windows to the fronts of Nos 30 (timber) and 28 (uPVC) is the full width horizontal timber transom which separates the four upper lights from the four lower lights. This element, together with the gaps between the separate timber frames, emphasises the sharp lines of the timber windows, as opposed to the flat and bland appearance of the uPVC windows.

16. Because the windows to the listed buildings are one of their predominant visual features (against the simplicity of the walls and flat roofs) I consider that this stark and obvious change in window design and materials has affected the overall character and appearance of No 28, when compared with No 30 and the other dwellings with the timber windows. As a feature of special architectural and historic interest I consider that the replacement windows have indeed affected the character of No 28. It follows that the appeal on ground (c) must fail.

The appeal on ground (e)

17. Because the appeal building is listed in Grade II and lies within the ETCA, in reaching my decision I have had special regard and paid special attention to sections 16(2) and 72 of the PLBCAA. I have also had regard to the relevant sections of the National Planning Policy Framework (NPPF) and in particular sections 7 (Requiring good design) and 12 (Conserving and enhancing the historic environment). The most relevant policies of the *Thurrock Local Development Framework Core Strategy and Policies for Management of Development, Adopted January 2015* are PMD2 (Design and Layout) and PMD4 (Historic Environment).

18. The main issues are firstly: the effect of the uPVC windows on the character and integrity of the listed building, on its setting and on its features of special

architectural or historic interest and, secondly, their effect on the character and appearance of the ETCA.

19. From my inspection of No 28 and the other mainly unaltered dwellings within Bata Avenue, it is clear that the timber windows were a key feature of the design of these modernist houses. Despite alterations and the fact that some houses now have inappropriate uPVC windows, I agree with the previous Inspector that the fenestration was a major contributory factor to the listed group's (Nos 2-34, even) overall uniformity. I also acknowledge that, from a distance, the windows have some visual similarities with those at No 30. However, I find them to be of poor design quality when compared with the majority of the timber windows in the other dwellings.

20. Despite the attempts to match the component sections and the surface finish, I consider that the uPVC windows detract from the integrity and character of the building and are seen as discordant and incongruous elements to the elevations of the listed building. In my view they fail to provide the sharpness, compositional and appropriate finish and characteristics of the timber windows in the majority of the houses in Bata Avenue.

21. Irrespective of the history of earlier replacements and any similarities in section sizes, the width and bulk of the uPVC sections significantly and detrimentally alter the proportions of the windows; particularly those to the front at ground and first floor levels.

22. I also consider that the uPVC windows are visually harmful to the overall setting of No 28 as well as to the neighbouring listed buildings. In addition the works carried out have affected the special architectural and historic features of the window openings. I conclude, therefore, that the uPVC windows are harmful to the Grade II listed building and that its significance is not preserved. I find them to be contrary to policies PMD2 (Design and Layout) and PMD4 (Historic Environment) which are broadly consistent with policies set out in sections 7 and 12 of the NPPF.

23. It follows in my view that although there are other nearby uPVC windows in the ETCA, the appeal windows neither preserve nor enhance its character or appearance. The ETCA is a unique architectural and historic part of Thurrock and Bata Avenue is an older part of the area. The fact that the ETCA is on the HE Heritage at Risk Register reinforces my view that to grant listed building consent for these particular windows would further erode the area's heritage.

24. The appeal fails on ground (e) and listed building consent is refused for the works as carried out.

The appeal on ground (h)

25. It is contended that the compliance period should be extended for 20 years which is considered to be the expected lifetime of the windows. However I do not find the suggestion to be acceptable. It is far too long a period and if granted would set an unfortunate precedent whereby the LPA would find it difficult both to consider other schemes and/or to take further actions against unauthorised work to the other listed buildings in Bata Avenue.

26. However, I find that 3 months is insufficient and shall increase the compliance period to 6 months. This will give time for the appellant to liaise with contractors and/or the LPA with regard to the carrying out of the alternative permitted scheme. The appeal succeeds to a limited extent on ground (h) and the LBEN will be varied accordingly.

Other matters

27. I sympathise with the predicament in which the appellant now finds herself especially as she was not responsible for carrying out the unauthorised works. However, a LPA can issue a LBEN at any time since there are no time-limiting restrictions (as there are in planning cases) on when listed building enforcement action can be taken.

28. In reaching my conclusions I have taken into account all of the submissions made by the Council, by the appellant and by interested persons who supported the appellant's case. These matters include the planning history; the initial appeal submissions; the Council's delegated report on the application for retention of the uPVC windows; the report and photographic evidence of Mr Peter Woodward; the comments of Mr Mark Sienkiewicz; the additional details provided by the appellant including the photographic submissions (dated 20 February 2018) and the appellant's final comments dated 28 February 2018.

29. However, none of these alters my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision that the appeal should be dismissed.

Formal decision

30. For clarity I direct that the LBEN be varied by adding the words '*to match the colour of the windows at No 30*', after the words '*peppermint green in colour*', in part 6.i of the LBEN (WHAT YOU ARE REQUIRED TO DO).

31. The appeal succeeds to a limited degree on ground (h) and I also direct that the LBEN be varied by deleting the figure '3' before the word '*MONTHS*' in part 7 of the LBEN (TIME FOR COMPLIANCE) and by substituting therefor the figure '6'.

32. Otherwise the Appeal is dismissed; the LBEN is upheld as varied and listed building consent is refused for the works carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Anthony J Wharton

Inspector