



Appeal Decision

Site visit made on 6 August 2019

by **Anthony J Wharton** BArch RIBA RIASI

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

Decision date: 19 August 2019

Appeal Ref: APP/U1620/F/18/3219081

Land at 1A Oxford Street, Gloucester GL1 3EG

- 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 Scott Ellis against a listed building enforcement notice (LBEN) issued by Gloucester City Council.
- The enforcement notice was issued on 5 December 2018.
- The contraventions of listed building control alleged in the notice are as follows:
 - *The removal of all timber framed single glazed sliding sash windows to the front elevation of 1A Oxford Street and replacement with white double glazed uPVC windows*
 - *The removal of all timber framed single glazed sliding sash windows to the South elevation of 1A Oxford Street and replacement with white double glazed uPVC windows*
 - *The removal of the timber door and frame to the South elevation of 1A Oxford Street and its replacement with a white uPVC door*
 - *The removal of all timber framed single glazed sliding sash windows to the rear elevation of 1A Oxford Street and replacement with white double glazed uPVC windows*
- The requirements of the notice are as follows:
 - In relation to the windows on the front elevation of 1A Oxford Street*
 - *Remove all the white uPVC double glazed windows*
 - *Replace the ground floor front window with timber single glazed 2x4 over 2x4 paned double hung cord weighted sliding sash windows*
 - *Replace the second floor front window with timber single glazed 2x3 over 2x3 paned double hung cord weighted sliding sash windows*
 - *Replace the top floor front window with timber single glazed 1x3 over 2x3 paned double hung cord weighted sliding sash windows*
 - *All sash windows shall have short Victorian sash horns and 14mm lambs tongue puttied glazing bar detail*
 - *All replacement windows shall be set back from the face of the wall by a minimum of 50mm*
 - *All windows shall be painted in a Weathershield paint system in white (RAL9010)*
 - NB – All replacement windows shall be traditionally constructed (ref to Annex A)**
 - In relation to the windows to the rear elevation of 1A Oxford Street*
 - *Remove all the white uPVC double glazed windows*
 - *Replace the first floor and second floor rear windows with timber single glazed 1x3 over 3x3 paned double hung cord weighted sliding sash windows*
 - *All sash windows shall have short Victorian sash horns and 14mm lambs tongue puttied glazing bar detail*
 - *All replacement windows shall be set back from the face of the wall by a minimum of 50mm*
 - *All windows shall be painted in a Weathershield paint system in white (RAL9010)*
 - NB – All replacement windows shall be traditionally constructed (ref to Annex A)**
 - In relation to the windows to the South elevation of 1A Oxford Street*
 - *Remove all the white uPVC double glazed windows*
 - *Replace the first floor and second floor windows with timber single glazed 2x3 over 2x3 paned double hung cord weighted sliding sash windows*
 - *All sash windows shall have short Victorian sash horns and 14mm lambs tongue puttied glazing bar detail*
 - *All replacement windows shall be set back from the face of the wall by a minimum of 50mm*
 - *All windows shall be painted in a Weathershield paint system in white (RAL9010)*
 - NB – All replacement windows shall be traditionally constructed (ref to Annex A)**

In relation to the entrance door on the South elevation of 1A Oxford Street

- *Remove the white uPVC entrance door and surround to the ground floor on the South elevation and replace with a timber door and timber frame.*
 - *The replacement timber door and timber frame shall be set back from the face of the wall by a minimum of 50mm.*
 - *The replacement timber door shall be 6 panelled and solid wood painted in Signal Black (RAL9004)*
 - The period for compliance with the requirements is 12 months.
 - The appeal is made on grounds (c), (d) and (e) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
-

Decision

1. The appeal is dismissed. See formal decision below.

Background information and relevant policy

2. The appeal property was listed in Grade II on 12 March 1973 and is the first house in a row of 8, all of which form part of the listed group. The list description indicates that the terrace dates back to around 1823-5 and was part of a development in Oxford Street for John Bowyer, attorney. The three-storey houses are brick stuccoed with incised masonry joints, slate roofs and brick chimney stacks to the party walls. The properties lie within the London Road Conservation Area (LRCA), first designated in 1984. The LRCA was reviewed in 2006 and the Council carried out a Conservation Area Appraisal and Management Recommendations document. This was produced and adopted as supplementary planning guidance (SPD) in September 2007.

3. A later up-date to the listing indicates that No 1A had been altered in 1990 when the former central entrance doorway to the street façade, had been infilled with a sash window with glazing bars. A new doorway had then been formed in the south end wall and on each of the upper floors there were sashes with glazing bars (first floor 3x4 panes and second floor 3x3 panes).

4. The appellant indicates that the property was purchased in February 2016, with the intention of renting it to students or for social housing. It is stated that at that time the listed building had been in very poor condition both internally and externally. Reference is made to dampness problems; broken and dilapidated window frames; non-existent heating and collapsed ceilings. The window replacement works which are now the subject of the LBEN were carried out to improve the property but there is no explanation as to why the necessary Listed Building Consent (LBC) was not applied for at that time.

5. The unauthorised works to the windows and doors were brought to the attention of the City's Planning Enforcement Team (PET) by the Conservation Officer (CCO) in April 2018. Several letters and a Planning Contravention Notice (PCN) were sent to the appellant. Mr G Ellis and the appellant had previously called into the planning office in July 2018. The PCN was not returned and eventually the Council decided that it was expedient to issue the LBEN. This was issued on 5 December 2018 and was appealed on the three grounds on 20 December 2018.

6. The development plan comprises the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) and the saved policies of the City of Gloucester Local Plan (CGLP). However, the latter are considered to be out-of-date and the most relevant policies are SD8 of the JCS (relating to the built, natural and cultural heritage of the City) and policies within the National Planning Policy Framework (NPPF) relating to the conservation and enhancement of the historic environment.

7. Because the building is listed in Grade II and within the LRCA, in reaching my decision, I had special regard and paid special attention to the requirements of sections

16(2) and 72 of the PLBCAA as amended. The Council refers to section 66 of the Act and although this has the same requirements as section 16(2) it relates to when planning permission as opposed to LBC is being considered. The emerging Gloucester City Plan which will eventually deliver the JCS for the City can only carry limited weight at this stage. However, the Council indicates that the plan includes policies which build upon and support those of the adopted JCS and the NPPF.

The appeal on ground (c)

8. To be successful on ground (c) it must be comprehensively shown that the works carried out (the works to windows, doors, fascia and rainwater goods) do not constitute a contravention of sections 7 and 8 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 architectural or historic interest unless the works are authorised'* (my underlining). Section 8 sets out when works to a listed building are authorised.

9. The appellant has acknowledged that the building is listed and it is a matter of fact that the works alleged to have been carried out have occurred. I noted the windows and doors as installed during my site visit and there appears to be no dispute between the Council and the appellant that the works were carried out. There is no LBC in place for the works and they are not permitted by virtue of any part of The Town and Country Planning (General Permitted Development)(England) Order 2015 as amended 2016 (GPDO). The works have in my view affected the character of the listed building and therefore constitute a contravention of section 9 of the PLBCAA. The appellant has failed to demonstrate that the opposite is the case. The appeal fails, therefore, on ground (c).

The appeal on ground (d)

10. This ground of appeal addresses situations where essential and urgent works were needed to preserve the listed building. The emphasis is on the words *'essential'* and *'urgent'* and *'to preserve the listed building'*. This ground of appeal comprises three tests. The first is whether the works were urgently necessary in the interests of safety or health; the second test is that it was not practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support and the third test is that the works carried out were the minimum measures immediately necessary to achieve the aims of safety, health or preservation.

11. For an appeal to succeed on ground (d) all three tests must be met and in this appeal the onus is on the appellants to conclusively show that this is the case. The tests under ground (d) do not specifically relate to works being carried out to a listed building to make it comply with *'The Energy Efficiency (Private Rented Property (England Wales) Regulations 2015'* (EER 2015).

12. Thus, whilst accepting that this might well have been a normal requirement for landlords of rented properties, such requirements do not fall into the category of being a requirement which was *'essential and urgent in order to preserve the listed building'* (my underlining). The requirements of the EER 2015 could well have been achieved without the installation of uPVC windows and doors and, in any case, as indicated by the Council, there is clear Government Guidance that buildings which do not need an EPC include listed buildings.

13. In relation to the first test, the evidence is that the works carried out were necessary to satisfy Government Regulations relating to energy efficiency. This is not the same as the works being *'urgently necessary in the interests of health and safety'*. It

has not been shown that the health of any tenant of the building was at risk if the uPVC doors and windows had not been fitted and some other solution had been adopted. Also there is no evidence that the building was in such a state that it was a risk to the public safety, and therefore that the unauthorised windows and door had to be fitted.

14. The Council refers to various Department for Business, Energy and Industrial Strategy and Building Regulation exemptions for necessary works to listed buildings including energy efficiency measures. The Council also stresses that there is clear Historic England guidance relating to the application of Part L of the Building Regulations for historic and traditionally constructed buildings.

15. The Council stresses that the appellant had not sought any advice from the CCO regarding the options available for replacing the inefficient and dilapidated components or for ensuring energy efficiency. The Council refers to other means of draft-proofing, repairs, shutters and secondary glazing which could have achieved the required energy ratings without using the uPVC windows and doors. In conclusion, therefore, the ground (d) appeal must fail on this first test.

16. On the second test there is some evidence that the defective windows and doors needed to be replaced. But the appellant has not shown why the works as carried out were so specifically '*urgently necessary*'. As indicated, there were no consultations carried out with the Council before the works were carried out and it would appear that it was simply a case of providing new uPVC windows and doors without due consideration of their impact on the character of the listed building. Again therefore it has not been shown that the works related to the aims of achieving safety, health or the preservation of the building. The works carried out were clearly not so '*urgently*' necessary for safety or health reasons. Therefore, the second test is not met either.

17. On the third test it must be shown that the works carried out were the '*minimum measures*' necessary. But again they must be measures relating to the need to again to overcome any health or safety issues as opposed to purely relating to the requirement for new windows and doors. Thus the works as carried out to the windows and doors do not meet this third test. The appeal fails on all three tests and cannot succeed on ground (d).

The Appeal on ground (e)

18. The main issues are the effects of the unauthorised works (the windows and door) on the character and integrity of the listed building; on its setting and on its features of special architectural and historic features.

The gist of the Council's case

19. It is contended that due to their design, inappropriate materials and methods of construction the windows and door are not acceptable. It is considered that the unauthorised works are harmful to the significance of this heritage asset and that this is contrary to Policy SD8 of the JCS, as well as to emerging policies of the Gloucester Second Deposit Plan.

20. In addition the works are not considered to comply with the policies set out in section 16 of the NPPF (Conserving and enhancing the historic environment) or the requirements of the relevant sections of the PLBCAA: Section 16(2) and/or Section 66 (1). With regard to the impact on the character and appearance of the LRCA, the Council concludes that the works neither preserve nor enhance its character or appearance and thus again are contrary to both local and national policies which seek to protect the historic environment.

The gist of the Appellant's case

21. The basis of the appellant's case is that the works as carried out were essential to meet Government Regulations regarding energy efficiency and have been granted an appropriate EPC Certificate with an 'E' rating. It is stated that various other works in addition to the uPVC windows have also been completed. These include the installation of a new energy efficient combination boiler; loft insulation; draft excluders and a secure uPVC door. It is stated that all of the works have ensured that the property has the basic necessities to *'help the reduction of the carbon footprint as urged and rewarded by the government'*. The RLA Residential Landlords Association Regulations are also relied upon in support of retaining the unauthorised uPVC windows.

22. The appellant indicates that the status of the building as one of architectural and historic interest is fully understood. However, it is contended that it is not conducive to Government policy in the future, to ask that timber windows be fitted which would have a greater detrimental effect in terms of the energy efficiency of the property. Evidence is submitted regarding the standard and quality of the sash windows installed and the energy rating achieved. An EPC Surveyor's e-mail is also submitted which confirms that timber windows would result in ratings *'resulting in a fail'*.

23. It is contended that great effort and expense has been expended to ensure that the correct style of high standard sash windows are installed and that these are considered to abide by the requirements of GCC to retain the style of the property; the character of the neighbouring surroundings and Government policy for efficiency. Works, particularly window installations, to other properties in the terrace are referred to whereby the architectural and historic appearance of the listed buildings have not been secured, unlike the situation at No 1A. Photographic evidence of these has been submitted.

24. It is stressed that every effort has been made to install windows to the exact details of the previous windows and that the windows installed have not had any harmful effect on the property or on the character and appearance of the LRCA. It is argued that the opposite is the case and that the works as carried out have enable a dilapidated building to be brought back into use as a dwelling fit for habitation. With regard to the LRCA it is further contended that *'there are no significant signs relating to this within the surrounding properties'*.

25. With regard to the design and construction of the windows it is stressed that they are true sash windows; that the glazing bars are installed inside of the glass as opposed to being stuck to the front; that they have traditional sash fasteners; that they have Victorian short sash horns and that there are no outward opening frames. The difficulties of maintaining timber sash windows are also emphasized with a need for scaffolding which itself needs approval from the Council and could cause hazards to the public.

26. An interested person has written in support of the works carried out to No1A and whilst acknowledging that it was *'obviously unwise'* to carry out the works without gaining consent, has questioned why other long-standing infringements in the area have escaped enforcement action. Other uPVC windows in the street have been referred to (for example at No 15) and references made to satellite dishes having had to be removed from some listed buildings. In this case it is argued that one has to look closely to note that the windows at No 1A are not timber windows; that they are energy efficient and that they will continue to look good in the future in contrast to the neglected state of many original windows in the street.

My assessment

27. It is clear that efforts have been made to ensure that the uPVC components matched, 'as closely as possible' with the original timber sash and case windows. I also acknowledge all of the facts relating to the condition of the previous windows; the construction of the uPVC components; their energy efficiency and the various regulations which need to be met in relation to the letting of residential properties.

28. However, having seen the windows as installed from both near and distant viewpoints, I share the Council's concerns about their effect on the listed building. In my view the attempt to replicate the original sash windows has fallen well short of what could be allowed. Even from the other side of the street it is clear that the replacement windows are uPVC components and they are perceived as being distinctly different in character and appearance to the timber windows in the adjacent property.

29. The bulky and thicker uPVC frames have completely different proportions to the much finer timber sash windows which remain in most of the houses in the terrace. The side frame sections and the meeting rails are much thicker than the adjacent timber sashes. The 'glazing bars', although not face-fixed to the glazing appear as artificial components and they affect the reflectance of the panes in a negative way in contrast to proper timber glazing bars.

30. The 'Victorian horns' have the appearance of simply being 'stuck' on to the underside of the top-frames and even the joint between horn and frame is distinctly noticeable when walking past the windows along the pavement. The 'horns' emphasize the inappropriate thickness of the meeting rails and in any case would not have been seen on Georgian windows. Irrespective of the materials and the appearance of the finish, these framing and glazing differences are starkly evident and, in my view, they detract markedly from the character and integrity of the listed property.

31. This visual harm to the building also affects the overall setting of the listed building in this part of Gloucester. The uPVC windows detract from the finer detailing of the timber sash windows (without horns) in most of the rest of the terrace. I also consider that the windows are harmful to the other remaining features, including the proportions of the window openings and the traditional materials to the roof. With its framing and glazing I also consider that the uPVC door is obtrusive and harmful to both the listed building and to this part of the LRCA. The works in my view neither preserve nor enhance the character or appearance of the LRCA.

32. In conclusion I find that the windows and doors are contrary policy SD8 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS), as well as to policies within section 16 of the NPPF which aim to conserve and enhance the historic environment. There are no other material considerations of sufficient weight to indicate that the decision in this case should be made otherwise than in accordance with the relevant local and national policies. I do not consider, therefore, that listed building consent should be granted for the works as carried out in contravention of the PLBCAA and the appeal must also fail on ground (e).

Other Matters

33. During my site visit I noted that most of the other buildings on both sides of the terrace had retained their timber sash and case windows, although as referred to by the appellant and an interested person by others there are some other inappropriate uPVC components in the terrace. If these unauthorised appeal uPVC components were allowed to remain, I consider that it would set an unfortunate precedent resulting in the Council

having difficulties in resisting other harmful non-traditional windows and doors being added to the terrace.

34. In reaching my conclusions I have taken into account all of the representations made by the Council, by the appellant and by an interested person. These include the initial submissions and grounds of appeal; the detailed statements and various appendices; the Council's delegated report; the photographic evidence and the specific third party comments made in support of the appellant's case.

35. However, none of these carries sufficient weight to alter 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 and the LBEN upheld.

Formal Decision

36. The appeal is dismissed and the Listed Building Enforcement Notice is upheld. Listed Building Consent is refused for the works carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Anthony J Wharton

Inspector