



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/18/3214845

3 Wellington Parade, Gloucester GL1 3NP

- 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 (PCA).
- The appeal is made by Mr David Harris against a listed building enforcement notice (LBEN) issued by Gloucester City Council (the LPA).
- The enforcement notice was issued on 9 October 2018.
- The contraventions of listed building control alleged in the notice are as follows:
 - *The removal of all timber and metal framed windows to the rear elevation and replacement with white UPVC windows.*
 - *The removal of the timber door to the rear elevation and replacement with a white uPVC door.*
 - *The removal of the timber fascia to the rear of the property and replacement with white uPVC fascia*
 - *The removal of the black uPVC guttering and downpipes. Replacement with white uPVC guttering and downpipes to the rear of the property.*
- The requirements of the notice are as follows:
 - 1. In relation to the windows of the Property**
 - *Remove all windows from the rear elevation of the property that are constructed of uPVC*
 - *Replace all windows with timber single glazed side-hung opening casements windows. (For the avoidance of doubt this must be in accordance with the joinery details included (Annex a)*
 - *All replacement windows shall be set back from the face of the wall by a minimum of 50mm*
 - *All replacement windows shall be traditionally constructed with side-hung opening casements fitted flush with the frame and have no trickle vents*
 - *All the replacement windows shall have a traditional cill details constructed of stone. Integral timber cill's (sic) will not be accepted)*
 - *All windows shall be painted in a Weathershield paint system in white (RAL9010)*
 - NB – Please refer to annex b for a table relating to specification for each window as they are differing sizes and designs**
 - 2. In relation to the doors of the property**
 - *Remove the door at ground floor level, to the rear of the property which is uPVC and replace with a timber door*
 - *The replacement timber door shall be set back from the face of the wall by a minimum of 50mm*
 - *The replacement timber door shall be half glazed with 2 window lights and painted black (RAL9005)*
 - 3. In relation to the fascias and rainwater goods of the property**
 - *Remove the UPVC fascia and rainwater goods from the rear of the property*
 - *The fascia should be replaced with traditional timber fascias with a preservative treatment applied, a Weathershield paint system in white (RAL9010)*
 - *The rainwater goods shall be replaced with black powder-coated aluminium guttering's (sic) downpipes and hoppers.*
- The period for compliance with the requirements is 3 months
- The appeal is made on grounds:

(c), (e), (g) and (h), as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (PLBCAA).

Decision

1. The appeal is allowed and the Listed Building Enforcement Notice is quashed. Listed Building Consent is granted for the white UPVC windows; the white UPVC door; the white UPVC fascia and the white UPVC guttering and downpipes all to the rear elevation of the listed building at No 3 Wellington Parade, Gloucester GL1 3NP.

Background information and relevant policy

2. The appeal building, at No 3 Wellington Place, was listed as part of a group of buildings (*Numbers 2 to 8 and attached area railings 2-8, Wellington Parade*) on 23 January 1952. It was described in the listing as being part of a terrace of 7 houses, which were completed in 1814 and which had been altered since that time. The buildings are described as having stone Ashlar facades; slate roofs, brick stacks with chimney pots and being doubled-depth blocks with rear wings, which were originally designed as 4 houses. Most of the list description relates to front of the houses and these are still recognisable from the list description. There is no specific reference to the rear of the buildings in the list description.

3. The listed buildings lie within the London Road Conservation Area (LRCA) which was first designated in 1984. The Conservation Area was reviewed in 2006 and a Conservation Area Appraisal and Management Recommendations was produced by the Council and adopted as supplementary planning guidance (CSPD) in 2008.

4. The enforcement notice is aimed solely at the unauthorised works carried out to the rear elevation of the property. In May 2016 the Conservation Projects Officer (CPO) of the City Council wrote to the appellant and informed him that the Council's attention had been brought to works carried out to the rear elevation. The CPO indicated that there was no record of the works carried out to the listed building and which included the white-painted rendered finish and the installation of the uPVC windows. The CPO requested a discussion with the appellant with a view to reaching an agreement and a timetable to remove the render in order to re-install more appropriate windows.

5. The appellant has indicated that the previous windows were not wooden casement windows and that they mainly comprised '*a metal 'Crittal' door and modern type wooden windows with lipped openings*'. It is stated that these had been in place for over 30 years and that the windows at Nos 2 and 3 are not the same style as those at Nos 4 to 8 Wellington Parade. It was also stated that the uPVC guttering and downpipes had also been in place for over 30 years. One of the submitted photographs clearly shows the previous rendered finish, some metal Critall windows and other timber-framed casement windows.

6. The Council has submitted documents to show that it had been trying to contact the appellant from around March 2016 regarding the works carried out to the rear of the property. A letter dated 8 September 2016 confirms this and also indicates that following advice from the City Conservation Team (CCT) the render itself would be acceptable (to be a cream colour such as Gardenia) but that the uPVC windows needed to be replaced by windows to match the original windows which were in place in July 2015. The Council indicates that there was no response to the letter and subsequently the appellant was written to at a different address.

7. Eventually the appellant gave a brief overview of the history of the appeal property and had indicated that the rear elevation had been rendered prior to 1989 and that over the years the colour had weathered and dirtied. As a result it was indicated that the render had simply been patched and the re-painted. Following a site visit in November 2016 the Council refers to photographs and a history of the site, as well as to the fact that several grants had been made towards replacement windows. At that time the Council had also confirmed to the appellant that uPVC materials were not acceptable components for this Grade II listed building.

8. Subsequently the appellant had submitted details to the Council of costings for replacement windows and his difficulties in meeting such costs. A Meeting with the Council Officers was arranged for 30 January 2017 and the appellant was supplied

with a list of contractors. He was also informed that enforcement action would be taken and that if the required works were not completed the Council could take direct action to undertake the works required and to subsequently seek to recoup the costs for such work. The LBEN was later issued on 28 February 2017 and the appellant appealed. This notice was found to be a nullity but this did not preclude the LPA from issuing the current LBEN on 9 October 2018.

9. 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.

10. 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 (1) 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 but 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)

11. 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.

12. The appellant's case is that the windows and the door to the porch do not require LBC because they were *'not part of the original listed building'*. However, even if elements, or even full elevations, are not mentioned in the list description, once listed the whole of the building is subject to the legislation. The evidence is clear that the former timber and metal windows have been replaced with uPVC windows; that a uPVC door has been installed and that the uPVC fascia and rainwater goods have been fixed to the rear of the listed building.

13. These all constitute works to the listed building and having seen these, during my site visit, I consider that they have affected the character as a building of special architectural and historic interest. At this stage, on ground (c), it is not a matter of whether or not the works have been harmful to the character of the listed building. The works merely need to have affected the character, irrespective of whether or not the impact is positive, neutral or negative. I deal in detail with the merits of the case in the ground (e) appeal below.

14. There is no dispute that the works have indeed been carried out and I have concluded that they have affected the character of the building. It follows that LBC would have been required for all of these alterations to the rear of No 3 Wellington Parade. There is no LBC in place for the works and it follows, therefore, that there must have been a contravention of the PLBCAA. What has occurred constitutes a contravention and the appeal must fail on ground (c).

The Appeal on ground (e)

15. The main issues are the effects of the works, to the rear elevation of the listed building, on its character; its setting and its features of special architectural and historic interest, having regard, amongst other things, to the planning history, the previous windows and the overall condition of the rear elevation prior to the works being carried out.

The gist of the Council's case

16. It is contended that due to their design, inappropriate materials and methods of construction, the windows and other works 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.

17. 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)). The Council contends that the works are on the '*upper end of the scale*' of '*less than substantial*'.

18. With regard to the impact on the character and appearance of the LRCA, the Council concludes that the works neither preserve nor enhance the character or appearance and thus again are contrary to both local and national policies which seek to protect the historic environment and heritage assets.

The gist of the Appellant's case

19. It is stressed that the previous windows were not wooden casements but mainly metal Critall windows as was the door. It is indicated that there were some '*modern type wooden windows with lipped openings*'. All of these were stated to have been in place for over 30 years and attention is brought to the fact that the windows at Nos 2 and 3 Wellington Parade were completely different to those at Nos 4 to 8. It is also indicated that uPVC guttering and downpipes have also been in place for 30 years and that the Council has accepted uPVC windows, guttering and downpipes of similar types on adjacent buildings. It is also indicated that there have never been stone cills in place in relation to the windows and the Council's introduction of such is unreasonable.

20. In addition, a property at No 18 London Road is referred to which the Council was involved in refurbishing. It is stated that uPVC guttering and downpipes were allowed. The appellant further states that the Council appears to have accepted uPVC works on the other listed buildings and that it is understood that these other owners have not been requested to remove the uPVCs components. Because of this, the appellant considers that the Council is discriminating against him.

21. With regard to the letter to affected persons the appellant considers that the Council has mislead others into thinking that the uPVC windows had replaced wooden casements and cast iron/aluminium heritage guttering and downpipes as well as stone cills. None of these were present prior to the works and this is indicated by the submitted photograph. It is contended, therefore, that the Council is over-enforcing since the requirement to install casement windows is over and above what was there originally or at the time of listing.

My assessment in relation to ground (e)

22. First of all, unlike in planning enforcement, there are no time limits restricting a LPA from taking listed building enforcement action and having seen the works as carried out I can understand the Council's concerns. They are clearly constructed of a

material (uPVC) which is noticeable and which is unacceptable in almost all situations where such components have replaced original windows and other historic and traditional features in listed buildings.

23. However, in my view, and despite the fact that the works enforced against are all constructed of uPVC, there are significant material considerations which weigh in favour of the works as carried out being allowed to remain in place.

24. From the submissions, including the photographic evidence, it is clear that the original windows were a hotch-potch of different types and window patterns. Most appear to have been metal Critall windows, although at least a few appear to be of timber construction. The Council has not provided any firm evidence of the windows at the time of listing but, as indicated by the appellant, Critall windows have been in production since the early C20 and could well have been in place in the 1950s. It is also clear that the rear elevation had been rendered and that uPVC downpipes had also been in place for over 30 years.

25. Having inspected the rear of the adjacent properties in Wellington Parade I also noted the other uPVC window installations. These other rear elevations are of brickwork as opposed to render and there are a variety of different windows styles, designs and materials. The overall effect is that these rear elevations have all been seriously altered which has affected the character of the buildings, as well as the character and appearance of this part of the LRCA.

26. Clearly the appeal windows would not be appropriate if they had simply replaced identified traditional timber windows. In fact, UPVC components cannot normally be justified as replacement windows in listed buildings. However, the circumstances in this case are unusual in that the rear elevation to the building has been significantly altered over the years. Also there is no evidence of the type of windows in place at the time of listing and in such circumstances. Furthermore, it can be unacceptable and even unlawful for a LPA to require any significant improvement over and above what was, or what might have been in place at the time of listing.

27. Having seen the windows and the other components in situ, it is my view that despite the uPVC material, they are clearly a visual improvement on what has been shown in the photographic evidence. In this case, if the LPA are not sure about the windows in place at the time of listing it is difficult to specify exactly what windows should replace the uPVC ones as fitted. The evidence from the appellant is that the windows were not timber casements and that most were the metal Critall windows. What is clear from the evidence however, is that in order to ensure that the preservation of the listed building, the old dilapidated windows needed to be replaced.

28. I acknowledge that timber casement windows would be preferable in that they would have slightly narrower frames than the uPVC ones as fitted. However, in my view, their overall appearance would not have been significantly different than the UPVC components. It follows that any impact on the character and appearance of the rear elevation would also not have been significantly different.

29. When seen from the main, but limited public viewpoint at the rear, the windows are not so obtrusive in my view so as to be significantly harmful to the character of this rear elevation of the listed building. In fact they are seen against other UPVC windows in the adjoining property. I acknowledge that this cannot be a reason for allowing more uPVC components but the question in this case relates to whether or not the character of the listed building and its setting have been unacceptably harmed by the appeal uPVC components.

30. In the overall circumstances of this case and particularly taking into account the history of the rear elevation; the uncertainty of the windows at the time of listing; the visual similarity to timber casement windows and the obvious need to replace the dilapidated windows, I consider that the character of the listed building has not been significantly harmed by the uPVC windows installed and that LBC for their retention is justified. The appeal succeeds in relation to the windows.

31. I also consider that the door, the fascia and the rainwater goods are also acceptable. I accept that the fascia is somewhat deeper than it needs to be but, due to the white render, this is not so dominant at the high gutter level. With regard to the colour of the rainwater goods I consider that the white components as fitted are less stark than black components would be on this rear elevation. In the light of the planning history I also consider it excessive and unreasonable to require aluminium Heritage components to be fitted to this rear elevation.

32. In conclusion therefore I consider that the works enforced against, on the rear elevation of No 3 Wellington Parade, are acceptable and that the conservation and preservation of this part of the heritage asset (its rear elevation) are maintained. The effect of the works is not so harmful so as to withhold consent for these works. In these circumstances I do not find the works to be contrary to Policy SD8 of the JCS (relating to the built, natural and cultural heritage of the City) or to relevant policies within the National Planning Policy Framework (NPPF).

33. Similarly, having had special regard and paid special attention to the requirements of sections 16(2) and 72 of the PLBCAA as amended I consider that listed building consent should be granted for the works carried out. In granting consent I am satisfied that the character and setting of the listed building, as well as the character and appearance of this part of the LRCA will be preserved. The appeal, therefore, succeeds on ground (e).

34. In granting consent I do not consider that this will set an unfortunate precedent or that it will lead to the LPA having difficulties resisting other unauthorised works to listed buildings in this part of Gloucester. This is an exceptional and unusual case and, in my view the overall circumstances have led to my conclusion that the works are acceptable. In any event each application/appeal must be considered on its merits and this is how I have dealt with the appeal.

Other Matters

35. Because the appeal succeeds on ground (e) the appeal on grounds (g) and (h) do not fall to be considered.

36. In reaching my conclusions in this appeal I have taken into account all of the other matters raised made by the Council by the appellant and by all of the interested persons. These include the full planning history of the site; the previous grant award for works to the property; the detailed list description; the earlier correspondence (letters and e-mails dating back to 2016) between the Council and the appellant; the initial appeal documents; the detailed statements and the appellant; the photographic evidence and the detailed comments of the interested persons.

37. However, none of these alter any of my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision that listed building consent should be granted for these works.

Anthony J Wharton

Inspector