
Appeal Decision

Site visit made on 30 October 2019

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 11 November 2019

Appeal Ref: APP/P0119/F/19/3222733

23 Horse Street, Chipping Sodbury BS37 6DA

- 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 Crown Developments (Chipping Sodbury) Limited against a listed building enforcement notice (LBEN) issued by South Gloucestershire Council.
- The enforcement notice, numbered COM/18/0374/LB/1 was issued on 15 January 2019.
- The contravention of listed building control alleged in the notice is: the repointing of the front elevation of the building at the land edged red on the attached plan.
- The requirements of the notice are as follows:
 - (a) Rake out the existing unauthorised black coloured mortar to the front elevation using hand tools only ie. cold chisels. No power tools are to be used.
 - (b) Repoint using a course, lime-based mortar mix, the coarseness to be derived from a high aggregate content.
 - (c) Use a tamped finish on the joints with a churm brush, with the result being a textured surface for the pointing which is set flush with the stone. Any excess mortar that has been applied to the stone shall be removed.
- The period for compliance with the requirements is 4 months.
- The appeal is made on grounds (b) and (j) as set out in section 39 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (PLBCAA).

Costs Application: An application for costs has been made by South Gloucester Council against the appellant, Crown Developments (Chipping Sodbury) Limited. This is the subject of a different decision.

Decision

1. The appeal is dismissed.

Matters of clarification

2. The appeal is made on grounds (b) and (j) only, as set out in section 39(1) of the PLBCAA. There is no appeal on ground (e) and so the merits of the case and whether or not listed building consent (LBC) should be granted for the retention of the pointing, as carried out, do not fall to be considered.
3. However, the arguments under ground (b) are made on the basis that permission and/or listed building consent has been granted for the pointing by virtue of a condition discharge notice from the LPA and the provision of a sample panel showing the rubble stonework (see below). In effect, therefore, this is an appeal on ground (c) which contends that there has not been a contravention of listed building control. I have, therefore dealt with the appeal on grounds (b), (c) and (j) and in doing so I am satisfied that no injustice will be caused to the appellant company or to the Council.

Background information

4. The appeal building, which formally operated as Chipping Sodbury Post Office, is located on the east side of Horse Street, approximately 60m to the south of the War Memorial located at the end of Broad Street. It dates back to the mid C18 and is a three storey structure built of rubble stone with a double Roman tile roof. It was listed in Grade II on 17 September 1952 (now the National Heritage List for England) and it lies within the Chipping Sodbury Conservation Area (CSCA). Other than some minor changes to its front elevation, it is still distinctly recognisable from its list description which is as follows:

'Mid C18. Rubble, Double Roman tile roof. Three storeys. Six windows; glazing bar sashes to second floor windows, and to No 23 on first floor, large panes to first floor of No 25. All in plain painted stone surrounds with keystones and relieving arches. Moulded cornice with pediment over 4 central windows. Rubble parapet. No 23 has 6-panel door with overlight, double keystone and pediment on brackets. No 25 has modern frontage at ground floor'.

5. LBC had been granted in 2016 (PK16/2907/LB) for alterations at first and second floor levels to provide residential accommodation. Sometime earlier LBC had been granted (PK15/5419/LB) for the demolition of a garage to create a communal parking area. One of the conditions attached to the earlier LBC was as follows:

'2. Sample panels of stonework, demonstrating the colour, texture and pointing are to be erected on site and approved in writing by the Local Planning Authority before the relevant parts of the work are commenced. The approved sample panel shall be kept on site for reference until the stonework is complete. Development shall be carried out in accordance with the agreed sample'.

6. A sample panel was provided and the condition was discharged by a notice issued by the LPA, reference DOC17/0412, on 19 July 2018. The appellant company has submitted a photograph showing the sample panel, as well as one showing the stonework raked out ready for pointing. From the photograph the pointing appears to be grey and of a slightly darker hue than the limestone rubble stone. It is difficult to determine the texture of the pointing from the photograph but the overall visual effect is one which has resulted in some, but not significant, contrast between the pointing and the stonework.

7. However, with regard to the sample panel, the Council indicates that Drawing No 4103/51 attached to application DOC17/0412 specifically referred to the re-pointing with Lime Mortar of the North (side elevation) only and that there is no reference to the re-pointing of the principal elevation. In fact the above drawing did not show the front or principal elevation.

8. Although I have not been provided with a full set of the application drawings, it would have been unusual if there had not been a front elevation included. Even if this had not been the case the application referred to the first and second floors of the property which must have included the whole of the building. My interpretation of the condition, therefore, is that it must have referred to any repointing carried out in relation to approval PK16/2907/LB. In my view, it would have been remiss of the LPA to have restricted such re-pointing to just the north elevation as shown on the above drawing.

9. It is clear to me that in appealing the LBEN the appellant company is relying on the approval of the sample panel as also relating to the front elevation. I consider

that this is an appropriate assumption taking into account the planning history of the building and it is on this basis that I have dealt with this appeal.

The appeal on ground (b)

10. The appellant company contends that because of the discharging of the condition relating to the sample panel, what is alleged to constitute a contravention of the PLBCAA has not occurred as a matter of fact. However, it is evident that the pointing has occurred and this is clear from my site visit. In a ground (b) appeal the question is not whether the alleged works carried out are authorised or not, it is a question of whether the alleged works have occurred at all. In this case the walls have, as a matter of fact, been pointed irrespective of whether or not the pointing matches that of the approved sample panel. Thus the matters alleged in the LBEN, which the LPA consider to constitute a contravention of the PLBCAA, have occurred as a matter of fact and the appeal must fail on ground (b).

The appeal on ground (c)

11. To be successful on this ground of appeal the onus is upon the appellant to conclusively demonstrate that the work carried out (the pointing of the rubble stonework) does 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 or architectural or historic interest unless the works are authorised'* (my underlining). Section 8 sets out when works to a listed building are authorised. I consider that, due to its colour and its contrast with the colour of the stonework, the pointing has affected the character of the listed building and that consent is indeed required.

12. The appellant company contends that consent has been granted for the works by virtue of the discharging of the condition No 2. Reference is made to the sample panel of pointing. It is evident that this is not on the front elevation but I have dealt with the matter as referred to above. There is no doubt that the condition was discharged on the basis of that panel as approved. It is not clear that the panel was *'kept on site for reference until the stonework is complete'*. However, it is the last part of the condition which is critical in this case. This stated that *'Development shall be carried out in accordance with the agreed sample'*.

13. Irrespective of the contention that the panel only related to the north elevation, the Council clearly considers that the pointing is inappropriate and has not been carried out in accordance with the approved sample panel. In the reasons for issuing the LBEN the Council refers to the black mortar as *'not a characteristic of the locality'* and that it is *'visually far too dominant which compromises the aesthetic appearance of this designated heritage asset'*. It is also contended that the smooth texture of the black mortar is also out of character as the mortar used in neighbouring properties is a traditional lime mortar, the texture of which complements the texture of the limestone as well as the colour of the stonework.

14. Having seen the pointing at close quarters and having compared it to the photographs of the sample panel, I do not consider that the works have been carried out in accordance with the sample panel as photographed and approved. Both from near and distant viewpoints the pointing is perceived as being distinctly black in colour rather than matching the lighter grey in the photograph of the sample panel. I find the appellant's statement that the mortar used is *'a little dark'* to be an understatement. The mortar, in my view, is extremely dark and the

contrast with the light grey limestone is distinctly noticeable. So too is the smooth texture of the black mortar used.

15. In my view the pointing has, therefore, had a most distinctly noticeable visual impact on the front elevation of the building and has affected its character as a heritage asset. I do not consider that the pointing has been carried out to match that of the approved sample panel. In addition, parts of the pointing have been crudely finished, particularly between the south door and the ground floor window where the thick, black, smooth pointing is most noticeable. The last part of the condition has not, therefore, been complied with and quite frankly the pointing as carried out is a mess and falls well below normal standards for pointing generally.

16. I do not accept the contention that the pointing accords with the sample panel and it follows that there is no planning permission or LBC in place for these harmful works to the principal elevation of the listed building. I do not consider, therefore, that the appellant company has conclusively shown that the matters as alleged in the notice (the unauthorised pointing) do not constitute a contravention of the PLBCAA. A contravention has occurred and the appeal must also fail, therefore, on ground (c).

The appeal on ground (j)

17. To be successful on this ground it must be shown that the steps required to be taken by virtue of section 38(2)(b) of the PLBCAA exceed what is necessary to alleviate the effect of the works executed to the building.

18. It is argued that although the mortar is '*a little dark at the moment*', it will fade in time when weathered over several seasons. It is further contended that if the steps required are carried out it could result in the appearance of the building being harmed. It is stressed that the raking out and the re-pointing would necessitate a full width scaffold; that the works would take a considerable time to carry out; that the works would be noisy and disruptive for occupants of the building and that overall the works would result in an appearance not much different to that as now existing.

19. Having seen the works as carried out, I consider that the requirements are totally necessary in order to alleviate the harmful effect on the character of the listed building, on its setting and on its features of special architectural and historic interest. In my view nothing less than the removal of the black pointing and its replacement with the required pointing would be sufficient to overcome the harm. As well as being far too dark, as referred to above, areas of pointing have been carried out in a most crude and untidy manner. It follows that I do not consider that the requirements of the LBEN are excessive and the appeal also fails, therefore, on ground (j).

Other Matters

20. In reaching my conclusions I have taken into account the full planning history of the site; the initial appeal submissions; the various statements and reports; the photographic evidence and the appellant's latest submissions dated 14 October 2019. However, none of these carries sufficient weight to change my decision.

Formal Decision

21. The appeal is dismissed and the listed building enforcement notice is upheld.

Anthony J Wharton

Inspector