
Appeal Decision

Site visit made on 5 November 2019

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 11 November 2019

Appeal Ref: APP/U2235/Y/18/3218975

Lake Farm, Green Lane, Maidstone ME17 3ES

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Chris Webb against the decision of Maidstone Borough Council.
 - The application Ref 18/505200/LBC, dated 5 October 2018, was refused by notice dated 28 November 2018.
 - The works proposed are replacement of 3 windows at the front of the property.
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Decision

1. I dismiss the appeal.

Reasons

2. The property is listed Grade II and the main issue is the effect of the works on the architectural or historic significance of the buildings. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and the primacy of the Development Plan do not apply to applications and appeals made under the Planning (Listed Buildings and Conservation Areas) Act 1990. Section 16(2) of the latter Act requires special regard to be had to the desirability of preserving the listed building or its setting or any special architectural or historic features it possesses. These duties are reflected in Maidstone Borough Local Plan Policies SP18 on the historic environment, DM1 that sets out the principles of good design and DM4 concerning development affecting designated and non-designated heritage assets. Paragraph 193 of the 2019 National Planning Policy Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
3. Policy DM4 contains the text; *'applicants will be expected to ensure that new development affecting a heritage asset incorporates measures to conserve, and where possible enhance, the significance of the heritage asset and, where appropriate, its setting'*, and although the policy concerns 'development' under the planning Acts rather than 'works' under the listed building Act, and as noted above, the primacy of the Development Plan does not apply to applications and appeal under the latter, the aim of enhancing where possible is a reasonable one. Section 16 of the Framework is entitled *'Conserving and Enhancing the Historic Environment'* and the concept of enhancement appears in various paragraphs.

4. However, the need to enhance does not appear in statute with regard to listed buildings, and even with regard to conservation areas where the statutory requirement in section 72(1) of the 1990 Act is to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area, the South Lakeland¹ case determined that the objective could be achieved by a development which leaves character or appearance unharmed, that is to say, preserved.
5. The appellant claims that the proposed windows are 'like-for-like replacements' of those presently in position, and it is the fact that the windows on both the ground and the first-floor front elevation are neither the original nor historically correct windows. The Council can find no record of the original windows having been replaced by consent, but the building was only listed in December 1985 and the listing description of the style of opening and the use of leaded lights agrees with the layout of the upper windows in place at the time of the site inspection. It is however inconclusive as to material and it is not possible to be certain whether the windows in place now were in place at the time of listing, and hence able to take advantage of being a 'like-for-like replacement'.
6. Be that as it may, the layout proposed and shown on the Everest drawings of windows 1 and 3 being single-light side hung casements is unacceptable as a replacement for the apparently correctly proportioned narrow two-light windows in place here and sharing those proportions with the windows on the remainder of the front elevation. Notwithstanding that none of these windows appear original or of the expected traditional timber construction, they do at least follow a narrow format with a vertical emphasis.
7. Without proof that the current windows were in place at the time of listing, the proposed use of aluminium frames would not be appropriate to the listed building, and the layout of casement size and opening arrangement would be unacceptable in any case, in addition to which there is insufficient information on how the leaded lights would be formed; the common arrangement of lead applied to single-pane double glazed units would not be acceptable. The proposal would cause harm to the significance of the building, and although 'less than substantial', paragraph 196 of the Framework states that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
8. There would be public benefits in the improvement to the thermal performance of the building, in pursuance of policies on using less energy and controlling emissions. However, that has to be balanced with the public benefit of the preservation of a listed building and in this case and on the information available, the balance lies in the proposals not being justified sufficiently to allow the appeal with the necessary certainty. The works would be contrary to policy and statute and for the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR

¹ South Lakeland DC v SSE & Carlisle Diocesan Parsonages Board [1992] 2 WLR 204, [1992] 2 AC 141