
Appeal Decision

Site visit made on 27 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: 20 November 2019

Appeal Ref: APP/N2345/F/19/3215948

21 Chaddock Street, Preston PR1 3TL

- 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 Mr Yakub Yusuf against a listed building enforcement notice (LBEN) issued by Preston City Council (the LPA).
 - The enforcement notice was issued on 9 October 2018.
 - The contraventions of listed building control alleged in the notice are: the installation of double glazed units inside all the windows to the front elevation of the property and the attachment of plywood facing to the front door of the property.
 - The requirements of the notice are as follows:
 - (i) Remove all of the internally installed double glazed units to the front elevation of the property and repair any damage to the interior of the property arising from these works.
 - (ii) Remove the plywood covering and reinstate a traditional style door as defined within the Supplementary Planning Guidance 5:- *'Design Guide on the repair and replacement of traditional doors and windows'*.
 - (iii) Remove all rubble and waste material from these works from the site.
 - The period for compliance with the requirements is 3 months.
 - The appeal is made on grounds (a), (b), (c) and (d) 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 dismissed. See formal decision below.

Matter of clarification

2. There is no appeal on ground (e); that listed building consent ought to be granted for the installation of the double glazed units inside the windows and the plywood covering to the front door. The merits of the case do not, therefore, fall to be considered and I am only empowered to consider the grounds as pleaded.
3. At the time of my site visit there was no 'plywood' covering to the front door and the only windows with secondary glazing appeared to be at first floor level. However, I must deal with the allegations as set out in the notice and it is clear that a 'plywood' covering had been applied to the front door and that the LBEN refers to all windows to the front elevation. The fact that the plywood has been removed from the door and that the only windows with internal secondary glazing are now at first floor level simply means that the appellant has complied with this part of the notice. However, the notice still stands as drafted and I must deal with it accordingly.

Background information

4. The red brick, terraced, appeal property is an attractive small town house on the north-east side of Chaddock Street. It was listed in Grade II on 20 December 1991 and dates back to around 1840. The windows and the doorway, with its round-headed architrave and set-in Tuscan columns, are referred to in the list description.

These features are still distinctly noticeable, although the original glazing to the windows had been altered. The house forms part of a set of Georgian, terraced houses and lies within the Avenham Conservation Area (ACA). During my visit I noted that the majority of the windows and doors to the properties in this part of the ACA were of traditional design and construction.

The appeal on ground (a)

5. An appeal on this ground challenges the listing and is made on the basis that the building is no longer of special architectural or historic interest and that it should be removed from the list.

6. Having seen the building, I consider that it remains worthy of its listed status. As well as retaining its distinct physical features, in particular the form of the window openings and the door surround, the building also has a social history in having provided a specific size of Georgian town house which was typical of its kind in relation to the different social classes of that time. In my view it still forms a significant element within this historic street and contributes most positively, with the others, as a listed building within the ACA. It is still recognisable from the list description. I do not consider, therefore, that it should be de-listed. It remains a building of special architectural and historic interest and the appeal must, therefore, fail on ground (a).

The appeal on ground (b)

7. To be successful on this ground it must be shown that what is alleged in the notice has not occurred as a matter of fact. However, it is evident from the Council's submissions, as well as the appellant's, that the internal double glazing at first floor level and the application of the plywood to the front door had have been carried out and were in place when the notice was issued. The Council enforced against these specific works and, although the plywood had been removed from the front door and some secondary glazing appears to have been removed, I could see the internal glazing at first floor level from the street.

8. I acknowledge that the material for the front door might not have been MDF and that the plywood had been fixed because part of the glazing had been damaged. However, in a ground (b) appeal the question is, not whether the works carried out are authorised or not, it is a question of whether they have occurred at all. In this case, despite the fact that the plywood is no longer in place, the Council's and the appellant's own evidence clearly indicates that the alleged works had in fact been carried out. Thus the matters alleged, to have constituted a contravention of the PLBCAA, had occurred and the appeal must also fail on ground (b).

The appeal on ground (c)

9. To be successful on this ground of appeal the onus is upon the appellant to conclusively demonstrate that the works carried out 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 or architectural or historic interest unless the works are authorised*'. Section 8 sets out when works to a listed building are authorised.

10. The appellant refers to an e-mail from the Council's Principal Urban Designer who indicated that uPVC windows would not be supported but that the installation of secondary glazing would not require planning consent. The appellant also refers to other secondary glazing installations within the street including at No 39.

11. I agree that such works do not require planning permission. However if any works, whether internal or external, affect a listed building's character as one of architectural or historic interest LBC, as opposed to PP is required. The question in this instance, therefore, is whether or not the works carried out have affected the building's character to such an extent that LBC is required and in particular, whether the works have affected the architectural and historic features of the house.

12. Having seen the remaining internal glazing from the outside, I consider that the works have affected the character of the listed building. The internal glazing is distinctly noticeable from the outside and makes no attempt to line up with the external glazing pattern. Instead, it cuts crudely across the glazing pattern at right angles and is distinctly obtrusive and out of character.

13. Although the plywood has been removed from the front door, I can imagine its visual impact in that it would have covered the original detailing and would have looked completely at odds with the rest of the traditional historic doors along the street. It would have been perceived as a modern flush door which would have clashed with the architectural and historic qualities of the other houses within the street, causing harm to the integrity of the building itself as well as to its setting.

14. In my view, and irrespective of the merits of the works, both the internal glazing and the covering of the door have (and must have) affected the character and appearance of the listed building. There is no LBC in place for these unauthorised works and so a contravention of the PLBCAA has occurred and the appeal must also fail on ground (c). I do not agree with the appellant that the works have not affected the architecture of the building. The works as enforced against have affected the character of the house as a building of architectural and historic interest.

The appeal on ground (d)

15. This ground of appeal essentially addresses situations where essential and urgent works were needed to preserve the listed building (my underlining). The emphasis is on the words '*essential*' and '*urgent*'. The 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. For an appeal to succeed on ground (d) all three tests must be satisfied.

16. It is evident that some form of secondary glazing was required and I accept the appellant's desire to provide such to ensure that the house is warm enough, particularly for his children. It is indicated that the glass to the windows was broken and that the single glazing was insufficient in terms of insulation.

17. However, there is no evidence to suggest that the specific works as carried out were in themselves so '*urgently necessary*' that LBC could not have been applied for prior to the works being carried out. I accept that the appellant did not consider that any consent was necessary but this is not the case and cannot be an excuse in relation to the PLBCAA. There is nothing to indicate that any consideration was given by the appellant to the appearance of the secondary glazing, or to visual effect that the plywood covering might have had on the character or appearance of the listed building. Clearly some works were required to resolve the issues. However, this in itself cannot be an argument that the works as carried out were so urgently necessary in the interests of safety or health. The first test is, therefore not met.

18. It is also the case, in my view, that the works could have been carried out in some other manner and there is no evidence to show that some temporary solution could not have been put in place, whilst a LBC application was prepared. Thus the second test is not met. Finally, although acknowledging that the works might have been the minimum measures necessary to achieve the aims of safety or health, the works, in my view, cannot be said to have been so urgently necessary with regard to the preservation of the building. Therefore, the third test also fails and the appeal cannot succeed on ground (d).

Other matters

19. In reaching my conclusions on each of the grounds of appeal I have taken into account all of the submissions made by the appellant and the Council. These include the initial documents submitted; all subsequent and final comments and statements and the quotation for window replacements. However, none of these carries sufficient weight to alter my conclusions and nor is any other factor of such significance so as to change my decision.

Formal Decision

20. 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