



Appeal Decision

Site visit made on 22 October 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 20th January 2020

Appeal Ref: APP/F1040/F/18/3215353

Lowes House, Lowes Lane, Swarkestone, Derby DE24 8ST

- 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 by Simon Skominas against a listed building enforcement notice issued by South Derbyshire District Council.
 - The listed building enforcement notice, ref. E/2014/00149, was issued on 5 October 2018.
 - The contravention of listed building control as alleged in the notice is the installation of 13 no. timber double-glazed windows comprising 11 on the front (south) elevation, 1 on the side (west) elevation and 1 on the rear (north) elevation of the Grade II listed building.
 - The requirements of the notice are to:
 - Remove the 13 no. timber double-glazed windows from the building.
 - Replace the windows with timber single-glazed windows in accordance with the schedule attached to the notice as appendix GJR1.LHWS.
 - The period for compliance with the requirements is 24 months.
 - The appeal is made on the grounds set out in section 39(1)(e), (g) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. It is directed that the listed building enforcement notice be varied by:

OMISSION of the requirement to: *Remove the 13 no. timber double-glazed windows from the building;* and,

SUBSTITUTION with the requirements to: *Remove the double-glazed sliding sashes from Windows W1 to W12 inclusive, and remove Window W13 in entirety, all as identified on the drawing attached to the listed building enforcement notice as Appendix 1 and the Window Schedule attached as Appendix GJR1.LHWS.*

OMISSION of the requirement to: *Replace the windows with timber single-glazed windows in accordance with the schedule attached to the notice as appendix GJR1.LHWS;* and,

SUBSTITUTION with the requirement to: *Replace the sliding sashes of Windows W1 to W12 inclusive with single glazed sliding sashes and replace Window W13 in entirety in accordance with the schedule attached to the notice as Appendix GJR1.LHWS.*

Subject to those variations the appeal is allowed insofar as it relates to the sash box frames of Windows W1 to W12 inclusive, and listed building consent is granted for the retention of the sash box frames and replacement of the sliding sashes subject to the following conditions:

- i. Prior to incorporation into the works hereby granted consent, details of the external joinery, which shall be in timber, shall be submitted to and approved in writing by the Local Planning Authority. The details shall include drawings to a minimum scale of 1:5 of the external joinery, including horizontal and vertical sections, precise construction and method of opening. The external joinery shall be constructed in accordance with the approved drawings.
- ii. External joinery shall be in timber and painted to a colour and specification which shall have been previously submitted to and approved in writing by the Local Planning Authority.

The appeal is dismissed and the listed building enforcement notice is upheld as varied, insofar as it relates to the double-glazed sliding sashes of Windows W1 to W12 inclusive and to Window W13, and listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Preliminary matters

2. The appeal property is part of a Grade II listed building described as "Lowes Farmhouse and attached farm buildings". I have therefore paid special regard to the desirability of preserving the listed building, its setting, and any features of special architectural or historic interest it possesses, as required under section 16(2) of the Planning (Listed buildings and Conservation Areas) Act 1990 as amended (the Act).
3. The Council have put forward development plan policy regarding protection of heritage assets. However, I should make clear that the development plan is not determinative in listed building, and listed building enforcement cases. Nevertheless, I shall take such policy as indicating the Council's stance on listed building matters.

Background matters

4. The appeal property stands to the western side of Lowes Lane. I understand it was built in the second half of the 18th century as a house with racing stables. The complex of buildings was converted to five separate dwellings following grant of planning permission and listed building consent in 1995¹. The principal building is essentially L-shaped with relatively minor projections, partially enclosing a central garden area. The appeal property itself comprises most of the east-west leg of the 'L', with the principal elevation facing south towards the garden and entrance drive.
5. The windows subject of the notice comprise the five ground floor windows and 6 first floor windows on the south front, one on the western gable elevation, and one on the northern elevation. Those on the ground floor front are six-over-six sashes, on the first floor they are three-over-six sashes. Window W13, on the north elevation, is a four-over-four sash with the box-frame wholly exposed, a timber lintel and a lead cill.

¹ Decision notices ref. 9/0595/0100 and 9/0595/0101, dated 2 October 1995

6. A listed building consent application to retain the present windows was refused in 2017². A further application to retain the present sash boxes, replace the double-glazed sashes with 'slim-line' double-glazed units, replace the existing applied timber glazing bars with true glazing bars, and remove the Victorian style horns was refused in 2018³.

The appeal on ground (e)

7. This ground is that listed building consent should be granted for the works alleged to be in breach of listed building control.
8. From my inspection of the appeal property and all that I have read I consider the main issue to be the effect of the unauthorised works on the special interest of the listed building in terms of its character and appearance.
9. The building is a good example of domestic architecture of the latter half of the 18th century. The regularly spaced double-hung sash windows, vertically proportioned on the ground floor and almost square on the first floor create a distinctive architectural make-up. The elegantly shaped stone lintels with carved 'keystones' provide restrained decorative elements.
10. The double-glazed windows appear as alien elements within this quite delicate composition. Notably the glass itself is modern, giving highly uniform reflections as compared with what would have been blown glass with a less perfect surface. Furthermore, the two sheets of glazing with separating plastic spacers result in very apparent double reflections, and at close range the spacers themselves are readily apparent. The glazing bars are clearly applied to the faces of the glazing rather than being integral elements supporting individual panes of glass. The bars are relatively wide as compared with a traditionally constructed sash, and the depth is excessive as a result of the internal spacers. Furthermore, externally the bars have little resemblance to the shape of traditional glazing bars with putty, and the internal bars have a somewhat over-elaborate moulding.
11. I consider the double-glazed sashes in all the windows enforced against are incongruous elements in the make-up of the listed building as a result of the modern materials used and their alien appearance.
12. The sash-boxes are essentially of traditional detail, but the Council argue that the original boxes would have been set back from the external wall face and hidden almost entirely in a structural rebate. I saw that the boxes of the replaced windows W1 to W12 are partially concealed but show part of the faces at the jambs and heads. I estimated something slightly less than 50mm at the jambs and 75mm at the heads. The faces of the Window W13 sash-box are entirely exposed.
13. This appears little different from the margins visible in the photograph of one of the single glazed six-over-six ground floor windows taken in July 1994, before the present replacements. The photograph is clearly of a window that had been in position for many years. This very likely pre-dated the listing of Lowes Farmhouse in 1987 only seven years before and would therefore have been a part of the listed building.

² Decision notice ref. 9/2016/1207, dated 23 January 2017.

³ Decision notice ref. 9/2017/0203, dated 15 February 2018.

14. The Council's arguments about the visibility of the sash-boxes are based to a great extent upon the general historic development of sash windows stemming from the 1709 and 1774 London Building Acts. While this provides an interesting and useful overview of the development of sash window design and indicates the broad type of windows that may have existed in this house, it does little to establish their specific detail. Although I saw an example of quite narrow visible box frame margins in one of the windows of The Stables, this appeared to be unusual rather than the rule, although I appreciate that many of the windows in parts of the complex other than Lowes House have been replaced.
15. The drawing attached to the listed building enforcement notice as Appendix 2 shows a plan detail of the required typical position of the windows in the brick openings. This shows exposed box frame margins that are little different from those of the majority of windows enforced against, or those of the 1994 photograph.
16. Overall, the evidence before me indicates it is likely the sash boxes of windows existing prior to listing were little different from those of the majority of the replacement windows, with the exception of W13 on the north elevation, which I understand was a casement window. I consider the existing sash boxes do not cause significant harm to the special interest of the listed building in terms of character and appearance. However, as I have found above the double-glazed sashes themselves cause significant harm to the special interest of the listed building. I also consider that the entirety of Window W13 is an incongruous feature.
17. The appellant has proposed that the double-glazed sashes should be replaced with painted timber single glazed sashes in accordance with the Council's specification set out in the listed building enforcement notice, but that the existing box frames be retained. It appears to me that the existing frames are well constructed and could be retained without significant modification. I consider this suggested approach would maintain the special interest of the listed building.
18. I conclude on ground (e) that it should succeed insofar as it concerns the box frames of windows W1 to W12 inclusive. However, it must fail insofar as it concerns the double-glazed sliding sashes of those windows and as it concerns Window W13. I shall vary the notice to require removal of the double-glazed sliding sashes in W1 to W12 and their replacement with single-glazed sliding sashes, and the removal of Window W13 in its entirety and its replacement with a side hung timber casement with a central horizontal glazing bar.
19. I have found that parts of the works subject of the notice have caused significant harm to the special interest of the listed building, but this must be regarded as less than substantial harm in terms of paragraph 196 of the National Planning Policy Framework. Such harm should be weighed against the public benefits of the proposal, including securing the optimum viable use. Lowes House is clearly in its optimum viable use as a dwelling. However, the unlawful works carried out provide no significant public benefits. I do not therefore find the harm caused by the unauthorised works to be outweighed by such matters.

The appeal on ground (g)

20. This ground is that the requirements of the listed building enforcement notice exceed what is necessary for restoring the building to its condition before the works were carried out. Since I have found that the appeal succeeds in part on ground (e), in a manner proposed by the appellant, there is no need for me to go on to consider ground (g).

The appeal on ground (h)

21. This ground is that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed. The appellant argues that the extent of the works – which might include removal of sections of masonry and internal finishes and subsequent re-decoration in all affected rooms – would probably entail a long lead time and period for execution of the works. Furthermore, personal and financial problems severely restrict his ability to carry out the works within the 2 years allowed by the notice.
22. Regarding the extent of required works, the partial success on ground (e) will result in a significant reduction in the time needed. I consider the 24-month period stated in the notice would be quite adequate. Similarly, the reduction in extent of works will also mean a significant reduction in cost. The present situation of continuing harm to the significance of the listed building should be brought to a close within a reasonable period. The appellant appears to be a resourceful man, and I consider two years would be adequate to arrange finance and for the required works to be organised and executed. The appeal on ground (h) therefore fails.

Conclusions

23. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant listed building consent for one part of the matter subject of the notice, but otherwise I will uphold the listed building enforcement notice with variations and refuse to grant planning permission on the other part.

Stephen Brown

INSPECTOR