
Appeal Decision

Site visit made on 10 January 2020

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 24 January 2020

Appeal Ref: APP/C1625/F/19/3233406

Land and premises at 2 The Cottages, Foxmoor Lane, Ebley, Stroud, Gloucestershire GL5 4QD

- 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 Peter Marsh against a listed building enforcement notice (LBEN) issued by Stroud District Council.
 - The enforcement notice was issued on 2 July 2019.
 - The contravention of listed building control alleged in the notice is: the insertion of a UPVC front door and double glazed windows within a Grade II listed property.
 - The requirements of the notice are, as follows: Remove the inserted UPVC front door and double glazed windows and replace the items with a timber constructed door and timber framed single glazed casement windows.
 - The period for compliance with the requirements is 9 months.
 - The appeal was made on grounds (a), (b), (c), (d), (e), (h), (i) and (k) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (PLBCAA).
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Decision

1. The appeal succeeds to a limited degree in relation to grounds (j) and (h). Otherwise the appeal is dismissed and the LBEN is upheld as varied. See Formal decision and variations below.

Matters of clarification and background information

2. The initial grounds of appeal, as indicated on the LBEN Appeal Form, are as set out above. Normally grounds (i) and (k) cannot be pleaded at the same time. In any case the arguments put forward under ground (k) do not strictly relate to the fact that the steps required exceed what is necessary to bring the building back to the state it would have been if a listed building consent (LBC) had been complied with. That is because there is no LBC consent in place. Instead arguments relating to listing are repeated along with the statement that over 100 people are in agreement that the works are *'in keeping with the character of the cottage'*.

3. Ground (j) has not been pleaded and again this ground cannot normally be pleaded if grounds (g) (i) or (k) are chosen. There is clearly no appeal on ground (g) and I have ruled out a valid appeal on ground (k). From a full reading of the appellant's submissions it seems to me that the arguments relating to ground (i) cannot succeed (see below). However I also consider that there are implied ground (j) arguments. I have, therefore also considered the appeal on ground (j) and in doing so I am satisfied that no injustice will be caused.

4. The appellant has referred in detail to the planning history of the windows and the door, including the fact that he could not find any record that his cottage was listed

prior to arranging for the works to be carried out. However, I have been provided with a copy of the listing and from the LPA's submissions (see below) and the fact that the list description was amended by Historic England (HE) in 2018, I can only conclude that the appeal property is listed in Grade II. The LPA had refused consent for the retention of the windows and the door works and an appeal against that decision was dismissed (APP/C1625/Y/17/3170857).

5. The previous Inspector (who dealt with the appeal against refusal of the retrospective LBC application) was also clearly of the view that No 2 The Cottages was listed and that it formed part of the group of buildings adjacent to 'Little Crybb'. Thus, the appeal building, No 2 The Cottages, is one of a row of 17th Century stone cottages which was listed in Grade II as part of a group. The listing extract refers amongst other things to 'Foxmoor Lane 5227 (East Side) EBLEY The Cottages No 2. No 3 (Little Crybb). No 4'. SO 8205 SW 9/274. C17. Coursed Rubble. Pitched stone roof...Cottages 1 to 9 (consec) The Cottages form a group together with shed opposite No 6. Listing NGR SO8242005116'.

6. I have noted the appellant's grievances and dissatisfaction with how the LPA had dealt with the overall situation regarding the loss of documentation and the previous application for the retention of the works carried out. I have also noted all of the references to the fact that the LPA has not taken action against other inappropriate doors and windows in neighbouring properties. However, I have not been provided with any details relating to the status of the other alterations and in any case these matters are not relevant to the matters before me. I am only empowered to deal with this LBEN as issued and the relevant grounds of appeal. In relation to listed building enforcement action, a LPA is not time restricted and can issue a LBEN at any time, if it is considered expedient to do so.

The appeal on ground (a)

7. The appellant contends that the cottage was not shown as listed by HE until 7 June 2018 and that only 'Little Crybb' was shown as listed prior to that date. I note that HE did in fact add Nos 2 and 4 to the latest list at that time. However, the historic extracts submitted by the LPA clearly refer to The Cottages No 2. No 3 (Little Crybb). No 4'. SO 8205 SW 9/274. Therefore, there is no doubt in my mind that the appeal property is listed and was listed at the time the works were carried out.

8. An appeal on this ground effectively constitutes an application to the Secretary of State (SoS) to remove the building(s) from the statutory list by virtue of the power set out in section 41(6)(c) of the PLBCAA. The Act indicates that the time at which this question falls to be considered must be the time before the allegations set out in the LBEN were carried out, rather than the date of issue of the LBEN.

9. Having seen the group of listed buildings I consider that they are all still worthy of their listed status. Despite many alterations over the years, including replacement windows and doors, the cottages are still basically recognisable as being typical of C17 vernacular construction. The coursed rubble walls and the pitched stone roof are typical of the area. In my view No 2 remains a fine, rustic, historically and architecturally interesting cottage. I find no reason to justify its removal from the list and the appeal must fail, therefore, on ground (a).

The appeal on ground (b)

10. To be successful on this ground of appeal it must be conclusively shown that what is alleged to have taken place (as set out in the LBEN) has not occurred as a matter of fact. In this case it is accepted by the appellant that the door and windows have been installed. An application for their retention was made and I saw them during the

course of my site visit. As a matter of fact, therefore, what is alleged in the LBEN has occurred and the appeal fails on ground (b).

The appeal on ground (c)

11. To be successful on this ground the onus is on the appellant to show that what has occurred does not constitute a contravention of listed building control. For example it would not be a contravention if the building was not listed, or if it was listed, that there was a listed building consent (LBC) in place or if the works carried out did not affect its character. In this case I have already concluded that No 2 The Cottages is a Grade II listed building and has been such since listing in the 1970s. I do not accept that it was only added to the list in 2018. The works were carried out in 2016 when the building was clearly listed.

12. Although a LBC application was submitted for the retention of the windows and the door this was refused and an appeal was dismissed. The previous Inspector concluded that the works carried out had affected the character of the listed building and I agree with him. It follows that LBC was required for the works and this must have been accepted by the appellant when the retrospective application was submitted. There is no LBC in place and therefore a contravention of the PLBCAA has taken place. Thus the appeal also cannot succeed on this ground.

13. I have noted that a previous owner had installed a door and windows in the late 1970s or the early 1980s and that no approvals or consents were granted for these works. I have also noted that the LPA did not take any action against the previous owner. However, that does not alter the fact that the appellant fitted these unauthorised windows and the door. I have already referred to a LPA being able to take LBEN action at any time. It is also the case that it matters not who carried out the unauthorised works or whether or not the LPA took any action against any previous works carried out at the property.

The appeal on ground (d)

14. This ground of appeal basically addresses situations where essential and urgent works were needed to preserve the listed building. 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.

15. On the first test it is evident that the windows and the door which were replaced were in very poor condition and were no longer 'fit for purpose'. A break-in had caused further damage to the fittings and it is clear that the appellant was unable to maintain them and that they no longer provided adequate protection or security. However, whilst accepting all of those points, there is no indication that the new works were so 'urgently necessary' or that more appropriate fittings could not have been provided.

16. I acknowledge that the appellant had submitted information to the LPA and that a cheque for application had been cashed. I agree with the previous Inspector that this was a most unfortunate set of circumstances and the LPA must bear some responsibility for the way matters then unfolded. Nevertheless the works were carried out without LBC and this led to the retrospective application which was refused with the subsequent appeal being dismissed. Clearly some replacements were necessary because of the dilapidated condition of the existing windows but this cannot be an

argument that the metal coated windows and uPVC door components themselves were urgently necessary in the interests of safety or health. The first test is not met.

17. Although it may not have been practicable to repair the dilapidated windows and the door, the issues regarding safety could have been addressed by their replacement with more appropriate components to the ones fitted. There is no evidence to show that some temporary solution could not have been put in place until it was clear that the LPA were satisfied with the replacement elements. Again I acknowledge that the LPA were at fault in not liaising with the appellant to secure an acceptable scheme and that they appear to have mislaid appropriate documentation. However, it has still not been demonstrated that some temporary measures could have been carried out. The second test under this ground is also not met.

18. Finally, having seen the windows and the door I do not consider that their installation constituted the minimum measures immediately necessary to achieve the aims of safety, health or preservation. Other than a risk of the old windows falling out, there is nothing else to show that there were serious health and safety issues that necessitated new windows and door of the types installed. Therefore, the third test also fails and the appeal cannot succeed on ground (d).

The appeal on ground (e)

19. The main issues are as follows:

- The effect of the works on the character and integrity of the listed building;
- The effect on its setting and the settings of the other listed cottages,

20. The most relevant development plan policy is Delivery Policy ES10 of the adopted Stroud District Local Plan 2015 (SDLP). The SDLP is generally up-to-date with the relevant policies within section 16 (Conserving and enhancing the historic environment) and section 12 (Achieving Good design) of the National Planning Policy Framework (NPPF). The NPPF is a major material consideration. In reaching my conclusion in this case I have had regard to the local and national policies. Because the building is listed in Grade II, I have had special regard to section 16 (2) of the PLBCAA.

21. Having seen the windows and the door I share the concerns of the LPA and the previous Inspector and do not consider that, as installed and detailed, they should be granted LBC. I accept (and again agree with the previous Inspector) that the powder coated aluminium windows have resulted in an overall balanced appearance, including the widths of stiles and rails. In fact only the frames are noticeably thicker than timber sections. In my view, the overall appearance is exacerbated by the applied 'leading', and the gaps between the double glazing, both of which were commented upon by the previous Inspector and considered to have had a negative effect on the building's character.

22. The works as carried out have resulted in reflections from the 'leaded' and 'double-glazed' lights which clearly emphasise the use on non-traditional materials and which detract from the character and integrity of the listed cottage and from its historic and architecturally interesting features. Despite the changes to the other listed cottage within the grouping, unfortunately the works to No 2 have further eroded the overall qualities of these vernacular buildings.

23. I find the overall effect of the works carried out to be contrary to policy ES10 of the SDLP. I also find the works to be contrary to policies within the NPPF which seek to ensure both the conservation and enhancement of the historic environment (section 16) and the achievement of good design (section 12). Whilst accepting that the harm is not substantial there are no public benefits emanating from the works carried out to

No 2. In conclusion on this ground of appeal, therefore, I do not consider that LBC should be granted for the retention of these particular windows and door. The LPA had concluded that, as installed, they were unacceptable; the previous Inspector had agreed with their conclusions and I have also concluded that LBC should not be granted for the works as installed.

The appeal on ground (i)

24. An appeal on this ground is made on the basis that the steps required by the LBEN, for the purposes of restoring the building to its former state, would not serve that purpose. The appellant states that the *'LPA insist on softwood copies of the unapproved fitments installed without permission in the late 1970s or early 1980s making the front of the building unsafe'*. It is contended that *'Fitting copies of unapproved fitments, leaving the building unsafe is just madness. The windows fitted support the front of the building'*.

25. There is no evidence to suggest that the earlier works resulted in any structural damage to the property. The removal of the stone mullions and the insertion of the unapproved timber windows do not appear to have resulted in any structural failure to the front of the listed building. However, aluminium or metal frames can be more structurally sound than similar sized timber sections. In this case it is recognised that the sections of the aluminium frames are greater than timber sections. I accept, therefore that they are likely to be more structurally sound.

26. However that does not mean that the steps required would not serve the purpose of restoring the character of the building to its former state. The timber windows would restore the appearance and character of the unapproved earlier windows. If carried out such works would restore the building to its former state. Thus the appeal cannot succeed on this ground.

The appeal on the implied ground (j)

27. An appeal on this ground is made on the basis that the steps required exceed what is necessary to alleviate the effect of the works as carried out. It allows consideration of whether or not the requirements to alleviate the effects of the works could be varied. Although the appellant has not made any specific suggestions regarding variation of the notice, there are implied arguments that what is required is excessive. In the overall circumstances of this appeal and having considered all of the submissions by the main parties and others, I consider it appropriate to consider whether or not any variations in the requirements could result in the preservation of the listed cottage as a building of special architectural and historic interest.

28. I have concluded above that, as installed, both the windows and the door are unacceptable. Although I found the size of the frame sections to be larger than their equivalents in timber, I consider that most of the harm relating to the effect on the character of the listed building related to the applied 'leading' and the reflective qualities of these elements and the wide double glazing. These aspects were referred to by the previous Inspector. In my view, the fact that the frames are metal is not, in itself, a major factor in detracting from the character of the listed building.

29. In my view, if the leaded elements were to be removed and the wide double glazing units were to be substituted for glazed units with less of a gap, I consider that the character of the cottage would still be preserved. This would remove the substantive negative reflective qualities. Despite the width of the metal coated frames I consider that, with appropriate width glazing units (and without the leading) they would be acceptable. As indicated by the previous Inspector and from my own

inspection, the stiles and rails for both opening and fixed lights are of similar dimensions resulted in a generally well balanced appearance.

30. Without the leaded lights and the particular double glazing detail, I consider that the windows would be acceptable and that it would be appropriate to offer an alternative requirement. I shall, therefore, vary the LBEN accordingly. In my view, with thinner double glazed sections and the lack of the applied leading, the reflections (which are a major contributory negative factor) would be minimal and the current appearance in terms of the reasonably balanced frames would be acceptable. I do not consider that such a variation would cause any injustice. The appeal succeeds to this limited degree on the implied ground (j).

31. However, the door is a different matter. In my view, only a traditional timber door, similar to the one shown in the photographic submissions and as required by the LBEN is appropriate in order to preserve the character of the listed building. The requirement in relation to the door will not be varied.

The appeal on ground (h)

32. The compliance period is 9 months. In support of this ground the appellant simply comments as follows: *'I feel that the notice is out of order. I have tried to comply with my LPA despite many errors in the HE listings and loss of documents by SDC, my LPA. Also long delays and no replies to letters to SDC'*. However, there is no suggestion of what length of compliance period should be allowed. Nor can I find any detailed comments on the ground (h) appeal by the Council.

33. However, having considered all of the circumstances of this appeal and noted all of the matters relating to the planning history and the Council's seemingly earlier reticence to liaise with the appellant, I consider it appropriate to extend the compliance period to 18 months. This should give adequate time for the parties to liaise and for the Council's Conservation Officer in particular to agree an acceptable alternative scheme for re-glazing the metal coated window frames. The appeal also succeeds, therefore, to a limited degree on ground (h).

Other Matters

34. This has been a most unfortunate set of circumstances for the appellant and I sympathise with his current predicament. As referred to above, I consider that the LPA must bear some responsibility for the current state of affairs whereby the listed building has ended up with inappropriate windows and a door. From the submissions, it would appear that the appellant's endeavours to carry out works to his property with the approval of the Council had failed due to the Council's actions (in losing documents) or lack of action (allegedly not responding to Conservation Officer queries).

35. In addition the information relating to the listing of the property had been elusive and even HE had to update the list in 2018. Be that as it may, I am not empowered to deal with these matters and the previous Inspector had also made that clear in the earlier decision. Any remaining grievances on the part of the appellant need to be taken up with the LPA and/or with others.

36. In reaching my conclusions on all of the grounds of appeal I have taken into account all of the other matters raised by the Council, the appellant and those in support of the appellant. These include the initial appeal document submissions; the detailed statements; the support by others for the appellant's position and the views of all those living within 50m of the cottage; references to the works carried out to all of the other cottages in the grouping; all of the historic and current photographic submissions; the references to vehicle speeds on the lane and all of the final

submissions. However, none of these carries sufficient weight to alter my conclusions on any of the grounds pleaded and nor is any other factor of such significance so as to change my decision.

Formal Decision

37. The appeal succeeds in part on the implied ground (j). I direct that the listed building enforcement notice be varied in Section 5 (WHAT YOU ARE REQUIRED TO DO) by adding the following after the requirements as drafted:

'OR

- 1. Remove the inserted UPVC front door and replace it with a timber door.*
- 2. Remove the leading and the current double-glazed units from the metal window frames as installed and re-glaze the metal window frames as installed either with single glazing or with double-glazing which is no more than 5mm in overall thickness.'*

37. The appeal also succeeds to a limited degree on ground (h). I direct that the listed building enforcement notice be varied in Section 6 (TIME FOR COMPLIANCE) by deleting the figure '9' before the word '*months*' and by substituting therefor the figure '18'.

38. Otherwise the appeal is dismissed and the listed building enforcement notice is upheld as varied. 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