



Appeal Decision

Site visit made on 5 February 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: 27 February 2020

Appeal Ref: APP/K0425/F/18/3217185

49a West Street, Marlow, Bucks SL7 2LS

- 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 Mr David Cager against a listed building enforcement notice (LBEN) issued by Wycombe District Council (the LPA).
 - The enforcement notice, numbered 18/00178/MS, was issued on 9 October 2018.
 - The contravention of listed building control alleged in the notice is the installation of UPVC windows in the first floor front elevation of the building and the first floor rear elevation of the building.
 - The requirements of the notice are as follows:
 1. Remove the two UPVC windows from the first floor front elevation of the building (the front elevation is shown marked blue on the attached plan) and replace these two UPVC windows with white horizontal sliding sash timber windows that are single glazed with the glass fitted into authentic glazing bars which have substantially the same design and detailing as the two first floor front elevation windows that are shown in Photograph 1 attached to this notice. These windows are to use the 9 by 9 fenestration pattern (which means there are 9 equally sized, individual panes of glazing in each sash/half of the window); and
 2. Remove all of the UPVC windows from the first floor rear elevation of the building (the rear elevation is shown marked green on the attached plan) and reinstate the previous timber windows that were installed in this elevation before the breach of listed building control took place or install timber windows that are identical to the timber windows that were removed from the rear elevation of the building.
 - The period for compliance with the requirements is 3 months.
 - The appeal was initially made on grounds (a), (d) and (j) 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 on grounds (j) and (h) only. Otherwise the appeal is dismissed. See formal decision below.

Matters of clarification

2. During my site visit, as well as noting the UPVC windows to the street frontage, I was able to view the rear of the property from within the grounds of the new development to the south-east, Portland Gardens. I noted the two rear extensions, as well as the UPVC windows to the first floor rear elevation. The merits of the works carried out do not fall to be considered, as ground (e) - that listed building consent ought to be granted for the UPVC windows - has not been pleaded. However in his final submissions the appellant has queried the compliance period claiming that 3 months is inadequate. I have, therefore, also considered the appeal on the basis of ground (h) and I am satisfied that in doing so no injustice will be caused.

3. I have noted the relevant policies referred to by the Council but these are related to the merits of the case. My consideration of this appeal is restricted to whether or not the building remains worthy of its listed status; whether the works were necessary in the interests of health and safety; whether the steps required by the LBEN exceed what is necessary to alleviate the effects of the works and, finally, whether the compliance period is adequate. The policies are not directly relevant and since I am not considering whether LBC be granted, neither are the duties set out in sections 16(2) and 72 of the PLBCAA. I have however taken into account the relevant policies set out in the National Planning Policy Framework (NPPF) and particularly section 16, Conserving and enhancing the historic environment.

Background information

4. The appeal property was listed in Grade II on 31 January 1974, as follows: *'WEST STREET 1. 1385 (South East Side) No 49 SU 8486 1/142 II GV C18 . 2 storeys, brick painted white, 3 window spaces, the centre of which on 1st floor is blocked. Sliding casements with glazing bars intact in segmental arched windows. 2 shop fronts take the entire ground floor. Nos 27 to 33 (odd) and Nos 37 to 51 (odd) form a group'*. The reference to 'GV' in the description means that the buildings was also considered to have group value with the other buildings referred to in the list. The listed building also lies within the Marlow Conservation Area (MCA) close to the centre of the town.

5. The LPA had received a complaint about the replacement UPVC windows on 7 May 2018 and a site visit on 10 May 2018 confirmed that this was the case. The owner (the appellant) had indicated that the frames were rotten and in danger of falling on to the pavement and that the rear of the premises was in very poor condition. However, listed building consent (LBC) was not applied for and the unauthorised windows were installed. The appellant indicates that he was not aware that the building was listed. However, he acknowledges that this cannot be a valid defence or ground of appeal.

6. The LPA considered that the character of the listed building had been affected and that there had been a contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA). It was considered expedient to issue the LBEN but the LPA decided at that stage not to pursue a parallel prosecution.

The Appeal on ground (a)

7. Under this ground the appellant indicates that he finds it *'difficult to believe how the building has any claim to be of 'Special Interest'*. Reference is made to the rear of the premises with 2 single storey extensions, roofed with *'felt on timber'* and with *'plastic rooflights'*. It is also indicated that the rear windows had frames which were 40 to 50 years old; that they had defective closure fittings and that there had been attempted burglaries.

8. I acknowledge that all of the windows had been in very poor condition. However, 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. It is clear from photographic evidence submitted by the Council that the historic front windows were in place in 2018, immediately prior to the UPVC windows being installed.

9. Having seen the appeal building and the group of listed buildings, I consider that they are all still worthy of their listed status. From the street elevation the original window openings of No 49 are still distinctly noticeable and in particular the segmental arches above the windows. The form and scale of the white painted frontage remains typical of a C18, 2 storey vernacular building. Despite what might have been alterations prior to 1975 to form the two retail frontages, since that date the premises has retained its basic architectural and historic character and contributes positively to the street-scene in this part of central Marlow.

10. The fact that the previous windows were in such poor condition cannot, in my view, be a justification to remove the building from the statutory list. There has been no previous formal approach to either the Council or Historic England (HE) to de-list the property. In any case, for the reasons set out above, I do not consider that such an application would have succeeded.

11. I conclude therefore that, despite the many alterations over the years and particularly to the rear, the building remains to be of special architectural and historic interest. This is both as a separate listed building in its own right, as well as one which contributes most positively to the group value of the adjacent nearby buildings in this part of Marlow. The appeal therefore fails on ground (a).

The Appeal on ground (d)

12. 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.

13. On the first test it is evident that all of the windows which were replaced were in very poor condition. It is stated that a tenant had been concerned about security at the rear and that there was a possibility of the rotten front windows falling on to the pavement. However, whilst accepting all of those points, there is no indication that the new works were so '*urgently necessary*' or that more appropriate windows could not have been provided.

14. In addition the works were carried out without LBC and this led to the initial complaint which resulted in the LPA taking LBEN action. Clearly some replacements were necessary because of the dilapidated condition of the existing windows. However, this cannot be an argument that the UPVC components themselves were so urgently necessary in the interests of safety or health. The first test is not met.

15. On the second test I consider that the issues regarding safety could have been addressed by the replacement of the defective windows 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 a LBC application had been made, giving the LPA the opportunity to make a decision on the replacement windows. The second test under this ground is also not met.

16. 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 UPVC windows of the type installed. Therefore, the third test also fails and the appeal cannot succeed on ground (d).

The Appeal on ground (j)

17. To succeed on this ground the onus is upon the appellant to demonstrate that the steps required to be taken exceed what is necessary to alleviate the effect of the works executed to the building. In support of his case photographic evidence has been submitted and again it is stressed that the previous windows had been in extremely poor condition. It is argued that works carried out have improved the look of the building and that this applies to both the front and rear of the premises. It is particularly stressed that the rear elevation has been considerably improved by the works as carried out.

18. Although I cannot consider whether or not LBC ought to be granted for the retention of the works carried out, in relation to this ground of appeal I must still reach a judgement as to whether the windows have affected the character of the listed building as one of special architectural and historic interest. I need to make that judgement in order to assess whether or not the requirements of the LBEN exceed what is necessary to alleviate the effect of the works as executed.

19. Having seen both front and rear elevations, I agree with the Council that the UPVC windows have affected the character of the building. The front windows in particular are most obviously more noticeable, due to their appearance from the street within this part of the MCA. The rear windows on the other hand are not readily visible from a public viewpoint and I have no reason to doubt the appellant's contention that they are an overall visual improvement on the previous dilapidated windows.

20. The rear extensions have also had an effect on the character of the building and I also noted many other alterations to the rear elevations of nearby buildings. I have not been provided with any detailed photographic or drawn evidence of the condition of the rear windows before they were replaced. The Council has not provided any specific or detailed evidence of its own with regard to the previous windows in the rear elevation.

21. Turning to the steps required, I find the requirement at part 5.2 of the LBEN to be somewhat confusing. It reads as though it requires either the reinstatement of the windows that were installed in this elevation before the breach, or the installation of timber windows that were removed from the rear elevation. Unlike requirement 5.1 it is far from specific about what is required.

22. Overall and despite the fact that the rear windows are of UPVC, I consider that the general overall appearance of the rear elevation is acceptable. Therefore, in the particular circumstances of this case, I conclude that the rear windows have not affected the character of the building to the same extent as those to the front elevation and find that, on balance and in the context of the other works carried out to the rear of the listed building, they are acceptable. I therefore consider that the steps required to remove the rear UPVC windows exceed what is necessary to alleviate the effect of the works carried out to this elevation. The appeal succeeds to a limited degree, therefore, on ground (j) and I will vary the LBEN accordingly.

The appeal on ground (h)

23. Having considered the detailing necessary for appropriate front windows to be manufactured, I consider that 3 months falls short of what should reasonably be allowed as a compliance period. I agree with the appellant that a 6 month period is necessary and appropriate. Again, therefore, the LBEN will be varied.

Other Matters

24. In reaching my conclusions on the grounds of appeal I have taken into account all of the submissions made by the Council and by the appellant. These include the planning history; the initial submissions; the evidence relating to the breach; the Council's full Planning Enforcement Statement; the Human Rights and Equalities issues; the photographic evidence and the appellant's final comments dated 25 February 2020.

25. 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

26. The appeal succeeds to a limited degree on ground (j) and I direct that the listed building enforcement notice be varied by deleting in full the following requirement No 5.2 as set out in part 5 of the notice (WHAT YOU ARE REQUIRED TO DO):

'Remove all of the UPVC windows from the first floor rear elevation of the building (the rear elevation is shown marked green on the attached plan) and reinstate the previous timber windows that were installed in this elevation before the breach of listed building control took place or install timber windows that are identical to the timber windows that were removed from the rear elevation of the building'.

27. The appeal also succeeds to a limited degree on ground (h) and I direct that the listed building enforcement notice be varied by deleting the figure '3' in Part 6 (TIME FOR COMPLIANCE) of the notice and by substituting therefor the figure '6'.

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

Anthony J Wharton

Inspector