



Appeal Decision

Hearing opened and adjourned on 21 January 2020

Procedure changed to written representations

by P N Jarratt BA DipTP MRTPI

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

Decision date: 9 March 2020

Appeal Ref: APP/Q3305/F/18/3210947

44 Garston Street, Shepton Mallet, BA4 5NW

- 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 Ms Emma Challis against a listed building enforcement notice issued by Mendip District Council.
 - The enforcement notice, numbered ENF/2018/0134, was issued on 1 August 2018.
 - The contravention of listed building control alleged in the notice is the replacement of all existing windows with uPVC casement windows with external trickle vents and a 'golden oak' finish.
 - The requirements of the notice are
 1. Remove the uPVC windows on the front, side and rear elevations.
 2. Replace these with a flush fitting, timber, side-hung casement windows – these must be single glazed fixed with putty, as per the photograph at annex 1 attached to the notice.
 - The period for compliance with the requirements is 3 months.
 - The appeal is made on the grounds set out in section 39(1) (a), (d), (f) and (i) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The appeal is dismissed and the listed building enforcement notice is upheld.

Procedural Matters

2. The appeal was originally scheduled to be heard by way of a hearing on 21 January 2020. Neither the appellant, nor her agent, were present at the opening of the hearing and, when contacted, they stated that they had no knowledge of the date of the hearing. As they were unable to attend the hearing, it was adjourned in order to investigate the reason for the breakdown in communications. The agent, whose contact details had been entered on the Inspectorate's database as part of the appeal details, explained that the address he had provided was no longer correct and he had failed to update them. Consequently he did not receive any documentation relating to the appeal from the Inspectorate.
3. Following the adjournment, the appellant was given the opportunity to comment on the Council's statement subject to no new evidence being introduced. Notwithstanding this, the appellant's response, through her agent, contained additional material together with information not relevant to the grounds of appeal alleging maladministration by the Council. If the appellant remains concerned about the conduct of the Council, then an appeal against an

enforcement notice is not the appropriate channel through which to pursue the matter.

4. In the light of the response to the Council's statement, I considered that I had sufficient information to determine the appeal on the basis of the written representations made and the hearing was therefore closed in view of the changed procedure. I have had regard only to evidence submitted in the original grounds of appeal and in response to the Council's Statement of Case, where relevant.
5. Section 38(2) requires that a listed building enforcement notice shall specify the alleged contravention and require such steps as may be specified in the notice to be taken for one of three reasons set out under (a), (b) and (c). The Council confirmed before the adjournment of the hearing that the notice had been issued under s38(2)(a) which is for 'restoring the building to its former state'.
6. Although I have not carried out a formal site visit with the parties I was able to view the appeal property and its surroundings from the road following the adjourned hearing. As I note that the appellant has chosen not to appeal on ground (e) which is that listed building consent should be granted for the works, it was not necessary for me to enter the appeal site.
7. Section 16 of the Planning (Listed Building and Conservation) Act 1990 requires special regard to be paid to the desirability of preserving a listed building, its setting or any features of special architectural or historic interest it possesses. In addition the policies of the Mendip District Local Plan 2006-2029) are also material considerations and these are referred to in the reasons for issuing the notice.

The site and relevant planning history

8. The appeal property is a 17th century former artisan's cottage and as such has a modest architectural style characterised by a limited number of small openings and the use of traditional vernacular materials.
9. A listed building application was refused in June 2018 for the retrospective replacement of metal and wood framed windows with wood effect UPVC framed windows (2018/0124/LBC). No appeal was made against the decision.

Appeal on ground (f)

10. An appeal on this ground is that the notice was not served correctly. The appellant states that the enforcement notice was sent to an address different to the address the appellant had used in her previous correspondence. As a consequence the notice was not served on her within the statutory 28 days and she only received a copy of the notice via her mortgage provider.
11. In response the Council state that the notice was served by hand delivering the notice to the address held for the appellant on the Land Registry and a certificate of service of the notice is attached at Appendix 4 of their statement.
12. It is good practice for a Council to serve a Requisition for Information Notice to establish factual information required for the service of a notice but in these circumstances, it does not seem unreasonable for the Council to have relied on the Land Registry. In any event, even if the notice was not served as specified

in s38(4) I have the power to disregard non-service under s41(5), provided that the appellant has not been substantially prejudiced by the failure to serve him or her. Generally someone who has appealed and attends the inquiry or hearing and states a case, or makes written representations, cannot be said to be "substantially" prejudiced. The appeal on this ground therefore fails.

Appeal on ground (a)

13. An appeal on this ground is that the building is not of special architectural or historic interest and requires a heavy burden of proof. The appellant contends that there is confusion as to the provenance of the building in that although the building is listed as being built in 1650, the deeds stipulate it was built in 1837. The appellant considers that enforcement action should not have been carried out without there being a correct assessment of the historic value of the building under s39(1)(a).
14. Whilst the appellant may choose to disagree with the listing description, the building was listed Grade II on 16 October 1974 with the following official details 'Weaver's cottage (part of row). Circa 1650. Douling Limestone rubble, freestone detail, brick stack, coped verges on kneelers, pantile roof. Artisan cottage, detached from rest of row of similar structures. 3 storeys, 1-bay. Entrance having massive architrave, moulded with straight hood. Two light stone mullioned windows.' There is no evidence before me to indicate that the statutory criteria and general principles for the selection for the appeal property for inclusion in the statutory list were not met.
15. Even if there is doubt over the original date of construction, it is evident when viewed from the street that the building generally conforms to the listing description and is clearly of special architectural or historic interest. The appeal on this ground therefore fails.

The appeal on ground (d)

16. An appeal on this ground is that the works are urgently necessary in the interests of safety or health or, as the case may be, the preservation of the building by works of repair or works affording temporary support or shelter, and the works carried out were limited to the minimum measures immediately necessary.
17. This ground of appeal only succeeds where, as a matter of fact and degree:
 - a) the works carried out were urgently necessary in the interests of safety or health or the preservation of the building, AND
 - b) it would have been impractical to carry out inoffensive repairs or provide temporary support or shelter, AND
 - c) the works were limited to the minimum measures immediately necessary
18. The appellant states that the building is tenanted and the works were urgently required to secure the safety of the building as a domicile. She indicates that the wood the windows was set in was rotting; the glazing was blown; there was damp in the property; a sticking window at the rear created a fire safety risk; and, the windows had ceased to be secure. It is also claimed that 'single glazing is illegal in rented properties' and that they would not have met the requirements of the EPC or the building's insurers.

19. No evidence has been submitted to show that the unauthorised replacement of the windows was urgently required and that temporary repairs would have been inadequate. The works carried out far exceed those necessary in the interests of health and safety. Other temporary measures could have been undertaken to secure the building whilst Listed Building Consent was sought for a permanent solution.
20. The appeal on this ground fails.

Appeal on ground (i)

21. An appeal on ground (i) is that the steps required for restoring the character of the building to its former state would not serve that purpose. In this context the former state is its state prior to ANY contravention, not just the contravention which is the subject of the notice.
22. The appellant states that she has not removed original windows but was replacing metal framed double glazed units that had failed which were believed to have been installed in about 1992, after the listing of the building. The replacements are contemporary equivalent units that appear as wooden framed windows especially when seen from the street. It is contended that as there is no record of the actual state of the building when it was built, the specification of the Council for flush fitting, timber, side-hung, single-glazed putty fixed, casement windows is mere conjecture.
23. The appellant is wrong to suggest this to be mere conjecture. The fact that the list description does not refer to the material that the mullioned windows were made from has little bearing on what is required to restore the character of the building to its former state. That material would not have been uPVC which is a modern material harmful to the character and significance of the building; nor would they have been metal framed double-glazed units. The Council has identified that timber casements would be the traditional window treatment for the appeal property, with which I agree. On the balance of probabilities, the steps required for restoring the character of the building to its former state would therefore serve that purpose.
24. The appeal on this ground fails.

Conclusion

25. For the reasons given above I conclude that the appeal should fail.

P N Jarratt

Inspector