
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: 12 March 2020

Appeal A - Ref: APP/H1840/F/19/3223067

84 Port Street, Evesham, Worcestershire WR11 1AT

- 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 M Notarangelo (Dicosmo Properties Ltd) against a listed building enforcement notice (LBEN) issued by Wychavon District Council.
 - The enforcement notice was issued on 24 January 2019.
 - The contravention of listed building control alleged in the notice is the installation of two unauthorised timber windows, seven unauthorised uPVC windows, three sets of uPVC French doors and one timber panelled door.
 - The requirements of the notice are as follows: Permanently remove the following unauthorised uPVC and timber windows, French doors and composite type external door from the Building:
 - (1) 84 Port Street, Five (5) front, north windows. Three (3) at first floor level and two (2) at ground floor level.
 - (2) 84 Port Street, front, north elevation one inappropriate front, wooden door.
 - (3) 84 Port Street, rear, south elevation timber window at first floor level and uPVC patio doors at ground level.
 - (4) 84 Port Street, rear, southwest elevation, one timber window at first floor level, two uPVC windows at ground floor level and two uPVC French doors.

AND Replace the windows doors and French doors as listed in paragraph 5.1 of the notice with timber framed windows and wooden doors as set out in paragraphs 5.3, 5.4, and 5.5 of the notice.
 - The period for compliance with the requirements is 6 Months.
 - The appeal is made on the ground (a) only as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (PLBCAA).
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Appeal B - Ref: APP/H1840/F/19/3223070

86 Port Street, Evesham, Worcestershire WR11 1AT

- 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 M Notarangelo (Dicosmo Properties Ltd) against a listed building enforcement notice (LBEN) issued by Wychavon District Council.
- The enforcement notice was issued on 24 January 2019.
- The contravention of listed building control alleged in the notice is the installation of three unauthorised timber windows, eight unauthorised uPVC windows and four timber panelled doors.
- The requirements of the notice are as follows: Permanently remove the following unauthorised uPVC and timber windows and composite type external door from the Building:
 - (1) 86 Port Street, Five (5) front, north elevation windows. Three (3) at first floor level and two (2) at ground floor level.
 - (2) 86 Port Street, front, north elevation one inappropriate front, wooden door.
 - (3) 86A Port Street, rear, south elevation one uPVC window at first floor level.

- (4) 86A Port Street, rear south east elevation one uPVC window at first floor level and one timber door.
- (5) 86B Port Street, rear, south east elevation, one uPVC window at first floor level, and one timber door.
- (6) 86 Port Street, rear south east elevation two timber windows at first floor level and one timber door.
- (7) 86 Port Street, rear south elevation one timber window at first floor level.

The details of the windows and doors above are set out in paragraphs 5.2, 5.3, 5.4, and 5.5 of the notice

AND Replace the windows and doors as listed in paragraph 5.1 of the notice with timber framed windows and wooden doors as set out in paragraphs 5.3, and 5.4 of the notice.

- The period for compliance with the requirements is 6 months.
 - The appeal is made on ground (a) only as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (PLBCAA).
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Decisions

1. Both appeals are dismissed.

Matters of clarification

2. Apparently the appellant and the agent were delayed in traffic en-route to the site visit and the Planning Inspectorate Case Officer had been informed. Due to another appointment I was unable to await their arrival. I therefore dismissed the Council representatives and carried out an unaccompanied site visit. I was able to see both properties and all of the works carried out to the front and the rear and noted the modern rear extensions. I am satisfied that I have seen all that I needed to see in order to reach decisions on the appeals. In carrying out an unaccompanied visit I am also satisfied that no injustice has been caused.

3. The appeals were made on ground (a) only. Because the facts suggested ground (e) arguments (that listed building consent ought to be granted for the works carried out), the case officer wrote to the appellant's agent on 4 April 2019, requesting clarification. By e-mails dated 18 April 2019 it was confirmed on behalf of the appellant that any inference of appeals being made on ground (e) were only to support the appeals on ground (a) and that this was the only ground pleaded in both appeals.

4. I have noted the situation regarding the only ground of appeal in both cases. I have not, therefore, considered the merits of the case and whether or not listed building consent should be granted for the works or any part of the works carried. The statutory duties under sections 16(2) and 72 of the PLBCAA do not therefore directly apply since, as the decision maker, I am not considering whether listed building consent (LBC) should be granted. I have dealt with the appeals solely on the basis that the two properties are not considered to be of architectural and historic interest and whether or not there are justified reasons to remove them from the statutory list.

5. In its appeals statement the Council's Planning Enforcement Office considers that *'the notice is reasonable and proportionate, and that the deemed application should be dismissed'*. However in a LBEN appeal there is no *'deemed application'*. A deemed application under section 177(5) of the Act would only have been relevant if the notice had been a planning enforcement notice and an appeal had been made on ground (a) under section 174 of the Act and the relevant fee had been paid. I am only empowered to deal with this LBEN appeal on the single ground pleaded as outlined above. In addition ground (e) has not been pleaded.

6. In relation to this single ground (a) appeal and from the representations, the Council is clearly of the view that the buildings are of still of special architectural and historic

interest and that they are still worthy of remaining on the list. Equally, the case put forward on behalf of the appellant clearly infers that the opposite is the case. It is on this basis that I have dealt with both appeals.

Background information

7. Numbers 84 and 86 Port Street were added to the statutory list (List Entry Number 1081331) on 6 May 1977 in Grade II. The details are as follows:

'PORT STREET 1.5429 (South Side) Bengeworth Nos 84 and 86 SP0443 NW3/85 6.5.77. IIGV2. C18 Red brick; 2 storeys. Each has 3 sash windows with key blocks and channelled lintels and a doorway with rectangular fanlight and lead canopied hood on wrought iron supports; gabled ends; slates. Nos 82 to 86 (even Lansdowne and former stables Lansdowne form a group. Listing NGR SPO441443538'.

8. The pair of red-brick houses are of eighteenth century construction and are located on the south side of Port Street which lies to the east of the historic core of Evesham. They also lie within the Evesham Conservation Area (ECA). This part of the town forms part of the historic suburb of Bengeworth, which is a linear conurbation, radiating west from the historic crossing over the River Avon at Bengeworth Bridge. At both properties windows and doors have been removed without listed building consent and the windows, French windows and doors (referred to above in the details of the notices) have been fitted. I now turn to the appeals on ground (a).

Appeals A and B on ground (a)

9. 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 reason for removal would be on the basis that a building was no longer of architectural or historic interest. 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. In this case, therefore, it means before the uPVC components were installed.

10. On behalf of the appellant, although it is accepted that the buildings are listed and within the ECA, it is not considered that they are still of architectural and historic interest. Reference is made to other listed buildings in Port Street having uPVC windows fitted; that the appeal buildings were extended and modernised in the early 2000s and that, although part of a group, they are of little or no architectural interest. It is argued that the windows are not out of keeping with others in this part of the ECA.

11. References are also made to the need for tenants to have security; ease of opening and ease of maintenance of the doors and windows. It is stressed that this is in a location which can be extremely busy with queuing traffic and that dust and pollution can easily permeate through timber frames. The difficulties of repeatedly having to paint timber windows is also referred to and it is considered that the retention of the windows will not be to the detriment of the area as many of the nearby buildings have similar fenestration. Finally it is stated that the windows have resulted in increased comfort for occupants in that they have resulted in a reduction of noise and pollution.

12. Most of the above matters relate to the merits of the installations but, as indicated above, the merits of the works do not fall to be considered. The question in this case is whether or not the two buildings are still worthy of their listed status and whether or not they are still of special architectural or historic interest. A lot of the arguments, put forward on behalf of the appellant, are related to other grounds which have not been pleaded. In considering an appeal on ground (a) the main consideration is whether or

not a listed building is still of special architectural or historic interest and, therefore whether or not it should remain on the statutory list.

13. Having seen the two houses within this part of the ECA, despite the installation of the uPVC components, they are still distinctly recognisable from their list description. They remain as a recognisable pair of C18 red-brick, two storey houses and most of their original features are still recognisable. The window openings and surrounds of the former sash windows remain unaltered; the key blocks are still in position and they have retained their channelled lintels. In addition the distinctive lead-canopied, wrought iron supports to the front doors are still most noticeable within the street scene in this part of the ECA.

14. Although the rear extensions are modern in appearance, the frontages are still definitely reminiscent of the C18 Vernacular style along this major thoroughfare through Bengeworth, into the centre of historic Evesham. Clearly the uPVC windows and doors (particularly the front windows) have had a major visual impact on the character and appearance of the buildings and their special architectural and historic features. But the impact is not so much as to render them unrecognisable from their original appearance when listed.

15. The fact that many other buildings in Port Street (whether listed or not) have had similar windows and doors fitted cannot be a justification for other inappropriate installations. If anything such other inappropriate alterations, in my view, have emphasised the qualities of Nos 84 and 86 as buildings of architectural and historic interest. As indicated above, despite the works carried out, I consider that they are still worthy of their listed status and I find that there can be no justification for removing them from the statutory list.

16. I disagree completely with the suggestion put forward on behalf of the appellant that they are of '*little or no architectural interest*'. With regard to the argument that '*the glazing which has been carried out is not out of character with other buildings*', this is missing the fundamental point that Nos 84 and 86 are listed. Due to their specific architectural, historic and social connections the houses met the relevant criteria in 1977 for listing. I consider that these criteria are still met despite the many alterations and that it is justifiable that they remain listed.

17. I acknowledge that the windows and doors as installed are similar to others in this part of the ECA and particularly those to the rear elevations. However, some of these other components have not been fitted to listed buildings. Even where such fittings have related to a listed building I have not been provided with any specific information as to whether or not LBC had been granted for the works. In any case these other works do not alter my overall conclusions about Nos 84 and 86.

18. In summary, therefore, from my inspection of the exterior of the buildings I consider that they justifiably added to the statutory list in the first instance and that they retain worthy of retaining their listed status in Grade II. It follows that I do not consider that they should be de-listed and both appeals fail on ground (a).

Other Matters

19. I have noted that the rear elevations of both buildings have been substantially altered. These alterations are not distinctly noticeable from the public domain and, although they are unauthorised, I do not consider that they detract from the character of the listed buildings to the same degree as the works carried out to the front elevations. Nevertheless I am not empowered to consider whether LBC should be granted for any part of the unauthorised works.

20. In reaching my conclusions I have taken into account all of the other matters raised by the parties. These include the initial submissions; the detailed statements and the final submissions. However, none of these alter my conclusions on the single ground pleaded in both appeals and nor is any other factor of such significance so as to change my decision that both appeals should fail.

Formal Decisions

21. Both appeals A and B are dismissed.

Anthony J Wharton

Inspector