
Appeal Decisions

by P N Jarratt BA DipTP MRTPI

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

Decision date: 26 May 2020

Land at 32 Devon Square, Newton Abbot, TQ12 2HH

Notice 1, Ref: APP/P1133/C/19/3236076

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Oskar Nawoj against an enforcement notice issued by Teignbridge District Council.
 - The enforcement notice, numbered 16/00208/ENF, was issued on 23 July 2019.
 - The breach of planning control as alleged in the notice is:
 - i) The unauthorised construction of a raised seating area in the approximate position hatched blue on the plan attached to the notice; and
 - ii) The unauthorised construction of a raised flower bed in the position hatched green on the plan.
 - The requirements of the notice are:
 - i) Remove the unauthorised raised seating area in the approximate position hatched blue on the plan and return the land to the original ground levels; and
 - ii) Remove the raised flower bed in the approximate position hatched green on the plan and return the land to the original ground levels.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (d) of the Town and Country Planning Act 1990 as amended.
 - **Summary of decision: appeal dismissed and notice upheld.**
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Notice 2, Ref: APP/P1133/F/19/3236084

- 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 Oskar Nawoj against a listed building enforcement notice issued by Teignbridge District Council.
 - The enforcement notice, numbered 16/00208/ENF, was issued on 23 July 2019.
 - The contravention of listed building control alleged in the notice is
 - a) The unauthorised conversion of the basement into 2 bedrooms with en-suite bathrooms and associated works, and
 - b) The unauthorised installation of windows in the basement.
 - The requirements of the notice are;
 - a) Remove from the basement all bathroom fixtures, fittings and associated ducting, ventilation and pipework and remove them from the site;
 - b) Remove from the basement all unauthorised internal partition walls and all the constituent parts including studwork, boards, insulation, doors, and remove them from the site
 - c) Remove from the basement all unauthorised materials which have been installed over the stone walls of the basement including studwork, boards, insulation and
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- damp membranes, and remove them from the site to return the stone walls to their former condition.
 - d) Remove from the basement all unauthorised studwork, insulation, sheeting boards, plaster, and associated fittings to return the ceiling to its former condition.
 - e) Remove the unauthorised basement windows and replace them with timber casement windows without trickle vents to match the detailed drawing 674-10 accompanying the notice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is made on the grounds set out in section 39(1) (e) and (g) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
 - **Summary of decision: appeal dismissed and notice upheld.**
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Procedural Matters

1. A site visit was not considered necessary in view of the grounds of the appeal, the submitted photographs and the planning history of the site.
2. The appellant's grounds of appeal in Appeal 1 were on grounds (a) and (b). The required fee for appeal on ground (a), which is that planning permission should be granted, has not been paid and therefore falls away. An appeal on ground (b) is that the breach of planning control alleged in the notice has not occurred as a matter of fact. The appellant states that the raised beds and planting have existed for over 4 years and does not require planning permission. It is evident from the appellant's comments that the appropriate ground of appeal is on ground (d), which is that at the time of the enforcement notice was issued, it was too late take enforcement action against the matters stated in the notice. Accordingly I have dealt with the appeal on this basis.

The site and relevant planning history

3. The appeal property is a mid-terrace Grade II listed building and is situated in a square in the Newton Abbot Town Centre Conservation Area.
4. Planning permissions and listed building consents were approved in December 2014 for the demolition of a rear extension and external lean to toilet enclosure, a replacement extension and replacement of two windows. Similar approvals were granted in May 2016 for the conversion of offices and construction of a replacement extension.
5. In October 2016, applications for alterations and the change of use to a House in Multiple Occupation (HMO) were refused and appeals dismissed (16/01402/COU and 16/01403/LBC; APP/P1133/W/16/3165229 and 223), with revised schemes refused and appeals dismissed in June 2017 (16/03175/FUL and 16/003176/LBC). Applications for the retention of a raised seating area in rear garden and raised flower bed and proposed fence were refused in November 2016.

Policy Background

6. Section 16 of the LBCA requires special regard to be paid to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses, before granting listed building consent. In addition to the duties under the Act referred to above, the policies of the Teignbridge Local Plan are also material considerations in these cases. Policy EN5 relates to the protection of heritage assets.

7. The policies are also broadly in accordance with the aims of the National Planning Policy Framework (the Framework) which is also a material consideration in these cases. Paragraphs 193, 194 and 196 of the Framework note that great weight should be given to conserving the significance of heritage assets and that any harm must be outweighed by public benefits of the proposal, including securing the optimum viable use of the building, before listed building consent is granted.

Notice 1

Appeal on ground (b)

8. The appellant appears to accept that the alleged works have taken place and the photographs attached to the representations of a neighbour confirm this to be the case.
9. The breach of control alleged in the notice has taken place as a matter of fact and the appeal on this ground fails.

Appeal on ground (d)

10. The appellant states that the raised beds and planting have existed for over 4 years and do not require planning permission. In addition, he states that the wall section referred to has already been lowered to an agreeable level, which was agreed with the Enforcement Officer.
11. In order to achieve immunity from enforcement action it is necessary for the appellant to show on the balance of probability that the works were carried out and substantially completed four years before the date of the notice, which in this case is 23 July 2015. The onus of proof rests entirely with the appellant but he has failed to provide any evidence in support of his contention.
12. The neighbour states that the works started in May 2016 and this is supported by dated photographs of the work that have been submitted. The Council also confirms that in June 2016 a brick wall had been constructed and was being infilled with waste material from the excavation of footings for a new extension and the raised bed had not been constructed. Despite the appellant's claims to the contrary regarding the lowering of a wall, the Council understand that the works remain as set out in the notice.
13. The appeal on this ground fails.
14. For the reasons given above I consider that the appeal against Notice 1 should not succeed.

Notice 2

Appeal on ground (e)

15. An appeal on this ground is that listed building consent should be granted for the works.
16. The main issue in the ground (e) appeal is whether the works subject to the notice preserve the listed building or its setting or any features of special architectural or historic interest it possesses. The appellant fails to address the issue in his appeal but merely refers to much of the work having taken place

- before he took ownership and that he carried out minor remedial works to the basement areas.
17. The Council contests that only minor works have been carried out by the appellant. Photographs taken at a site visit by the Council in June 2016 show that the basement was an open space with rubble walls and cobbled floor surface. If some of the works were carried out by the previous owner, it is the current owner who is responsible for the building and the need to obtain all the necessary consents.
18. Although the appellant has not submitted details to support the work carried out, the Council indicates that the works have already been considered as part of planning and listed building applications that were subject to appeal and subsequently dismissed (APP/P1133/W/16/3165229 and 223). I note that the main area of dispute in the listed building appeal related to the sub-division of the basement into two rooms, each with an en-suite bathroom. The Inspector considered the subdivision of the cellar alters the layout of the property which harms the significance of the building and that the works to convert the basement were not fully justified.
19. Although not explicitly referred to by the Inspector, on the basis of the information before me, the level of harm is less than substantial in the context of paragraph 196 of the Framework. The appellant has not indicated whether any public benefits arise from the works or that the works have secured the optimum viable use of the listed building in order for the harm to be weighed against any public benefits.
20. There are no changed circumstances that indicate that I should reach a different decision to the previous Inspector. I therefore share the Inspector's conclusion that the works would not preserve the listed building or any features of special architectural interest which it possesses.
21. The appeal on this ground fails.

Appeal on ground (g)

22. An appeal on this ground is that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out. The appellant repeats his case as set out in the ground (e) appeal above other than to add that he has removed a stub wall. In the absence of any submitted case that the requirements of the notice are excessive, I can only conclude that the requirements of the notice are the minimum necessary to return the basement back to its original condition.
23. The appeal on this ground fails.

Conclusions

24. For the reasons given above I conclude that the appeal against Notice 2 should fail.

Decisions

Notice 1

25. The appeal is dismissed and the enforcement notice is upheld.

Notice 2

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

P N Jarratt

Inspector