



Appeal Decision

by P N Jarratt BA DipTP MRTPI

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

Decision date: 14 July 2020

Appeal Ref: APP/Q3305/F19/3229925

Alma Cottage, Long Street, Croscombe, Shepton Mallet, BA5 3QL

- 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 Mrs Veronika Borzymowski against a listed building enforcement notice issued by Mendip District Council.
 - The enforcement notice, numbered ENF/2018/0072, was issued on 3 May 2019.
 - The contravention of listed building control alleged in the notice is the unauthorised installation of upvc replacement windows in the west and north west elevations of the building which is Grade II listed building. The buildings are marked 5, 6, 9 and 10 in Appendix 3 annexed hereto.
 - The requirements of the notice are
 - i) Remove the existing windows (shown and numbered 5, 6, 9 and 10 within Appendix 3 to this notice);
 - ii) Replace with flush-fitting, side-hung timber casements with a single central horizontal glazing bar (of similar form to the example shown within Appendix 1 to this notice). The window shall incorporate a slim profile of double glazing (total width no greater than 14mm including the thickness of the glazing) fixed with putty (of similar form to the example 2 shown within Appendix 3 to this notice);
 - iii) Paint the windows with an off-white satin painted finish.
 - The period for compliance with the requirements is 9 months.
 - The appeal is made on the grounds set out in section 39(1) (c), (d), (g) and (e) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding, should the Local Planning Authority have kept a record of this listed building enforcement notice on any register, they should consider reviewing it.

Procedural Matters

2. The notice has been poorly drafted.
3. The breach refers to upvc windows 'marked 5, 6, 9 and 10 in Appendix 3 annexed hereto'. Requirement (i) of the notice refers to numbered windows on 'Appendix 3 to this notice'. Requirement (ii) refers to an example of a casement window 'shown within Appendix 1 to this notice' and to 'example 2 shown within Appendix 3 to this notice'.
4. Appendices 1 and 3 are not attached to the notice. There is no reference to Appendix 2 in the notice.

5. The Council acknowledges that the windows are timber and the reference to upvc windows is an error. In respect of Appendix 3, the Council advises that it is a drawing showing elevations of the building with numbered windows below which is a table. There is no title, drawing number or Appendix number on the drawing.
6. The Council originally advised that Appendix 1 and Appendix 2 are within the notice but these appendices are not attached to the notice issued by the Council.
7. The notice has an extract headed 'Traditional Casement Windows Technical Guide 1 Single Glazing'. As Requirement (ii) refers to 'the window shall incorporate a slim profile of double glazing....', the relevance of the single glazing technical guide appears confusing or irrelevant at best. Reference is also made to example 2 within Appendix 3 to the notice. This does not exist.
8. Despite originally confirming that the document sent to PINS on 10 July 2020 and entitled 'Appendices document' was issued as part of the notice and was served/sent to the appellant, further clarification from the Council dated 12 July 2020, contradicted this, stating that:
 - i) The "Appendices document" forwarded to you yesterday was produced in response to your query in order to clarify which documents correlated with the numbered appendices referred to in the Notice (notwithstanding the typo already explained yesterday).
 - ii) The original Enforcement Notice included the two joinery details sheets now named Appendix 1 and the elevations/table sheet now named Appendix 3.
 - iii) While not explicitly named Appendix 3 originally, the latter was clearly referred to as such in the Notice.
 - iv) The sheets now called Appendix 2 do not appear to have been included with the Notice originally; although these were clearly referred to in the Notice but not by this name.
 - v) Appendices 1 & 2 are not essential to the Notice – merely provided for illustrations of the type of joinery required, primarily to help the applicant (as she was at that time). It is considered that the written descriptions of what is required for each window is sufficient, so the LPA is content for Appendix 2 to be disregarded if the fact that it was not originally included deems it inadmissible at this stage.
 - vi) The sheets comprising Appendix 1 were originally included in the Notice, but if their inclusion only serves to confuse the matter now, the LPA would not object to them also being disregarded.
 - vii) The LPA is content for the Inspector to decide whether to disregard either of these two appendices and the references to them in the Notice.
9. A notice must be drafted so as to tell the recipient fairly, what he or she has done wrong and what must be done to remedy it. The appropriate test is derived from *Miller-Mead v MoHLG* [1963] 2 WLR 225. A notice may be hopelessly ambiguous and uncertain so that the owner and occupier could not

tell with reasonable certainty what steps had to be taken to remedy the alleged breaches. In such circumstances a notice may be found to be a nullity.

10. I have a duty to put the notice in order and I have the power to correct or vary an enforcement notice so long as no injustice would be caused to the parties. I am satisfied this could have been done in respect of deleting reference to upvc windows as I am satisfied that no injustice would have arisen here as it was the appellant who drew attention to the incorrect window material. However, I find that in respect of the requirements, these are very confusing and it has taken some effort to establish exactly what was attached to the notice through reference in the requirements. It may well be the case that any injustice to the appellant has been limited but I note that the appellant is not professionally represented and may not have been familiar with issues such as those relating to nullity and invalidity in notices.
11. I have concluded that the notice is a nullity and in these circumstances the appeal under the various grounds set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended does not fall to be considered.

P N Jarratt

Inspector