The Planning Inspectorate

Appeal Decision

Site visit made on 20 July 2020

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 22 July 2020

Appeal Ref: APP/B2355/F/19/3224270

514 Market Street, Whitworth, Rochdale OL12 8QW

- 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 Alexander Brownlie against a listed building enforcement notice issued by Rossendale Borough Council.
- The enforcement notice was issued on 5 February 2019.
- The contravention of listed building control alleged in the notice is the removal of 6 windows (3 to ground floor and 3 to first floor from the front/west facing elevation) and the removal of 4 windows (2 to the ground floor and 2 to the first floor from the rear/east facing elevation) and their replacement with UPVC windows; in addition, the removal of 2 doors (one to the rear and one to the front) and their replacement with composite doors.
- The requirements of the notice are;

Step 1 – Application for Listed Building Consent

Submit to Rossendale Borough Council Planning Department, a Listed Building Consent application for the removal of 6 windows (3 to ground floor and 3 to first floor from the front/west facing elevation) and the removal of 4 windows (2 to the ground floor and 2 to the first floor from the rear/east facing elevation) and their replacement with timber single glazed windows which are appropriate and sympathetic to the character and style of the building.

Listed Building Consent must also be sought within the same application for the removal of 2 doors (one to the rear and one to the front) and their replacement with proposed timber doors which are appropriate and sympathetic to the character and style of the building.

Upon receipt of being granted Listed Building Consent, the remaining requirements of the notice shall be undertaken.

Step 2 – windows to the front/west facing elevation

i. Carefully remove the 6 existing black UPVC double glazed windows from their openings on the front/west facing elevation.

ii. Carefully remove all aerosol foam and any fixings associated with the installation of all the UPVC windows. Make good the window openings, ensuring that any repairs are undertaken using lime mortar only.

iii. Install the 6 approved timber single glazed windows.

Step 3 – windows to the rear elevation

i. Carefully remove the 4 existing black UPVC double glazed windows from their openings on the rear elevation.

ii. Carefully remove all aerosol foam and any fixings associated with the installation of all the UPVC windows. Make good the window openings, ensuring that any repairs are undertaken using lime mortar only.

iii. Install the 4 approved timber single glazed windows.

Step 4 – door at the front elevation

i. Carefully remove the existing composite door from the front elevation.

ii. Install the approved replacement timber front door.

Step 5 – door at the rear elevation

i. Carefully remove the existing composite door from the rear elevation.

ii. Install the approved replacement timber front door.

- The periods for compliance with the requirements is 8 weeks for Step 1 and 6 months for Steps 2-5.
- The appeal is made on the grounds set out in section 39(1)(e) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Decision

1. The notice is a nullity and no further action will therefore be taken in connection with this appeal. Should the Local Planning Authority have kept a record of this listed building enforcement notice on any register, they should consider reviewing it.

Reasons

2. The listed building enforcement notice requires replacement doors and windows to be "…appropriate and sympathetic to the character and style of the building". This is vague and, with regard to the judgement in *Miller-Mead v Minister of Housing and Local Government [1963] 2QB196*, the Appellant cannot know what he must specifically do to remedy the breach of listed building control. More importantly, however, an enforcement notice cannot require a scheme to be submitted to the local planning authority for written approval, whether this be informally or by, as in this case, submission of an application for listed building consent. This was established in *Clive Payne v The National Assembly for Wales and Caerphilly County Borough Council [2006] EWHC 597 (Admin)*. The listed building enforcement notice is fundamentally flawed and is thus a nullity.

John Braithwaite

Inspector