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# Appeal Decision

Site visit made on 28 July 2020

**by Katie Peerless Dip Arch RIBA**

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

**Decision date: 5 August 2020**

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**Appeal Ref: APP/Z2260/F/19/3227200**

**Land or premises at 21 Chapel Place, Ramsgate, Kent CT11 9SB**

- 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 Peter Saunders against a listed building enforcement notice issued by Thanet District Council.
  - The listed building enforcement notice was issued on 28 February 2019.
  - The contravention of listed building control alleged in the notice is the removal of timber windows and door and installation of replacement upvc windows and doors.
  - The requirements of the notice are Remove the unauthorised upvc windows and doors to the front and rear elevations and reinstate them with appropriate timber windows, comprising of 3 glazing bar sash windows and replace with new timber frames to match those removed unless otherwise agreed in writing by the Council.
  - The period for compliance with the requirements is 12 months
  - The appeal is made on the grounds set out in section 39(1)(d) 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.

## Main Issues

2. The main issues in this case are whether the installation of the replacement windows and doors was urgently necessary in the interests of safety or health or for the preservation of the building and, if so, whether it would have been possible to achieve this through temporary measures. It should also be demonstrated that the works carried out were limited to the minimum measures immediately necessary.

## Reasons

3. The appeal property is a grade II listed building and is one of a terrace of similar properties within the Ramsgate Conservation Area. Most of the original timber windows and doors to the front and rear of the property have been replaced with upvc substitutes apart from 2 timber sash windows that remain on the first floor of the front elevation.
4. Any works that affect the architectural character or historic interest of a building on the statutory list require a grant of listed building consent to authorise them. No such consent has been granted for the works noted above, and set out in the Listed Building Enforcement Notice, and the appellant has not appealed on the grounds that consent should be granted for them.

*Ground (d)*

5. The installation of the windows and doors has changed the architectural character of the building through the use of a modern material that would not normally be found in a building of this age and architectural style. However, the appellant submits that the changes were necessary because the previous windows were rotten and the lessees of the building requested that they were replaced, as they were in danger of falling out. He has produced a letter from them describing the problem and asking for the appellant to take action to rectify it.
6. However, any appeal under s39 (1)(d) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) against this listed building enforcement notice can only succeed if it is demonstrated that replacement of the windows and doors was urgently required for health and safety reasons and, if that is the case, the use of upvc windows, rather than windows that matched the original timber sashes, was either a temporary measure or that it was the minimum measure immediately necessary, as noted in the main issues.
7. The appellant has made no mention of the doors and I have no information on the condition of the rear windows before replacement. I have therefore been given no justification for the unauthorised replacement of these items. However, I have no reason to doubt that there was a need to repair or possibly replace some of the front windows. Nevertheless, I have been given no explanation as to why this could not have been done using traditional timber units to match those that were previously installed. The appellant notes that he obtained a quote prior to carrying out the work and presumably it took some time for this to be submitted, accepted and the upvc units supplied and installed. This does not indicate to me that the windows were so dangerous that the works required were '*urgently necessary*' as required by the LBCA and that there were no other temporary measures that could have been taken.
8. Following on from this, neither does it appear that the upvc windows were intended as a temporary measure until timber replacements could be sourced and installed, also as required by s39 (1)(9) of the LBCA. Indeed, the appellant does not claim that this was the case. It is clear that, in the case of the rear windows, they have been in place for some time with no apparent intention to replace them. Neither has it been shown that the complete replacement of the windows in upvc was the minimum measure immediately necessary to protect the health and safety of the occupants and the general public or for the preservation of the building.
9. No survey details of the extent of damage to the timber windows have been produced to show they were in imminent danger of falling out, as claimed, or any consideration given as to whether or not they could have been repaired rather than replaced.
10. In mitigation, the appellant states that he did not know that the building was listed or that the chosen windows would be unacceptable, as they were similar to those in the rear of the property. The Council has only just enforced against these rear windows through this notice, although they were the subject of a refusal of listed building consent over 6 years ago. They were installed by a previous owner, prior to the purchase of the property by the appellant, who considers that it is unfair of the Council to have waited this long before taking enforcement action against them.

11. I sympathise with the appellant if he was unaware that consent was required and note that he was not responsible for changing the windows at the rear. However, there is no time limit in the LBCA for taking enforcement action unless the works under consideration were carried out prior to the start of 1969. I have been given no evidence to show that this was the case here; only that the rear windows were installed '*several years ago*'. Whilst a subsequent owner of a property where unauthorised work has been carried out would not be prosecuted for the offence, they can nevertheless still be required to rectify it.
12. I find that it has not been shown that the works were urgently necessary, a temporary solution or the minimum necessary to ensure health and safety and therefore, for the reasons given above, I conclude that the appeal should fail.

*Katie Peerless*

**Inspector**