
Appeal Decision

Site visit made on 25 August 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: 03 September 2020

Appeal Ref: APP/T3725/F/20/3246749

Fleur de Lys, Lapworth Street, Bushwood, Lowsonford B95 5HJ

- 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 Nicholas James Woodhouse against a listed building enforcement notice issued by Warwick District Council.
 - The enforcement notice was issued on 10 January 2020.
 - The contravention of listed building control alleged in the notice is the erection of a pergola with pitched roof.
 - The requirement of the notice is permanently remove the pergola and restore the land and building to its former state.
 - The period for compliance with the requirements is 3 calendar months.
 - The appeal is made on the grounds set out in section 39(1)(c), (e), (h) and (k) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The contravention of listed building control in section 3 of the enforcement notice is corrected by the insertion of 'part' between 'with' and 'pitched'.
2. The listed building enforcement notice is varied by:
 - a. The insertion of 'OR alter the pergola to comply with listed building consent W/18/0121/LB' after the requirement in section 5 of the notice;
 - b. The deletion of '3 calendar months' in section 6 of the notice and the substitution instead of '6 calendar months'.
3. Subject to the correction and the variations the appeal is dismissed, the listed building enforcement notice is upheld, and 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.

Background Information and the Listed Building Enforcement Notice

4. Under the ground (c) appeal it is claimed that the notice is not sufficiently precise and ambiguous, and is incapable of correction without prejudice to the Appellant, though the alleged prejudice has not been detailed. This is not a ground (c) matter but must be addressed.
5. Fleur de Lys is a public house and a Grade II listed building. At the rear of the building is a flat roofed extension to the original building. The extension was erected prior to the listing in 1988. The pergola that is the subject of the listed

building enforcement notice is at the rear of the public house and is, partly, supported by, but is not fixed to, the extension.

6. On 30 June 2003 planning permission W/03/0760 was granted for, amongst other things, the erection of a timber pergola, and on 21 July 2017 planning permission W/17/0858 (the 2017 PP) was granted for 'retrospective replacement of rear patio pergola'. A listed building consent application (Ref. No. W/17/0859/LB) for the replacement pergola was determined as 'permission not required'. On 9 March 2018 listed building consent W/18/0121/LB (the 2018 LBC) was granted for 'modification to form of pitched shingle roof to flat roof of patio pergola'.

7. The original pergola adjoined one of two external walls of the extension. It was ultimately replaced by a larger L-shaped pergola that adjoined both sides of the extension and which, partly, had a pitched shingle roof. The 2017 planning application was for retention of the replacement pergola, including the pitched roof element. However, the application was amended prior to determination by the deletion of the pitched roof element. The 2017 PP is for a wholly flat pergola. The 2018 LBC is for the wholly flat pergola that is permitted by the 2017 PP.

8. The contravention of listed building control refers to the 'erection of a pergola with pitched roof' and the requirement of the enforcement notice requires the removal of the pergola. There is, as the Appellant suggests, some ambiguity between the contravention and the requirement. The contravention, as it is written, suggests that the whole of the pergola has a pitched roof whereas the requirement requires the whole of the pergola to be removed, including the flat part which is considered, through the grant of the 2017PP and the 2018LBC by the Council, to be acceptable.

9. But the removal of only the pitched roof element of the pergola would result in the retention of a freestanding flat pergola which would be incongruous. The requirement to remove the whole of the pergola is not unreasonable and the ambiguity can be remedied by correcting the contravention to make it clear that only part of the pergola has a pitched roof. No prejudice is caused to the Appellant by correcting the contravention of listed building control by the insertion of 'part' between 'with' and 'pitched'.

Reasons

The ground (c) appeal

10. The Council did once determine that listed building consent was not required for the pergola as it has been built. This is not a matter that can influence the outcome of a later appeal against issue of an enforcement notice. The pergola is supported by an element of the public house that was in place when it was listed and it is not relevant that that element is a modern extension. Despite not being 'fixed' to the listed building the pergola could not exist without this structural support. It is a matter of planning judgement, based on the circumstances of this case, that listed building consent is required for the as built pergola and listed building consent has not been granted. The ground (c) appeal thus fails.

The ground (e) appeal

11. The main issue in the ground (e) appeal is the effect of the pergola on the character and significance of the listed building.

12. The Fleur de Lys public house originated in the 15th century but was probably altered in the 16th century and certainly in later centuries. It was possibly three terraced cottages originally but this is inconsequential. The building has mainly roughcast walls, probably on timber framing, and some painted brickwork under a steep pitched plain tile roof. A particular feature of the listed building is various brick chimney stacks including a ridge stack to centre of main range with diagonally set flues. The two storey main range has, at the rear and to the left, a two storey gable projection. The modern flat roofed single storey extension adjoins the main range and the projection, and thus has two external walls.

13. The L-shaped shallow pitched roof of the pergola wraps around the flat roofed extension and the flat element of the pergola extends the structure further out over an outdoor seating area of the public house. The pitched roof element of the pergola differs from the roof of the public house in material and pitch. It is, consequently, visually intrusive and incongruous. It has, furthermore, an awkward constructional relationship where it meets the eaves of the main building, particularly at the rear of the main range of the listed building.

14. The pergola as built, given the material and shallow pitch of the pitched roof element, has had a considerable adverse effect on the character and significance of the listed building, though the effect on its significance is less than substantial. Though the development plan is only a material consideration in ground (e) appeals it is worth noting that the pergola as built conflicts with saved policy HE1 of the Warwick District Local Plan.

15. Paragraph 196 of the National Planning Policy Framework (NPPF) states that, in enforcement situations, where a development leads to less than substantial harm to the significance of a designated heritage asset the harm should be weighed against the public benefits of the development including, where appropriate, securing its optimum viable use. There is nothing in evidence to indicate that the viability of the public house is dependant on the provision of an outdoor covered area in the form it is at present, rather that it is a facility that is complementary and is appreciated by some customers. The public benefits of the pergola are slight and do not outweigh the harm to the listed building.

Other matters

16. The listed building enforcement notice refers, in the reasons for issue of the notice, to the location of the public house in the Lowsonford Conservation Area and to the curtilage of the listed building adjoining the Canal Conservation Area. The Council has not substantiated their concern in this regard. The pergola as built, given its limited size and position relative to the listed building, does not have any impact on the character and appearance of either Conservation Area.

17. The Appellant's Agent has commented on conditions attached to the 2018 LBC in relation to the tests for conditions set out in the NPPF. These comments are not relevant to determination of the ground (e) appeal. In this regard, the implication of the grant of the 2018 LBC, and the 2017 PP, is that the Council considers the as built pergola to be unacceptable and it is for the Appellant then to decide when to implement the LBC and the PP in accordance with their conditions.

Conclusion

18. The pergola as built has had an adverse effect on the character and significance of the listed building. The ground (e) appeal thus fails.

The ground (h) appeal

19. The Appellant has requested that the compliance period be extended to either nine months or a year, mainly because the pergola benefits the public house business particularly during summer months. This decision is being issued after those months so this consideration is not relevant. However, in recognition of difficulties associated with the current COVID-19 pandemic a reasonable period for compliance with the requirement of the notice would be six months. The ground (h) appeal, to this extent, thus succeeds.

The ground (k) appeal

20. The requirement of the notice does not take account of the 2018LBC and part of the pergola, the flat part, is covered by this consent. A reasonable alternative requirement to demolition of the pergola, which would not prejudice the Appellant, would be that it is altered to comply with the 2018LBC. The ground (h) appeal thus succeeds and the requirement of the listed building enforcement notice has been varied to include the alternative requirement that the pergola is altered to comply with listed building consent W/18/0121/LB.

John Braithwaite

Inspector