



Appeal Decisions

Site visit made on 22 September 2020

by Simon Hand MA

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

Decision date: 08 October 2020

Appeal A: APP/F1610/C/20/3249808

Land south of 12A Farmington, Cheltenham, Gloucestershire, GL54 3NQ

- 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 Farmington Natural Stone Ltd against an enforcement notice issued by Cotswold District Council.
 - The enforcement notice was issued on 21 February 2020.
 - The breach of planning control as alleged in the notice is without planning permission the carrying out of unauthorised engineering works to alter the land levels and to create an access track on the land.
 - The requirements of the notice are return the land to its previous condition prior to the unauthorised works as shown on the 2016-2018 aerial photograph obtained from Maps Online attached to this notice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/F1610/F/20/3249802

12A Farmington, Cheltenham, Gloucestershire, GL54 3NQ

- 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 Farmington Natural Stone Ltd against a listed building enforcement notice issued by Cotswold District Council.
- The enforcement notice was issued on 21 February 2020.
- The contravention of listed building control alleged in the notice is (i) The removal of internal floors and floor coverings with concrete floors being introduced to the ground floor; (ii) The removal of lath and plaster ceilings; (iii) The removal of lime plaster walls; (iv) The removal of the staircase from the ground floor to the first floor; (v) The removal of the stone mullion window to the principal elevation; (vi) The insertion of steel beams; (vii) The commencement of timber frame partition walls to the first floor; (viii) Externally, re-landscaping and earth removal around the building with concrete being added around the perimeter adjoining the Listed Building.
- The requirements of the notice are
 - A External Elevations
 - a) Remove three windows inserted into new stone mullion surround to the front façade and reinstate single glazing in metal frame with glazing bar detail as shown in interior photographs dated 24 May 2011 attached to the Enforcement Notice;
 - b) Repair damaged stone work to external elevations where these have been damaged by the use of an angle grinder to remove pointing by repairing and repointing using a lime mortar and traditional stone to match;
 - c) Remove two windows inserted in the front dormer and reinstate windows as shown in the photograph taken on the 14th of October 2019 attached to the Enforcement Notice;

- d) Remove the fascia boards applied to the dormer windows and redress the tiles as shown on the photograph from 2014 attached to the Enforcement Notice;
- e) Remove the casement windows which have been inserted throughout the Building and replace with single glazed timber casement windows to match those shown in the photographs taken on the 14th of October 2019 attached to the Enforcement Notice.

B Ground Floor

- f) Remove the concrete floor and damp-proof membrane throughout;
- g) Remove new plumbing and pipe work;
- h) Reinstate lath and lime plaster ceilings throughout the ground floor;
- i) Remove plastic membrane and any treatment for damp to walls and reinstate lime plaster to all internal walls;
- j) Reinstate internal doors to match that of interior photographs dated 24th May 2011 attached to the Enforcement Notice;
- k) Remove structural steel beams and metal plates and reinstate timber beams to ground floor ceilings;
- l) Remove steel frame support to stone mullion window on front elevation and any associated engineering brick and reinstate timber beam to ground floor ceilings;
- m) Reinstate fire place surround to the ground floor front room as shown on the interior photographs dated 24th May attached to the Enforcement Notice;
- n) Reinstate timber panelling to the wall between the staircase and the kitchen in the front room to match that shown in the interior photographs dated 24th May 2011 attached to the Enforcement Notice;
- o) Reinstate the staircase from the ground floor to the first floor to match that of the interior photographs dated the 24th May 2011 attached to the Enforcement Notice.

C First Floor

- p) Remove the timber frame partitions which have been inserted and reinstate the partitions' alignment to that of the original alignment;
- q) Remove the new plumbing and pipe work;
- r) Remove any modern plasterboard and insulation which has been inserted and reinstate the ceilings to roof level using a breathable insulation with lath and lime plaster;
- s) Remove any cementitious plasters and reinstate with lime plaster to the walls;
- t) Reinstate the traditional timber floor boards and joists to the rear room;

D External Landscaping

- u) Remove the concrete around the Building and all new landscaping and boundary treatments installed and reinstate the landscaping and all boundary treatments around the Building and within the garden to that of the aerial photograph dated 2016 – 2018 obtained from 'Maps Online' attached to the Enforcement Notice.
- The period for compliance with the requirements is 6 months.
 - The appeal is made on the grounds set out in section 39(1) (c), (d), (e), (g), (h), (i) and (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decisions

Appeal A – 3249808

1. It is directed that the enforcement notice be corrected by the deletion of the words "*the carrying out of unauthorised engineering works to alter the land levels and to*" from the allegation. Subject to this correction the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the creation of an access track on the land shown on the map attached to the enforcement notice.

Appeal B - 3249802

2. It is directed that the listed building enforcement notice be corrected by deleting the allegation and replacing it with *"The removal of lime plaster walls on the first floor; the insertion of steel beams; the insertion of a timber frame partition wall to the first floor, the removal of single glazed metal framed casement windows to the front elevation and the installation of fascia boards beneath the eaves of the front dormer"*; and by deleting the following requirements A(b), A(e), B(f), B(g), B(h), B(i), B(j), B(m), B(n), B(o), C(q), C(r), C(s), C(t) and D(u) [for the avoidance of doubt this leaves requirements A(a), A(c), A(d), B(k), B(l) and C(p)]. The appeal is allowed insofar as it relates to *"the removal of lime plaster walls on the first floor; the insertion of steel beams; the insertion of a timber frame partition wall to the first floor and the installation of fascia boards beneath the eaves of the front dormer"* and listed building consent is granted for the retention of the fascia boards applied to the dormer window (A(d)); the structural steel beams and metal plates inserted in the ground floor ceiling (B(k)); the steel frame support to the stone mullion window on the front elevation and any associated engineering bricks (B(l)); and the timber frame partitions inserted on the first floor (C(p)) subject to the following condition:
 - 1) The roof of the front dormer window shall either be extended by 1 row of tiles or replaced by longer tiles to overhang the fascia boards on both sides of the dormer cheeks so as to obscure views of the fascia boards from the ground. These works shall be executed within 3 months of the date of this decision.
3. The appeal is dismissed and the listed building enforcement notice is upheld as corrected, insofar as it relates to the removal of single glazed metal framed casement windows to the front elevation as described in requirements A(a) and A(c), 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.

An Application for Costs

4. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Appeal B – Impact on the Listed Building.

5. The Council have identified 21 different issues (a) to (u). The appeal is made on a variety of grounds which apply to different issues in differing combinations. Essentially the appellant is either arguing the matters alleged are of such a minor nature they have no effect, or they have already (or are about to) put them right, or they were necessary to preserve the building and were carried out in line with current conservation practice. As a final resort, if I disagree with those arguments, they ought to be granted listed building consent as there is no harm to significance. I shall therefore address each requirement in turn, considering the various grounds as appropriate.
6. The property is one half of a semi-detached early 19th century estate workers cottage. There are two pairs of cottages, all looking the same and all listed, facing across the valley to the south. No12A is the western end of the group and the access to the cottages runs south from the minor road through Farmington ending at a parking area behind and beside the appeal property.

Further to the west are open fields, to the east of the group is another cottage accessed from a different track that curves round to form the southern boundary of the land. The cottages have small gardens that run down a gentle slope to a boundary with the small area of land that forms the land in the operations enforcement notice. This parcel of land fills the gap between the gardens and the southern boundary track. The land falls quite steeply to a wall that forms a revetment holding the bank up a metre or so above the southern boundary track. This track leads to a large house that is undergoing restoration, part of which has involve cutting into the edge of the steep slope with a large embankment installed to hold up the land.

7. From the cartographic evidence it seems little has changed in the relationship between these buildings and the boundary and access tracks over the years. The four cottages still form a harmonious group in a prominent position. 12A has a late 1950s rear extension that nevertheless, now to the untrained eye, fits in with the look of the main cottage. In terms of its significance this lies in the fact that the cottage is a good example of early 19th century vernacular architecture and is read with its neighbours as a coherent group. As is usually the case the main architectural details are on the southern, front façade. The interior retains the legibility of its original simple plan form, a single downstairs parlour with fireplace in a chimney breast, and two small bedrooms upstairs, linked by a simple winder staircase in the corner of the parlour. The roof structure and attic is largely intact but not affected by the renovation works and so not mentioned in the notice – apart from the front dormer, which I shall come onto below.
8. The appellant argues the 1950s restoration works involved some unfortunate changes, such as the removal of the stone floor and its replacement with concrete with no damp proof course; the replacement of the original plastered walls with a cement render, the new rear extension, a new fireplace in the parlour and a timber screen boxing in the staircase. All the lath and plaster ceilings were removed. The Council noted traces of lath and plaster on various beams when they visited the property during the renovation, but the appellant says these were just the remnants left from the 1950s work and only revealed by the major renovation he was undertaking. I have no reason to disagree with this assessment, which seems highly likely.
9. The 1950s works had inevitably led to deterioration of the fabric of the building and serious damp problems. Most of the photographic evidence comes from No11, but there is no reason to assume it was not true of 12A as well. Consequently a major upgrade of the building was required to return it to a habitable state. When the notice was issued the works were at an advanced stage, but I had the opportunity of seeing it completed and the building has been finished to a high standard.
10. A(a) and A(c). These refer to the new windows at the front of the house. The appellant accepts the replacements are modern and look out of place. I agree, the windows of the neighbouring cottage retain their original, single-glazed metal casements, and the narrow, white painted frames stand out in comparison to the wider, dark, modern finished frames installed. I also agree that double-glazing would be problematic in such narrow windows, as it would be difficult to replicate the original frame widths. The appellant originally argued the required replacements had already been installed, but I saw this was not the case, the new compliant windows are apparently on order. There

is no dispute by the appellant however, that this should be done, nevertheless, this element of the notice should be upheld.

11. A(b). I was not able to see any damage to the stonework and the appellant states they have used lime mortar as required. If there ever was an issue it has now been rectified and so there is no effect on significance or on the historic character of the building
12. A(d) concerns the now revealed fascia boards on the front dormer. This is a small dormer with a gable end roof consisting of only 4 or 5 courses of tiles. According to the appellant the stone cheek of the dormer had sunk, as it was only supported on a timber frame internally, leaving a gap above. This has been filled with a wooden fascia board that is visible below the eaves of the dormer roof. It would seem the original eaves were made up of longer tiles that covered any fascia that may have been there, and this would seem to be the case next door. This is also clearly visible in the photograph from 2014 attached to the notice. I cannot agree with the appellant that the difference is imperceptible, once pointed out it is obvious, especially as it is not replicated on the adjoining cottage and does have a small effect on significance. I do agree, however, that it could be resolved by replacing the lower course of tiles with longer ones, which would match the attached cottage and largely hide the fascia board from view.
13. A(e), the rest of the windows to side and rear have been replaced by wooden, double glazed, casement windows. I agree that these are of a high standard and the glass is such that it is not obviously double-glazed. I can't see any benefit in removing them to be replaced by single glazed timber windows and I do not think they have any effect on significance or the historic character of the building.
14. B(f), I can see no purpose to removing the concrete floors, which have been installed with a DPC that should not inhibit the breathability of the walls. The previous floor was also concrete and without a DPC had deteriorated. The new floor has no effect on significance or the historic character of the building.
15. B(g) and C(q). The new plumbing and pipework is now largely concealed or has been modernised and no harm to fabric of the building has been caused. The internal photographs attached to the notice show typical late 50s exposed pipework. Although this would have been in place when the building was listed it does not contribute to the significance of the building at all. The new plumbing and pipework would not affect the historic veracity of the building in any way but is part of the ongoing history typical of any listed dwelling.
16. B(h), B(i), C(r) and C(s). As noted above I am persuaded by the appellants that there was no original lath and plaster work left in the building (other than the upstairs partition discussed below), and the walls had been covered in a cement render that contributed to the problems found. Consequently, the new plasterboard finishes to the walls and ceilings should prove to be longer lasting and do not affect the significance of the building. The appellant argues the new DPC provided to the ground floor would be beneficial in dealing with water ingress and damp penetration and I have no evidence to suggest otherwise. None of these matters therefore effect significance or the historic character of the building.

17. B(j). The photographs attached to the enforcement notice show the corners of two doors which do not look particularly dissimilar to those that have now been installed. I have no reason to assume the new doors do not match those that were there before, and the appellant suggests they match those found in the other cottages. The new doors have no effect on significance nor on the historic character of the building.
18. B(k) and B(l). The ceiling beam was introduced to enable the ground floor brick partition to be removed. This partition was inserted in the 1950s and split up the original front parlour, which has, as a result, been returned to its original form. There would not seem to have been any loss of original fabric and the intervention has enabled the significance of the building to be enhanced. The steel beam in the window replaced the original wooden beam, but this had rotted through. Neither the original nor its replacement are visible and the original wooden beam was not related to the significance of the building in any way. Replacing the steel beam, which will have a longer life than a wooden one, would not seem to serve any purpose and I shall grant consent for these works.
19. B(m). The appellant argues that each cottage has a different fireplace and there is a photograph of that at No12 which is wooden. The stone fireplace in the cottage was a standard version provided by the local quarry in the 1950s renovation. There is convincing evidence the original fireplace was much larger with a curved segmental headed recess that has at some time in the past been filled in. Given these changes over time the current configuration, which is a simple stone hearth with no mantelpiece, would seem to be appropriate. While the fireplace that was in place before the works was part of the listing it was not important for the significance of the building and its loss causes no harm to the historic character of the building.
20. B(n) and B(o). The staircase has been reinstated and would seem to replicate the original. The difference is the stair was originally boxed in with timber boarding. This has been removed to open up the lower half of the staircase and a short length of handrail with a newel post has been installed. The treatment in the other cottages seems to be different in that both 11 and 12 have plasterboard stud partition walls enclosing the staircase, with No 12 having what looks like an under-stairs cupboard. It would seem therefore most likely the staircase was enclosed in 12A, whether originally with timber or plasterboard is unclear, but it was a timber partition at the time of the works. The issue is whether its removal has harmed the significance of the building. It certainly looks much better to the modern eye and given there is unlikely to have been any loss of original fabric I consider any harm to be minimal and so there is no loss of significance or to the historic character of the building.
21. C(p). The rearrangement of upstairs has resulted in the loss of the original lath and plaster partition, which split the upstairs into two small rooms. A new one has been created so there is now a larger bedroom and smaller ensuite. The position of the original partition is visible as a timber truss filled in above, which clearly marks the original bedroom sizes. There has thus been a loss of original fabric and a rearrangement of the original plan form upstairs, this represents less than substantial harm to the significance of the building.
22. Paragraph 196 requires that the less than substantial harm is balanced against any public benefits including securing the optimum viable use of the heritage

- asset. I consider the current arrangements upstairs have produced an attractive and workable solution. The plan form is still visible, and indeed reproducible if wanted so the impact on significance is small. It is difficult to imagine how the original two small rooms could be anything other than cramped and difficult to use and so their loss, while regrettable is understandable, and the harm is outweighed by the benefit of securing the assets optimum viable use. I shall grant consent for these alterations.
23. C(t). I agree with the appellant the floorboards of the 1950s extension are of no historic significance.
24. D(u) concerns landscaping. There has clearly been a considerable amount of landscaping to the exterior of the cottage. There was a wall that ran down the side, close to the wall of the cottage, which held back the higher land to the west. The main front garden then was a grassed area and the aerial images suggest it fell away in line with the neighbours. This imagery dates back to 2000 when the gardens were either much less cultivated or were overgrown. Old maps show the cottages originally had very small front spaces as the boundary is clearly shown in 1883 close to the front of the cottages. The land to the south is split into 3 parcels which doesn't relate to any current divisions on the ground. Later maps up to 1955 show a similar picture and the outline of the small front gardens is still visible in the 2000 aerial photograph although it is possible the full length gardens also have been established by now. By 2006 the appeal cottage seems to have one long undifferentiated garden, but the others seem to retain a vestige of the original small garden, while they have now clearly also extended south into the open land, much as they are today.
25. This suggests to me the treatment of the gardens to the front of the cottages has changed over time, as would be expected in a situation where there is no obvious southern boundary. Now the wall to the side has been removed, the land excavated to form a wider gap between the cottage and the higher land and the retaining wall reinstated there. The small front yard has been recreated with a gravel patio then grass beyond, although the garden is roughly half the length it was in the 2000s and it is bounded by a picket fence similar to the neighbours. In addition the land to the west of the cottage, that is held back by the moved retaining wall, has now been turned into a wide stone track providing access to the southern land. The stone boundary wall between this track and the fields beyond has been rebuilt.
26. All of this leads to some change in the setting of the cottage, but the listed building enforcement notice is confined to works to the building itself or any structures within the curtilage of the building. I accept the retaining wall is a curtilage listed structure and so the issue is the effect of moving that wall. This wall has clearly been moved further away from the cottage to create a better access to the rear and faced with original or traditional materials. This opens up the side somewhat, which the appellant suggests helps reduce moisture retention in the side wall and so is a positive measure. Whether this is the case or not, the change does not seem to me to be harmful. The rebuilding of the boundary stone wall using similar materials in the same place would not seem to merit comment. Concrete has also been laid beneath the patio and gravel side access, but in the absence of any evidence this would harm the fabric of the building, as it is invisible, I do not think this particular element has any effect on significance or causes any harm to the historic character of the building. The cottage retains a reasonably sized garden and

the provision of a smaller patio may well reflect the historic use of the small front garden.

27. There is now a gravel track down the side of the cottage rather than grass and this does represent a change. The old maps show this land (the western parcel) and the southern parcel were consistently defined as a single area wrapping around the side and rear of the appeal cottage and its neighbour although more recently this is not the case and the plan attached to the enforcement notice shows the boundary of the cottage extending west to the drystone wall, incorporating the western parcel and separating it from the southern parcel of land. By the 1920s any division of the southern parcel of land was more tentative and has disappeared in the 2000 aerial photograph. We know from 2000 both parcels of land (the southern and western) were all grassed or overgrown and this likely to be the situation before that. While the land was largely cleared of trees by the 2016-18 photograph it still seems to be grassed or overgrown. This has been changed by turning the western parcel into a stone track. The track is not mentioned in the notice and I shall discuss the track on the western parcel below as it is closely related to the engineering works. The rest of the changes detailed above are neutral in impact on the setting of the listed building and do not harm its significance.

Conclusion on Appeal B

28. I shall correct the notice to remove any references in the allegation and requirements to the matters where there has been success on ground (c) – that is requirements A(b), A(e), B(f), B(g), B(h), B(i), B(j), B(m), B(n), B(o), C(q), C(r), C(s), C(t) and D(u). I shall correct the allegation to refer directly to the matters that require consent. I shall then issue a split decision to grant consent for the matters covered by requirements A(d) (subject to a condition concerning the tiles), B(k), B(l) and C(p) and uphold the notice and refuse consent for the matters covered by requirements A(a) and A(c).

Appeal A – The Engineering Works

29. The notice covers the parcel of land to the south of the group of cottages, that fills gap between their gardens and the southern track. This is steeply sloping land, that as described above, falls away to a retaining wall next to the southern track. The appellant argues the notice is invalid as it doesn't tell them what to do. The notice requires the appellant to return the land to its "*previous condition prior to the unauthorised works as shown on the 2016-2018 aerial photograph...*". The aerial photograph shows the land covered in scrub with what look like two paths cut through it. It is currently covered in weeds, rather than scrub, but I cannot think the issue is the type of rough vegetative cover. The officer's report recommending the issue of a Stop notice notes the creation of a new track down the side of the property and significant engineering works. Photographs with the report show a mound of stone and earth piled up roughly where the garden now ends and trailing down the slope. The Council's appeal statement suggests the ground levels have been altered and the track is new. I do not think the notice is a nullity as the appellant is in the best place to know what the land levels were like previously and the aerial photograph clearly shows it to be grassed over. The issue is whether there was any change to the land levels.
30. The appellant denies the levels have been altered. I was shown on site that the land now slopes down to the southern boundary in a smooth profile and

there is no evidence that this is any different than before works began. The aerial photographs are not much help in assessing the slope or levels, but it does not look as if anything has materially changed in terms of the slope. The Council's photographs taken at the time of their site visits, do seem to show considerable works to the land and so I understand their concern. However by the time of my site visit, in terms of engineering works, it would all seem to have been put back, more or less as it was. Insofar as its possible, given the lack of evidence concerning actual changes to the profile of the land, it would not seem to me there has been a material change, or if there was, it was only temporary while the excavation works around the cottage took place. This part of the appeal succeeds on ground (b).

31. The second part of the allegation is the creation of an access track. The 'new' track, as noted above, runs down the side of the cottage, filling the western parcel, and peters out at the top of the southern parcel. The Council suggest the track on the western parcel is caught by the landscaping element of the listed building enforcement notice, however that cannot affect just landscaping unless there is a building or structure involved. No arguments have been presented as to whether the land actually is within the curtilage or not, but in any event this does not matter as I do not think the track on the western parcel of land is caught by the listed building enforcement notice at all.
32. The engineering works notice covers only the southern parcel of land and part of the track does come onto this land, but only for a few metres, it peters out at the top of the slope. The appellants argue there has always been a track on the land and have provided statutory declarations to support this. However, no track is shown on any of the photographs, aerial or otherwise. If there was a track it was only at best an informal grass track, and this has been materially changed by the laying of stone. I conclude there has been the creation of a track. The small section of track covered by the notice causes no harm to the character and appearance of the area, the Cotswold AONB or to the setting of the listed building. The main section of track that runs beside the listed building is a different matter, but I make no comment on that as it lies outside the scope of either notice.

Conclusion on Appeal A

33. The engineering works part of the notice succeeds on ground (b), as I am not convinced there has been a material change to the land form. However, I need to grant planning permission for the small element of the track. The simplest way to effect this is to correct the notice to leave only the track and then quash it and grant planning permission for the track.

Simon Hand

Inspector