



Appeal Decision

Site visit made on 6 October 2020

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 15 October 2020

Appeal Ref: APP/B1605/F/20/3247064
43A Bath Road, Cheltenham GL53 7HG

- 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 Tania Marie Blake against a listed building enforcement notice issued by Cheltenham Borough Council.
 - The enforcement notice was issued on 27 January 2020.
 - The contravention of listed building control alleged in the notice is installation of 2 windows within the rear (north west) elevation and side elevation (north east) of the rear projecting wing of the building at basement level.
 - The requirements of the notice are to submit for approval to the LPA design details, including materials, finishes, etc for the replacement of the unauthorised windows and remove the unauthorised windows currently in situ and install replacement windows in strict accordance with the details that shall first have been submitted to the LPA for approval and contact the LPA once the works have been completed in order to arrange for an inspection to be undertaken.
 - The period for compliance with the requirements is 6 months.
 - The appeal is made on the grounds set out in section 39(1)(c), (f) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
-

Decision

1. I find the notice a nullity and take no further action.

Reasons

Ground (h)

2. An enforcement notice to be lawful has to set out the works necessary to discharge the notice in a precise and achievable way. It is not acceptable for a notice to require works that need the approval of the Council. The appellant may have difficulty in obtaining the Council's approval and because there are criminal sanctions if the notice is not followed, it is unacceptable.
3. The judgment in *Payne v NAW & Caerphilly CBC* [2007] JPL 11740 held that in those circumstances where a notice required the subsequent submission and approval of a scheme of works, it was found that the requirement would not comply in that case with s173, the notice was a nullity and not, therefore, correctable. It is a similar situation here. In particular, it is not possible or reasonable to try to correct the notice as I do not know what the Council has in mind and any alternative is likely to affect natural justice for the appellant.
4. If the Council does not have precise details of the previous arrangement it can always simply ask for the windows to be reinstated as the original windows removed. The appellant is considered to know what that was.

5. I therefore find the notice a nullity.

Graham Dudley

Planning Inspector