
Appeal Decision

Site visit made on 14 October 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: 20 October 2020

Appeal Ref: APP/R0660/F/19/3226024

Avenue Lodge, London Road, Broughton

- 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 Act).
 - The appeal is made by Lady Rona Delves-Broughton against a listed building enforcement notice issued by Cheshire East Council.
 - The enforcement notice was issued on 25 February 2019.
 - The contravention of listed building control alleged in the notice is the alteration and extension of the building including the installation of eight plastic material double glazed windows (three on southern elevation; two on northern elevation; two on western elevation; one on eastern elevation).
 - The requirements of the notice are 1. Replace eight plastic double glazed windows (three on southern elevation; two on northern elevation; two on western elevation; one on eastern elevation) with soft wood flush single glazed casement windows, painted white, of the same style as the adjacent lodge known as Lake Lodge. The width of frames to be consistent in opening and non-opening lights and they are to match those in Lake Lodge (Two photographs indicating the design of the current windows at Lake Lodge are attached to this Notice). The design of the windows should be as follows: North elevation: 2 smaller windows to each be a pair of flush double single light casements, South elevation: bay arched windows to be 2 over 2 cross flush casements of the same proportions as the adjacent Lodge bay windows, East elevation: 1 arched window to be 2 over 2 cross flush casements of the same proportions as the adjacent Lodge bay windows; west elevation: 2 arched windows to be 2 over 2 cross flush casements of the same proportions as the adjacent Lodge Bay windows; and 2. Each window detailed in paragraph 1 above, to be set back within its opening by 50mm, measured from the external face of the wall surrounding the relevant opening.
 - The period for compliance with the requirements is 3 calendar months.
 - The appeal is made on the grounds set out in section 39(1)(a), (b), (c), (e), (g) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. Since the notice is found to be a nullity no further action will be taken in connection with this appeal.

Reasons

2. In his judgement in the case of *Miller-Mead v MHLG [1963] JPL 151* Lord Justice Upjohn stated, amongst other things, that the test in deciding whether an enforcement notice satisfied the statutory requirement must be "Does the notice tell him (the recipient of the notice) fairly what he has done wrong and what he must do to remedy it". This principle has been endorsed in other court judgements such as *Clive Payne v The National Assembly for Wales and Caerphilly County Borough Council [2006] EWHC 597*.

3. Avenue Lodge is one of two single storey dwellings either side of a driveway entrance off London Road; the other dwelling is Lake Lodge. When the listed building enforcement notice was issued Lake Lodge had timber windows. The principal requirement of the notice relating to Avenue Lodge is the replacement of the plastic windows that have been installed in contravention of the Act with timber windows that match, and are of the same style as, those in Lake Lodge. Two photographs dated 24 January 2019 show three timber windows in a bay on the north elevation of Lake Lodge.

4. Since the photographs were taken the timber windows in Lake Lodge have been removed and replaced by plastic windows. The photographs do provide some information on the style of the timber windows but they do not provide any information on the width of frames and the detailing of the windows. Consequently, it would not be possible, from the photographs, to detail windows to 'match' the timber windows that previously existing in Lake Lodge. Furthermore, there are no photographs of any of the other timber windows that were previously installed in Lake Lodge and it cannot be assumed that the style of the plastic windows replicated the former timber windows.

5. The Appellant cannot know, from the first requirement of the notice because it refers frequently to timber windows that no longer exist in Lake Lodge, what she must do to remedy the contravention of the Act. Crucially, and with regard to section 41(1) of the Act, the notice cannot be corrected without causing injustice to the Appellant. The listed building enforcement notice is fundamentally flawed and is thus a nullity.

John Braithwaite

Inspector