



Appeal Decision

Site visit made on 29 September 2020

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

an Inspector appointed by the Secretary of State

Decision date: 12 November 2020

Appeal Ref: APP/D1265/F/19/3237210

47A The Esplanade, Weymouth, Dorset DT4 8DQ

- 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 G Shipton against a listed building enforcement notice issued by Dorset Council
 - The enforcement notice was issued on 21 August 2019.
 - The contravention of listed building control alleged in the notice is listed in Annex 1.
 - The requirements of the notice are listed in Annex 1.
 - The period for compliance with the requirements is six months.
 - The appeal is made on the grounds set out in section 39(1)(c), (d) (e) (g) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Procedural Matters

1. The enforcement notice identifies the 'Basement', but clearly does not refer to the basement, as no apparent work has been completed there. It should identify the ground floor, where the ceiling referred to is apparent. The appellant understands this and therefore there would be no injustice in amending the notice to read 'Ground Floor'.
2. The appellant argues that as the ground floor toilets have a separate address this cannot be included as it has not been correctly identified in the notice. I do not agree with this as clearly it is one building as originally constructed and in the same ownership. It makes little difference in any case as I have found that the ground floor ceiling should be removed from the allegation and requirement.
3. This appeal is only concerned with the related enforcement notice and what is alleged within it. Other matters raised by the appellant, not relevant to the appeal, are not for my consideration.
4. The list description notes it as a grade II building, formerly a Westminster Bank, but now holiday accommodation above public toilets. It was built about 1883 in red brick in English bond, Portland stone ashlar dressings and a green Westmorland slate roof. It is described as a very vigorous interpretation of French Renaissance with Flemish Renaissance details. A very steep hipped roof is set behind a balustrade parapet with plain panels, above main walling carried out in flush banded brick and stonework in the manner of Norman Shaw. It has a long but shallow plan, with its principal frontage to Bond Street, and returning with the narrow front to the Esplanade.

5. I consider the significance and special architectural and historic interest relates to its age, ornate stone detailing and presence within the street scene with the interior being complimentary to it.

Decision

6. It is directed that the listed building enforcement notice be corrected and varied by:-
7. Deleting allegation 1 and requirement 1.
8. Deleting allegation 11 and requirement 12.
9. In allegation and requirement 9 where 'bedroom' is identified add (excluding bedroom 3).
10. The appeal is allowed on ground (h) and it is directed that the enforcement notice be varied by the deletion of 6 months and the substitution of 12 months as the period for compliance.
11. Subject to these corrections and variations, the appeal is dismissed and 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.

Reasons

Ground (c)

12. This argues that the matters alleged (if they occurred) do not constitute such a contravention. Effectively this is that if any matters alleged have occurred they would not affect its character as a building of special architectural or historic interest.

Ceilings and Walls

13. There is no argument that some of the walls have been re-plastered with modern materials. The appellant says that there were modern materials previously provided in the building and that these were replaced with similar materials and therefore there is no effect on the character of the building.
14. It is difficult to identify what the materials were before the works to the ceiling and walls in much of the building. There are some areas of the original materials remaining. Although small, they were generally formed in lime plaster and the ceiling visible at ground floor level was lath and plaster.
15. The appellant also had a survey of the building undertaken in April 2017, prior to purchase. This identified that Listed Building Consent is required for various works. It noted that the majority of ceilings to the property have been constructed with lath and plaster. Inspection of the ceilings was from within rooms and from the accessible roof space, but not all were viewed.
16. However, the survey also noted that in some rooms it appears that the original lath and plaster ceilings have been over boarded with plasterboard, but with only bedroom 3 identified as an example.

17. The appellant's builder noted that the ceilings on the top floor could withstand a top finish plaster. It was noted that the ceilings on the lower floor are a little more in need of attention.
18. It is for the appellant to prove his case on the balance of probability. I agree that the ceiling of bedroom 3 should be removed from the notice, but with it being identified that 'the majority' are lath and plaster and without other evidence of the other rooms it is not possible to deduce which were and which were not, and prior application for consent would have been useful in this.
19. I conclude that the appellant's case is generally not proven on the balance of probability. However, I shall require bedroom 3 to be removed from the notice.
20. Photographic evidence in 2018 shows lath and lime plaster. An application made by the appellants WP/19/00009/LBC refers to existing finish materials being lime plaster. The new finish was specified as being new lime plaster work with interior emulsion and gloss paint.
21. The appellant's builder in February 2019 identified that there was lime plaster to the walls of the building. Photographs taken of the building identify lime plaster as well as lath partitions with lime plaster finish. There is still evidence of some of the walls being lime plastered on site. There is suggestion of some modern plaster repairs, but the evidence indicates these were minor, and there is little specific evidence to identify these areas. I do not agree with the appellant that the photographs provided show that the walls were finished with modern materials. I therefore do not consider that the appellant has proven his case on the balance of probability in the light of other evidence submitted. Removal of the original lime plaster finish is a loss of historic fabric, a change to the character of the building and can affect the performance of walls. It affects the character as a building of special architectural and historic interest.

Cornice

22. At first floor level part of the cornice has had added timber battens, the purpose of which is not obvious. These change the formation of the cornice and appear as incongruous additions and affect the character as a building of special architectural and historic interest.

Stair Spindles

23. Some of the stair spindles have been removed, with many of them laid out on the floor in the kitchen ready for reuse. The majority of stair spindles remain in place. As the building is clearly in the process of repair and alteration I consider that their removal is part of this process, with only a very limited number of balustrades having been removed. These are to be replaced in the overall process and I consider that this is part of the reasonable repair process. Partial temporary removal as was found necessary is limited and does not on the balance of probability affect the character as a building of special architectural or historic interest.

Cast Iron Grilles

24. There is no dispute that the cast iron grilles have been removed and are not on site. The appellant suggests these have been removed by the builder. They were clearly part of the listed building and contributed to its architectural and

historic interest and therefore their removal, by whatever means, required consent.

25. The appeal on ground (c) succeeds in relation to the stair balustrades and these will be removed from the enforcement notice. The appeal fails in relation to the wall re-plastering, ceiling replacement, removal of ornate grilles and addition of timber battens to the coving.

Ground (d)

26. The appellant effectively argues that the works were urgently necessary to secure health and safety or preserve the building. The works must be the minimum necessary.
27. I appreciate that some temporary works may have been necessary in the front corner of the building where there is some suggestion of water penetration and associated problems including damage to the ceiling at ground floor level in the toilet. However, the work that has been undertaken has generally gone well beyond that limited to preserve health or safety, or preserve the building. Removing small areas of the damaged plaster at the ground floor ceiling may have been necessary, but it would not have been necessary to carry out re-plastering throughout the building until the appropriate consents had been applied for and received. Removal of artex may be desirable, particularly if it is old and may contain asbestos, but it is not an urgent matter if it remains undisturbed.
28. However, I consider that removal of the small area of ground floor ceiling at the front corner of the building, (yet to be repaired and re-plastered) may have been necessary for health and safety purposes and that this will in time be repaired with matching materials. It therefore is a normal repair (in process) and I shall therefore remove this from the enforcement notice. The appeal therefore partially succeeds in relation to the ground floor ceiling under ground (d).
29. Removal of the grilles and addition of the battens is not justified as an urgent repair.

Ground (e)

30. The works that are to be considered in the application that arises are those in the enforcement notice. There is mention of other matters by the appellant, including heating and electrical works, but these are not part of the notice and therefore not matters for consideration in this appeal.
31. The development plan includes the West Dorset and Weymouth and Portland Local Plan [LP]. Policy ENV 4 notes any harm to the significance of a designated heritage asset must be justified. Applications will be weighed against public benefits of the proposal. The desirability of putting heritage assets to an appropriate and viable use that is consistent with their conservation will be taken into account. This reflects the National Planning Policy Framework (NF).
32. The works undertaken have affected the significance and special architectural and historic interest, by removing fabric important to the performance, character and appearance of the building. The harm in terms of the National Planning Policy Framework is described as 'less than substantial harm' to the significance.

33. The appellant argues that he is providing a good use appropriate for the building and that the works will affect viability. However, there is little information to explain how the viability is affected; not enough to form a judgement to that effect on the balance of probability. I accept that to reuse the building in a complimentary way would be a public benefit, but it could be achieved without the damage caused by the works so the benefit is small. I therefore conclude that public benefits do not sway the balance in favour of the works completed and they are a contravention of LP Policy ENV 4 and the NF and listed building consent should not be granted. The appeal on ground (e) fails.

Ground (g)

34. I consider that the Council has shown that much of the original ceiling and walls were traditionally finished and that these have been altered by the appellant without consent. The removal of traditional materials is the loss of historic fabric and materially affects the character of the listed building and its significance and it is not unreasonable or excessive to require restoration to its former state. While I accept that the building cannot be fully restored to its former state, the required works will bring back to a condition near to its former state and is not unreasonable. The appeal on ground (g) fails.

Ground (h)

35. I consider that 6 months is a short time frame in which to do the works as these will be mixed in with the other repairs and alterations to the listed building. I shall extend the period for compliance to 12 months. The appeal succeeds on ground (h).

Human Rights

36. Representations were made in relation to human rights. I have taken into consideration the Human Rights Act 1998 and the European Convention on Human Rights and I recognise that dismissal of the appeal could potentially interfere with rights under Article 1 of the First Protocol and Article 8. However, given the harm identified to the building, the action is in accordance with the law and pursues legitimate aims of protecting a listed building and is proportionate to the situation.
37. I do not consider that there has been any interference in relation to Article 6, in receiving a fair and public trial, as the appeal process has been followed. I also do not accept any discrimination or racism has occurred during the appeal, which has been dealt with in accordance with the normal processes without discrimination. The appellant has raised a number of issues about the process prior to the appeal, but that is a matter for others.
38. I would also add that the appellant was fully advised by his surveyor about listed buildings and the need to consult with the Council and obtain necessary consents and to some extent this situation could have been avoided had such advice been heeded.

Graham Dudley

Planning Inspector

Annexe 1

Without listed building consent, the carrying out of works ("the Works") to the Building, namely:

Basement

1. The part removal of lath and plaster ceiling in ladies conveniences

First Floor

2. The re-plastering of kitchen walls with modern materials.
3. The erection of a new ceiling to kitchen with modern materials and the addition of lengths of timber strips fixed around the edges of the historic cornicing.
4. The re-plastering of living room walls with modern materials.
5. The erection of new ceiling to living room with modern materials and the addition of lengths of timber strips fixed around the edges of the historic cornicing.

Second Floor

6. The re-plastering of bedroom walls with modern materials.
7. The erection of new ceilings to bedrooms with modern materials.

Third Floor

8. The re-plastering of bedroom walls with modern materials.
9. The erection of new ceilings to bedrooms with modern materials.

Stairwells and Landings

10. The re-plastering of walls and ceilings with modern materials.
11. The removal of some of the ornate spindles from the banisters

Other items

12. The removal of ornate cast iron ventilation grilles

In contravention of Section 7(1) of the Act.

Basement

1. Reinstate the lath and lime plaster ceiling where it has been removed, with materials to match original and a finish to match the panelling effect and corning.

First Floor

2. Remove the modern materials used on the kitchen walls by hand, if any of the walls have been lined with plasterboard this should be removed and timber lathes should be reinstated and all walls to be finished with lime plaster.
3. Remove the modern materials used on the kitchen ceiling along with the timber strips fixed around the edges of the corning. If the ceiling is damaged when carrying out the removal of the modern materials timber lathes and a lime plaster should be reinstated. If any corning is damaged or missing replace to match original in design and materials.

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4. Remove the modern materials used on the living room walls by hand, if any of the walls have been lined with a DPC and plasterboard these should be removed and timber lathes should be reinstated and all walls finished with a lime plaster.
 5. Remove the modern materials used on the living room ceiling along with the timber strips fixed around the edges of the corning. If the ceiling is damaged when carrying out the removal of the modern materials timber lathes and a lime plaster should be reinstated. If any corning is damaged or missing replace to match original in design and materials.

Second Floor

6. Remove the modern materials used on the bedroom walls by hand, if any of the walls have been lined with plasterboard this should be removed and timber lathes should be reinstated and all walls to be finished with lime plastering.
7. Remove the modern materials used on the bedroom ceilings. If the ceiling is damaged when carrying out the removal of the modern materials timber lathes and a lime plaster should be reinstated. If any corning is damaged or missing replace to match original in design and materials.

Third Floor

8. Remove the modern materials used on the bedroom walls by hand, if any of the walls have been lined with plasterboard this should be removed and timber lathes should be reinstated and all walls to be finished with lime plastering.
9. Remove the modern materials used on the bedroom ceilings. If the ceiling is damaged when carrying out the removal of the modern materials timber lathes and a lime plaster should be reinstated. If any corning is damaged or missing replace to match original in design and materials.

Stairwells and Landings

10. Remove the modern materials used on the stairwell and landing walls by hand, if any of the walls have been lined with plasterboard this should be removed and timber lathes should be reinstated and all walls to be finished with lime plastering.
11. Remove the modern materials used on the stairwell and landing ceilings. If the ceiling is damaged when carrying out the removal of the modern materials timber lathes and a lime plaster should be reinstated. If any corning is damaged or missing replace to match original in design and materials.
12. Replace all the removed ornate spindles to the banisters, if any are missing replace with replicas to match the original spindles in design and material.

Other items

13. Reinstate all the ornate cast iron ventilation grilles in their original positions either by using new or reclaimed to match in design and of a similar size and paint in black.
14. Make good any damage caused by carrying out the above.

Note: Section 5 What Steps are Required to be Taken (above) specifies 'Modern Materials' which includes cement render, gypsum plaster, plaster board and DPC. Some or all of these items may have been used within the carrying out of the unauthorised works.
