
Appeal Decision

Site visit made on 14 September 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 November 2020

Appeal Ref: APP/D1265/Y/20/3253751

Phoenix House, High East Street, Dorchester, Dorset DT1 1HH

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) against a refusal to grant listed building consent.
 - The appeal is made by Mr G Clifford against the decision of Dorset Council.
 - The application Ref WD/D/19/001932, dated 31 July 2019, was refused by notice dated 6 December 2019.
 - The works proposed are described as emergency remedial and replacement works to dry rot affected areas.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since refusal of the above application, the Council has granted listed building consent reference WD/D/20/001062 (the latest LBC), for works at the appeal property. Based on the information supplied, the latest LBC covers some, but not all of the works which are subject of the appeal scheme, together with additional works which were either not previously described, or which are clearly different. In this regard, though the Council states that it has not granted consent for the insertion of a steel beam above the bay window, or for the application of drilled and painted fungicidal paste, this does not account for all the works subject of the appeal scheme, or for the differences. Moreover, the Council has not explicitly withdrawn its objection to the appeal scheme as a whole. In view of the above, I have resolved to determine the appeal as set before me. In this regard, both my findings below, and my decision above, do not alter the validity of the latest LBC.
3. The application was submitted retrospectively, therefore the works outlined within it had already been undertaken. As set out in the Act, it is an offence to execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised. Section 9 of the Act sets out the relevant defence. Whilst the parties each seek to address this point, it is ultimately a matter for the Courts to resolve. In this regard, were this appeal to be allowed, any consent granted would be for 'retention' of the works only, and would have no bearing on the legality of their initial execution.
4. I was unable to view all parts of the site at the time of my visit. However, much of the work for which consent has been sought is in any case incapable of

visual inspection. This is either because it relates to fabric which has already been removed, to fabric which has been concealed, or to processes and treatments which either have no external expression, or whose visual effects have again been concealed. Photographs taken during different phases of the works have however been supplied by the appellant, and I have taken these into account in my reasons below.

Main Issue

5. The main issue is the effect of the works on a Grade II listed building, 15 and 16 High East Street.

Reasons

6. In view of the fact that the works have been undertaken to a Grade II listed building, it is necessary for me to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. I have also taken into account paragraph 193 of the National Planning Policy Framework (the Framework), which states that great weight should be given to the conservation of heritage assets.
7. The appeal property is 16 High East Street, which has been split into 2 parts, 16A and 16B. These, together with 15 High East Street, form the listed building. The works in question centre on No 16B. Insofar as it relates to the appeal, the significance and special interest of the listed building lies in its early nineteenth century date and historic fabric, key elements of which include double hung sash windows, finely jointed brown brickwork, and the mid and late nineteenth century ground floor commercial frontages.
8. The works for which consent has been sought form a package specified by a damp proofing firm in response to the identification of dry rot. The specification for the works has been provided, and a plan is attached. However, there is no detailed record or survey of the building fabric as it existed at the time of the inspection.
9. Submitted photographs, which are neither comprehensive nor cross referenced to a plan, provide only limited assistance. Moreover, they do not clearly substantiate the claims made within the appellant's submissions that little or no historic fabric survived internally prior to the works being undertaken. Indeed, where or not plasterboard finishes, linings and other modern interventions may have existed in some areas, the walls of the listed building itself, as too other structural elements, themselves form substantial parts of its historic fabric.
10. My assessment of the impact of the works on the significance and special interest of the building is clearly hindered by the lack of evidence for its previous condition. It is nonetheless possible to assess the nature of the likely potential impact of the works in question.
11. The specification set before me outlines a series of standard interventions, packaged to secure an insurance backed guarantee. Whilst this acknowledges the fact that the building is listed, I have little evidence that the specification was informed by, or directly tailored to the particular character or nature of the historic building fabric, or therefore the desirability of its preservation. This is simply illustrated by the absence of any detailed survey, as noted above.

12. The need to address sources of moisture ingress was noted, as were certain building defects. However, this did not form part of a low impact strategy of repair and environmental control, such as, for example, might entail establishing the extent of the dry rot, pinpointing and remedying its cause or causes, and drying the building fabric in order to conserve the maximum amount of material possible.
13. The approach advocated and then taken was instead to remove material and to seal the building fabric both inside and out. This entailed the specification and use of external sealants, an injected damp proof course, tanking, cement pointing and impermeable waterproof finishes. These interventions will be likely to lock moisture into the building fabric, and/or disrupt, slow or prevent normal patterns of moisture movement through it. In this context the additional moisture introduced to the walls through their irrigation with fungicides will have exacerbated the problem thus caused. In each of these regards, long term degradation of the historic building fabric may result.
14. The isolation of timbers from masonry, the use of fungicides and the introduction of steelwork can all play legitimate roles in conservation work. Insofar as each however causes some harm through loss or potential damage to historic fabric, this harm should be outweighed by the conservation benefits delivered. In this case, in the absence of any clear evidence that the specification was informed by a sound appreciation of the nature, composition and performance of the historic building fabric, or that environmental methods which might have entailed a lesser impact were prioritised, none of these interventions has been adequately justified. This is clearly contrary to the requirement of paragraph 194 of the Framework.
15. I acknowledge the claim that some form of damp proofing had already been undertaken at the property, and that some impermeable finishes were already present. However, if they existed, their lawfulness has not been clearly stated. Furthermore, insofar as they are or were described, no explanation is or was provided of their relationship to the outbreak of the dry rot and the dampness identified. Indeed, insofar as such treatments or finishes, if present, were most likely incompatible with the traditional construction of the building fabric, they may have contributed to the problem.
16. In the above regard the replacement or renewal of inappropriate finishes or treatments 'like for like' cannot be properly considered to constitute preservation. This is because, where such finishes or treatments perpetuate or are likely to give rise to processes of decay or degradation of the historic building fabric, the historic building fabric is not preserved. The effect on the building is therefore negative rather than neutral.
17. Cement pointing has been carried out externally, and in this context the photos supplied show damage to the brickwork which was evidently caused when cleaning out the joints. Aside from the damage which may arise from the use of mortar far harder than that which would have been employed when the building was constructed, permanent damage has therefore been caused to the edges of the bricks. For both this and the above reasons, the works undertaken have not demonstrably achieved preservation of the listed building in accordance with the Act.
18. I appreciate that most of the works specified, and subsequently undertaken, are irreversible. In some cases, there is therefore no option but for such works

to be retained. This simple fact does not however form a basis to legitimise the irreversible harm which has arisen and/or which may arise by allowing the appeal.

19. I also appreciate that rot within a building is a health and safety hazard. However, be that as it may, in view of my findings above, this does not in itself form a basis to directly justify the particular specification and package of works undertaken to the listed building. This is because, in the absence of any evidence to the contrary, health and safety considerations could have been addressed in a more sensitive way.
20. The appellant claims that some of the works were authorised by a historic listed building consent. The Council however disputes this. No detailed evidence relating to the consent in question has otherwise been set before me. I have therefore determined the appeal on its own merits. Again, as in relation to the latest LBC, if another consent does in fact exist which authorises some of the works included within the appeal scheme, my decision above will not affect its validity. This is a matter which can be settled between the parties.
21. In view of my reasons above, and on the basis of the evidence before me, I find that the works have given, and are likely to give rise to less than substantial harm to the significance of the listed building. I attach great weight to the harm that has been caused. In accordance with paragraph 196 of the Framework, it is necessary to balance this harm against the public benefits advanced in favour of the appeal scheme.
22. The principal considerations advanced in favour of the works is that they have preserved the listed building, and that they have fulfilled a health and safety need. Having considered both these points in my reasons above, I attach very little to no weight to them as considerations in favour of the scheme. The works will also have generated employment for the contractors involved. However, as any broader economic benefits of this are negligible in scale, this consideration attracts negligible weight. Consequently, the benefits of undertaking the works is insufficient to outweigh the harm that they have caused ,and are likely to cause to the significance of the listed building.
23. For the reasons outlined above I conclude the listed building has been unacceptably harmed by the works undertaken. They have thus failed to satisfy the requirements of the Act; heritage policy set out within the Framework; and, insofar as it is relevant, conflict with Policy ENV4 of the West Dorset, Weymouth and Portland Local Plan 2015 (the LP), which, though drafted with particular reference to 'development', nonetheless requires applications affecting the significance of a heritage asset to demonstrate how the proposals would positively contribute to the asset's conservation.

Other Matters

24. The site is located in Dorchester Conservation Area (the Conservation Area). This fact is acknowledged by both of the parties, but not addressed in any detail by either. In view of the duty set out in Section 72(1) of the Act, it is nonetheless necessary for me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
25. Insofar as it relates this appeal, the significance of the Conservation Area resides in the historic layout of the town, and the collection and

interrelationship of historic buildings and spaces it contains. Within this context the listed building is a prominent feature which stands on the main historic route through the town, and displays use of a particular type of brick which is distinctive within the local context.

26. The appeal scheme has chiefly involved works to the interior of the building which, unless looking through the windows from the public pavement, are not appreciable from within its setting. Only the pointing has any clear external expression. Insofar as I have found that this has caused harm to the listed building, it follows that it has also caused some harm to the contribution that the listed building makes to the significance of the Conservation Area. The harm caused is again less than substantial, but in this instance, it attracts considerable importance and weight.
27. I am mindful of the fact that the effect of the proposal on the Conservation Area was not a reason for refusal of consent. However, notwithstanding the additional weight that the identified harm lends in favour of dismissing the appeal, this does not alter the outcome of my findings in relation to paragraph 196 of the Framework set out above. Similarly, the additional conflict that the scheme's failure to preserve or enhance the character or appearance of the Conservation Area causes in relation to the Act, the Framework and Policy ENV4 of the LP, does not alter the outcome of my conclusion in relation to the main issue. As such this matter is not determinative of the outcome of the appeal. I am therefore satisfied that the interests of neither party are prejudiced by my findings.

Conclusion

28. For the reasons set out above I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR