



Appeal Decision

Site visit made on 16 February 2021

by Thomas Shields DipURP MA MRTPI

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

Decision date: 10 May 2021

Appeal Ref: APP/A1910/F/20/3262176

Markyate Grill, 121 High Street, Markyate, St. Albans, Herts, AL3 8JG

- 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 Kowser Murshed (Markyate Grill) against a listed building enforcement notice issued by the Dacorum Borough Council.
 - The listed building enforcement notice was issued on 5 October 2020.
 - The contravention of listed building control alleged in the notice is installation of an extraction system and external flues to the rear of the building.
 - The requirements of the notice are:
 1. Permanently remove from the land the extraction system, associated flues and any other materials or apparatus associated with the extraction system or flues.
 2. Ensure that any opening created by virtue of carrying out the works required in Step 1, is repaired and infilled. These works should result in a water and wind proof seal and shall match the adjacent areas in terms of external material and finish.
 - The period for compliance with the requirements is 4 months.
 - The appeal is made on the grounds set out in section 39(1)(c) and (d) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (PLBCAA).
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Decision

1. The appeal is dismissed, the listed building enforcement notice is upheld and listed building consent is refused for retention of the works carried out in contravention of section 9 of the PLBCAA.

Preliminary matters

2. No appeal was made under ground (e) that listed building consent (LBC) ought to be granted for the works. However having read all of the representations I consider that there is an implied ground (e) appeal. I shall therefore consider whether or not LBC should be granted. I am satisfied that this course of action will not cause any injustice to the appellant or to the Council.
3. Following the issue of the notice on 5 October 2020 further works were undertaken by the appellant. These comprise the erection of screen fencing and attached planter boxes. However, these works are not subject of the notice.

Appeal on ground (c)

4. This ground of appeal is a claim that the works carried out and subject of the notice do not affect the character of the listed building, in contravention of section 9 of the PLBCA.
5. 121 High Street Markyate is an end of terrace corner building at the junction with Hicks Road which runs to the side and rear of the property.

6. No. 121, along with adjacent number 117 and 119 comprise a Grade II Listed Building. The terrace dates from the 17th century or earlier, constructed in red brick with steep red tile roof and with No. 121 having a stucco facing. At first floor No. 121 has two timber sash windows to the front, a flush box sash window to the side below a cusped bargeboard, and two timber casement windows to the rear.
7. Two galvanised metal fume extraction flues, subject of the notice, have been installed and emerge and project vertically from the flat roof of the single storey rear addition. They are large structures of overtly modern character and appearance constructed in modern materials. Without doubt they have affected the character of the building. LBC is required for the works carried out and has not been granted. The appeal on ground (c) therefore fails.

Appeal on ground (d)

8. This ground of appeal is a claim that the works carried out were essential and urgent works necessary to preserve the listed building. The key words here are 'essential' and 'urgent'. As such, three tests must all be satisfied. Firstly, that the works were urgently necessary in the interests of safety or health; secondly, that it was not practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support; and thirdly, that the works carried out were the minimum measures immediately necessary to achieve the aims of safety, health or preservation.
9. I acknowledge the appellant's evidence that the extraction and flue equipment that had been in place previously was inefficient and that complaints had been made concerning smoke and fumes that it produced. I also accept that without efficient extraction equipment the production of such fumes in the long term can be injurious to health. However, it is clear from the appellant's submissions that he was aware of the poor operation of the older system for some time before installing the new equipment. He could therefore have sought advice and prepared an application for LBC before undertaking the works subject of the notice.
10. Taking account of these factors, and with no other convincing evidence to suggest otherwise, I conclude that the installation of the new extraction equipment and flues, subject of the notice, was not so urgently necessary for safety and health, or for preservation of the building, that an application for LBC could not have been made beforehand. Consequently, the tests I have set out above have not been satisfied and the appeal on ground (d) fails.

Appeal on ground (e)

11. The appeal on ground (e) is that LBC ought to be granted for the works subject of the notice.

Main Issue

12. The main issue is the effect of the works on the architectural character and historic interest of the listed building and the character and appearance of the Markyate Conservation Area (MCA).

Reasons

13. I have had special regard and paid special attention to the requirements of sections 16(2) and 72 of the PLBCAA. Policies CS11, CS12, CS25 and CS27 of the Dacorum Core Strategy (September 2013) (CS) are material considerations as is the Framework¹ in respect of designated heritage assets, which I have also taken into account.
14. I am unaware of the effect on the listed building and MCA of the old equipment which was replaced. However, the Council's evidence that it was also unauthorised and in contravention of s9 of the PLBCAA is not disputed by the appellant. My consideration of this appeal relates solely to the works carried out as set out in the notice.
15. Notwithstanding the surrounding screen fencing and attached planters, I saw during my visit to the appeal site that the upper part of the flues were still visible from ground level. In addition, I have examined the Council's submitted photographs showing views of the works at the rear of the building prior to the erection of the screen fencing. Contrary to the appellant's views, I consider that these large modern flues are highly prominent modernising features starkly at odds with the character of the listed building. In both short and long range views from Hicks Road the vertical projection of the bulky equipment cuts through the eaves line of the historic roof and also substantially obstructs views of the rear first floor timber casement windows. As such, the works result in considerable harm to the character and integrity of the listed building. As such, they also fail to preserve or enhance the character or appearance of the MCA.
16. The surrounding screening added subsequently has not mitigated the effect of the works because it has had the effect of further obstructing the window and roof details I previously described and which are intrinsic to the character and historic interest of the listed building. It would therefore be inappropriate to grant consent with a condition requiring such screening. I am also unconvinced by the appellant's assertion that the works carried out minimised the impact on the listed building and the MCA. There is no convincing evidence before me to suggest that a less harmful scheme of works is unavailable or that any advice on a more sensitive design was sought from the Council or from other sources.
17. Overall, I find that the works carried out are an insensitive and bulky addition, harmful to the character and integrity of the listed building and its architectural features. As such, the works are also harmful to the character and appearance of the MCA. The works thereby conflict with the requirements of CS Policies CS11, CS12, CS25 and CS27. Although the harm to the heritage assets is serious, I find it to be less than substantial as set out at Framework paragraph 195. Accordingly, the harm should be weighed against any public benefits of the works. While operation of the business indirectly contributes to the local economy, and cooking fumes and noise from extraction equipment has improved, these limited public benefits do not individually or cumulatively outweigh the harm I have identified.
18. For all these reasons the appeal on ground (e) fails.

Thomas Shields INSPECTOR

¹ The National Planning Policy Framework (2019)