



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: 26 May 2021

Appeal Ref: APP/A1910/F/20/3261709

57 St. Johns Road, Hemel Hempstead, HP1 1QQ

- 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 Ms Rachel Gold against a listed building enforcement notice issued by the Dacorum Borough Council.
- The listed building enforcement notice was issued on 25 September 2020.
- The contravention of listed building control alleged in the notice is the removal of timber windows and a timber back door and installation of uPVC windows and a uPVC back door without the benefit of listed building consent.
- The requirements of the notice are:
 1. Remove the uPVC windows and frames from the front of the property.
 2. Install new windows and frames of timber construction.
 3. The windows shall be of an 8/8 vertically sliding sashes of equal proportions.
 4. The astragals (narrow moulded timber bar separating panes of glass) must be structural, with a traditional mould-ovolo, and no wider than 18mm.
 5. The glazing should be fixed into the frames and astragals with putty.
 6. The windows should not have horns.
 7. If all the above can be met double glazed units (slimlite or the equivalent 6mm gap) can be used.
 8. Any trickle vent should not be visible externally.
 9. The window frame and sashes should be solid painted white in colour.
 10. The sash weights shall be contained within a timber box and attached to the window with a sash cord via a pulley.
 11. Remove the uPVC windows and frames from the rear of the property.
 12. Install new windows and frames of timber construction.
 13. The replacement ground floor rear elevation window shall be of an 8/8 vertically sliding sash. The replacement first floor rear elevation window shall be of a 4/8 vertically sliding sash. In both cases, all panes shall be of equal proportions.
 14. The astragals (narrow moulded timber bar separating panes of glass) must be structural, with a traditional mould-ovolo, and no wider than 18mm.
 15. The glazing should be fixed into the frames and astragals with putty.
 16. The windows should not have horns.
 17. If all the above can be met double-glazed units (slimlite or the equivalent 6mm gap) can be used.
 18. Any trickle vent should not be visible externally.
 19. The window frame and sashes should be solid painted white in colour.
 20. The sash weights shall be contained within a timber box and attached to the window with a sash cord via a pulley.
 21. Remove the uPVC windows and frames from the side elevation of the property.
 22. Install new windows and frames of a timber construction.
 23. The casements shall be flush fitting with the timber frame.
 24. The casements (if opening) shall be side hung.
 25. The casement shall consist of 4 equal sized panes.
 26. The astragals (narrow moulded timber bar separating panes of glass) must be structural, with a traditional mould-ovolo, and no wider than 18mm.

27. The glazing should be fixed into the frames and astragals with putty.
 28. If all the above can be met double-glazed units (slimlite or the equivalent 6mm gap) can be used.
 29. Any trickle vent should not be visible externally.
 30. The window and frame shall be solid painted white in colour.
 31. Remove the uPVC back door and frame.
 32. Replace the door with a new door and frame of timber construction.
 33. The door shall be of 3 equal sized panels separated by mullions set side by side below the mid rail.
 34. The panels shall be surrounded by a simple raised bead.
 35. Above the mid rail the door shall be glazed in 6 equally sized panes, 3 to each side of a central mullion (vertical bar dividing the timber panels).
 36. The door shall be painted in a single dark colour and not a high gloss finish.
 37. If all the above can be met double glazed units (slimlite or the equivalent 6mm gap) can be used.
 38. The door furniture shall be metal with a single dark colour finish.
- The period for compliance is 18 months for requirements 1-10, and 3 years for requirements 11-38.
 - 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 (PLBCAA).

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

Background

1. No. 57 St. Johns Road is one of a pair (with No. 55) of three similar pairs¹ of C19th two storey semi-detached houses within a single list entry comprising a Grade II listed building. It should be noted that the list entry description is solely for identification purposes and not a summary justification of their historic value or why the buildings were added to the list.
2. Each pair has a low pitched hipped roof in Welsh slate with eaves cornices, and with elevations constructed in flint rubble between wide red brick pilasters at the corners, and double width pilasters at midpoints dividing each pair. Each pair was also constructed with timber single glazed windows and doors. No. 57 has 8 over 8 pane (8/8) sash windows centrally positioned at ground and first floor front elevation and rear ground floor; and a 4/8 sash window at rear first floor.
3. At the appeal property the timber single glazed windows to all elevations and the rear door have been removed and replaced with uPVC double glazed units, now subject of the listed building enforcement notice and this appeal.

The Listed Building Enforcement Notice (LBEN)

4. S38(2) states that a LBEN shall specify the alleged contravention and require such steps as may be specified in the notice to be taken within such period as may be so specified:
 - (a) for restoring the building to its former state; or
 - (b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent; or

¹ The two other pairs of semi-detached houses in the listed group are Nos. 59/61, and 63/65

- (c) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with.
5. The LBEN states it has been issued pursuant to s38(2) of the PLBCAA. However, it omits which part of s38(2), [either (a), (b) or (c)], is exercised in respect of the steps (the requirements) to be taken. It is important to state which is relevant because the available grounds of appeal against a LBEN at s39(1)(g), (j) and (k) relate differently to each one. The Council refer² to the requirements at Section 5 of the LBEN as being necessary to "restore" the building to its former condition. That would indicate the requirements relate to s38(2)(a). However, I do not consider that to be the case for the following reasons.
 6. The LBEN requirements allow for variation in the width of the astragals up to 18mm, and hence an associated variation in pane size, (requirements 4, 14, 26) together with double glazing (requirements 7, 17, 28, 37) and trickle vents (requirements 8, 18, 29). However, this was not the previously authorised form of the windows and rear door. As such, these works would not restore the building to its former condition. Hence, they can only properly be considered as requirements to alleviate the harm the Council considers has resulted from the appellant's works and consequently they fall within s38(2)(b).
 7. Following on from the above, for a LBEN issued pursuant to s38(2)(b), the relevant ground of appeal in respect of the requirements being excessive is ground (j) - that they exceed what is necessary to alleviate the effect of the works executed to the building, rather than ground (g) that they exceed what is necessary for restoring the building to its former condition.
 8. I have wide powers to correct a LBEN provided that would not materially prejudice any party. In this particular case I am satisfied from the evidence before me that neither the appellant nor the Council would be prejudiced by allowing the appellant's submissions to be considered as if they had been made under ground (j). I will therefore correct the LBEN accordingly and substitute the appeal made under ground (g) for ground (j).
 9. From the appellant's submitted evidence it is apparent that she has understood what the Council's intentions are with the requirements at Section 5 of the notice. Nonetheless, they must also be clear to others including, for example, any future successors in Title. Consequently, in order to make them more precise, the wording of some of the requirements necessitate some minor corrections. At Section 5.1, 5.6, 5.8, 5.9, 5.15, 5.16, 5.18, 5.19, 5.27, and 5.29 the word "*should*" will be replaced with the word "*shall*". At Section 5.7, 5.17, 5.28 and 5.37 the words "*...can be used*" will be replaced with the words "*...may be used, otherwise the replacements shall be timber single glazed units*". I am satisfied that these minor corrections can also be made without prejudice to either of the main parties, and I will correct the notice accordingly.

Appeal on ground (c)

10. For the appeal on this ground to be successful the appellant must show that the works carried out do not constitute a contravention of sections 7 and 8 of

² Council's appeal Statement of Case, paragraphs 7.30-7.32

the PLBCAA. Section 7 says that no person shall execute or cause to be executed any works to a listed building, including those for its alteration, in any manner which would *affect its character* as a building of special architectural or historic interest, unless the works are authorised. Section 8 sets out when works to a listed building are authorised.

11. There is no dispute that the works the subject of the notice were carried out without any application being made for listed building consent. The appellant must show therefore that the works do not affect the building's character as a building of special architectural or historic interest. It should be noted that the question to be answered is simply whether the character has been *affected*, and not whether the works are considered harmful.
12. The windows and door openings at the appeal property are significant and distinguishing features, intrinsic to the building's overall character as I have previously described. The removed windows were traditional white painted timber frames with individual single glazed panes divided by slender structural horizontal and vertical timber glazing bars. The rear door was also painted timber with single glazed panelling.
13. The replacement windows now inserted into the openings are of uPVC construction. They have relatively thicker and wider frames with glazing bars surface-mounted across the outer glass, rather than being structural elements of the frame separating individual panes. The uPVC material also has a modern shiny finish with a precision machine-produced quality. The windows also give off a noticeable 'double-register' reflection. Taken together, these factors emphasise their appearance as modern alterations to a historic building. Irrespective of whether the works carried out result in any harm, or whether the rear elements are readily visible in public views, they have undoubtedly affected the character of the listed building.
14. The appeal on ground (c) therefore fails.

Appeal on ground (d)

15. An appeal on ground (d) contends that the works carried out were essential and urgent works necessary to preserve the listed building. This ground of appeal is made solely in respect of the removal and replacement of the rear door.
16. 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 or preservation of the building; secondly, that it was not practicable to achieve the aims of safety, health or preservation 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.
17. The appellant's submitted photographs and February 2019 survey³ report point to evidence of woodworm, rotten sections of the door frame, some broken glazing, and damage to the timber threshold. I also note the cat flap that had been inserted in the lower panel of the door by a previous owner. The survey recommends repairs to the timber elements and replacement of the broken glass, rather than noting the door as being beyond reasonable repair.

³ Hugh James, RICS Building Survey, sections E6/E7, 11.02.2019

Consequently, while I acknowledge the appellant's concerns relating to security and efficient heating of the property, I am not convinced that the replacement of the door represented the minimum urgent works necessary for safety and health or to preserve the listed building. Moreover, the appellant did not purchase the property until later in April 2019, and so she had time after receiving her survey report to seek advice and make an application for listed building consent before undertaking the works.

18. I accept the appellant was unaware that listed building consent was necessary, and in general terms felt 'encouraged' by works that had been undertaken by the Council to neighbouring properties. However, that does not circumvent the requirement to satisfy the three tests I have set out set above. They have not been satisfied and thus the appeal on ground (d) fails.

Appeal on ground (e)

Main Issue

19. An appeal on ground (e) seeks to show that listed building consent should be granted for the works carried out as alleged in the LBEN. The main issue is the effect of those works on the special architectural or historic interest of the listed building.

Reasons

20. Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act, 1990 requires me to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses. I have also taken into account the provisions of the Framework⁴ which is also a material consideration.
21. Given their traditional timber construction and proportions, the form and composition of windows and doors in this building are a significant feature of its overall character and historic interest as I have previously set out. In this regard it is noteworthy that even subtle differences between historic fabric and proposed replacements can have a significantly harmful effect on the integrity and special interest of a listed building.
22. The uPVC replacement windows and door inserted have non-structural glazing bars, the white uPVC material has a modern production sheen finish and the internal gap between the two panes of glazing is of a depth that results in a noticeable double reflection. The frames, with visible trickle vents, appear heavier in composition than the more slender and refined timber windows they replaced. Taking these factors in combination, the replacements overall have an unambiguously modern appearance. As such, they contrast sharply and inappropriately with the traditional and historic fabric and character of the listed building. Consequently, I conclude that the works carried out result in harm to the character and historic interest of the listed building.
23. The side and rear elements are not readily visible to the public, but that does not mitigate the harm to character of the building I have identified. Moreover, adding timber beading and paint or putty to the edge of the astragals would not mitigate that harm. Additionally, while works have been carried out to

⁴ National Planning Policy Framework (2019)

other properties in the listed group affecting their character, this should not be taken as a precedent and any harm should not be compounded. Moreover, I note that the works are subject of remedial action by the Council. None of these considerations, either by themselves or taken together, overcome the more fundamental concerns I have regarding the harmful effect on the listed building as a whole. Consequently, they do not lead me to a different conclusion.

24. In the language of the Framework the harm is 'less than substantial' and thereby should be weighed against any public benefits. Accordingly, I note the appellant's references to the eco-thermal advantages of the uPVC units, the avoidance of waste if they were retained, and their contribution to the long term viability of the building as a dwellinghouse. However, these do not provide a level of public benefits which can be said to outweigh the harm I have identified.
25. For all these reasons the appeal on ground (e) fails.

Appeal on ground (j) (substituted for ground (g))

26. The ground of appeal seeks to show that the requirements exceed what is necessary to alleviate the effect of the alleged works.
27. The appellant's suggestion of adding timber beading and putty or paint to the frames does not address all of the harm previously described. Indeed I am not persuaded they would alleviate any of the harm to the historic character of the building. There is a significant risk that they could result in more harm.
28. The effect of the works arises from the harm caused through the loss of the former timber single glazed windows and door. It is clear to me that the requirements of the notice do not exceed what is needed to alleviate that loss. Consequently, the appeal under ground (j) fails.

Appeal on ground (h)

29. The ground of appeal is that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed.
30. The LBEN compliance period is 18 months for the requirements relating to the front of the property and 3 years for those to the rear of the property. The appellant seeks a period 3 years and 8 months for all requirements. Although not specifically referred to in her ground (h) submissions I take that to also include for the rear door.
31. The appellant argues she should have an extended period of time in line with that given for alleviation of works to other properties. While I am not persuaded by that argument I note that it arises more directly from her significant concerns over the financial burden the requirements impose upon her in those timeframes.
32. In this regard I consider that a period of 3 years (for the rear) does not fall short of what should reasonably be allowed. However, I accept that the shorter 18 month period (for the front) would be more difficult to achieve. Furthermore, allowing the same period of time for completion of all works

would provide the opportunity for costs savings from the ability to secure a single scheme and contract for all works to be funded and executed within a single time frame rather than two separate ones. I acknowledge that some elements of the unauthorised works are visible from the public arena and therefore more sensitive, however the resulting harm relates to the significance of the listed building as a whole regardless of whether elements are readily visible or not. For these reasons I consider that a compliance period of 3 years for all of the LBEN requirements (1-38) would be more reasonable. The appeal on ground (h) therefore succeeds to this extent and I will vary the LBEN accordingly.

Formal Decision

33. It is directed that the listed building enforcement notice be corrected by:

- in Section 1, line 2, deleting "s.38" and inserting the words "s.38(2)(b)";
- in Section 5.1, 5.6, 5.8, 5.9, 5.15, 5.16, 5.18, 5.19, 5.27, and 5.29 deleting the word "should" and inserting the word "shall";
- in Section 5.7, 5.17, 5.28 and 5.37 deleting the words "can be used" and inserting the words "may be used, otherwise the replacements shall be timber single glazed units".

34. It is directed that the listed building enforcement notice be varied by:

- in Section 5 deleting all of the words after 5.38 and inserting instead the following words: "Time for Compliance: 3 Years".

35. Subject to these corrections and the variation, 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.

Thomas Shields

INSPECTOR