



Appeal Decision

Site visit made on 4 May 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 12 July 2021

Appeal Ref: APP/R0660/F/21/3267447

Avenue Lodge, London Road, Doddington, Cheshire CW5 7NJ

- 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 Lady Rona Delves Broughton of the Doddington Estate against a listed building enforcement notice issued by Cheshire East Council.
- The enforcement notice was issued on 17 December 2020.
- The contravention of listed building control alleged in the notice is the alteration and extension of the building which has an adverse impact on its architectural character 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 to restore the building to its former state by taking the following steps:
 - Remove 8 unauthorised plastic double glazed windows (windows 1-8 identified on Photographs attached to this notice at Appendix 1) and replace with timber windows as per the specification contained in Appendix 1 to this Notice. Three on southern elevation; two on northern elevation; two on western elevation; one on eastern elevation). The timber windows are to be fabricated in soft wood be of flush design and have single glazing only. All windows are to be painted white. Opening lights for each window are to be as detailed below.
 - The design of the windows shall be as follows:

Front Bay, South Elevation Photographs A and B in Appendix 1; the 3 bay arched windows nos 1, 2 and 3 are to be fabricated in soft wood, be 2 over 2 flush casements. The horizontal subdivision each window shall be $\frac{1}{4}$ over $\frac{3}{4}$. The vertical subdivision is to be central to the window. The top opening lights are to be top hung and the lower opening lights side hung. The windows are to be single glazed. The frames are to be painted white.

Western elevation arched windows 4 and 5, Photograph C in Appendix 1 are to be fabricated in soft wood and be 2 over 2 flush casements. The horizontal subdivision of the window is to be $\frac{1}{4}$ over $\frac{3}{4}$. The vertical subdivision is to be central to the window. The top opening lights are to be top hung and the lower opening lights are to be side hung. The windows are to be single glazed. The frame is to be painted white.

Eastern Elevation Photograph D in Appendix 1, arched window no. 6 shall be fabricated in soft wood and shall be sub-divided vertically into three equal parts. Opening lights are to be side hung. The window shall be single glazed. The frame is to be painted white.

Northern (Rear) Elevation Photograph C in Appendix 1. Window no. 7 is to be fabricated in soft wood with a soft wood sill. The window is to be divided in half vertically. The opening light shall be side hung. The window shall be single glazed. The frame is to be painted white.

Window No. 8 is to be fabricated in soft wood with a soft wood sill. The window is to be 2 over 2. With the window frame being $\frac{1}{3}$ over $\frac{2}{3}$ with a central vertical subdivision. The top opening lights are to be top hung with the lower opening lights

are to be side hung. The window shall be single glazed. The frame is to be painted white.

All windows are to be fabricated in accordance with Drawing Nos. 1-5 attached to this notice. Where a timber sill is required this shall be in accordance with Drawing Nos. 1-6 attached to this notice.

Each window detailed above is 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), (c), (e), (h) and (i) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
-

Summary of Decision

1. It is directed that the listed building enforcement notice be corrected, including amendment to the original allegation and the inclusion of a revised allegation and variation to the timescale for compliance as set out in the Formal Decision. Subject to these corrections and 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 Area) Act 1990 as amended.

Site and Surroundings

2. Avenue Lodge is one of a pair of single storey lodges on London Road which are situated within the boundary of Grade II listed Doddington Park. It is located approximately 650 metres from Doddington Hall which is a Grade I Listed Building, first listed in June 1952. The lodges flank the entrance to a driveway leading to the Hall which links to an avenue of trees, originally laid out in the eighteenth century and known as Wilbraham's Walk.
3. Doddington Hall is a substantial country house built between 1777 and 1790 and designed by Samuel Wyatt. It is built in Keuper sandstone ashlar with a slate roof with lead flashings. It is three storeys in height with a main front entrance and 9 bays which are symmetrically disposed. The Hall is a fine neo-classical composition which could be described as being stark in terms of its detailing and decoration with a heavy channelled base and upper floors with sandstone and Coade Stone decorations. The house has a rendered brick service wing which curves away towards the west as well as a group of ancillary cottages, a red brick stable block, the remains of the former Delves Hall, Star Barn and Demesne Farm and other lodges and features, including the appeal lodge.
4. Avenue Lodge is situated immediately adjacent to Grade II listed Lake Lodge gates, piers and screen walls which were first listed in September 1986. Originally built between 1777 and 1790 the wrought iron, ashlar and red English garden wall bond brick with ashlar copings are thought to have been moved to their current location at the beginning of the twentieth century. They show central drive gates with arrowhead finials to the palings, quatrefoils to the dog bar panel and crescent shaped strengthening bars. To either side are square ashlar piers with flat pyramidal caps and at either side of these are double wicket gates. To either side of these is another pair of similar ashlar piers connected to the screen walls which are curved and have chamfered ashlar coping above.

Procedural Matters

5. The allegation in the Listed Building Enforcement Notice (LBEN) relates to the alteration and extension of the building which has an adverse impact on its architectural character including the installation of eight plastic material double glazed windows (three on the southern elevation, two on the northern elevation, two on the western elevation and one on the eastern elevation). The requirements relate to restoring the building to its former state by removing the eight unauthorised windows and replacing them with timber windows as per the specification set out as an appendix to the notice.
6. I have noted that although the alleged contravention relates to alteration and extension of the building, neither the reasons for issuing the notice nor the requirements of the notice refer to the extension. It is clear that as well as the replacement windows extensive other alterations have taken place at the property following a fire, including new concrete floors and the removal of all plasterwork, rewiring and plumbing. In its appeal statement the Council states that it has not required the correction and reinstatement of the building in relation to the other work which has been carried out. The Council also states that the requirements of the notice are the minimum required to remedy the harm caused to the architectural character of the building and that it would not grant listed building consent for the works carried out. The simplest way forward is to delete the reference to the extension in the alleged breach. The Council has stated that there is no objection to such deletion. Therefore, the reference to the extension will be deleted since this would cause no injustice to either main party.
7. There is a typographical error in paragraph 5 of the LBEN where the final sentence on page 2 refers to "The *fame* is to be painted white". This should clearly read "The *frame* is to be painted white". This can also be corrected without causing prejudice to the main parties.

Application for costs

8. An application for costs was made by Lady Rona Delves Broughton of the Doddington Estate against Cheshire East Council. This application is the subject of a separate Decision.

Historic Background

9. The wider estate has been in the Delves Broughton family since 1352 when Sir John Delves purchased the Manor of Doddington to establish his own house. The original Delves Hall was redeveloped between the fourteenth and seventeenth centuries with the tower being the only remaining part which is Grade I listed and is situated to the north of the Hall. Around the mid-eighteenth century the old Delves Hall was mostly demolished and by 1766 Doddington was used as a farm.
10. The Doddington Estate undertook its major transformation between the mid-1770s and 1810s when Lancelot 'Capability' Brown was commissioned to provide a general plan for the alterations and plans for the house and other buildings. The extent to which Capability Brown's plans for the landscape of the estate are not known, but the Grade II registered park and gardens has features that are associated with him, according to the evidence presented to

me and this is recognised by Historic England, among other heritage authorities.

11. Brown's plans for the house were rejected and Samuel Wyatt drafted new plans around 1776 and construction of Doddington Hall started in 1777 and was completed some years later in 1798. The Hall represents the most complete collection of the different typologies of Samuel Wyatt buildings nationally on a single site. The Hall itself, the service wing, stables and Demesne Farm, Star Barn, Walgherton Lodges and the Lake Lodge gates, piers and walls were all designed by Wyatt, starting at the beginning of his career, but as a consequence of the timescale taken to build the estate, also show how his architectural style and planning skills developed and matured over time.
12. Historical evidence shows that between the early nineteenth century and early twentieth century there were limited changes to the estate and buildings. However, Avenue Lodge and its neighbour, Lake Lodge were built along with the extension to Wilbraham's Walk to London Road to provide a new entrance to the grounds and Hall. This phase included the abandonment of the part of the drive skirting the east side of Doddington Pool which linked Wilbraham's Walk to the Bridgemere Lodges and it is also thought that the relocation of Samuel Wyatt's Lake Lodge gates, piers and walls also took place as part of this phase.
13. During the 1930s and 1940s land and the contents of the Hall had to be sold off in order to pay off family debts and death duties and in 1946 Goudhurst College was relocated to the Hall from Kent. The lease with the College was extended in 1967 for a twenty year period and it is my understanding that this included the same buildings and land in the original 1946 lease; namely the Hall and two cottages (neither one of which were Lake Lodge nor Avenue Lodge). The Hall remained in use by the College until 1985, since which date the current owner has been working to secure the long term viability of the estate and its buildings.
14. Avenue Lodge suffered a fire in 2017 which destroyed part of the building's internal fabric, doors and windows. I understand that the building was in such poor condition after the fire that the owner considered demolition and a total rebuild. Extensive works were subsequently carried out, including fitting new plastic windows to improve the building's thermal performance.

The appeal on ground (a)

15. The ground of appeal is that the building is not of special architectural or historic interest and implicitly attacks the listing of the building. The ground only applies to the listed building or buildings themselves and the merits of curtilage buildings are irrelevant to a ground (a) appeal. Therefore, quite simply, if Doddington Hall and Lake Lodge gates, piers and screen walls are included on the 'list' they are deemed to be of architectural or historic interest.
16. In this case, the appellant has focussed on whether Avenue Lodge makes any contribution to the special interest of Doddington Hall and the nearby listed Lake Lodge gates, piers and screen walls and whether it can be considered to be a curtilage listed building. Since there is no argument that Doddington Hall or the gates, piers and screen walls are not of architectural or historic interest the appeal on ground (a) must fail.

The appeal on ground (c)

17. Recent case law¹ has summarised the factors that should be taken into account when considering whether land or structures fall within the curtilage of a listed building and the case re-affirms the approach in the *Calderdale case*² and the qualification of this in the *Debenhams case*³ by the additional test which requires the structures to be ancillary to the building in the statutory list. The three factors are the physical layout of the listed building and the land or structure, their ownership, past and present and their use or function, past or present.
18. With reference to the current appeal, the Debenhams case is of particular relevance since, with respect to use or function, 'a structure within the curtilage of the buildings' as referred to in legislation, must be restricted to *"such structures as are ancillary to the listed building itself, for example the stable block of a mansion house, or the steading of a farmhouse, either fixed to the main building or within its curtilage"*. Therefore, it is clear to me that this test avoids the inclusion of a separate building in its own right which is not subordinate in its use or function to the listed building.
19. Furthermore, when dealing with cases such as this it is important to understand the extended definition of listed buildings through structures falling in the curtilage of the listed asset, being that *"a structure or object which is so clearly related to a listed building that its removal would adversely affect the interest of the at building, should be treated as falling within the extended definition of listed building, even if that item would not otherwise be regarded as part of, or one of the features for that building"*.
20. Consequently, Avenue Lodge should be considered in the wider context of its contribution to the special architectural or historic interest of Doddington Hall and other associated listed structures and not as a designated heritage asset in its own right. I consider the key factors in establishing whether or not it can be defined as being within the curtilage of a listed building in turn, below.

Physical Layout

21. Doddington Hall is a Grade I listed building which forms part of a large landscaped park of approximately 160 hectares. It is my understanding that the Hall has three main access drives with lodges, one of which is known as Wilbraham's Walk and links London Road with the Hall. Avenue Lodge is one of a pair of gatehouse lodges that is situated adjacent to the access which is formed by entrance gates and associated walls which are listed in their own right. Furthermore, it is noteworthy that the park area is listed as a Grade II historic park and garden.
22. The lodges are situated approximately 650 metres from Doddington Hall and, were built approximately 120 years after the Hall when Wilbraham Walk was realigned and the access gates, walls and piers were constructed between 1898 and 1901, according to historical data. Therefore, the lodges were not erected as part of the original grand entrance onto the Park, but as a later addition when a number of works were carried out around the estate. Nonetheless,

¹ Hampshire County Council v Secretary of State for Environment, Food and Rural Affairs [2020] EWHC 959 (Admin)

² Attorney General ex rel. Sutcliffe v Calderdale Borough Council [1983] JPL 310

³ Debenhams plc v Westminster City Council [1987] AC 396

from around 1900 Wilbraham Walk became the main formal access point into the Park and to the Hall.

23. The appellant has stated that if the Lake Lodge gates were by Samuel Wyatt (as stated in the listing) they may have been re-located to their current position from elsewhere. Before the lodges and relocation of the entrance features there was no access into the Park from London Road at this location, but rather historic data shows that Wilbraham's Walk was part of a drive skirting Doddington Pool. It is therefore argued that Avenue Lodge is part of a later and minor phase of the history of Doddington Hall, with its erection and associated buildings and works being detrimental to the high significance of Lancelot Brown and Samuel Wyatt's original designs for the estate; the new entrance arrangements significantly changing the approach to the Hall from London Road.
24. However, Avenue Lodge is one of a pair of gatehouse lodges situated at an historic formal entrance to the Hall which, together with the entrance composition of the adjacent listed gates, piers and walls, have an important role in announcing the arrival at the historic location, and, in particular, the arrival at Doddington Hall. The Lodge sits immediately adjacent to other important listed entrance features, is within the historic estate of a Grade I listed building (Doddington Hall) and is also identified in the description of the Grade II listed park and gardens.
25. Furthermore, the two lodges front onto each other at either side of the access driveway, facing onto the drive which has historically formed the entrance into the estate. I am aware that it is a later phase of the development of the park, but that that it is not of less value in the contribution to the historic development of the estate. The situation at the date of listing is also an important in determining factor and the gatehouse lodges, Lake Lodge and Avenue Lodge, were both present prior to 1948 and at the time of the listing of the other structures on the estate, including the Hall and Lake Lodge gates, piers and screen walls.

Ownership

26. It is my understanding that at the time Doddington Hall was listed in June 1952 Avenue Lodge was within the ownership of the Doddington Estate, but it was let to a private tenant as a separate dwellinghouse. The Hall was let to Goudhurst College and therefore the Lodge was also separate in terms of its function.
27. I understand that whilst some parts of the original estate have been sold, the Hall and the lodges have remained within the ownership of the same family. The evidence before me shows that, according to the Land Registry, the title to the land is currently registered to the appellant who is a descendant of Sir Thomas Broughton who commissioned the rebuilt Hall in the late eighteenth century.
28. The appellant has also pointed out that Avenue Lodge does not appear within the red line of the School's 1967 lease and there is an indication that the details of that lease may be the same as an original lease document in place at the time of Doddington Hall's listing. Evidence suggests that Avenue Lodge was occupied by tenants of Sir Evelyn Delves Broughton who were not in employment at the school.

29. Therefore, the evidence before me shows that, although there have been various tenants in Avenue Lodge, it has remained in the same ownership since well before the date it was listed. Therefore, there is a clear link between Avenue Lodge, Doddington Hall and the Lake Lodge gates, piers and screen walls in terms of ownership.

Use or function, past and present

30. The evidence before me shows that the use and function of Avenue Lodge has changed over the years. It appears that it was originally erected for an ancillary purpose associated with the access into the Park. However, by 1952 when the Hall was listed it was being used for educational purposes. Although at that time the Lodge retained its residential use it is also clear that its function remained the same as its original purpose as a lodge associated with the access to the Hall and its parkland setting.
31. In my judgement, Avenue Lodge had only a limited relationship in terms of the functioning of the school. I also understand that according to lease documentation the use of the Hall as a school was not on the basis of the whole of the estate being leased to Goudhurst College, but rather it was very specific, relating to the Hall itself only and an area of land which provided some ancillary outdoor space to be used for recreational purposes. Therefore, it can only be said that Avenue Lodge had a limited functional relationship with Doddington Hall.
32. Nonetheless, the lodges originally had a use associated with the access and that has not changed over time and, indeed, it can reasonably be argued that the function of Avenue Lodge and its neighbour, Lake Lodge, has increased over time as a consequence of their location at the main entrance to Doddington Hall and the listed park and garden.
33. The previously quoted Calderdale case identifies that where buildings are in common ownership and one is used in connection with the other then there is little difficulty in putting a structure near to a building, or even some distance from it, into its curtilage. In addition, the recent Hampshire case confirms the approach that broader definition applies to listed building curtilage covers structures which are closely related to the building which has been listed such that their removal or alteration could adversely affect its interest. In this case, the removal of the lodges would in my judgement leave the adjacent gates, piers and walls on their own in isolation with diminished historical context.
34. The appellant has stated that the Council has not clearly stated which designated heritage asset they consider the Lodge to be curtilage listed to, but the Council has clearly stated that the alteration to the Lodge adversely affects its character and its relationship to the main listed building and also to the listed walls which sit adjacent to the lodge. The Notice clearly refers to the '*main listed building, Doddington Hall*', but the lodges were clearly positioned adjacent to the entrance in a planned fashion, inside the park walls with the clear purpose of defining the entrance to the Hall with the listed walls providing the boundary to each of the two gate lodges, adjacent to the main entrance gates. Therefore, they are also ancillary to the walls, designed specifically to sit within them and were they to be removed or altered the historic interest of the listed gates, piers and walls would be adversely affected.

35. Therefore, as a consequence of its physical layout, ownership and use or function, past and present, I conclude that Avenue Lodge is curtilage listed and the appeal on ground (c) fails.

The appeal on ground (e)

36. The ground of appeal is that listed building consent ought to be granted for the works and therefore the main issue is the effect of the works on the special architectural and historic interest of the curtilage listed building.
37. Section 16(2) of the Act requires the decision-maker, in considering whether to grant listed building consent for any works affecting a listed building or its setting, 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.
38. Saved Policy BE9 of the Borough of Crewe and Nantwich Replacement Local Plan 2011 adopted on 17 February 2005 (the LP) relates to alterations and extensions to listed buildings and states that proposals for alterations to listed buildings will not be permitted unless the proposal respects the scale, materials, colour, detailing and other significance features of the building concerned, among other things.
39. Paragraph 132 of the National Planning Policy Framework (the Framework) states that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to that asset's conservation. Significance can be harmed or lost through alteration or destruction of the heritage asset, or development within its setting.
40. The appeal building is a relatively simple single storey 'L-shaped' composition of red brick with a red tiled roof and timber door. There is a bay window fronting onto the driveway which sits adjacent to the timber entrance door. The building can clearly be seen above the adjacent listed Lake Lodge gates, piers and screen walls. I find that the historic significance of the building lies in its function as part of the composition forming the main entrance into the park and leading to Doddington Hall. Its simple composition, use of traditional materials and design features throughout and close relationship with Lake Lodge and the adjacent listed structures contribute to defining it as an important building associated with the historical development of the wider estate and, in particular the changes that took place during the early part of the twentieth century.
41. The significance of a heritage asset is the sum total of its heritage values and historic windows will usually be of such significance that every effort should be made to conserve them, as most historic windows will illustrate to varying degrees the materials, technology, craftsmanship and architectural style of the period in which the building was built. The evidence before me shows that the replaced windows contributed to the character of the building and added to its interest through the use of traditional timber frames and maintained the aesthetic value of the heritage asset.
42. The original timber windows have been replaced with eight plastic framed windows. The appellant argues that the windows are a relatively minor detail of the property as a whole and as a group they are mainly obstructed from the public realm with the exception of the bay window which is visible along the

approach towards the entrance into the park along London Road. It is my understanding that the previous windows were white painted timber casement windows with a mullion and transom dividing the opening to $\frac{1}{4}$ over $\frac{3}{4}$. The actual size of the openings has not been changed and the replacement windows reflect the $\frac{1}{4}$ over $\frac{3}{4}$ proportions of the original windows.

43. The evidence presented is that the transom bars are thinner than the previous openings and their appearance is somewhat different to the ones they replaced. The appellant contends that their contribution to the aesthetic and functional form of the building remain unchanged and are wholly appropriate to the degree of significance in question. The appellant also states that the new windows were necessary following fire damage of the previous fenestration and the desire for the Lodge to be lived in again. There is insufficient evidence before me that reinstating timber frames and windows to match the original ones could not have been pursued and instead standard plastic replacement windows have been used. This approach is rather careless and harmful to the character and appearance of the curtilage listed building in terms of the windows themselves and the method of installation, using modern bonding, for example. Therefore, the plastic replacement windows are harmful to the special architectural and historic interest of the building.
44. Paragraph 193 of the Framework advises that when considering the effect of works on the significance of designated heritage assets great weight should be given to their conservation. It goes on to advise that significance can be harmed or lost through the alteration of those assets. Given the degree of harm to the windows which are important features relating to the materials, technology and craftsmanship and architectural style of the building's period, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
45. Under such circumstances, paragraph 196 of the Framework advises that this harm should be weighed against the public benefits of the works, which includes securing the optimal use of the building. The appellant is of the opinion that the works that have been carried out would be beneficial because they ensure that the building could be re-inhabited after the fire. There is insufficient evidence that this could not have been achieved by other means, such as replacing the previous windows and their associated frames with a more suitable design using timber.
46. Given the above, and in the absence of only limited public benefit, I conclude that those benefits do not outweigh the harmful effect on the special architectural and historic interest of the curtilage listed building. This would fail to satisfy the requirements of the Act, paragraph 92 of the Framework and would conflict with saved Policy BE9 of the LP.

The appeal on ground (i)

47. The ground of appeal is that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose. The appellant contends that the requirements of the notice make assumptions about the former state of the windows without clear knowledge of the dimensions and details of the former windows. Therefore, it is contended that it cannot be reliably argued that the exact measurements and design set out in the enforcement notice match with the design of the windows that were previously in place.

48. My attention has also been drawn to a previous appeal⁴, where the Inspector deemed that photographs of the windows at Lake Lodge provided some information on the style of timber windows but not information on the width of frames and detailing. The appellant argues that this remains the case and that the Council cannot reasonably determine the details of the replacement windows and therefore the details set out in the Notice cannot be accurate.
49. The Council is not requiring the reinstatement of the windows and frames that were previously present but rather the restoration of the character of the building to its former state before the replacement windows were installed and to alleviate the effect of such works which were carried out without listed building consent. The steps required by the LBEN would serve the purpose of restoring the character of the building to its former state and the appeal on ground (i) therefore fails.

The appeal on ground (h)

50. 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. Three calendar months would be sufficient to install the new windows. The one year compliance period suggested by the appellant would be excessive having regard to the ongoing harm caused by the works. However, under current ongoing Covid 19 restrictions I consider that the period should be increased to enable sufficient time for the bespoke replacement windows to be manufactured and fitted and in this respect, I consider six months would strike the appropriate balance and would not place a disproportionate burden on the appellant. To this limited extent the appeal on ground (h) succeeds.

Formal Decision

51. I direct that the listed building enforcement notice be corrected by:
- a) the deletion from paragraph 3 of the words 'and extension'; and
 - b) the deletion of the word 'fame' from the final sentence of the final paragraph on page 2 of the notice and the replacement therefor of the word 'frame'
- and varied by:
- c) the deletion from paragraph 6 of the words '3 calendar months' as the time for compliance and the replacement therefor of the words '6 calendar months'.
52. Subject to these corrections and variation I dismiss the appeal and uphold the listed building enforcement notice and refuse listed building consent 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.

A A Phillips

INSPECTOR

⁴ APP/R0660/F/19/3226024