



Appeal Decision

Site visit made on 25 May 2021

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

an Inspector appointed by the Secretary of State

Decision date: 16 July 2021

Appeal Ref: APP/Z4718/F/21/3267855

74 Wooldale Road, Wooldale, Holmfirth HD9 1QG

- 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 Nicholas Anstey against a listed building enforcement notice issued by Kirklees Metropolitan Borough Council.
 - The enforcement notice was issued on 18 December 2020.
 - The contravention of listed building control alleged in the notice is an alteration to the building consisting of the installation of replacement windows and door to the ground floor rear elevation.
 - The requirements of the notice are:
 - a) (i) Remove the two unauthorised replacement windows at the ground floor rear of the property addressed on this notice, and install windows with a style, design, glazing and materials to match the timber windows that existed prior to the unlawful works being carried out (as shown in the photo in appendix A).
 - a) (ii) Remove the unauthorised replacement door at the rear of the property addressed in this notice, and install a door with a style, design, glazing and materials to match the door that existed prior to the unlawful works being carried out.
 - Or
 - b) (i) Remove the two unauthorised windows at the ground floor rear of the property addressed on this notice and install windows in a matching design to the 1 over 1 pane sash timber windows with sash horns on the front elevation. The glazing should be single glazed or slim double-glazed units up to a maximum thickness of 16mm with black edge seals and timber frames painted white.
 - c) (ii) Remove the unauthorised replacement door at the rear of the property addressed on this notice and install a six-panel timber door painted in colour RAL6007 (Bottle Green).
 - The period for compliance with the requirements is 60 days.
 - The appeal is made on the grounds set out in section 39(1)(d), (e), (g) and (i) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
-

Decision

1. The appeal is dismissed and the listed building enforcement notice (LBEN) is upheld. Listed building consent is refused for the retention of the replacement windows carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Procedural Matters

2. The appellant has confirmed that the door has been replaced in accordance with the requirements of the LBEN other than with respect to colour. The Council has stated that if a timber door of six-panel design has been installed then no further works will be required and the design of the replacement door

is appropriate for the age of the building. In addition, the Council has stated that the paint colour specified in the requirements of the LBEN is a typical period colour used for mid-nineteenth century doors, but other colours are equally suitable including the current colour of the door, which is mid-grey.

3. Where remedial works are carried out under section 38(2)(b) of the Act in compliance with the requirements of the LBEN, section 38(7) indicates that they are deemed to have listed building consent. Consequently, the replacement six panel timber door is deemed to have listed building consent and although RAL 6007 (Bottle Green) colour paint has not been used the Council has indicated that the current colour of the door is suitable and will not give rise to further enforcement action.
4. Grounds (g) and (i) are mutually exclusive and cannot simultaneously be pleaded in relation to the same requirement of a LBEN. However, in cases where there are a number of different allegations and requirements, the appeal may plead a combination of these grounds. A notice issued under section 38(2)(a) of the LBCA seeks restoration of the building to its former state. Ground (g) claims that the requirements of the notice exceed what is necessary to achieve this and can, therefore, only apply when restoration is required. Ground (i) relates only to restoration.

The appeal on ground (d)

5. This ground of appeal addresses situations where essential and urgent works were needed to preserve the listed building. The emphasis is on the words 'essential' and 'urgent'. The ground of appeal comprises three tests. The first is whether the works were urgently necessary in the interests of safety or health; the second test is that it was not practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support and the third test is that the works carried out were the minimum measures immediately necessary to achieve the aims of safety, health or preservation. For an appeal to succeed on ground (d) all three tests must be met and the onus is on an appellant to conclusively show that this is the case.
6. At the time the windows were replaced, the appellant was suffering from health problems and he states that the single glazed windows were rotten and leaked in terms of both air and water, causing heat loss and damage to the windows and internal walls. The appellant considers it was necessary to carry out the works to keep the house warm for his health and well-being and therefore the windows were replaced as quickly as possible.
7. There is no evidence to refute the claim that the windows were rotten, but timber decay is a slow process that takes years of neglect for a window to reach the stage when it is no longer possible to repair. It is my understanding that the appellant has owned the property for at least thirty years and therefore there has been ample opportunity to repair the windows or replace them with suitably designed and manufactured windows with the benefit of listed building consent.
8. Furthermore, there is little evidence before me that advice was taken with respect to the replacement of the windows or potential temporary measures that could be put in place to improve the windows and it seems to me that such works could have been undertaken without the requirements for formal consent. I have taken account of the appellant's personal circumstances but

see no reason why a suitable scheme could not have been negotiated with the Council and the necessary listed building consent be granted for timber replacement windows of an appropriate design for this historic building. Consequently, the appeal on ground (d) fails.

The appeal on ground (e)

9. 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 Grade II listed building.
10. 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.
11. Policy LP35 of the Kirklees Local Plan Strategy and Policies adopted February 2019 (the LP) relates to the historic environment and, among other objectives, states that proposals affecting a designated heritage asset should preserve or enhance the significance of the asset. In cases likely to result in substantial harm or loss, development will only be permitted where it can be demonstrated that the proposals would bring substantial public benefits that clearly outweigh the harm or meet a set of specific criteria.
12. The appeal building was listed in August 1983 and is one of a pair of semi-detached houses with No 72 Wooldale Road which date back to the mid-eighteenth century or possibly earlier. It is constructed of hammer dressed stone with quoins and a stone slate roof with two ashlar stacks. The building has two storeys with two bays of three light stone mullioned windows with stepped lintels and a doorway in a more recent porch.
13. The arrangement of mullioned windows to the first floor on the rear elevation with blocked and altered lights indicate that it may have been used for domestic weaving. I have noted that the appeal property has been extended and altered in the past, but the pair of houses are good examples of mid-eighteenth century vernacular buildings using local stone and traditional methods and features. The pair is also of group value with other properties in the immediate vicinity including Nos 73 and 75 Wooldale Road which are of a similar age and show similar vernacular features and makes a positive contribution to the overall character and appearance of the Wooldale Conservation Area.
14. 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.
15. The appellant argues that the works carried out are sympathetic and the door has been replaced in accordance with the requirements of the LBEN apart from its colour. There is insufficient evidence before me that repairing the windows

and frames could not have been pursued, but instead standard plastic replacement windows have been used. This approach is harmful to the character and appearance of the listed building in terms of the windows themselves and the method of installation. Therefore, the plastic replacement windows are harmful to the special architectural and historic interest of the building.

16. 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.
17. 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 would make the building more comfortable to live in. There is insufficient evidence that this could not have been achieved by other means, and, in any case, it seems to be that this is a private, rather than a public, benefit.
18. Given the above, and in the absence of any clearly defined public benefit, I conclude that the works have a harmful effect on the special architectural and historic interest of the listed building. This would fail to satisfy the requirements of the Act, the Framework and would conflict with Policy LP35 of the LP.

The appeal on ground (i)

19. The ground of appeal is that the steps required for the purpose of restoring the character of the building to its former state would not serve that purpose. With particular reference to the door, the appellant has confirmed that it has been replaced with a six panel timber door the Council agrees that further works will not be required because the design is appropriate for the age of the building. The Council has also agreed that although it is not painted in strict accordance with the requirements of the LBEN, the colour used is suitable.
20. With regard to the windows the Council is seeking to either reinstate windows with a style, design, glazing and materials to match the timber ones that existed prior to the unlawful works taking place or install windows to match the one over one pane timber sash windows with sash horns on the front elevation of the property. Either option would serve the intended purpose of the LBEN of restoring the character of the building to its former state and therefore the appeal on ground (i) fails.

The appeal on ground (g)

21. The ground of appeal is that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out. The door has been replaced with a six panel timber door which is acceptable to the Council. The appellant argues that the sash windows on the front elevation are appropriate but on the rear elevation they would look out of

place and could be problematic from an engineering perspective with particular reference to height and width ratios. It is further argued that the replacement windows are of a conventional design and restore the building's original appearance and character.

22. There is insufficient evidence before me regarding potential problems with implementing either of the LBEN options. The requirements set out in the LBEN; to either reinstate the design of the windows that previously existed or replacement windows with a design more in keeping with the period of the listed building, would serve the purpose of restoring the character of the building to its former state. Therefore, the appeal on ground (g) fails.

Formal Decision

23. I dismiss the appeal and uphold the listed building enforcement notice and refuse listed building consent for the retention of the retention of the replacement windows carried out in contravention of section 9 of the planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

A A Phillips

INSPECTOR