



Procedural Note

Site visit made on 9 August 2021

by Vicki Hirst BA (Hons) PG Dip TP MA MRTPI

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

Decision date: 22 September 2021

Appeal Ref: APP/J1860/F/20/3264098

Land at Lake Cottage, 13 Bestmans Lane, Kempsey, Worcester, WR5 3QA

- 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 Mrs Irene Carter against a listed building enforcement notice issued by Malvern Hills District Council.
 - The enforcement notice was issued on 10 November 2020.
 - The contravention of listed building control alleged in the notice is without listed building consent, unauthorised works to a listed building, the unauthorised works comprising the erection of a conservatory shown approximately hatched blue on the attached plan.
 - The requirements of the notice are to permanently remove the unauthorised conservatory shown approximately hatched blue on the attached plan and to restore the land its condition before the breach of planning control took place.
 - The period for compliance with the requirements is 12 calendar months from the date the notice takes effect.
 - 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.
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Decision

1. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding should the Local Planning Authority have kept a record of this listed building enforcement notice on any register, they should consider reviewing it.

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2. Section 38(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the Act) states that a listed building enforcement notice shall specify the alleged contravention and require such steps as may be specified in the notice to be taken a) for restoring the building to its former state; 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 c) for bringing the building back 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.
3. Section 5 of the notice purports to set out what the recipient of the notice is required to do. It requires the permanent removal of the unauthorised conservatory shown approximately hatched blue on the attached plan and to restore the land to its former condition before the breach of planning control

took place. However, no further clarification of how the building should be restored to its former state or the Authority's requirements for further works to alleviate the effect of the works has been provided. I have not been advised that the building is the subject of any listed building consent in respect of Section 38(2)(c).

4. It is apparent from the evidence submitted that the conservatory, the subject of the enforcement notice, replaced a previous extension. Given this, and other matters, I queried the local planning authority's position with regard to the notice's requirements. The local planning authority has advised that it is seeking the removal of the conservatory but not the re-instatement of the previous extension. In respect of the openings in the original dwelling that facilitate access to the conservatory, it has advised that an application for listed building consent would be required to permanently close the remaining openings. Should the conservatory be removed prior to the approval of the closure of the openings, the local planning authority advised that the opening should be secured against the weather by constructing a temporary but weathertight stud wall. The local planning authority sent a letter to the parties informing them of these requirements¹.
5. The requirements set out in the letter sent to the parties are not included in the official enforcement notice and have no legal effect. Any requirements for the permanent closure of any openings should have been clearly specified in the notice with clear and precise details of the style, materials and appearance of the required windows/doors/blocking up and the steps to be taken to meet these requirements. Even if the letter had legal effect, a requirement to carry out works subject to the need for listed building consent would leave the recipient uncertain as to what may be acceptable to the Authority if an application for listed building consent was made. The recipient would have to rely on the local planning authority in this regard and would have no guarantee of the outcome.
6. Section 38(7) of the Act states where a listed building enforcement notice imposes any such requirement as is mentioned in subsection 2(b), listed building consent shall be deemed to be granted for any works of demolition, alteration or extension of the building executed as a result of compliance with the notice. In the event that the local planning authority had specified its exact requirements in the notice there would be no need for listed building consent to be sought.
7. In addition, the notice's requirements refer to the restoration of the land to its condition before the breach of planning control took place. There is discrepancy within the notice as to whether it relates to an alleged breach of planning control or an alleged breach of listed building control. The requirements of the notice to return to the land to its condition prior to a breach of planning control may differ from its condition prior to a breach of listed building control. The requirements are not clear to the recipient in this regard.
8. I find the requirements of the notice do not set out exactly what the recipient is required to do to fully comply with the notice. It is well established in law that where a notice is uncertain in its requirements it is a nullity. The notice is uncertain on its face and therefore without legal effect.

¹ Letter from Malvern Hills District Council dated 10 November 2020

9. I am fully aware of the powers of variation and correction provided under the Act. However, as the identified problems render the notice a nullity, they are incapable of being corrected under such provisions.
10. For these reasons, and have considered all matters raised, I find the enforcement notice is a nullity. As a consequence, the appeal under grounds (c) and (d) does not fall to be considered.

VK Hirst

INSPECTOR