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## Appeal Decision

Hearing Held on 26 October 2021

Site visit made on 26 October 2021

**by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 29<sup>th</sup> December 2021**

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**Appeal Ref: APP/C3240/F/20/3257270**

**The building known as Middle Lodge, shown edged red on the plan attached to the listed building enforcement notice, situated at Middle Lodge, Chetwynd Road, Newport TF10 8AA**

- 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 Barry James Fradley against a listed building enforcement notice issued by Telford and Wrekin Council.
- The enforcement notice was issued on 3 July 2020.
- The contravention of listed building control alleged in the notice is:  
Without listed building consent, the carrying out of the following works and alterations to the building known as the Coach House:
  - a) The removal of all roof tiles to the building, with the exception of those to the east bay window, and the subsequent replacement with roofing felt and battens.
  - b) The removal of all metal casement windows and subsequent fitting of boarding and metal grilles across window openings.
  - c) The removal of the front door and subsequent fitting of boarding across the opening.
  - d) The removal of decorative timber finials to the apex of the north, south and west and east roof gables.
  - e) The removal of 2 no. chimney pots.
  - f) The removal of 4 no. twist balusters to each of the west and south sides of the front porch.
  - g) The removal of all rainwater goods.
- The requirements of the notice are shown within the Schedule appended to this decision.
- The period for compliance with the requirements is 6 months.
- The appeal is made on the grounds set out in section 39(1) (c), (g) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the LBCA).

**Summary Decision: The appeal succeeds in part and the listed building enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.**

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### Procedural Matters

1. Within his comments responding to the Council's Statement of Case the appellant withdrew his ground (b) appeal and he withdrew the parts of the ground (g) appeal relating to the works and alterations itemised at section 3 b), c) and e) and partly relating to those at 3 a) and g). During the Hearing the appellant withdrew his appeals on grounds (d) and (e). Consequently, I have given no further consideration to those aspects of the case.

2. It was confirmed at the Hearing that the appellant wished to retain his ground (g) appeal in relation to the wording of the requirements in respect of the word 'brindle' associated with the tiles, the word 'castle' associated with the chimney pots and the word 'reinstate' throughout the requirements.
3. Correspondence and a statutory declaration in relation to a listed building consent<sup>1</sup> from 1997 (the 1997 LBC), relating to Middle Lodge, was submitted at the Hearing. That consent had not been cited in the evidence submitted by either main party. The Council had no explanation as to why it had been missed from the site's planning history. Based on the discovery of the 1997 LBC the appellant confirmed that he wished to make an appeal on ground (c) in relation to the rainwater goods (item 3 (g)). The correspondence submitted indicated that the Council had been informed by the appellant's agent of the 1997 LBC and its relevance to the appeal proceedings. As a result, the Council have had the chance to respond and prepare evidence in relation to the potential appeal on that ground. Both parties were given the chance during the Hearing to give comments on this matter. I consider that the main parties are not prejudiced by the submission of the evidence in relation to the 1997 LBC and the appeal on ground (c).

### **The Notice**

4. On an appeal any defect, error, or misdescription in a listed building enforcement notice may be corrected using the powers available in section 41(1)(a) of the LBCA, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
5. The description of the alleged contravention of listed building control cites '*the building known as the Coach House*'. It is clear that this is a typographical error given the description of the land to which the notice relates at section 2. Moreover, the appendices cited within the requirements of the notice all relate to Middle Lodge. As such, the appellant is aware that the notice relates to Middle Lodge. Consequently, I intend to delete the wording 'the Coach House' from the description of the alleged contravention and substitute it with 'Middle Lodge'. I consider that I can carry out these corrections without injustice to the parties.
6. Requirement 1) a refers to 'BS5534' with no description of what BS5534 concerns. At the Hearing the Council confirmed that BS5534 relates to a code of practice for slating and tiling for pitched roofs and vertical cladding. However, it was conceded that this is aimed at new new-build pitched roofs and may not be appropriate for re-tiling where traditional and/or reclaimed materials are used. As a result it is apparent that the reference to BS5534 is an error and I intend to delete the wording 'BS5534' from requirement 1) a and substitute it with '*points b to e and h below*'. I consider that I can carry out these corrections without injustice to the parties.

### **Background**

7. The appeal property was listed in Grade II on 8 April 1983, and the list description is as follows: '*Circa 1860. Small Gothic lodge. Sham timber framing with roughcast infill on ashlar plinth. Steeply pitched fishscale tile roof with gabled ends with ornate pierced bargeboards, pendants and finials. One storey.*

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<sup>1</sup> Ref: W97/0664

*Right-hand slightly projecting square bay window. Left-hand gabled porch with side screens of twisted balusters. Canted bay on gable end. Casement windows with lozenge-shaped panes. Large central ashlar chimney stack.* The appeal site is located on the east side of Chetwynd Road, on the road frontage and within Chetwynd Park which is listed within the Register of Historic Parks and Gardens by Historic England.

8. Middle Lodge was bought by the appellant in the late 1980's and a number of planning applications and listed building consents have been approved on the lodge itself and the adjacent land. These include, in 1990 planning permission and listed building consent for the erection of a two-storey side extension and refurbishment to residential use<sup>2</sup> (the 1990 consents). In 1991 planning permission was granted on appeal for residential development (2 plots)<sup>3</sup> (the 1991 appeal). The reserved matters application associated with the 1991 appeal was granted in 1996<sup>4</sup> (the RM). Also in 1996 the 1990 consents were renewed (the renewed 1990 consents).
9. There were legal obligations associated with the RM including a deed of variation, dated 11 September 1998, which required, amongst other things, the 1991 appeal and the RM not to be implemented until the renewed 1990 consents had been implemented. It also required a number of works to be carried out to Middle Lodge including corrugated steel sheeting to be secured to the roof and that the renewed 1990 consents to be completed in full before the 31 December 1998. The 1997 LBC granted consent for the removal of rooftiles, removal of cast iron guttering and the provision of temporary corrugated metal sheeting to the roof. The scheme associated with the renewed 1990 consents was commenced and the external shell of the extension was constructed in the late 1990's. However, the scheme has never been completed and the dwellings approved by the RM have not been constructed.
10. Photographs of Middle Lodge taken in 2004 indicate that most of its roof was covered with tiles at that time. In 2017 a listed building application<sup>5</sup> for *'the temporary removal of existing tiles, replacement of roofing felt with a new layer of felt secured with battens over, temporary boarding up of all openings and installation of barbed wire to roof and all openings (part retrospective)'* was refused (the 2017 LBR).
11. On the 3 July 2020 a notice under Section 215 of the Town and Country Planning Act 1990 (the 1990 Act) was issued in relation to the condition of the land at Middle Lodge (the 215 Notice). This requires, amongst other things, the render/stucco, infill panels, bargeboards and timber framing to be repaired and repainted, the boarding from the windows in the extension to be removed and timber windows to be inserted, blockwork to be removed from door openings and doors inserted and overgrown vegetation to be cut back. This notice is currently being appealed through the Courts.

### **The ground (c) appeal**

12. An appeal on ground (c) is that those matters (if they occurred) do not constitute a contravention of sections 9(1) or (2) of the LBCA. Section 9(1) states that if a person contravenes section 7 he shall be guilty of an offence.

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<sup>2</sup> Ref Nos: W90/0654 & W90/0656

<sup>3</sup> Ref No: W90/0665

<sup>4</sup> Ref No: W94/0538

<sup>5</sup> Ref No: TWC/2017/0212

Section 7 of the LBCA states, amongst other things that '*... no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special or architectural or historic interest unless the works are authorised*'. Section 8 sets out when works to a listed building are authorised. This includes if '*(a) written consent for their execution has been granted by the local planning authority....(b) they are executed in accordance with the terms of the consent and of any conditions attached to it*'.

13. The appellant's case on ground (c) is limited to the rainwater goods/guttering. Accordingly, there is no basis on which the notice could be quashed under ground (c), but there is scope for argument over whether the notice can require removal of the rainwater goods. There is no dispute that the removal of the rainwater goods effects the character of Middle Lodge and therefore listed building consent would have been required for the works. The onus is on the appellant to show that the removal of the rainwater goods/guttering complies with the terms of the 1997 LBC and any conditions attached to it.
14. The Council considers that it is vague as to when the guttering was removed from the building. Nevertheless, there is no dispute that the works granted by the 1997 LBC were commenced as the roof tiles were removed and for a period corrugated sheeting was put on the roof. The Council confirmed at the Hearing that it appears from notes on its files that a Council Officer verbally agreed the replacement roof covering. Furthermore, the appellant's agent confirmed that tiles and rainwater goods from Middle Lodge are stored at Maer Hall, the appellant's property. Consequently, there is little evidence to indicate that the conditions attached to the 1997 LBC have not been complied with.
15. The evidence before me indicates that the guttering was partially removed by persons unknown, by means of theft, and partially by the appellant to secure it from any future theft. It is more likely than not that the guttering was removed by the appellant somewhere between 1997 and 2004 as no guttering is visible on the 2004 photographs. There is no indication that the rainwater goods/guttering have ever been reinstalled after 2004.
16. Taking into account all of the above, it is my judgment that the removal of the rainwater goods was authorised by the 1997 LBC and therefore a contravention of listed building control has not, therefore, occurred in this respect. The appeal succeeds to that extent and I intend to vary the requirements by the deletion of requirement 7).

### **The ground (g) appeal**

17. Section 38(2) of the LBCA 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 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;....*'
18. The Notice does not state as to whether it has been issued under section 38(2)(a) or 38(2)(b). Nevertheless, even though requirements 2) to 6) of the notice cite the word 'reinstate' it is clear that the requirements (as corrected

and varied) of the notice are intended to restore the building to its former state by replacing the items that have been removed from the building. The ground (g) appeal has been made because the appellant maintains that the specific wording of the requirements of the notice exceed what is necessary for restoring the building to its former state.

19. In relation to requirement 1) the appellant considers that the use of the word 'brindle' is not precise as it is ambiguous as to what it refers to. The Council confirmed that 'brindle' refers to the colour of the tiles. Both parties agreed that the requirements should include and cite the re-use of the tiles stored by the appellant at Maer Hall and that any shortfall be made by using tiles to match in all respects the characteristics of the retained tiles. The parties submitted an agreed form of wording of a proposed variation to that requirement. They stated that they both considered that the requirement could be varied without injustice to either of them and I have no reason to disagree. Consequently I intend to delete the word 'brindle' throughout requirement 1) and add the submitted wording to the end of that requirement.
20. Section g of requirement 1) relates to repairs to the underlying roof structure. I acknowledge that it is not known if the removal of the tiles and its replacement with roofing felt has resulted in repairs being required to the structure of the roof. Nevertheless, it would be unreasonable for a notice to result in an improvement to the listed building compared to its state prior to the carrying out of unauthorised works. As such, the requirements can only specify that any damage resulting from the works is to be made good. In that respect section g of requirement 1) is excessive and I intend to delete its entire wording and substitute it with *'Make good any damage to the underlying roof structure resulting from the works to remove the roof tiles using materials and finishes to match.'* I consider that I can carry out this variation without injustice to the parties.
21. Requirements 2) through to 6) all utilise the words 'reinstate' or 'reinstatement' within them. The appellant considers that the use of this word is excessive as most of the original items cannot be 'reinstated' as it is not known where they are, and the finials are in an unusable condition. I consider that the word reinstate could be taken to indicate that the original items are to be returned or it could mean that they are to be replaced with replicas. To ensure there is clarity within these requirements I intend to vary the requirements to indicate that replacements are installed. I consider that I can carry out those variations without injustice to either party.
22. Furthermore, in respect of requirement 2), the appellant considers that the use of the word 'castle' is ambiguous as there are various designs of chimney pots that could meet that description. That word is not needed as the Council confirmed that the requirement intends for the chimney pots to match the existing ones. However, the clarity of the requirement in that respect can be improved. Consequently, I intend to delete the word 'castle' from requirement 2) and add 'chimney pots' to the end of the requirement. I consider that I can carry out those variations without injustice to either party.
23. The appeal on ground (g) succeeds in respect of the matters cited above.

### **The ground (h) appeal**

24. The issue is whether the compliance period of six months is reasonable. The appellant has requested the period for compliance be extended to 24 months as he intends to pursue a planning application for a scheme of 6 new dwellings to enable refurbishment works to progress and be completed on the appeal building.
25. Middle Lodge has been vacant and unused for many years and has suffered from numerous acts of theft and vandalism. As a result, it is in a perilous state of repair. I understand the appellant's concerns about replacing the items and those items being stolen or damaged. I also agree that the ideal time for those items to be installed would be as part of a comprehensive programme of repair and renovation relating to the reuse of the building.
26. However, the Council's pre-application response to the appellant's proposed scheme indicates that there appears to be a large number of potential issues relating to that scheme. It is not clear if those issues can be successfully overcome. I was told at the Hearing that the main stumbling block is the cost of providing power and services to the site. Yet in the late 1990's the shell of the extension to Middle Lodge was constructed.
27. The funding from newly built dwellings, if they are approved and constructed/sold, would assist the appellant in reversing the harm caused by the works. In addition, it could enable a viable reuse for the listed building. However, the works carried out to this building, in my judgment, together with the overgrown vegetation around the building and the graffiti on it highlight to passing pedestrians and motorists that the building is vacant. Moreover, its perilous condition will also attract further acts of vandalism and theft.
28. Therefore, irrespective of whether funding becomes available through a successful planning scheme, the replacement of the roof tiles, chimney pots, windows, front door, finials and balusters should assist in making the building appear secure and cared-for. Consequently the spiral of deterioration that the building is caught in could be temporarily halted. In addition, if the appeal against the 215 Notice is unsuccessful the combination of the requirements of the notices would ensure that the external appearance of the building and land around it would be substantially improved which would help to deter casual intruders.
29. Nonetheless, I accept that securing and scheduling appropriate contractors to complete some of the required works, such as the metal windows, may take longer than 6 months given their specialist nature. However, 24 months seems to me to be excessive considering the perilous state of the building and the length of time it has been vacant. Taking account of all the relevant circumstances I consider that a period of 12 months would be more reasonable, and I will vary the notice accordingly. The appeal on ground (h) therefore succeeds to this extent.

### **Other Matters**

30. In reaching my conclusions on the grounds of appeal I have taken into account all of the submissions made by the appellant and the Council. These include the initial submissions; the appellant's and Council's statements and appendices; all of the plans and photographic submissions; the history of the site and the

events leading up to the issuing of the LBEN and all of the other submitted correspondence. However, none of these carries sufficient weight to alter my conclusions on any of the grounds pleaded and nor is any other matter of such significance so as to change my decision.

### Formal Decision

31. The appeal is allowed in part, on grounds (c), (g) and (h), and it is directed that the listed building enforcement notice be corrected by:

- Deleting the wording '*the Coach House*' from the description of the alleged contravention and substitute it with '*Middle Lodge*'.
- Deleting the wording 'BS5534' from requirement 1) a and substitute it with '*points b to e and h below*'.

And varied by:

- The deletion of requirement 7).
- Deleting the word 'brindle' throughout requirement 1) and adding the following as section h at the end of requirement 1) - '*In requirements a, b, c, d and e above, the references to tiles are references to the reuse of tiles which have been removed from the building and stored, with any shortfall in the quantity of available tiles being made good with new tiles which shall match the retained tiles as close as possible in terms of material, colour, shape, thickness and method of fixing to battens.*'
- Deleting the entire wording of requirement 1) g and substitute it with '*Make good any damage to the underlying roof structure, resulting from the works to remove the roof tiles, using materials and finishes to match*'.
- Deleting the word 'Reinstate' and substitute it with '*Install replacement*' in requirements 2), 3) and 4).
- Deleting the wording '*Reinstatement of*' at the start of requirements 5) and 6) and substitute it with '*Install replacement*' in both requirements.
- Deleting the word 'castle' from requirement 2) and add the wording '*chimney pots*' to the end of that requirement.
- Deleting '*6 months*' in section 6 and substitute it with '*12 months*'.

32. Subject to these corrections and variations the listed building enforcement notice is upheld.

*D. Boffin*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

|                |                              |
|----------------|------------------------------|
| Killian Garvey | Counsel – Kings Chambers     |
| Grant Anderson | Agent - Hill Dickinson       |
| Jonathan Edis  | Heritage Expert - HCUK Group |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                |                                               |
|----------------|-----------------------------------------------|
| Martin Carter  | Counsel – Kings Chambers                      |
| Ian Ross       | Solicitor – Telford and Wrekin Council (T&WC) |
| Vanessa Walton | Planning – T&WC                               |
| Penny McKnight | Heritage – T&WC                               |
| Helena Rea     | Legal – T&WC                                  |

## **DOCUMENTS**

- 1 Pack of information relating to the 1997 LBC.
- 2 Suggested addition to paragraph 5(1) of the notice.
- 3 Pack of pre-application responses sent by T&WC to appellant.

## SCHEDULE

- 1) Remove the roofing felt and battens and replace the roof coverings as follows:
  - a. Replace battens and fix tiles in accordance with BS5534.
  - b. Front west pitch, rear east pitch, porch roof: brindle clay club tiles as per *Appendix 3*
  - c. Rear wing south and north pitches: brindle plain clay tiles with three equally spaced bands of 3 brindle clay club tile courses as per *Appendix 3*
  - d. Bay window: brindle clay plain tiles as *per Appendix 1*
  - e. All ridge tiles to be brindle plain angled clay with mortar bedding and joints in lime without the addition of cement.
  - f. All flashing to be lead
  - g. All necessary repairs to the underlying roof structure to be made on a like-for-like basis in terms of materials, construction and dimensions.
- 2) Reinstate 2 no. buff coloured castle chimney pots to chimney stack to match existing.
- 3) Reinstate metal framed single-glazed casement windows with lozenge-shaped frames and clear glass panes to window openings in north, south and west elevations of the frontage building in accordance with elevations shown in *Appendix 4* and photographs at *Appendix 1*. All window frames to be finished with a minimum of two coats of off-white exterior gloss or satin paint.
- 4) Reinstate front door with vertical plank and ledge timber door having wrought iron decorative strap hinges and door furniture. All details are to match the front door of Church Lodge, Chetwynd Park. The timber to be finished with a minimum of two coats of off-white exterior gloss or satin paint, and ironwork to be finished with a minimum of two coats of black exterior satin or gloss paint.
- 5) Reinstatement of timber finials to north, west, south & east gables in accordance with *Appendices 2 & 4* to be finished with a minimum of two coats of black exterior satin or gloss paint.
- 6) Reinstatement of 4 no. twist balusters with moulded top and bottom ends and off-white painted finish as per *Appendix 1*, to each of the west and south sides of the porch, positioned in accordance with ground floor plan *Appendix 4*.
- 7) Reinstate cast iron rainwater goods with black painted finish to all roofs.