
Appeal Decision

Site visit made on 2 November 2021

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

an Inspector appointed by the Secretary of State

Decision date: 18th January 2022

Appeal Ref: APP/F1610/F/21/3273201

The building situated at and known as Dover House, High Street, Northleach, Cheltenham GL54 3EW

- 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 Richard Watson against a listed building enforcement notice issued by Cotswold District Council.
- The enforcement notice was issued on 2 March 2021.
- The contravention of listed building control alleged in the notice is 'the removal of a historic fireplace from the Building without the benefit of Listed Building Consent the following works have been carried out'.
- The requirements of the notice are 'reinstate or replicate the historic fireplace which has been removed and, if replicating it, submit the design and details of it for approval to the Council, prior to its installation'.
- The period for compliance with the requirements is 3 months.
- The appeal is made on the grounds set out in section 39(1) (c), (d), (e) and (g) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the LBCA).

Summary of Decision: The appeal is allowed, the listed building enforcement notice is quashed and listed building consent is granted.

Procedural Matters

1. The appellant submitted information relating to Save Britain's Heritage website and the entry for the appeal building on that website after the site visit had been undertaken. As the submission related only to the issue of whether the building is on a Buildings at Risk register, in my judgement, there was no need to request comments from the Council on it.
2. The property is located within the Northleach Conservation Area (NCA) and within the Cotswolds Area of Outstanding Natural Beauty (AONB). However, as the works relate to internal features within the property there is no dispute that the works do not harm the character and appearance of NCA or the landscape and scenic beauty of the AONB.

The Notice

3. 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.
4. Both parties were consulted as to whether they considered the term 'historic fireplace' precise and did they interpret that term to include only the fire surround as indicated in the Council's ENFORCEMENT REPORT (delegated decision). There is no dispute that the fire surround is the item enforced

against. The specific location of the 'historic fireplace' is not cited within the description of the works but both parties are aware of where the works have been carried out.

5. In addition, the wording '*the following works have been carried out*' is superfluous to the description. Moreover, the evidence submitted by both parties indicates that they consider the removal of the slate fire surround and its replacement with a stone fire surround forms the works affected by the notice. However, the replacement fire surround is not cited within the description of the alleged contravention.
6. Consequently, I intend to delete the description of the alleged contravention and substitute it with '*The removal and replacement of a fire surround from the ground floor of the Building has been carried out without the benefit of Listed Building Consent*'. I consider that I can carry out the corrections to the description without injustice to either party.

Background

7. The appeal property was listed in Grade II on 25 March 1987 and the list description is as follows:

'House at end of row. Built c1619 under the will of William Dutton, extended C19. Limestone rubble, ashlar street front, short length of ashlar in left-hand return. Stone slate roof, corrugated asbestos to C19 extension at rear. Ashlar stacks. Formerly 'L'- shaped plan now rectangular plan. Small C19 extension. Two- storeys. Two-windowed facade to main road, all 12-pane sashes with horns. C19 six-panel door set back within semi-circular headed surround. Band and parapet above first floor windows. Left-hand return; C20 door with glazing bars within flat-chamfered 4-centred arched surround. Sixteen-pane sash left of door. Small 16-pane sash above door. Twenty-pane sash left. Sixteen-pane sash to upper floor of extension to left. Six-pane casement within blocking of room pitching door left. C19 four-panel door with upper panels glazed and C19 plank door to ground floor. Gable end stacks. Interior; intersecting moulded beams in room left of 4-centred arched doorway. History; once used as store for wool and cloth, then became the Lamb Inn and subsequently the Sherborne Arms. House formerly extended further left of present front, the additional bays were refronted in the early C19 in a similar way to the remaining 2 bays. This part of the house was dismantled and transported to America by Henry Ford in 1937. The house contained stencilled, probably C18 wall paintings. (Trans B.G.A.S. p 6 - 7 and 1939).'

8. It appears that the building was vacant for many years prior to the appellant purchasing it in 2017. The buttressing adjoining a wall of the property, that fronts onto Farmington Road, was constructed in the early 20th Century when part of the property was removed to allow for the construction of that road.
9. The significance, architectural and historic interest of the listed building derives mainly from the age of the building with the oldest parts and the associated materials and detailing making important contributions. However, the alterations undertaken in the early 19th Century are also of architectural and historic interest as they have evidential and aesthetic value in their own right. Internally and externally the plan form of the building, although changed through time, remains as a record of the building's historic development. The building's past uses also contribute to its significance. The property forms a

highly attractive and characterful building in a prominent location in Northleach.

The ground (c) appeal

10. 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. 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*'.
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 appellant's case is that as the fire surround is not original to the house and is not mentioned in the list description it is not of special architectural or historic interest. Moreover, he states that it is possible that the fire surround could have been installed after the property was listed in 1987 and that the previous owner traded in antiques.
13. There is no dispute that the slate fire surround removed as part of the works would not have formed part of the house built in the 17th Century. There is very little detail within the list description relating to the interior of the building. In my experience, this is not unusual taking into account that the description appears to date from 1987 and was principally designed to aid identification of the building. Whereas more modern list descriptions will set out a summary of the assessment of special interest in the building at the time of designation. In addition, from 26 June 2013 some new list descriptions or those amended after that date may provide that part or a feature of the building is not of special architectural or historic interest. However, in this case there is no evidence before me to indicate that the list description has ever been amended.
14. List descriptions are not a comprehensive record of the special interest of a listed building and an omission of a feature does not indicate that it is not of interest or that it was not in place at the time of listing. The only detail relating to the interior of Dover House cited in the list description is the intersecting moulded beams. As stated above, in my judgement the special interest/significance of the building includes its plan form and internal features and detailing.
15. I acknowledge that the use of cement to fix the surround to the wall indicates that it is more than likely than not that the surround was installed at some time in the 20th Century. In addition, there is no documentary evidence before me to indicate when the slate fire surround was first installed within Dover House.

Without that documentary evidence it is difficult to determine when specifically the fire surround was installed.

16. Nevertheless, the surround could also have been in place prior to the 20th Century and refixed to the wall when the tiled insert and grate were installed. Moreover, the appellant has submitted no evidence, such as sworn declarations from the previous owners, to indicate that the slate fire surround was installed after 1987. Consequently, there is little evidence to indicate that the slate fire surround was not in place at the time the property was listed.
17. Only the upper part of the slate fire surround is visible in the photograph submitted by the Council. Nevertheless, it appears from that photograph that the design of the surround was relatively simple with plain jambs, shelf and lintel. Due to its material it was dark grey/black in colour. In my judgement, the design of the surround is consistent with that of fire surrounds from the early 19th Century. However, those surrounds would most likely have been in wood or marble as those were the prevalent materials utilised for surrounds at that time. The use of slate for the surround indicates, in my experience, that it is more likely to date from the late 19th/early 20th Century. Nonetheless the fire surround has some evidential and aesthetic value relating to the historical development of the building.
18. It has been replaced with a fire surround of differing design and materials that was produced recently by a stonemason. Consequently, as a matter of fact and degree, I consider that the works enforced against have affected the character of the building as one of special architectural or historic interest. These works have not been authorised, and a contravention of section 9(1) of the LBCA has thus occurred. The appeal on ground (c) therefore fails.

The ground (d) appeal

19. 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' and the 'need to preserve'. As such, three tests must all be satisfied. Firstly, that the works were urgently necessary in the interests of safety or health; secondly, that it was not practicable to achieve the aims of safety, health or preservation of the building 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.
20. I have no reason to disagree with the appellant or his stonemason that there were areas of extensive damage due to damp ingress on the wall facing Farmington Road. This is based on the facts that a large proportion of the front range of Dover House was demolished in the early 20th Century, a buttress constructed utilising cement mortar, the building had been vacant for some time and vegetation covered large parts of the wall. As such, it is more likely than not that parts of the stonework and internal lath and plaster were in urgent need of repair and/or replacement.
21. However, whilst accepting this, there is little indication that works to the chimney breast itself were urgently necessary in the interests of health and safety. This is because there are no photographs or details of how extensive or not the cracks in the lintel were. Moreover, the stonemason has also stated that the most likely cause the lintel above the fireplace had cracked was heat. Clearly some works were necessary because of water ingress and the cracked

lintel. Furthermore, there is no evidence to dispute the appellant's claim that the slate fire surround was damaged beyond repair whilst it was being removed to facilitate the works to the lintel and chimney breast. I also acknowledge that the appellant has had some difficulty in communicating with the Council and that the building is on Save Britain's Heritage Building at Risk Register.

22. Nevertheless, there is no convincing evidence before me to suggest that the works carried out were in themselves so urgently necessary for safety and health that listed building consent could not have been applied for beforehand. Moreover, I am not convinced that some temporary solution or support could not have been put in place while an application for listed building consent was prepared or that the removal and replacement of the fire surround represented the minimum measures immediately necessary to achieve safety, health or to preserve the listed building. Consequently, the works carried out to the fire surround fail all three tests and the appeal on ground (d) fails.

The ground (e) appeal

23. An appeal on this ground 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 interest/significance of the listed building.
24. Section 16(2) of LBCA 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. The National Planning Policy Framework (the Framework), a material consideration, states that when considering the impact of a development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
25. The property is being renovated, repaired and refurbished by the appellant following periods of vacancy and neglect. As outlined above the wall facing Farmington Road appears to have suffered from prolonged water ingress causing damage to historic fabric including stonework, lath and plaster. Works to stabilise the wall and timber beams supported by that wall have been undertaken. The hearth, insert and grate that formed part of the overall fireplace, which the slate fire surround also formed part of, have been removed. An opening has been formed within the chimney breast and a replacement hearth and a multi-fuel stove and flue has been installed. The Council has confirmed that the removal and replacement of the fire surround are the only works it is looking to enforce against.
26. The chimney breast and fireplace are within a ground floor room at the front of the property. This room is lit by a large sash window that has very slim glazing bars and panelled internal shutters. The architraves, skirting and decorative cornice are all consistent with the design of that window. I acknowledge that the cornice only extends to one side of the hallway that adjoins the ground floor room. However, overall the architectural detailing leads me to the finding that the ground floor room appears to have been formed at the time that the building was refronted. That detailing is also consistent with the early 19th Century as stated by the Council.
27. Generally, fireplaces and their associated fire surrounds, inserts and grates are an important part of the design of such a room. However, for the reasons

stated within the ground (c) appeal above I disagree with the Council that the slate fire surround dates from the early 19th Century. As such, in my judgement it cannot have formed an integral part in the design of this room when that room was fashioned. In this case, it appears that the evidence no longer exists of what the early 19th Century fire surround consisted of in terms of design, materials etc.

28. It is extremely unfortunate that the works were undertaken without previous consultation with the Council or listed building consent and that the slate fire surround was damaged and could not be refitted. However, the fire surround had limited evidential and aesthetic value, as an example of its type, relating to the building's overall historical development. Moreover, in terms of the early 19th Century room design it made a negligible contribution to its special interest/significance. As such, the fire surround's contribution to the overall significance/character of the listed building was extremely limited.
29. The design of the replacement stone fire surround is not consistent with that of an early 19th Century one. Nevertheless, it is viewed and experienced in the context of the overall room and with the new opening, hearth and multi-fuel stove. The evidential and aesthetic value of the early 19th Century architectural features remain, and the fire surround does not visually compete with those features. Its materials and the simplicity of its form are compatible with the overall significance of the listed building. Consequently, I consider the works do not harm the special interest/significance of the listed building.

Conclusion

30. Given the above, I conclude that the works preserve the listed building thus satisfying the requirements of the LBCA and the Framework insofar as relevant.

Overall Conclusion

31. For the reasons given above, I conclude that the appeals on ground (c) and (d) fail but the appeal on ground (e) succeeds. The appeal on ground (g) does not therefore fall to be considered.

Formal Decision

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

- Deleting the description of the alleged contravention and substituting it with '*The removal and replacement of a fire surround from the ground floor of the Building has been carried out without the benefit of Listed Building Consent*'

Subject to the corrections the appeal is allowed, the listed building enforcement notice is quashed and listed building consent is granted for the retention of the works carried out - the removal and replacement of a fire surround from the ground floor of the building situate at and known as Dover House, High Street, Northleach, Cheltenham GL54.

D. Boffin

INSPECTOR