The Planning Inspectorate

Appeal Decision

Site visit made on 23 March 2022

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 19th April 2022

Appeal Ref: APP/V3120/F/21/3280143
22 Wallingford Street, Wantage, Oxfordshire, OX12 8AX

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
- The appeal is made by Mr Roger Tredinnick against a listed building enforcement notice issued by Vale of White Horse District Council.
- The enforcement notice was issued on 7 July 2021.
- The contravention of listed building control alleged in the notice is:
  The execution, without listed building consent, of works for the alteration of the listed building in a manner affecting its character as a building of special architectural of historic interest, namely the removal of a curtilage listed rear wall and its replacement with a wooden fence to the rear of the site. The fence is marked in blue on the plan attached to the enforcement notice.
- The requirements of the notice are:
  (i) Remove the wooden fence.
  (ii) Reconstruct the demolished section of the wall with bricks matching the size, colour and texture of the original fabric bricks and conforming to the brick pattern and finish of the adjacent remaining wall, using an appropriate lime mortar of a 3:1 mix of graded sand to match the existing wall and a non-hydraulic lime putty.
  (iii) Remove from the land any and all waste resulting from steps (i) and (ii) above.
  (iv) These works are required to restore the building to its former state. Listed building consent is deemed to be granted for the carrying out of these works.
- The period for compliance with the requirements is three months.
- The appeal is made on the grounds set out in section 39(1)(a), (c), (d), (i) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the Act).

Decision

1. The appeal is dismissed and the listed building enforcement notice is upheld.

Preliminary Matters

2. The name of the appellant shown on the appeal form was derived electronically when the account on the Planning Portal was initiated. However, Mr Roger Tredinnick stated in writing that the appeal had been made by him and he requested that the name be amended on the appeal form. I have dealt with the appeal on this basis.

3. At the accompanied site visit Mr Tredinnick requested that I look at copies of photographs that he had with him. However, I explained to him that the photographs had not been submitted as part of his evidence, in support of his grounds of appeal, therefore I could not look at them. The appellant said that he believed that he had submitted them. The Council's representative at the site visit confirmed that he had not seen or received any photographs as part of the appellant's evidence. Consequently, the photographs were not viewed at the site visit.

Background

4. 22 Wallingford Street (No 22) was listed in Grade II on 6 December 1985 with 2 other properties, 24 and 26 Wallingford Street (Nos 24 and 26). The list description is as follows:

> *'Three cottages, now 3 shops. Late C16/early C17. Originally timber-framed. Roughcast walling; C20 tile roof; brick stack. 3-unit plan. 2 storeys; 3-window range. C20 doors and windows, C18 first-floor sashes. Gabled roof; ridge stack. Interior: No.26 (to left) has chamfered quartered beams on first floor, mid C19 two-panelled doors, timber-framed partition to right. No.24 has chamfered beam and chamfered bressumer to open fireplace in chalk rubble stack. No.22 (right) has chamfered ground-floor beam, jowled posts to 2 queen-post trusses with windbraces and clasped purlins in timber-framed side-walls, which have wattle and daub infill.'*

5. In 1988 listed building consent[1] was granted for alterations to the appeal property which included a rear extension. That extension appears to have been built and no part of the previous rear external wall to No 22 is visible from the parking area to the rear. Various other works and alterations appear to have been undertaken to the rear elevations of Nos 24 and 26. The alleged breach of listed building consent relates to the removal of a brick wall that ran along the rear boundary of No 22. The wall has been replaced on the same alignment with a wooden fence.

The ground (a) appeal

6. The ground of appeal is that the building is not of special architectural or historic interest. However, this ground only applies to the listed building or buildings themselves, that is No 22 and Nos 24 and 26, and the appellant has submitted little evidence in relation to their interest. However, the Council's Conservation and Design Officer's comments state that the appellant has asserted that the wall dated from the late 1980s development on the neighbouring site. I have also taken the appellant's statement relating to the wall being integral to a non-listed building to be an argument that the wall was not within the curtilage of No 22 and was not listed through section 1(5)b of the Act. The condition of the wall is not relevant to this ground of appeal, but it is relevant to the ground (d) appeal.

7. The Council have provided photographs of the wall prior to it being removed. The removed section of the wall relates to the whole of the rear boundary of No 22. In those photographs it is apparent that it was part of a brick wall that was continuous along the rear boundaries of 20 Wallingford Street (No 20), No 22 and No 24. The photographs also indicate that the wall to the rear of No 20 has been subsumed into the construction of the modern outbuilding given the different brick bonds visible in those photographs. The use of a different brick bonding pattern on the lower part of the wall to that within the gable above provides evidence that this part of the boundary wall was not demolished when the outbuilding was constructed. That evidence was not visible on the day of my visit as the whole gable of the outbuilding is now rendered.

8. Nevertheless, the rear boundary wall to No 24 was visible and the photographs indicate that the removed section of wall was constructed of bricks similar in

[1] Application No: WAN/8893/2-LB

colour and texture to that remaining at the rear of No 24. The visible brick bond used in the wall, the bricks and the apparent use of a lime-based mortar, in my experience, denote that the wall was highly likely to have been built in the 19th Century.

9. The historic maps submitted by the Council indicate that the alignment of the rear boundary to No 22 has not altered since the 1898-1900 edition of the Ordnance Survey (OS) map. The rear wall forms one side of the enclosure that was around the rear yard/garden to No 22. There is little before me to indicate that his rear area has not been, historically and recently, used in association with the use of No 22. This area adjoins the rear elevation of No 22 and appears to be within the same ownership as No 22. In my view, as a matter of fact and degree, the land to the rear of No 22 that was bounded, in part, by the removed brick wall is within the curtilage of No 22.

10. I conclude that the rear boundary wall stood within the curtilage of the listed building, formed part of the land and had done so since before 1st July 1948, and in accordance with the provisions of section 1(5)(b) of the Act was part of the listed building. The appeal on ground (a) therefore fails.

The ground (c) appeal

11. To be successful on this ground of appeal it must be successfully argued that the works (the removal of the rear wall) carried out do not constitute a contravention of sections 7 and 8 of the Act. Section 7 of the Act states that *'Subject to the following provisions of this Act, 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.

12. Given my findings in the ground (a) appeal that the brick wall was within the curtilage of the listed building that wall formed part of the listed building for the purposes of the Act. There is no dispute that the works were carried out without any application being made for listed building consent (LBC). The question is therefore whether the works have affected the character of the listed building, as one of special architectural and/or historic interest. This is irrespective of whether the works are considered to be harmful to the building.

13. The age, materials and form of the rear boundary wall to No 22 provided aesthetic and evidential value that contributed to the architectural and historic interest of the listed building. I acknowledge that the rear elevations of No 22 and Nos 24 and 26 have been altered and extended and that the part of the boundary wall to the rear of No 26 has at some point been replaced with blockwork. I also acknowledge that the materials utilised in those alterations and extensions are not sympathetic to the special interest of the overall listed building. Additionally, the erection of the fence would not have required the benefit of listed building consent as it is not physically attached to the listed building itself. However, the removal of the section of wall to the rear of No 22 and its replacement with the fence has substantially eroded the aesthetic and historic value that this part of the boundary wall made to the special interest of the listed building.

14. 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 Act has thus occurred. The appeal on ground (c) therefore fails.

The ground (d) appeal

15. 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.

16. Based on the evidence before me, it is apparent that the bricks used in the construction of the rear wall had suffered from water and frost damage. The appellant has also stated that the wall was built on clay with no footing. Moreover, parts of the remaining section of brick wall to the rear of No 24 are out of vertical alignment, the top section of the wall leans towards the parking area. It also appears that the movement in the vertical alignment of the boundary wall may have been causing damage to the outbuilding at No 20. However, whilst accepting this, there is little indication that works to remove the whole section of boundary wall itself were urgently necessary in the interests of health and safety. This is because there is no technical evidence, such as a structural survey, to indicate whether the damage to and lean of the wall were extensive or not.

17. As a result, 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, there is no evidence to suggest that works for making the wall safe or for its support/repair could not have been achieved by way of a more minimal temporary nature while an application for listed building consent was prepared. Consequently, the three tests are not satisfied and the appeal on ground (d) fails.

The ground (i) appeal

18. This 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 a site visit is needed to assess the situation. Within his ground (c) appeal it is stated that the wall consisted of a soft red brick and to match the property the wall should be built in LBC Windsor bricks. I consider that this statement is relevant to this ground of appeal.

19. The notice requires the fence to be removed. As the fence is on the alignment of the boundary wall its removal is necessary to ensure that a wall can be built on the same alignment as the removed wall. The Council is not requiring the reinstatement of the wall using the original fabric bricks but the reconstruction of the wall with bricks matching the size, colour and texture of the original fabric bricks. I observed on site that the extension to No 22 appears to be constructed in LBC bricks. However, the wall to be reconstructed would adjoin the part of the boundary wall that is to the rear of No 24 and it would be seen

in conjunction with that wall. Furthermore, the restoration of the character of the building to its former state before the wall was removed would be achieved by using a brick that matched the original fabric bricks with regard to size, colour and texture. The steps required by the notice would serve the purpose of restoring the character of the building to its former state and the appeal on ground (i) thus fails.

Other Matters

20. In reaching my conclusions on all of the grounds of appeal I have taken into account all of the other matters raised, including the issues of difficulties in communications between the parties, by the appellant and the Council. However, none of these alters any of my conclusions on the various grounds of appeal and nor is any other factor of such significance so as to change my decision.

Overall Conclusion

21. For the reasons given above I conclude that the appeal should fail.

D Boffin

INSPECTOR