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# Appeal Decision

Site visit made on 3 August 2022

**by AJ Steen BA(Hons) DipTP MRTPI**

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

**Decision date: 16 August 2022**

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**Appeal Ref: APP/G2245/F/22/3292294**

**1 Lockyer Place, Vicarage Hill, Westerham, Kent TN16 1TG**

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
  - The appeal is made by Mrs Susan Butcher against a listed building enforcement notice issued by Sevenoaks District Council.
  - The enforcement notice was issued on 12 January 2022.
  - The contravention of listed building control alleged in the notice is without Listed Building Consent, a UPVC replacement window frame installed to a listed building.
  - The requirements of the notice are to:
    - A. Remove UPVC window frame from the front elevation second floor (loft area)
    - B. Replace with a timber frame and sash window with three over six glazing pattern to match the windows on the dwelling and adjacent dwellings. No such works should take place other than in accordance with granted pursuant to an application first made to the Local Planning Authority.
  - The period for compliance with the requirements is twelve months.
  - The appeal was made on the grounds set out in section 39(1)(e) and (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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## Decision

1. It is directed that the listed building enforcement notice be corrected and varied by deleting "to match the windows on the dwelling and adjacent dwellings. No such works should take place other than in accordance with granted pursuant to an application first made to the Local Planning Authority" at Schedule 3: Steps required to be taken.
2. Subject to that correction and variation, the appeal is dismissed and the listed building enforcement notice is upheld, and listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

## Application for Costs

3. An application for costs was made by Mrs Susan Butcher against Sevenoaks District Council. This application is the subject of a separate Decision.

## Preliminary Matters

4. The enforcement notice does not specify under which part of section 38(2) of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act) the steps required to be taken by the notice are based. Section 38(2)(a) enables the Council to require works to restore the building to its former state. Section 38(2)(b) allows Councils to require further works they consider necessary, but only where restoration under section 38(2)(a) would not be reasonably practicable or would be undesirable.

5. An appeal under ground (j) is that steps required to be taken by virtue of section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building. In this case, the requirement is to replace the uPVC window with a timber frame and sash window to restore the building to its former state. As such, the requirement is under section 38(2)(a). Consequently, the appeal should have been made under ground (g), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out. Given the nature of the cases made by the parties, there would be no injustice were I to deal with the appeal under ground (g), so I shall do so.
6. Requirement B appears to suggest that the works required to comply with the notice should not take place other than in accordance with a listed building consent granted by the local planning authority. However, where works take place in accordance with the notice they are deemed to have listed building consent. As a result, this part of the requirements is unnecessary and I will use my powers under section 41(1)(a) of the Act to correct the notice.

### **The Appeal on Ground (e)**

7. An appeal on this ground is that listed building consent ought to be granted for the works. The main issue is whether the development preserves the Grade II listed building known as 1 Lockyer Place or any features of special architectural and historic interest (or significance) which it possesses.
8. In coming to my decision, as the work involves a listed building and within a conservation area, I have had special regard to sections 16(2) and 72(1) of the Act.
9. 1 Lockyer Place is a semi-detached house located in a prominent position on the main A25 as it enters Westerham from the east. It and the attached neighbour comprise a two storey building with dormers in the front roof slope that contribute to the street scene within Westerham Conservation Area. The conservation area comprises historic development of this market town, including along the A25, and surrounding parkland. Buildings feature a variety of vernacular features, typical of traditional Kentish buildings. The conservation area contains a substantial number of listed buildings, including grade I listed Quebec House directly opposite 1 and 2 Lockyer Place. The conservation area's significance, insofar as relevant to this case, derives from the variety of attractive buildings fronting the road.
10. The building comprises a brick frontage with tiled mansard roof. It is a pair of semi-detached houses that are not symmetrical, with the front door of no. 2 on the front elevation, but main door to no. 1 on the side. It contributes to the group of buildings in this part of the conservation area, including Grosvenor House, Grosvenor House Cottages and nos. 1 and 2 Dale Cottages, Mill Street. Its significance as a listed building derives from its contribution to that relationship with surrounding development, including its relationship with the A25.
11. Most of the windows on the building comprise timber sliding sash windows with thin frames and glazing bars, three or four panes wide. The dormers on the front elevation are of a slightly different shape and size. That of the neighbouring property is a four pane Crittall style casement window. However, the width of the dormer at 1 Lockyer Place means that it is a three pane

window. I understand that the uPVC window replaced a timber sliding sash window, albeit in a poor condition and the bottom sash may have been fixed shut. It appears to have been replaced in the past, such that the previous window may not have been original.

12. The uPVC window that has been inserted has noticeably wider frames than the timber and Crittall style windows on the remainder of the building. The frames project outward in a manner other windows on the building do not. This means the frames have a thicker and less elegant profile than those on other windows and do not reflect the character or appearance of other windows on the building. Both the top and bottom sections of the window appear to be able to open outward, rather than being sliding sashes. Whilst other windows on the building open in a similar manner, they are of a different shape and size. Taking account of all these factors, the window appears incongruous on this prominent dormer and does not preserve the appearance of this listed building within the conservation area.
13. I understand that a number of uPVC windows have been installed in nearby listed buildings. My attention has been drawn to, for example, 1 Dale Cottages listed grade II and Rydal House (or Rysted House) that is grade II\* listed. The circumstances of their provision, such as why those windows were provided or whether listed building consent was required or obtained, is not clear. The Council have indicated they may also be investigating these. They are not all in such prominent positions as this window, fronting the A25. As a result, they carry limited weight in my considerations.
14. For these reasons, I conclude that the replacement of the window in the dormer at 1 Lockyer Place does not preserve the Grade II listed building and features of special architectural and historic interest that it possesses. In addition, it does not preserve or enhance the character and appearance of the Westerham Conservation Area. As such, the work results in harm to the significance of the listed building and conservation area as heritage assets, albeit that harm is less than substantial.
15. The works do not comply with Policy SP1 of the Sevenoaks Local Development Framework Core Strategy Development Plan Document, Policies EN1 and EN4 of the Allocations and Development Management Plan and paragraphs 194-200 of the National Planning Policy Framework (the Framework). These policies seek works to conserve or enhance the character and appearance of heritage assets. This includes responding to the materials of the area and taking into account the historic and architectural significance of heritage assets and any elements of the asset to be lost or replaced and the prominence of the location and setting of the asset. Paragraph 199 of the Framework states that great weight should be given to the conservation of heritage assets.
16. Paragraph 202 of the Framework establishes that, where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The appellant is concerned that young occupiers may fall through the bottom sash when open, but I note the previous sliding sash was fixed shut and it may be possible to restrict opening by other means. In addition, it is unclear how that differs from the uPVC window installed where the bottom casement also appears capable of opening. They suggest that a sash window would result in the room becoming

uninhabitable, such that top opening windows extend the lifespan of the building but the reasons given for that are unclear and unconvincing. Timber is also more complicated to maintain than uPVC, requiring regular redecoration that may include scaffolding on the pavement outside the building. However, these claimed benefits are primarily private rather than public, so carry modest weight. As a result, there are no public benefits that would outweigh the identified harm to the listed building.

17. For these reasons, I conclude that the appeal under ground (e) should fail.

### **The Appeal on Ground (g)**

18. An appeal on this ground is that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out.

19. The requirements of the listed building enforcement notice are to remove the uPVC window frame and replace with a timber frame and sash window with three over six glazing pattern. I understand this would reflect the appearance of this dormer window prior to the work having taken place. As such, it would not exceed what is necessary to restore the building to its condition before the works were carried out.

20. My attention has been drawn to a possible need for a lintel above the window. It is unclear whether a lintel is necessary as the evidence suggests none has been located in the dormer in the past. The appellant suggests the previous window was poorly installed and was not historic. Nevertheless, I understand this window may have been regularly replaced in the past as a repair to the building. As the previous window was a timber sash window, its appearance and the materials used in its construction were sympathetic and in character with the remainder of the building.

21. I note that the requirement refers to the window matching windows on the dwelling and adjacent dwellings. However, the windows on this pair of semi-detached dwellings vary, with most windows being of different size to the dormer window, and those on surrounding buildings also differ. The other dormer window on the building is of different size, shape, materials and style. The reference to a timber frame and sash window with three over six glazing pattern is clear. As such, the reference to other windows is somewhat confusing so I shall remove it from the notice.

22. For these reasons, I conclude that the appeal under ground (g) should succeed to the extent that I shall remove reference to other windows from the requirements.

### **Conclusion**

23. Subject to a correction and variation and for the reasons given above I conclude that the appeal should fail.

*AJ Steen*

INSPECTOR