
Appeal Decision

Site visit made on 21 July 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 05 September 2022

Appeal Ref: APP/J4525/F/21/3289596
18 Park Place West, Sunderland SR2 8HT

- 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 Jonathan Bray against a listed building enforcement notice issued by Sunderland City Council.
 - The enforcement notice is dated 2 December 2021.
 - The contravention of listed building control alleged in the notice is: Without listed building consent, the removal of Welsh natural slates from the front roof plane, their replacement using Spanish slate and the installation of plastic framed windows and French doors in the rear elevation; materially altering the external appearance and character of the building within the listed terrace.
 - The requirements of the notice are: (i) With reference to photograph 'EN 1' attached to the notice, remove the Spanish slates from the front roof plane and recover the front roof plane using Welsh slates of a matching size and colour as the slates used on the front roof plane of the adjoining properties Nos 17 and 19 Park Place West and laid to the same gauge. (ii) With reference to photograph 'EN 2' attached to the notice, remove from the rear elevation all plastic framed windows and French doors, including any plastic cladding and infill panels from the rear elevation of the building at basement, ground floor, first floor and second floor levels and in the rear dormer. (iii) Remove from the land the dismantled components and any wastes arising from fulfilling requirements (i) and (ii) above.
 - The period for compliance with the requirements is nine months.
 - The appeal is made on the grounds set out in section 39(1)(e), (h) and (i) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

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

The appeal on ground (e)

2. Ground (e) is that listed building consent ought to be granted for the works

Main Issue

3. The main issue is the effect of the works on the character or appearance of the grade II listed building.

Significance

4. 18 Park Place West forms part of a terrace of dwellings, Nos 1–24, which were listed grade II in 1994. The row comprises townhouses dating from c1850 to 1854, and is mirrored by a similar terrace across the road.

5. The frontage of No 18 is built in brick and has three bays. The roof was previously covered in Welsh slate and the chimneys are in brick. In terms of architectural treatment, features include painted ashlar dressings. The rear elevation has less formality than the more ordered front elevation, reflecting the fact it fulfils a private rather than a public function. Nonetheless, it retains features such as the historic brick construction and a number of historic window openings.
6. No 18 is an attractive example of a townhouse of its period, which appears to be relatively unaltered since it was built. As a result, its original form, dimensions and appearance, including the rear elevation, remain largely apparent. These factors all contribute to the significance of the listed building, and to the neighbouring listed buildings in the terrace.
7. The appellant has provided a photograph of the rear of the building prior to the works which shows that the timber windows at the back were not historic in character. However, the photograph shows that they were single glazed windows of slender proportions, and simple in terms of their design and appearance. The upper French doors appear to have been of stained timber. Therefore, although these elements did not make a positive contribution to the character or history of the listed building, they were relatively unobtrusive in appearance.

Effect of the works to the roof

8. In terms of works to the roof, the appeal relates only to the front roof plane of the listed building. There is no dispute between the parties that the unauthorised works comprised the removal of Welsh slate from the front roof slope, and its replacement with Spanish slate.
9. The appellant argues that the building was falling into disrepair when he purchased it. He cites water ingress particularly next to the chimney stacks and the rear dormer. On inspection of the roof, nail fatigue was identified, as well as some water damage and poor previous repair work. However, even if it is accepted that the roof at the front was beyond reasonable repair, the change from Welsh slate to Spanish slate requires clear justification.
10. Welsh slate is the typical historic roof covering for buildings of this era, as reflected in the list description for the terrace, and from the prevalence of the material in the vicinity of No 18. There are demonstrable differences in the visual properties of Welsh slate and Spanish slate. When the roof of No 18 is viewed side by side with the Welsh slate roofs on either side, it is clear that the Spanish slate is darker in colour, and lacks the variation of shades found in the Welsh slate roofs. It also has more of a sheen on its surface, as opposed to the more matt finish that is typical of Welsh slate.
11. These differences alone lead me to the conclusion that the change to Spanish slate has altered the character and appearance of the listed building in a way that harms its significance and its historic integrity.
12. The appellant alludes to the lawfulness of requiring material from a specific country to be utilised. However, as this case demonstrates, it is usually very difficult to source from another geographical location a material that satisfactorily matches the qualities of the original.

13. I have taken into account the appellant's introduction of new evidence at the final comments stage. This document contains three pictures of different roofing materials. The first thing to note is the striking difference in colour between the Spanish and Welsh examples. Secondly, the appellant states that the 'existing tiles' in the left hand photo were on the roof prior to replacement. However, it is not made clear whether these tiles were on the front or rear roof slope prior to replacement, or how they appear to be entirely unweathered.
14. Moreover, this evidence appears to contradict the planning officer's report which states that original Welsh roof slates were replaced on the front roof, as the photographed material appears significantly different to the other Welsh slate roofs in the area. Unfortunately, very little can be drawn from this vague and inconclusive new evidence, and so it has not led me to a different conclusion on this particular aspect of the appeal.

Effect of the works to the rear

15. To the rear elevation of the house, works have been carried out to remove the upper-level French doors and a number of timber windows, and replace them with uPVC items. The new windows have altered the appearance of the listed building in a number of ways.
16. uPVC is a synthetic material whose smooth, shiny, modern appearance does not satisfactorily capture the character of the painted timber finish that previously existed, and would have typified the original windows of the house. Although the French doors were stained and not painted, their uPVC replacements are still inappropriate due to the unsympathetic qualities of uPVC. As a result, the new windows and doors appear discordant, and out of keeping with the natural traditional materials that are dominant within the building.
17. Furthermore, the new window frames are disproportionately large in comparison to the dimensions of the replaced windows, and appear overly bulky within the modestly sized window openings. These changes result in new windows whose unsympathetic materials and poor detailing detract from the significance of the heritage asset, and depart still further from the likely character of the original windows. The fact that the windows are at the back of the building is insufficient to mitigate this harm, as buildings are listed for their intrinsic historic and architectural qualities, regardless of accessibility or visibility from outside the property.
18. The appellant gives a list of the problems relating to the condition of the previous windows. However, whilst the windows may have been in need of repair, this in itself does not justify their replacement with new windows that have harmed the character of the building. The cost effectiveness of uPVC windows is cited as enabling finances and efforts to be focused on the renovation of the remainder of the property, including the front windows. I note also the appellant's future intention to replace the back windows with timber ones in some years' time. However, these circumstances do not justify the ongoing harm from the unauthorised works.
19. With regard to sustainability and energy conservation, these are of course important policy objectives. However, they do not outweigh the need to preserve the significance of heritage assets. I fully acknowledge the need to address the various problems of disrepair and make the building weather tight, and the appellant's general commitment to the preservation of the listed

building. However, these outcomes could equally have been achieved using sympathetic materials. It is unclear how Spanish slate and uPVC, materials that have been in use in the UK for decades, can be considered to be innovative, as the appellant suggests. Whilst the National Planning Policy Framework (NPPF) and the local plan do not specifically prohibit the use of uPVC, each case is to be determined on its individual merits.

20. My attention has been drawn to a list of properties in Park Place East and Park Place West where the appellant states that non-Welsh slates and uPVC windows have been granted listed building consent. He also refers to works to buildings in Mowbray Street, and to a former school building that is to be replaced with new housing. However, the details of these cases and the circumstances in which they were found to be acceptable are not before me, which substantially limits the weight I can afford them.
21. Accordingly, in view of the harm I have identified to the listed building, the works conflict with the overarching statutory duty as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, which must be given considerable importance and weight, and with the NPPF. In addition, the appeal scheme conflicts with Policy BH1 of the Sunderland City Council Core Strategy and Development Plan 2015-2033 (CSDP), which requires high quality design, CSDP Policy BH7, which gives great weight to the conservation of heritage assets, and CSDP Policy BH8, insofar as it requires alterations to listed buildings to conserve their significance.
22. Although serious, the harm to the heritage asset in this case is less than substantial, within the meaning of the term in paragraph 195 of the NPPF. Paragraph 196 requires that, where there is less than substantial harm, the harm should be weighed against the public benefits of the works.
23. I have taken into account all the benefits of the works outlined by the appellant, including their cost effectiveness and the need to make repairs to the building. However, these are private benefits that do not go in the appellant's favour, in view of the harm to the significance of the listed building, and the fact that the works could have been done in a manner that would have preserved its character. There is no evidence that the life or meaningful use of the building has been prolonged by the appeal scheme, over and above using the appropriate materials.
24. I therefore find that insufficient public benefits have been identified that would justify or outweigh the harm I have identified to the heritage asset. The scheme therefore conflicts with the NPPF, which directs, at paragraph 193, that great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. It also fails to comply with the NPPF's environmental objective of protecting and enhancing the historic environment.

Conclusion

25. For the reasons above, the appeal on ground (e) fails.

The appeal on ground (h)

26. Ground (h) is that the period specified in the notice within which any step required by the notice is to be taken falls short of what should reasonably be allowed.

27. The enforcement notice gives nine months for the carrying out of the requirements. The appellant states that nine months appears to be a sufficient period of time in normal times. However, with reference to Brexit and the coronavirus pandemic, he cites concerns that the people required to measure up, manufacture and install the new front roof and rear windows may not be available to carry out these tasks.
28. However, at the time of writing of this decision, the pandemic restrictions have been lifted for some time. The specific effects of Brexit on the appellant's ability to carry out the requirements within the given time are not clear from the evidence before me.
29. The appellant also refers to the cost of having to replace the unauthorised slates and windows. However, as he effectively incurred these costs himself by carrying out the works without listed building consent, this factor in itself does not justify an extension of the stated time period.
30. Taking all these circumstances into account, I am not satisfied that there is good reason to extend the compliance period. Even if there was, the appellant's request for a period of five years to comply with the notice would not be tenable. To allow the harm to the listed building to persist for such a long period would not be justified, would call into question whether it was expedient for the Council to enforce in the first place, and would erode the confidence of the public in the efficacy of the planning system. For the same reason, it would not be appropriate to consider the appellant's suggestion of granting a temporary listed building consent for the replacement windows.
31. Accordingly, the appeal on ground (h) fails.

The appeal on ground (i)

32. Ground (i) 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.
33. To be successful on this ground of appeal, the onus is on the appellant to conclusively show that the steps required to restore the character of the building to its former state would not serve that purpose. In other words, that the removal of the unauthorised Spanish slate and its replacement with Welsh slate would not restore the character of the building to its state before the works took place.
34. As noted above, I have found that there are significant visual differences between the Welsh and Spanish slates, and that these differences have led to harm to the listed building. The appellant contends that the new slates to the front roof plane will blend in with time, with the effect that the character of the building will be returned to its former state. If that is the case, then it is argued that the removal of the new slates would not be justified.
35. However, there is little evidence before me to show that this outcome would occur. As the lack of colour variation in the Spanish slate is part of its intrinsic quality, it is unclear how this would change as it weathers. It would also have to lighten in its overall tone and acquire a matt surface in order to approximate Welsh slate. In my experience, Spanish slate does not weather in this way, and remains visually distinct from Welsh slate.

36. Therefore, in the absence of any substantive evidence to the contrary, I am satisfied that the steps required by the notice will result in the restoration of the character of the building to its former state, and so the appeal on ground (i) fails.

Conclusion

37. For the reasons above, the appeal is dismissed and the enforcement notice is upheld.

Elaine Gray

INSPECTOR