
Appeal Decision

Site visit made on 20 September 2022

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 24 October 2022

Appeal Ref: APP/G2713/Y/22/3298417

Bridge Cottage, 4 Bridge Street, Great Ayton TS9 6NR

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
 - The appeal is made by Dr Richard Gossow, Zetland Medical Practice, against Hambleton District Council.
 - The application Ref: 21/02852/LBC is dated 1 December 2021.
 - The works proposed are described as 'application to replace existing modern windows (fitted in 2004) with appropriate Heritage approved double glazing.'
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Decision

1. The appeal is dismissed and listed building consent is refused.

Preliminary Matters

2. The application was submitted by Dr Richard Gossow and the appeal was submitted by Dr James Gossow. It has been confirmed that they are one and the same person. I have used the name as stated in the application form in the heading above.
3. The appeal was submitted on the basis of the failure of the Council to determine the application within the prescribed timescale. In addition, the Council has not submitted a statement of case in relation to the appeal. Having regard to the information presented by the parties along with that requested by me from the Council relating to a previous application and appeal for similar proposed works at the same property¹, I have determined the appeal on the basis that, had the Council determined the application, the recommendation would have been to refuse the grant of listed building consent. Given that the appellant's grounds of appeal addresses the issues arising from this, I am satisfied that they would not be prejudiced by this approach.
4. The appeal relates to an application for listed building consent for proposed works to a property which is Grade II listed and located within a conservation area. Listed building appeals are not subject to section 38(6) of the Planning and Compulsory Purchase Act 2004. Consequently, they do not need to be determined in accordance with the development plan, although relevant provisions can nevertheless be material considerations. No relevant development plan policies have been submitted by the Council relating to the consideration of this appeal. I have therefore determined the appeal on the basis of the statutory duties under sections 16(2) and 72(1) of the Planning

¹ Application Ref: 20/00469/LBC, Refused 15 September 2020; and Appeal Ref: APP/G2713/Y/20/3263849, Dismissed 14 July 2021.

(Listed Buildings and Conservation Areas) Act 1990 (the Act) and the relevant provisions within the National Planning Policy Framework 2021 (the Framework).

Main Issue

5. In the context of the above, the main issue is whether the proposal would:
- i) preserve the Grade II listed building known as, Nos 2, 4 and 6 with adjoining wall and outhouse, Bridge Street (East fork); and ii) preserve or enhance the character or appearance of the Great Ayton Conservation Area.

Reasons

Special interest and significance

6. Bridge Cottage, 4 Bridge Street (No 4) forms part of a Grade II listed building referenced in the National Heritage List for England as Nos 2, 4 and 6 with adjoining wall and outhouse, Bridge Street (East fork)² (the listed building). The listed building occupies an important and highly prominent corner site fronting the highway and facing the bridge at the junction of Bridge Street and Levenside (A173), and is located within the Great Ayton Conservation Area (the GACA).
7. The listed building is stated to date from the late-18th century to the early-19th century. It comprises two-storey dwellings which are constructed of coursed squared stone with pantile roofs. Its fenestration mainly consists of single-glazed, multi-pane, painted timber, vertical sliding-sash windows. Pertinent to the appeal, the windows within No 4 are declared by the appellant to have mostly been installed around 2004 and are now in poor condition and not functional. Having regard to the submitted information and my observations on site, I have no reason to disagree with these assertions.
8. From the evidence before me, I find the listed building's special interest and significance to be principally derived from its historic and architectural interests. Important contributors in these regards are its surviving historic fabric; traditional construction and materials; and modest but pleasing architectural form and design, including key features and detailing. Special interest and significance also stems, in part, from its group value.
9. The listed building's fenestration is a key feature of its architectural style and appearance. In relation to the appeal, while the existing windows in No 4 which are the subject of the proposed works may not be historic, they are of classic single-glazed, multi-pane, vertical sliding-sash form and proportions and are constructed of traditional materials, all of which are compatible with the age and style of the house. In these respects, they are important components of the property which, although of no historic value, contribute in a positive way to the listed building's architectural merit.
10. No 4 is also located within the GACA which encapsulates the historic core of Great Ayton either side of the River Leven. The special interest and significance of the GACA are largely derived from the preservation of the village's historic street pattern; the architectural richness of its historic buildings which signify its organic development; and the pleasing composition of the buildings and verdant spaces either side of the focal feature of the river and its bridging

² National Heritage List for England, List Entry Number 1188965.

points. By virtue of its historic and architectural integrity, Nos 2, 4 and 6 with adjoining wall and outhouse, Bridge Street (East fork) adds to Great Ayton's historic and aesthetic charm. In doing so it positively contributes to the character and appearance of the GACA as a whole and thereby to its significance as a designated heritage asset.

Proposed works and effects

11. Section 16(2) of the Act requires that special regard shall be had to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. Additionally, section 72(1) of the Act requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
12. Moreover, Paragraph 199 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have clear and convincing justification.
13. The proposed works comprise the replacement of 14 of the existing windows in the front, rear and side elevations of No 4. The units to be replaced include a variety of single-glazed, multi-pane (including one-over-one, two-over-two, four-over-four, six-over-three and eight-over-eight), painted timber, vertical sliding-sash windows. The proposed units are slimline double-glazed, multi-pane, uPVC with grained acrylic foil finish, vertical sliding-sash windows, which possess traditional style features such as sash mechanisms, continuous horn construction, wood effect and authentic style locks³.
14. Given the age of the existing windows, the proposed works would not involve the loss or alteration of historic fabric. Moreover, even though no formal condition report of the existing units has been submitted, I acknowledge that the evident decay is likely to have diminished their structural integrity and contributed to their poor functioning. These factors provide some justification which supports the principle of their replacement.
15. Nonetheless, I have concerns about the detail of the proposed works as submitted and the appropriateness of the proposed replacement windows within a listed building.
16. From the details provided, the proposed units would reflect the vertical sliding-sash opening style and white colour of the existing windows. Additionally, when comparing the number references of the windows in Appendix 2 and Appendix 4⁴ of the appellant's statement, the glazing pattern of some of the proposed windows would echo that of the existing units⁵.
17. However, in the absence of accurate and detailed drawings of the existing and proposed windows at an appropriate scale, it is difficult to undertake a meaningful assessment of the proposal. Indeed, from the information provided,

³ Bygone Collection – Symphony Collection Brochure.

⁴ Appendix 2 - Elevation Drawings showing 'number of corresponding section drawing' and Appendix 4 – Colin Watson Proposal Ref: B2202022A dated 3 March 2022.

⁵ Windows referenced- numbers 1, 2, 3, 4 and 7 on the front elevation, 5 on the side elevation and 6 on the rear elevation.

it is evident that, at the very least, the glazing pattern of some of the proposed units would not match that of the existing windows⁶. As such, I cannot be certain that the proposed windows would satisfactorily duplicate the detailed dimensions, profile and design of the existing units.

18. Even if I considered that the proposed windows would acceptably replicate the existing units in these respects, the proposed base material of uPVC, even with a grained acrylic foil finish, is a synthetic fabric which does not adequately emulate a painted timber texture and is incompatible with the historic and architectural integrity of the listed building.
19. In all of the above respects, I am not persuaded that the proposed units would, as asserted by the appellant, 'appear identical to the current windows.' The changes to the appearance of the listed building as a result of the proposal, which would be readily apparent when viewed from adjacent public routes, would weaken the architectural integrity of the listed building and detrimentally undermine its heritage merit. As such, the proposal would not conserve this designated heritage asset in a manner appropriate to its significance.
20. Given the building's prominence within the villagescape of Great Ayton, it follows that the identified negative effects to the listed building would also harm the positive qualities of the GACA. In these regards, the proposed works would materially and incrementally diminish the character and appearance of the GACA as a whole and thus its significance as a designated heritage asset.
21. I acknowledge that conservation is an active process of managing change to heritage assets in ways that sustain, reveal or reinforce their heritage interests, and that change to a heritage asset does not automatically result in harm to its significance. While I do not doubt that, of themselves, the proposed windows are of a high quality, I find that they would erode the identified special interest and significance of the listed building and the GACA, which would not be sufficiently mitigated by the imposition of any conditions.
22. Accordingly, I conclude that the proposal would fail to preserve the listed building; and would not preserve or enhance the character or appearance of the GACA. As such, it would fail to satisfy the requirements of sections 16(2) and 72(1) of the Act and harm the significance of these designated heritage assets.

Other Matters

23. The appellant asserts that 'precedents' have been set at a national and local level through the acceptance of windows similar to those proposed and/or modern materials in listed buildings.
24. At a national level, while the appellant states that the proposed windows are 'heritage approved' and deemed suitable for use in listed buildings, no corroborative evidence has been presented in this respect. In any event, the acceptance of this particular make of window by a different local planning authority, does not justify its approval in this particular listed building in this specific context.
25. At a local level, the appellant has referred me to other properties in Hambleton District and Great Ayton, which are stated to be Grade II listed buildings and

⁶ Windows referenced- numbers 8 and 9 on the rear elevation.

that have uPVC windows of a similar or poorer quality to those proposed⁷. However, the specific details and circumstances of these works and/or any associated listed building consents, if obtained, have not been submitted. Consequently, I cannot be sure that they are directly comparable to the appeal property and/or the proposed works. Moreover, the alleged lack of action by the Council in respect of any asserted unauthorised installation of uPVC windows in nearby listed buildings, does not denote a general acceptance of those works.

26. Additionally, the appellant has cited other works/developments in the area which they state have been approved by the Council, including the installation of solar panels on a listed building⁸, the installation of modern rooflights in a listed building⁹ and the development of new houses opposite No 4 within the GACA. Similar to the above, no details of these works/developments have been provided. Nevertheless, as they are for different works/development to that proposed they are not comparable and do not weigh in favour of the appeal.
27. Reference is also made to some unlisted buildings within Great Ayton that the appellant contends are of a similar age, style and construction to the appeal property and which have installed uPVC windows. Nonetheless, as they are not listed, any alterations to them are not subject to the same statutory duties.
28. The appellant disputes the special architectural or historic interest of the listed building of which No 4 forms part, contending the original decision to list it to be 'completely arbitrary' and highlighting that there are many similar properties in Great Ayton, the majority of which are not listed. Nevertheless, 2, 4 and 6 with adjoining wall and outhouse, Bridge Street (East fork) was listed as a building of special architectural and historic interest in May 1989. It is not for me as part of this appeal to consider and/or make a judgement on the relative merits of the building's listed status. I have considered the appeal on the basis that it is a listed building and assessed the proposal against the current legislative and policy context.
29. I have had regard to the appellant's reference to the comments made by Planning Consultants, RBA Planning. I have also given careful consideration to the representations submitted in support of the proposal, and note that no objections were received by the Council in relation to the proposed works. I acknowledge these views and have included the public benefits they highlight in the planning balance below. However, a lack of objection does not denote a lack of harm and they do not alter my conclusion on the main issue.
30. I note the appellant's comments in relation to the Council's alleged conduct during the assessment and ultimate failure to determine the application. Nonetheless, of itself, this matter is not within the remit of my considerations in the context of an appeal under section 20 of the Act.

Overall Balance and Conclusion

31. With reference to Paragraphs 201 and 202 of the Framework, in finding harm to the significance of a designated heritage asset, the magnitude of that harm should be assessed. Given the extent and nature of the proposed works, I find

⁷ Application Ref: 19/01948/LBC The Old Post Office, Sutton Under Whitestonecliffe, YO7 2PR; 27 Bridge Street, Great Ayton, TS9 6NP; and 39 Bridge Street, Great Ayton, TS9 6NP.

⁸ Application Ref: 11/02227/LBC 10 High Green, Great Ayton, TS9 6BJ.

⁹ No 1 Low Green.

that the harm in this instance would be 'less than substantial' but, nevertheless, of considerable importance and weight. Under such circumstances, Paragraph 202 advises that this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing the asset's optimum viable use.

32. The appellant contends that the proposal would not result in harm to the property. Nonetheless, their statement includes a range of benefits which they consider the proposal would generate.
33. Mindful of the advice within the Planning Practice Guidance regarding what constitutes a public benefit¹⁰, some of those benefits and/or interests cited would be of a private nature, including those concerning heating and maintenance costs and the value of and ability to sell the property.
34. Nonetheless, of these, I acknowledge that an improvement in the property's thermal efficiency with a consequent reduction in its carbon footprint; improvements to the housing stock within the area; and investment into the property and regional economy would amount to benefits that would flow to the public at large. These benefits carry moderate weight in favour of the appeal, but of themselves, are not sufficient to outweigh the considerable importance and weight I attach to the harm to the significance of the designated heritage assets.
35. I am aware of the personal circumstances which have been advanced by the appellant. These relate to the risks to the health, wellbeing and security of him and his family, particularly his young child, from living in a property which suffers from condensation, damp and mould, noise pollution and is not secure, all of which he contends are a result of the existing windows. The appellant submits that there is a 'clear duty of care' to ensure that a young child has suitable living conditions and that a refusal of the proposal would mean that this duty is not being met.
36. In these respects, I have had due regard to Article 8(1) of the Human Rights Act 1998 (the HRA), Article 3(1) of the United Nations Convention on the Rights of the Child (the UNCRC), and the Public Sector Equality Duty (the PSED) under the Equality Act 2010, of which age is a protected characteristic. In reaching my decision, I have kept these interests at the forefront of my mind, with the rights and best interests of the child being a primary consideration. However, they are qualified rights and interference may be justified where it is in the public interest. The concept of proportionality is key.
37. Given the poor condition of the existing windows, it would be reasonable to conclude that the installation of double-glazed units into the property would improve its internal environment in terms of reduced condensation, potentially lessening the issues of damp and mould; increased heat retention; increased sound abatement; and increased security. These effects would benefit the appellant and his family, including his young child, and carry significant weight in favour of granting listed building consent.
38. If listed building consent was refused and the existing windows retained, the issues highlighted would persist, with the potential for consequent risks to the health, wellbeing and security of the appellant's family, including his young

¹⁰ Planning Practice Guidance: Paragraph: 020 Reference ID: 18a-020-20190723 - What is meant by the term public benefits?

- child. This would represent an interference with their home and family life as well as the rights and best interests of the child.
39. However, no evidence has been presented which confirms that the existing windows are the sole or main cause of the damp and mould problems within the property, or that noise pollution and the security of the house are significant issues.
40. Moreover, there is insufficient evidence in respect of any alternative options in terms of replacement windows, which may realise the same improvements to the internal environment of the property and thus reduce any risks to the health, wellbeing and security of the appellant and his family, particularly his young child; as well as attain the same general public benefits set out above.
41. While similar timber windows may be more expensive, no quotes have been provided to make any meaningful comparisons. Additionally, although I note the appellant's comments regarding the long-term durability of timber windows, the Bygone, Symphony brochure confirms that the proposed window itself has only a 12 year guarantee.
42. Additionally, while I have had regard to the efforts made by the appellant to resolve the issues cited, no substantive evidence has been submitted which confirms that the property would not be useable or viable as a dwelling or that its future as a heritage asset would be at risk if the works, as proposed, were not implemented.
43. Having regard to the legitimate and well-established legislative and planning policy aim of the conservation and enhancement of the historic environment, a refusal of listed building consent would be proportionate and necessary. It would not unacceptably violate the family's rights and the rights and best interests of the child under Article 8 of the HRA and Article 3(1) of the UNCRC. The protection of the public interest cannot be achieved by means that are less interfering of their rights.
44. For the reasons given above, I conclude that the appeal should be dismissed and listed building consent should be refused.

F Cullen

INSPECTOR