



Appeal Decision

Site visit made on 25 October 2022

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

an Inspector appointed by the Secretary of State

Decision date: 9th November 2022

Appeal Ref: APP/B1605/F/22/3297327

3 Suffolk Road, CHELTENHAM, Gloucestershire, GL50 2AG

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the LBCA Act).
- The appeal is made by Ms Tracey Lovett against a listed building enforcement notice (LBEN) issued by Cheltenham Borough Council.
- The enforcement notice was issued on 1 April 2022.
- The contravention of listed building control alleged in the notice is:
Without prior listed building consent the removal of single glazed, timber framed sliding sash windows at first floor level of front & rear elevations and timber entrance door at ground floor level & the installation of Upvc framed, double glazed windows at first floor level of front & rear elevations and a composite entrance door at ground floor level.
- The requirements of the notice are:
 - Remove the Upvc framed, double glazed windows at first floor level of front and rear elevations & composite entrance door at ground floor level; and
 - Install single glazed, 6/6 timber sliding sash windows with horns and 18mm lambs tongue glazing bars to be painted white in colour at first floor level of front and rear elevations and a timber panel & part single glazed timber entrance door at ground floor level.
- The period for compliance with the requirements is 6 months.
- The appeal is made on the grounds set out in section 39(1)(a) and (e) of the LBCA Act.

Summary Decision: Subject to corrections, the appeal is dismissed, the LBEN is upheld and listed building consent is refused for the retention of the works.

The Notice

1. 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 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
2. Section 38(2) of the LBCA Act states that: '*A listed building enforcement notice shall specify the alleged contravention and require such steps as may be specified in the notice to be taken within such period as may be so specified- (a) for restoring the building to its former state; or (b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent;....*'
3. The Notice does not state as to whether it has been issued under section 38(2)(a) or 38(2)(b). Nevertheless, it is clear that the requirements of the notice are intended to restore the building to its former state by removing all the components of the Upvc windows at first floor level, the composite door at

ground floor level and replacing them with timber windows and door of a design to match the pre-existing windows and door. Section 38(2)(b) is only applicable in cases where the Council consider that such restoration would not be reasonably practicable or would be undesirable. There is no indication that the Council took such a view and there is nothing to suggest that restoration to the former state would be impracticable or undesirable.

4. The second requirement of the notice cites the installation of 6/6 sash windows but the evidence before me indicates that the windows on the front elevation of the appeal property were not 6/6 sash windows. Moreover, the description of the alleged breach does not include the wording '6/6'. I therefore consider that the citation of 6/6 is a typographical error given my findings above. Moreover, there is no reference to the pre-existing windows and door. Therefore, I intend to delete the wording '6/6' within the second requirement and insert the wording *'to match the design and appearance of the windows and door that existed immediately prior to the installation of the unauthorised windows and door'* at the end of that requirement to ensure clarity. Both parties were given the chance to comment on these corrections. The corrections of the errors relate to a matter of fact and therefore I consider I can carry out these corrections without injustice to either party.
5. The appellant has stated that when she acquired the property in April 2020, this was at the start of the Covid pandemic, and that she contacted the Council regarding building/planning regulations. She goes on to state that *'she was informed by a lady employee (obviously working from home) that permission was not needed to replace the windows and door'*.
6. However, there is no detail of whether the lady employee was a Planning Officer/Building Control Officer or another employee. Furthermore, there is no indication as to what information that employee was given in relation to the address or listed status of the building. It is more likely than not that the advice given was of a general nature of whether replacing windows and doors may/may not require planning permission or building regulation approval. There is little to indicate that advice was ever given that the specific works that form the alleged breach would not require listed building consent. Nonetheless, even if it was, informal advice from a Council Officer (which the telephone call would seem to have been) cannot later prevent the issue of an enforcement notice if it is found the works do require listed building consent. This is a well-known aspect of planning law and requires no further elucidation here.
7. For the reasons given above, I conclude that the LBEN is valid, the Council are not prevented from issuing it and that no injustice would be caused by correcting the errors in accordance with my powers under section 41(1)(a) of the LBCA Act.

Background and relevant policy

8. The appeal property was listed in Grade II in 1998 as part of a group with 5 and 7 Suffolk Road (Nos 5 and 7). The list description states, amongst other things, *'the 3 houses, now houses and shops. c1840 with later additions and alterations. Stucco over brick with artificial slate roofs and iron brackets. EXTERIOR: 3 storeys, 3 first-floor windows at left, with 2 storeys 2 + 3 first-floor windows. Stepped back at left and right. At left part a first-floor sill band. First floor has 6/6 sashes where original.* It goes on to state *'To right house a*

plate glass-window and glazed door. At right a C20 garage door.....INTERIOR: not inspected. SUBSIDIARY FEATURES: 2 houses at right have tent-roofed canopies on scrolled brackets. HISTORICAL NOTE: Suffolk Road is shown on Merrett's 1834 Map as Commercial Street. An externally little-altered group which relates to a group of similar buildings.' It is at the one end of the terrace of these properties and its ground floor is in use as barbers and the upper floor is in residential use. The adjoining property also has a commercial unit at ground floor level. The appeal property is located prominently on a main thoroughfare that traverses to the south of Cheltenham town centre.

9. The evidence before me indicates that nearby buildings on Suffolk Road, Montpellier Grove and Montpellier Villas are also listed in grade II. The use of stucco and the high quality of the architectural detailing within these buildings and the appeal listed building means that together they have evidential and aesthetic value as a group that makes a significant contribution to the character and appearance of the surrounding area. The property lies within the Suffolks Character Area of the Central Conservation Area (CCA) and there is a mix of commercial and residential uses close to the appeal site. Based on the evidence before me and my observations the character, appearance and significance of this part of CCA appears to be derived from the quality and architectural detailing of the historic buildings within it, their limited palette of materials, the historic mix of commercial and residential uses and the relationship of the buildings to each other and the areas between them. The group value cited above makes an important contribution to the character, appearance and significance of CCA.
10. The development plan policy cited within the LBEN is Policy SD8 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS). This policy is consistent with section 16 of the National Planning Policy Framework (the Framework). They are material considerations which I have taken into account in reaching my decision.
11. Section 16(2) of the LBCA Act requires special regard to 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. Section 72(1) of that Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

The ground (a) appeal

12. The ground of appeal is that the building is not of special architectural or historic interest and implicitly attacks the listing of the building. Effectively, it constitutes an application to the Secretary of State to remove the building from the statutory list by virtue of the power set out in section 41(6)(c) of the LBCA Act. That Act indicates that the time at which this question is to be considered is the time before the allegations set out in the LBEN were carried out, rather than the date when the LBEN was issued. In this case, therefore, it means before the Upvc and composite components were installed.
13. The terrace of 3 properties, despite the installation of the Upvc and composite components, are still distinctly recognisable from their list description. They remain as a perceptible terrace of 19th Century stucco, two and three storey houses/shops and most of their original architectural features, including the tent-roofed canopies on scrolled brackets, are still identifiable. The window opening sizes have not changed and overall the scale and proportions of the

property are still typical of a 19th Century house/shop in this part of Cheltenham. The architectural and historic interest of the listed building (the terrace of 3 properties) is derived mainly from its high-quality architectural detailing, its materials and design and use as houses/shops. The window and door openings and their architectural detailing are a significant feature of the architectural interest of the terrace. The listed building's form provides architectural and historic interest attributable to its design and historic uses that contribute to the special interest of the terrace.

14. The appellant contends that the appeal property is not of special interest, suggesting it should no longer be considered to be a listed building of special architectural or historic interest. No clear justification is given for the appellant's argument under ground (a) that it is not of special architectural or historic interest. She has stated that at the time she purchased it, in 2020, the property had fallen into disrepair and that a number of works have been carried out to it. Moreover, the garage door cited in the list description had been removed and replaced with a single door by 2020. Nevertheless, the removal of the 20th Century garage door would have had minimal impact on the historic interest of the listed building. Yet it would have had a modest impact on its architectural interest by the alteration to the size of the door opening.
15. However, nothing mentioned by the appellant, including the dilapidated state of the property in 2020, the remedial works carried out by her since then or the replacement/alteration of the garage door justify a conclusion that the building is not of special interest. There is insufficient evidence before me to conclude that the building no longer meets the criteria for listed buildings and, furthermore, I am not aware that there was an application to de-list the building before the LBEN was served. The building is listed alongside other local properties and therefore, it has significant group value, as well as being of individual merit, which weakens any case advanced to de-list it.
16. In summary, therefore, from my inspection of the exterior of the building I consider that the building is still of special architectural or historic interest. On that basis the appeal on ground (a) fails.

The ground (e) appeal

17. This ground is that listed building consent ought to be granted for the works.

Main Issue

18. Based on my observations and the evidence before me I consider that the main issue is whether the installation of Upvc framed, double glazed windows at first floor level of the front and rear elevations and a composite entrance door at ground floor level preserve the special architectural and historic interest of the listed building, whether they preserve or enhance the character or appearance of CCA and whether the significance of the heritage assets is harmed.

Reasons

19. Windows and doors are often among the most prominent features and an integral part of the design of a listed building and can be indicators of when the building was built. The design, materials and details of construction of historic windows and doors are all important to the significance of a heritage asset and its special interest.

20. The evidence before me is that the windows on the front elevation of the property were traditional single glazed timber-framed sashes with structural glazing bars. Other features in the design of the sashes included very slim sections to the meeting rails and stiles and the glazing bars/astragals also had very slim sections typical of the architectural style of the 19th Century. These windows were similar in design to those within the remainder of the listed building (Nos 5 and 7) therefore it is reasonable to consider that the windows on the rear elevation were of the same design to those on the front. The removal of the windows erodes the historic interest that they contributed to the significance of the listed building. The door that has been replaced was a modern replacement itself therefore it made no contribution to the building's historic interest. However, given its position on the front elevation its replacement has an impact on the architectural interest of the listed building.
21. Having seen the Upvc windows and composite door, I share the Council's concerns about their effect on the special interest/significance of the listed building and on the character and appearance of the CCA. Two of the windows are on the rear elevation and the first-floor front elevation is set back from the ground floor front elevation of the listed building. Nonetheless, I find that the installed windows and door are not sympathetic to the historic architectural detail and character of the building. Even subtle differences between historic fabric and replacements can have a significantly harmful effect on the integrity and special interest of a listed building.
22. In this regard the double glazed Upvc windows are overtly modern in both materials and design, having wide and heavy looking frames. The method of opening, a top opening casement, further highlights these alien additions to the elevations. Overall, their appearance is starkly at odds with the simpler and finer construction details of the traditional timber units that were removed. The rear elevation windows are not readily visible to the public, but that does not mitigate the harm to the special interest of the building I have identified. As such, the historic and architectural interest of the listed building has been significantly diminished by the removal and replacement of the windows.
23. The unauthorised door by reason of its materials and design contrasts sharply with the historic character and architectural detailing of the listed building. The arrangement of the two vertical glazing panels within the door is in sharp contrast to the glazing design of the half-glazed door within another property that forms part of the listed building. The glazing design of the half-glazed door appears to be similar to that of the door that was replaced. Furthermore, the composite material has a modern production sheen finish. As a result the door has a crude and incongruous appearance and fails to preserve the special architectural interest of the building.
24. I note the appellant's submissions and photographs that the windows and door were in poor condition, letting in water and ill fitting. However, a more appropriate response would have been to make repairs to them, or, if they were beyond repair, to replace them on a like-for-like basis. However, there is no convincing evidence before me that any were beyond repair. Moreover, even if they were beyond repair, the Upvc and composite units now installed are not like-for-like and instead diminish the historic and special architectural interest of the listed building as previously described.

25. Although the reasons for issuing the LBEN do not refer to the effect of the works on the CCA, section 72 of the LBCA Act requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. In my view it follows that if the special interest of a listed building within a conservation area is materially diminished, it follows that the character and appearance of that conservation area as a whole is also similarly incrementally harmed.
26. Furthermore, even though the first floor is set back, the windows and door on the front elevation are evident in the street scene when viewed from the public realm, exacerbating their harmful impact. They individually and cumulatively erode the architectural interest of this prominent historic building and the aesthetic value of the group of buildings in the surrounding area, which make a positive contribution to the significance of CCA. I, therefore, conclude that the works do not preserve or enhance the character or appearance or significance of CCA and they are in conflict with the requirements of the LBCA Act.

Other matters

27. I have taken into consideration other Upvc windows that have been installed in nearby buildings within CCA which have been drawn to my attention, and I observed those on my site visit. However, the evidence before me indicates that none of those buildings are listed buildings, therefore the circumstances relating to their installation are not the same as that before me. Moreover, the existence of other Upvc windows which fail to preserve the significance of the CCA does not set a precedent that should be repeated.

Conclusion - the ground (e) appeal

28. Drawing all of the above factors together, I consider that the unauthorised works as a whole or in part fail to preserve the special interest of the listed building and the character and appearance of the CCA contrary to the expectations of the LBCA Act. I must attach considerable importance and weight to these considerations when reaching my decision. I conclude that the harm caused to the designated heritage assets, is, in the context of the significance of the assets as a whole and in the language of the Framework, less than substantial. In those circumstances, paragraph 202 of the Framework says that this harm should be weighed against the public benefits of the works including, where appropriate, securing its optimum viable use. Even though I have found that the harm to the designated heritage assets is less than substantial, it is not to be treated as a less than substantial objection.
29. The appellant considers that the use of double glazing is environmentally sound and she wanted to reduce heat loss and increase sound insulation and security for the first floor residential flat. I have no doubt that the continued occupation of the building by the barbers and the residential flat maintains the beneficial use of this listed building and helps to achieve greater economic sustainability within Cheltenham. The use of the first floor flat will have economic and social benefits. Therefore, the continued viable use of this prominent listed building within CCA contributes to the vitality of Cheltenham as a whole which can reasonably be treated as public benefits.
30. However, whilst thermal efficiency, sound insulation and security may have some impact on the use of the building I have been given no indication that its viable use as a commercial unit with flat above was seriously threatened and

the issues raised could not have been addressed by alternative means such as secondary glazing. Against that background there is no substantial evidence before me to demonstrate that the property would not continue to be viable as a shop with flat above without these specific windows and door in place. As such, I attach modest weight to the public benefits.

31. As a result, the weight attributable to the public benefits does not outweigh the considerable importance and great weight to be given to the harm to the significance of the heritage assets. As such, these works do not comply with paragraph 202 of the Framework, and they conflict with the heritage aims of CS Policy SD8.

32. For the reasons set out above, and taking into account all other matters raised, I conclude that the appeal on ground (e) fails and listed building consent is refused.

Other Matters

33. In reaching my conclusions on all of the grounds of appeal I have taken into account all of the other matters raised by the appellant, the Council and the interested parties supporting the appeal. 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

34. For the reasons given above, I conclude that the appeal shall not succeed. I shall uphold the LBEN with corrections.

Formal Decision

35. It is directed that the listed building enforcement notice be corrected by deleting the wording '6/6' within the second requirement and insert the wording '*to match the design and appearance of the windows and door that existed immediately prior to the installation of the unauthorised windows and door*' at the end of that requirement. Subject to these corrections, the appeal is dismissed, 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 the LBCA Act.

D. Boffin

INSPECTOR