



Appeal Decision

Site visit made on 8 November 2022

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/H2265/F/21/3281089

The Coach House, Aldon Lane, Offham, West Malling ME19 5PH

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the Act).
- The appeal is made by Mr Ajmal Mohammad against a listed building enforcement notice issued by Tonbridge and Malling Borough Council.
- The enforcement notice was issued on 26 July 2021.
- The contravention of listed building control alleged in the notice is without the benefit of planning permission, the unauthorised installation of PVC material fenestration at the dwelling and works not in accordance with planning permission 14/03366/FL and listed building consent 15/00539/LB.
- The requirements of the notice are:
 - Within 28 days of the date the enforcement notice becomes effective, and prior to commencement of any further works, the landowner is to submit to the Council for approval a proposed scheme of remedial works outlining the timetabled removal of all unauthorised PVC window and door frames from the building and their replacement with suitable and traditional timber framed windows and doors in accordance with the approved plan.
 - The programme of works must also include the timetabled alterations to the building as outlined below so that it accords with the approved plan '2013/23 (37) Rev: B', which is appended to this Notice:
 - Side (west) elevation
 - a) remove first floor balcony.
 - b) remove existing glazed PVC access door, top hung single window and double side hung window from the first floor and replace with approved double and single timber framed sash windows.
 - c) replace existing rectangular top and side hung PVC windows on the ground floor with approved timber framed arched windows.
 - Front (north) elevation
 - d) remove existing top-hung/side opening PVC window on the ground floor and replace with approved timber framed triple panel, full-length windows and barn-style timber doors.
 - Rear (south) elevation
 - e) remove existing side-hung PVC framed double window added to the ground floor.
 - f) remove existing PVC framed windows on first floor and replace with approved timber frames.
 - Side (east) elevation
 - g) remove existing PVC framed windows and replace with approved timber framed, obscure glazed sash windows.
 - The remedial works to be carried out concurrently to expedite the removal of the harmful elements.
 - The programme of works must detail how the building will be protected from the weather during the implementation of remedial works to ensure that no further harm comes to the fabric of the building.
- The period for compliance with the requirements is 6 months.

- The appeal is made on the grounds set out in section 39(1)(a), (c), (e) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Summary Decision: I take no further action.

Preliminary Matters

1. The provisions of section 41(1) of the Act give Inspectors wide ranging powers to correct or vary listed building enforcement notices, provided that such alterations would not result in injustice to any party. However, in certain circumstances the defects within the notice may not be capable of being corrected and it would be considered a nullity, for example where it is missing a vital element required by section 38 of the Act. A notice would be a nullity if it is defective on its face, with a fundamental error. The test is whether the notice is hopelessly ambiguous or uncertain. Essentially, the question is whether the notice fairly tells the person on whom it has been served what has been done wrong and what must be done to remedy it?
2. The enforcement notice refers to the breach of planning control and states that the works took place without the benefit of planning permission. However, this is a listed building enforcement notice, so it should have referred to a breach of listed building control and listed building consent. Similarly, under the reasons for issuing the notice it refers to a breach of planning control, whereas it should have referred to a breach of listed building control. Given that the heading of the notice refers to the correct Act and states listed building enforcement notice, I could correct these errors.
3. Section 38(2) requires that the notice should specify the alleged contravention. In this case, the enforcement notice alleges the unauthorised installation of PVC fenestration "and works not in accordance with planning permission 14/03366/FL and listed building consent 15/00539/LB". Other than the PVC fenestration, it is unclear what works it is to which this relates. The only works other than the fenestration mentioned anywhere else on the notice is the balcony. However, it is unclear whether this is the only work to which the Council refer. The allegation is hopelessly ambiguous. I allowed the Council to comment, but they did not address this matter in response. As the notice does not specify the alleged contravention, it does not comply with section 38(2) of the Act.
4. Section 38(2) also states that the notice shall require such steps as may be specified in the notice to be taken. The first part of the requirements of the notice requires submission of a scheme of remedial works by the landowner. This is subsequently referred to as a programme of works in the requirements. Requiring a scheme or programme of works does not specify the steps required to be taken under section 38(2) of the Act. A list of works is provided that limits uncertainty to some extent and I note that the Council have suggested that the notice could be altered to correct this defect. However, overall the requirements are not precise and introduce further uncertainty to the notice. Given the lack of clarity as to the allegation set out above, I am also not certain whether the requirements are comprehensive and deal with all the "works" referred to in the allegation. Taking all these points into account, the requirements of the notice are hopelessly uncertain. For these reasons, the notice does not specify what steps are required to be taken within the notice, so does not comply with section 38(2) of the Act.

5. For the above reasons, I conclude that the notice does not set out fairly what has been done wrong and what needs to be done to remedy it. The notice is hopelessly ambiguous and uncertain in terms of what it is alleging and its requirements. It does not comply with section 38(2) of the Act. I consider, therefore, that it is a nullity.

Conclusion

6. Since I find the notice to be a nullity I take no further action in connection with this appeal. In the light of this finding, should the Local Planning Authority have kept a record of this listed building enforcement notice on any register, they should consider reviewing it.

AJ Steen

INSPECTOR

