



Appeal Decision

Site visit made on 1 February 2023

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 March 2023

Appeal Ref: APP/Y9507/F/22/3305457

The Milburys, Beauworth Road, Beauworth, Alresford SO24 0PB

- 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 Martin Juden of Milburys Pub against a listed building enforcement notice issued by the South Downs National Park Authority.
 - The enforcement notice ref. SDNP/16/00602/LB was issued on 1 August 2022.
 - The contravention of listed building control alleged in the notice is (i) the removal of 6 no. traditionally detailed and rebated single glazed 6 over 6 timber sliding sash windows; and (ii) the replacement of the windows identified in item (i) with UPVC top hung double glazed units on the south elevation.
 - The requirements of the notice are (i) remove the UPVC windows and frames shown circled in red on photo A; (ii) replace the windows circled in red on photo A with traditionally detailed vertical sliding 6 over 6 sash windows, without horns, with true glazing bars and a puttied finish. The windows and frames shall be constructed in timber and painted white inside and out. The replacement windows shall exactly match the traditional sliding sash 6 over 6 windows on the first floor of the western elevation in all respects; and (iii) make good surrounding fabric, where required, on a like for like basis.
 - The period for compliance with these requirements is 6 months.
 - The appeal is made on the grounds set out in section 39(1)(a), (d), (h), (i), (j), and (k).
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Summary of Decision

1. It is directed that the Listed Building Enforcement Notice (LBEN) be corrected to make the contravention of listed building control alleged, and the requirements of the notice, somewhat plainer. Subject to these corrections, the appeal is dismissed and the LBEN is upheld. Listed building consent is refused for the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Preliminary Matter

2. While the submitted appeal form refers to appeals under grounds (a), (d), (h), (i), (j) and (k), it appears from the submissions that the appellant believes that listed building consent should be granted for the works involved. In the interests of fairness, I have therefore considered an appeal under ground (e).

Reasons

Ground (a)

3. For an appeal to succeed under ground (a), it would need to be shown that the building is not one of special architectural or historic interest. The Milburys is shown on the statutory list as 'The Fox and Hounds Public House' dating from

the mid 18th Century with 19th Century additions. It is listed at Grade II. The appellant does not dispute the list entry and to that extent, the building is evidently one of special architectural and historic interest.

4. It is not entirely clear from the submissions, but I understand the appellant to be suggesting that the replacement windows, that were installed over a decade ago, have undermined that special interest to the extent that it has been lost. However, that argument falters on the fact that the replacement windows are not an authorised alteration to the listed building, and the passage of time does not make them so. The impact they have had on the special architectural and historic interest of the listed building (that I deal with further below) cannot therefore bear on the consideration of whether the building is one of special interest.
5. If the suggestion is wider in its compass, that the building is not one of special architectural or historic interest, then with respect, I disagree. It is a fine example of a mid 18th Century Public House, with traditional form, materials and detailing, that very clearly warrants its place on the statutory list.
6. On that overall basis, the appeal under ground (a) fails.

Ground (d)

7. To succeed under ground (d), it would need to be shown that the works were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary.
8. I appreciate that the windows previously in place were single glazed and may well have been draughty. These factors may have had an impact on the health and well-being of the appellant. However, there appears to be no good reason why these impacts could not have been alleviated by refurbishing and draught-proofing the existing windows, or failing that, replacing them like for like with appropriate timber sliding sashes. If the appellant wished to install double-glazed windows, there seems to be no good reason why listed building consent could not have been sought for them.
9. There is some suggestion too that the replacement windows were needed to provide means of escape in an emergency. As top-hung casements, I doubt they would be of any great improvement in that regard over a properly functioning sash window.
10. It has not been shown that the works were urgently necessary in the interests of safety or health and the appeal under ground (d) therefore fails.

Ground (e)

11. An appeal under ground (e) is that listed building consent ought to be granted for the works. In considering whether to grant listed building consent for any works, section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 says that the local planning authority, or the Secretary of State shall have special regard to the desirability of preserving the building, or its setting or any features of special architectural or historic interest which it possesses.

12. Paragraph 199 of the National Planning Policy Framework (the Framework) sets out that when considering the impact of a proposed development on the significance of a designated heritage asset (such as a listed building), great weight should be given to the asset's conservation (and the more important the asset the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance.
13. Broadly speaking, the relevant policies of the South Downs Local Plan 2014-2033, which are material considerations, take a similar tack.
14. As set out above, the listed building is a fine example of a mid 18th Century Public House, with traditional form, materials and detailing. The timber windows, whether sashes or casements, with their customary joinery details, make a substantial contribution to all that.
15. In that context, the removal of the traditionally detailed timber windows from the south elevation has harmed the special architectural and historic interest of the listed building. The UPVC windows that have been installed in their place are a very poor substitute. The detailing is very clumsy, with much thicker framing sections, that are particularly evident on the opening lights. The top-hung nature of the opening lights is itself incongruous. Moreover, the glazing bars are applied to the surface of the glass and as such, lack authenticity.
16. In my view, the replacement windows have had a profoundly harmful impact on the special interest and significance of the listed building. The Framework differentiates between harm to significance that is termed 'substantial' and 'less than substantial'. We are told that the bar for a finding of substantial harm to significance is a high one. With that in mind, while the harm that has been caused in this case is serious, it is nevertheless, less than substantial. Paragraph 202 of the Framework says that where a development proposal will 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.
17. The appellant has pointed to the benefits the replacement windows have brought in terms of the improved thermal performance of the building. I have no reason to doubt that, but I would observe that similar public benefits could be secured by replacement windows of a more appropriate design. It may well be that the importance of improving the thermal performance of listed buildings will lead to changes in approach to glazing in historic buildings, but I am in no way convinced that this means the end of single glazing, and/or sliding sashes. Proper draught-proofing and other treatments, like secondary glazing, or even heavy curtains, can secure significant improvements in thermal performance.
18. On that overall basis, I do not consider the public benefits to be sufficient to outweigh the harm to the significance of the listed building that has been caused. Bearing in mind Section 16(2) of the Act, and the approach of the Framework, and the development plan, there is no justification for a grant of listed building consent for the works that have taken place.

Grounds (i), (j), and (k)

19. I am able to deal with these grounds together. An appeal under 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. Ground (j) is that steps required to be taken by the Notice exceed what is necessary to alleviate the effect of the works carried out to the building while ground (k) is that steps required to be taken exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.

20. Ground (k) can be dealt with very briefly; there has been no grant of listed building consent for the works carried out or, as far as I am aware, any other works relating to the windows concerned. As such, there is no grant of listed building consent that the appellant could have complied with.
21. The appeal under ground (k) must therefore fail.
22. In terms of the appeals under grounds (i) and (j), there is no dispute that six original, timber windows were removed, and replaced with six UPVC windows (I deal with the way that has been dealt with in the Notice below). Leaving aside the reasons why and when the unauthorised works were carried out, matters I have addressed under other grounds, it is clear to me that removing the UPVC windows that have been installed, and replacing them with appropriately detailed timber windows, would restore the building to its former state. This operation, it appears to me, is the minimum necessary to alleviate the effect of the unauthorised works that have been carried out.
23. The appeals under grounds (i) and (j) fail on that basis.

Ground (h)

24. An appeal under ground (h) is that the period specified in the Notice as the period within which any step required by the Notice is to be taken falls short of what should reasonably be allowed. The Notice specifies a period of six months.
25. In their submissions on the appeal, the Council has suggested that this ground of appeal should succeed and the period for compliance should be extended to nine months in order to allow the necessary steps to take place in the summer months. I can see the rationale behind that but bearing in mind the date of my decision, six months would cover the summer in its entirety. On that basis, I believe six months is a reasonable period for the unauthorised windows to be properly replaced. As a result, the appeal under ground (h) fails.

The Notice

26. There are some issues with the precise wording of the Notice which referred back to the parties for comment. The allegation is that 6 no. traditionally detailed and rebated, single-glazed, 6 over 6 timber sliding sash windows were removed from the south elevation of the building. This description is correct in relation to the 5 windows removed from the two-storey element of the building. However, the window in the single-storey element of the south elevation, which I am told is a 1970s extension, seems to have been a timber casement window. The photograph with the list description bears that out.
27. In terms of the alleged breach, this inaccuracy can be remedied by removing the words '6 over 6' and 'sliding sash'. The contravention alleged by the Council is clearly understood by the appellant, and the correction would not change its scope. It can therefore be made without injustice.

28. This correction has ramifications for the requirements of the Notice too. As issued, it requires all the offending windows on the south elevation to be replaced with traditionally detailed vertical sliding 6 over 6 sash windows. However, as set out above, the window that was removed from the 1970s single-storey element of the building appears to have been a timber casement window. The requirements of the Notice need to be adjusted to cater for that.
29. Clearly, the requirement to replace the five traditionally detailed vertical sliding 6 over 6 sash windows in the two-storey element of the building can remain. The situation in relation to the window in the single-storey element is more complex. I note the alternative wording provided by the authority – *side hung flush timber casement window of appropriate subdivision to relate to the other casement windows in the property* - but that gives me concerns in two ways. First, I would question whether it gives the recipient of the Notice a sufficiently clear indication of what is required. Secondly, I am anxious that what is suggested might involve a requirement to put something back that is an improvement over what was removed.
30. Having considered the matter, in the light of what is known about the window concerned, I am content that a requirement to put back *a timber casement window, to match that removed, painted white inside and out* gives sufficient clarity. This would not make the requirements of the Notice more onerous so the change can be made without injustice to the appellant.

Formal Decision

31. I direct that the LBEN be corrected by deleting the words *6 over 6* and *sliding sash* from Part 3 (i) of the Notice.
32. I further direct that the LBEN be corrected by deleting Part 5 (ii) of the Notice in its entirety to be replaced with the words: *Replace the windows circled in red on Photo A in the two-storey element of the building with traditionally detailed, vertical sliding, 6 over 6 sash windows, without horns, with true glazing bars, and a puttied finish. The windows and frames shall be constructed in timber and painted white inside and out. The replacement windows shall match the traditional, 6 over 6 sliding sash windows on the first floor of the west elevation of the building. Replace the window circled in red on Photo A in the single storey element of the building with a timber casement window, to match that removed, painted white inside and out.*
33. Subject to these corrections the appeal is dismissed and the LBEN is upheld. Listed building consent is refused for the works carried out in contravention of Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Paul Griffiths

INSPECTOR