



Appeal Decision

Site visit made on 12 July 2023

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 18 July 2023

Appeal Ref: APP/T3725/F/22/3308215

45-47 Bath Street, Royal Leamington Spa, CV31 3AE

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
 - The appeal is made by B & R Khera Ltd against a listed building enforcement notice issued by Warwick District Council.
 - The enforcement notice, reference ACT/185/18, was issued on 7 September 2022.
 - The contravention of listed building control alleged in the notice is without Listed Building Consent, the removal of 15 (Fifteen) historic timber window frames from the rear elevation and replacement by the installation of a uPVC window frames (hereinafter known as "the Unauthorised Works").
 - The requirements of the notice are permanently Remove the uPVC window frames from the rear elevation of the property. Install 15 (fifteen) replacement white painted hardwood timber sashed windows with single glazing, putty and structural glazing bars not exceeding 17mm in width.
 - The period for compliance with the requirements is 12 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.
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Decision

1. The appeal is dismissed and the listed building enforcement notice is upheld. Listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Reasons

2. 45-47 Bath Street is an attractive late Georgian mid terrace building currently housing a hotel on the upper floor and a bar and grill on the ground floor. It has been refurbished to a high standard externally on the front façade. However, it would seem that prior to its purchase by the current owners many of the timber sash windows on the rear elevation were removed, and a few years ago all the rear façade windows were replaced by modern UPVC.
3. The appellant makes a number of points, that the front façade works have been of a high quality, demonstrating his commitment to the character and appearance of the building and the area, that the windows needed refurbishing, especially if a hotel use was going to thrive and perhaps most importantly the rear facade is only seen from a narrow rear service and delivery area, and has already been substantially affected by the usual clutter associated with restaurant, hotel and other neighbouring commercial uses, as well as down pipes and other rainwater goods.
4. All of this would seem to be true, and I have no doubt about the appellant's good intentions towards the listed building and the appearance of the area.

However, the building is listed as a heritage asset because of its historic quality, not merely because of the positive impact it makes on the street scene. The fact that the rear facade is not easily seen is only one factor to take into account. As I saw the design of the UPVC windows has made no attempt to replicate the sash windows, they are a standard, large frame, top opening variety that positively harms the rear façade. I accept it is already somewhat compromised with the usual commercial clutter as noted above, but even so, the new windows stand out, particularly because there are so many of them, as crude and poorly designed.

5. In the language of the NPPF the harm to the significance of the listed building is less than substantial, but there would appear to be no counter-weighting public benefits as this is not the only option. Even plastic replica sash windows would be an improvement, but it is certainly possible to fit wooden double-glazed sashes, that given the lack of visibility, would seem to me to be a reasonable compromise, although that would be a matter for the Council in the first instance. The Council have already given a year to carry out the requirements, so that is plenty of time to enable the appellant to negotiate a compromise solution, if that is achievable. I shall uphold the notice and dismiss the appeal.

Other Matters

6. The appellant has also appealed on two other grounds, but I think these must be a mistake. Ground (a) is that the building is not worthy of listing and no evidence has been provided to support that contention and, even from my short site-visit, it is obviously not the case.
7. Ground (c) is that the matters alleged have occurred but are not a contravention of the Act, that is they do not affect the historic character of the building. However, the appellant's arguments here are that the works are necessary for insulation, are at the rear and are in keeping with the area. Only the latter is really a ground (c) argument – and is, as is clear from my discussion above, not the case. There is clear harm to the listed building and so the works are an alteration which would affect the character of 45-47 as a building of special architectural or historic interest and are contrary to the Act.

Simon Hand MA

INSPECTOR