



The Planning Inspectorate

Appeal Decision

Site visit made on

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Levelling Up Housing and Communities

Decision date: 18 September 2023

Appeal A - Ref: APP/M0933 /Y/22/3307044

Flats 1, 2 & 3, Gillam House, Gillam Yard, Market Street, Ulverston LA12 7LT

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) against a refusal to grant Listed Building Consent (LBC).
- The appeal is made by Mrs Eleonor Fisher, against the decision of South Lakeland District Council (the LPA)
- The application, Ref:SL2022/0252, dated 1 April 2022, was refused by notice dated 1 September 2022.
- The works proposed as described in the application are to:
Replace single glazed sash with bar windows with UPVC double-glazed windows with bar (appearance unchanged).

Appeal B - Ref: APP/M0933/F/22/3307815

Flats 1, 2 & 3, Gillam House, Gillam Yard, Market Street, Ulverston LA12 7LT

- 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 Mandy Williamson against a Listed Building Enforcement Notice (LBEN) issued by the South Lakeland District Council (The LPA).
- The notice was issued on 7 September 2022.
- The contravention of Listed Building Control, alleged in the notice, is the removal of 8 wooden windows on the first and second floors and the replacement with UPVC windows.
- The requirements of the LBEN are as follows:
 - (A) Permanently remove the 8 UPVC windows on the first and second floors within the listed building on the attached plan, and,
 - (B) Replace the 8 UPVC windows with copies of the original wooden windows with single-glazed panes.
- The period for compliance with the requirements is 13 weeks.
- The appeal is made on grounds (e) and (d) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) as amended.

On 1 April 2023 Barrow-in-Furness Borough Council, Eden District Council and South Lakeland District Council merged to form a new Unitary Authority called Westmorland and Furness Council. Appeals against the issuing of an Enforcement Notice continue to refer to the name of the Local Planning Authority that issued the notice, in this case South Lakeland District Council.

Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.
3. See Formal Decisions below.

Matters of clarification

4. Although made by different appellants, the appeals both relate to the same addresses and the same works (the replacement of 8 windows) carried out to the properties now known as Flats 1, 2 and 3 Gillam House. These three flats now form parts of the Grade II listed building at No 51 Market Street. Prior to conversion to three flats, the property was a well-established shop in Ulverston (at ground floor level) with accommodation above. The appeals were linked by the Inspectorate Case Officers, and I have, therefore, dealt with them together in this decision.

5. In Appeal A, the appellant has stressed that 'Flats 1, 2 and 3 Gillam House' are not referred to in the list of buildings which are of architectural and historic interest. However, that is because these specific addresses post-dated the listing which refers to No 51 Market Street. The Grade II listed building has now been converted into the 3 flats and this does not alter the fact that the whole building (at No 51) remains listed, including the flats which are now known as 'Gillam House'. It is clear therefore that the appeals address remains on the list. It is on this basis that I must consider both of these appeals.

Background information

6. The Grade II listed appeals building is located in a prominent position, within the centre of Ulverston, and at the junction of Union Street and Market Street. It lies within the Ulverston Conservation Area (UCA) and still comprises a shop on the corner of the two streets, and the Gillam House flats, Nos 1, 2 and 3 adjacent and above.

7. The List Description is as follows:

'House and shop. Mid C19. Stucco on ground floor and roughcast above, with a slate roof. 3 storeys and 3 bays. The windows are glazing bar sashes with plain reveals and projecting painted sills. To the left of the 2nd bay is a door with a timbersurround which has sunken panels and a cornice on brackets. In the left-hand bay there is a shop window with a timber fascia and cornice supported on timber pilasters. The chimneys, to the right of the 2nd bay and at the right, have limestone caps. The west facade, facing Union Street, is of one bay and has windows matching those on the other facade, including a shop window on the ground floor. Across the angle between the 2 facades is a recessed shop doorway with a painted stone surround'.

8. An enforcement complaint was made to the LPA in January 2022 complaining that the UPVC windows had been installed without Listed Building Consent (LBC). Following an officer site visit, a retrospective LBC application was submitted for the removal of 8 wooden windows on the first and second floor, to be replaced with the white UPVC windows already installed (SL/2022/0252). The application was refused on 1 September 2022 and the decision was appealed. This is now the subject of Appeal A. The LBEN was then issued on 7 September 2022, and this was also appealed. This is the subject of Appeal B.

Appeal A and Appeal B on ground (e)

9. The question in both cases is whether or not Listed Building Consent ought to be granted for the replacement of the 8 single glazed timber sash windows with the UPVC double-glazed windows.

The Main Issues

10. The main issues are as follows:

- The effect of the UPVC windows on the character, setting and the features of architectural and historic interest of the listed building and,
- The effect on the character and appearance of the Ulverston Conservation Area (UCA).

11. In reaching my conclusions I have had special regard to the requirements of Section 16(2) and have paid special attention to, the requirements of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA).

Relevant Policy

12. The most relevant development plan policies are: CS1.1 (Sustainable Development Principles); CS1.2 (The development strategy); CS8.2 (Protection and enhancement of landscape and settlement character); CS8.6 (Historic Environment) and CS.10 (Design) of the South Lakeland Core Strategy Policies (SLCSP) and policies DM1 (General Requirements for all development); DM2 (Achieving Sustainable high quality design) and DM3 (Historic Environment) of the South Lakeland Development Management Development Plan Document Policies (DM).

13. These generally accord with policies in the National Planning Policy Framework (NPPF) which is a major material consideration. The relevant sections of the NPPF are Nos 2 (Achieving sustainable development); 4 (Decision Making); 12 (Achieving well-designed places) and 16 (Conserving and enhancing the Historic Environment). Planning Practice Guidance (PPG) is also a material consideration.

The effect on the listed building

14. Having seen the unauthorised works as carried out I share the Council's and others' concerns about the effect that they have had on the character and appearance of this listed building; on its features of architectural and historic interest and on its setting within this historic central part of Ulverston.

15. The NPPF in Section 16 indicates that when considering the impact of any development on the significance of a designated heritage asset, 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. It also states that any harm to, or loss of, the significance of a designated heritage asset, from its alteration should require clear and convincing justification.

16. Policy CS1.1 of the SLCSP states that there is a need to safeguard the essential character and appearance of listed buildings and sites that make a positive contribution to the special architectural or historic interest of the area. Policy CS8.10 seeks to ensure that the design scale and materials of all development should be of a character which maintains or enhances the quality of the area and, where appropriate, should be in keeping with local vernacular tradition. This requirement is carried through to local policies CS8.6 of the Core Strategy and DM3 of the DM DPD.

17. I agree with the LPA and the Civic Society that the loss of the listed building's original windows on the upper floors has caused significant harm to the significance of the building. The replacement windows are most inappropriate in terms of their design and materials. The mock sash and case UPVC windows have resulted in a crude and unbalanced appearance and have detracted markedly from the late Georgian and early Victorian character and appearance of the building in this prominent location within the UCA. Whilst acknowledging the harm is less than substantial, in that the works have not resulted in the total loss of this historical asset, there are no public

benefits resulting from the proposals. In fact, the opposite is the case and there are clearly public disbenefits due to the inappropriate appearance and visual harm caused to the listed building.

The effect on the conservation area

18. It follows that the windows as installed also detract from the character and appearance of this part of the UCA. It is clear from walking around this part of the town that other buildings have been altered. I noted other non-traditional windows as well as some inappropriate details and additions to buildings. However, the overall visual effect is one of a coherent historical and architecturally interesting town centre.

19. Unfortunately, for the reasons outlined above the UPVC windows detract markedly from this coherent appearance. They neither preserve nor enhance the character and appearance of the UCA. It follows, that the unauthorised windows also fail in relation to this second issue.

Conclusion

20. In conclusion I find that the works as carried out are contrary to the relevant development plan policies, as well as being contrary to policies within the NPPF which seek to conserve and enhance the historic environment. It follows that I do not consider that LBC should be granted for the retention of the unauthorised UPVC windows. Therefore, Appeal A and Appeal B on ground (e) must fail.

Appeal B on ground (d)

21. Section 39(1)(d) of the PLBCAA is drafted to provide for only the most pressing works to be carried out on Listed Buildings on health or safety grounds, without Listed Building Consent (LBC) first being obtained. This ground basically addresses situations where essential and urgent works were needed to preserve the Listed Building. The emphasis is on the words 'essential' and 'urgent'.

22. This ground of appeal comprises three tests. The first is whether the works were urgently necessary in the interests of safety or health. The second is whether or not it was practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support. The third is whether or not the works carried out were the minimum measures, immediately necessary, to achieve the aims of safety, health or preservation. For an appeal to succeed on this ground an appellant must demonstrate that all three tests have been met.

Whether the works were urgently necessary in the interests of health and safety

23. In support the application a statement for the justification and mitigation of the works was submitted which in summary were to improve the appearance of the property and improve energy efficiency. However, there is no evidence that the works were necessary in the interests of health or safety. To justify removal without consent the windows would have had to have been in a dangerous state and for example about to fall out. Or they would have had to have, for example, leaked severely thereby causing a health hazard.

24. There is nothing to suggest that either of the above situations was apparent prior to the unauthorised removal of the timber sash and case windows and their replacement with the UPVC windows. Instead, it has been stated that the works were carried out to improve appearance and energy efficiency. Whilst acknowledging that the energy efficiency would have been improved, I have disagreed regarding the

appearance of the works and consider that they have had a negative effect on both the listed building and the streetscene. It follows that the first test has not been met.

Whether or not it was practicable to achieve the aims of safety, health or preservation repair or temporary support.

25. If the works were not necessary to achieve the aims of safety, health or preservation of the building then the second test is not met. Even if the timber windows had been in very poor condition, it could still be argued that they could have been repaired or re-placed with like-for-like timber windows. Thus the second test has not been met.

Whether or not the works carried out were the minimum measures immediately necessary to achieve the aims of safety, health or preservation.

26. On the last test it cannot possibly be argued that the installation of a full set of UPVC windows was the minimum measure immediately necessary to achieve the aims of safety, health or preservation. As referred to above there is no evidence that there was a risk to health and safety if the windows had not been immediately replaced. The third test also fails.

Conclusion

27. The appeal on ground (d) fails since none of the tests have been met.

Other Matters

28. In reaching my conclusions in both appeals, I have considered all of the other matters raised by the Council, the two appellants and other interested parties and persons. However, none carries sufficient weight to alter my conclusions on the main issues or the grounds pleaded. Nor is any other factor of such significance to change my decisions.

Formal Decisions

Appeal A

29. The appeal is dismissed.

Appeal B

30. The appeal is dismissed, and the Listed Building Enforcement Notice is upheld. Listed Building Consent is refused for the removal of 8 wooden windows on the first and second floors and the replacement with UPVC windows at Flats 1, 2 & 3, Gillam House, Gillam Yard, Market Street, Ulverston LA12 7LT.

Anthony J Wharton

Inspector