



Appeal Decision

Site visit made on 1 November 2023

by Thomas Shields DipURP MA MRTPI

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

Decision date: 29 December 2023

Appeal Ref: APP/Y1110/F/23/3314162

Armada House, 15 New North Road, Exeter, EX4 4HF

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (hereafter “the Act”).
- The appeal is made by Ms Ginette Ruthven against a listed building enforcement notice issued by the Exeter City Council.
- The listed building enforcement notice was issued on 7 November 2022.
- The contravention of listed building control alleged in the notice is the unauthorised construction of a single storey ground floor extension on the rear (north) elevation not in accordance with applications reference 14/1613/FUL and 14/1614/LBC both approved on the 9 September 2014.
- The requirements of the notice are:
 - 1) Demolish the rear ground floor extension;
 - 2) Remove all materials formerly comprising the extension from the premises and responsibly dispose of them; and
 - 3) Make good the original rear elevation of the building with materials to match the existing elevation.
- The period for compliance is 9 months.
- The appeal is made on grounds set out in section 39(1)(e), (f), (g) and (h) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Background

1. No. 15 New North Road is one of nine individual properties within a three storey terraced block which together form the Grade II listed building at Nos. 9-17 New North Road. It also forms part of a group listing with the adjacent terraced block at Nos. 19-29 New North Road.
2. I viewed the listed building on 1 November 2023. However, for reasons which have no bearing on the outcome of this appeal, I was unable to view the extension subject of the appeal at the rear of No.15. Instead I have relied upon aerial imagery¹ and the internal and external photographs of the extension together with related plans, drawings, and written comments submitted by the parties.

Appeal on ground (f)

3. An appeal on ground (f) is that copies of the listed building enforcement notice were not served as required by section 38(4).
4. Section 38(4) of the Act states that “A copy of a listed building enforcement notice shall be served...on the owner and on the occupier of the building to which it relates and on any other person having an interest in the building

¹ Google Earth images

which...is materially affected by the notice". The Council state the notice was served on the appellant by sending copies of it to her at 15 New North Road by ordinary post and also by recorded delivery.

5. The appellant confirms that she is the owner and occupier of the property but did not herself receive the recorded delivery copy of the notice and/or that "part was not received prior to the notice", which is unclear. However, there is no evidence before me that the notice was not properly served as required by the Act.
6. Moreover, even if it had not been properly served, s41(5) of the Act allows me to disregard any failure to properly serve if the relevant person has not been substantially prejudiced by that failure. Since the appellant has been able to lodge her appeal against the notice and make her case she has not been prejudiced herself, and there is no evidence before me of any other person having been prejudiced.
7. For these reasons the appeal on ground (f) must fail.

Appeal on ground (e)

8. An appeal on ground (e) seeks to show that listed building consent should be granted for the works carried out as alleged in the notice. The main issue is the effect of those works on the special architectural or historic interest of the listed building.
9. Section 16(2) of the Act requires me to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses. I have also taken into account the provisions of the Framework² which is also a material consideration.
10. The listed building of nine houses was constructed mid-19th century of three storeys, apart from the centre and end houses having four storeys with gables. It has a prominent stucco frontage across the whole terrace with banded rustication at ground floor level and with the slightly forward projecting four storey elements having rusticated quoins. Each house at the front has a splayed bay at ground floor level and six-over-six paned timber sash windows on the upper floors have architrave surrounds. The roof is slate tiled with each of the three storey houses having a single dormer.
11. As is typical of this era the imposing grandeur of the frontage contrasts with the simpler and more utilitarian rear, finished in red brick, with two storey rear projections finished in render. I was able to see some of the rear myself from Elm Grove Road, but otherwise as previously stated I have relied on aerial imagery and the parties' submissions.
12. Turning to the extension itself I consider its primarily rectangular form, proportions and overall size are appropriately subservient and consistent with the host property and with most other developments and additions to the rear of the terrace. I agree with the parties that the rear extension is not readily visible within the public realm and thus does not result in harm to the character or appearance of the St David's Conservation Area.

² National Planning Policy Framework (2019)

13. However, the roof form of the extension is irregular in its design and materials and appears as an awkward adjunct to the house, also incorporating a plastic domed skylight. The absence of an appropriate render finish to exterior walls, together with the use of uPVC double glazing for window and door openings, is also inappropriate, not relating well to the traditional and historic fabric and character of the listed building.
14. Taking account of all of these factors in combination, I find that the extension as constructed harmfully detracts from the host property and from the special architectural and historic interest of the listed building. In the language of the Framework it results in 'less than substantial' harm to the listed building's significance as a designated heritage asset.
15. I gather from correspondence between the parties that some alterations to the extension have been proposed and there may be a broad agreement in principle to some or all of those. However, I have no alternative plans before me and so I am unclear as to the detail of a proposed final construction. Moreover, the ground (e) appeal relates to the extension as constructed. As such, achieving an overall satisfactory outcome, as may be envisaged by the parties, is not possible within the scope of any conditions that could be imposed now on a grant of listed building consent. Any alternative re-design will need to be the subject of a further application to the Council in the first instance.
16. Given that the harm is 'less than substantial' as described in the Framework it should be weighed against any public benefits. I acknowledge the extension provides an enhanced standard of accommodation and utility for occupiers and thereby its contribution to the long term viability of the listed building used as a dwellinghouse. However, these do not provide a level of public benefits which can be said to outweigh the harm I have identified.
17. For all these reasons the appeal on ground (e) fails.

Appeal on ground (g)

18. An appeal on ground (g) is that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out.
19. I note that the notice in Section 4 states it was issued for the purpose of 'restoring the building to its former state'. As such, I will consider the appellant's arguments as additionally made in respect of ground (i) - 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.
20. The extension was constructed prior to the appellant's purchase of the property. However, the building was listed in 1974. As such any works carried out since then, without the benefit of listed building consent and that have affected the special architectural and historic interest of the building, are in contravention of listed building control.
21. The notice requires the removal of the extension and the making good of the original rear elevation of the building. Clearly therefore in respect of ground (g) the requirements go no further than simply undoing what has been done, and cannot be regarded as excessive. As such, the appeal on ground (g) must fail.

22. At the same time the requirements, if complied with, would remove the harm I have previously identified to the character of the listed building and hence the requirements fully serve the purpose of restoring the character of the building to its former state. Consequently, the appeal under ground (i) also fails.

Appeal on ground (h)

23. The ground of appeal is that the 9 month period specified in the notice as the period within which any steps required by the notice are to be taken falls short of what should reasonably be allowed.
24. The Council have suggested that the compliance period could be extended to 12 months. I consider that to be very reasonable. Furthermore, it would allow sufficient time for an alternative scheme to be consulted upon and agreed and for listed building consent to be obtained from the Council as necessary prior to its implementation.
25. For these reasons I will vary the compliance period in the notice to 12 months. The appeal on ground (h) therefore succeeds to this extent and I will vary the notice accordingly.

Formal Decision

26. It is directed that the listed building enforcement notice be corrected in Section 5 by deleting "9 (nine)" and substituting instead "12 (twelve)".
27. Subject to the variation, the appeal is dismissed and 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 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Thomas Shields

INSPECTOR