



Appeal Decision

Site visit made on 14 January 2024

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 29 January 2024

Appeal Ref: APP/M4320/F/23/3332396

Flat 3, 46 Promenade, Southport PR9 0DX

- 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 David Riley against a listed building enforcement notice issued by Sefton Metropolitan Borough Council.
 - The enforcement notice was issued on 28 September 2023.
 - The contravention of listed building control alleged in the notice is the installation of UPVC windows.
 - The requirements of the notice are: Remove the unauthorised UPVC windows at Flat 3, 46 Promenade, South PR9 0DX (1 bay window to first floor front elevation and 2 windows on the first floor front elevation to the right of the bay window) and replace them with 1 bay window (traditional fixed casement timber window with structural glazing bars and traditional casement timber windows top hung middle section with structural glazing bars on each side) and 2 traditional casement timber windows top hung middle section with structural glazing bars. This should be the same style as the original windows that were replaced without Listed Building Consent.
 - The period for compliance with the requirements is eighteen (18) months.
 - The appeal is made on the grounds set out in section 39(1) (e) and (i) 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.

The Appeal Site

2. The appeal premises forms part of a three-storey, Grade II listed, mid C19 terrace. The terrace originally comprised four houses which have subsequently been converted to flats. The terrace is listed for its group value, along with Stanley Terrace and Nos 49 & 50 Promenade. Based on the evidence before me, including the list description and observations on my site visit, the significance of the building as a heritage asset is mainly derived from the historic evidence it provides as part of a group of C19 town houses, its composition and proportions, and its architectural detailing, including timber joinery, large canted bay windows, large round-headed doorways with pilaster jambs and plain fanlight, deep cornices and dentilled and bracketed eaves cornices.

3. The appeal site is also located within Promenade Conservation Area (PCA). It occupies a prominent position on the Promenade in a location where there are a number of listed buildings. The general consistency, including layout of the plots, architectural decoration, scale, roofs, building sizes and types of property on Promenade, all contribute to the Victorian character and appearance of this part of the PCA.

Appeal on grounds (e) and (i)

4. Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act, 1990 as amended (the Act) requires special regard to be had to the desirability of preserving the listed building or its setting or any features of special architectural interest which it possesses. Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
5. The appellant argues that listed building consent ought to be granted for the UPVC windows, as the timber windows that were replaced were not the original windows installed in the property. They were thus not historic and were of a different appearance and opened differently from those that would have originally been installed. The contribution that the replaced windows made to the character and the significance of the building is therefore reduced.
6. Furthermore, he contends that the design of the new windows conforms to the appearance of those on the remainder of the front elevation of the terrace. He argues that they preserve the uniformity of the window pattern and therefore sustain the character and appearance of the listed building as seen in public views from Promenade. The windows only differ in respect of their material. UPVC has been used on other properties within the Listed Group and are widespread within the PCA. The appellant extends this argument to support his ground (i), claiming that the works would not restore the character of the building to its former state.
7. Windows are often amongst the most prominent features and an integral part of the design of traditional buildings. In this case, the timber windows in the listed building are not the original ones, have a different design with small-paned glazing with casements. However, their traditional timber construction, including structural glazing bars and casements all contribute to the significance of the building.
8. In contrast, the windows that have been installed are constructed from a non-traditional material. Although the glazing arrangement is the same, their sections are bulkier, smoother and flatter than timber windows. They have a modern and less refined appearance, lacking the fine detailing and depth of timber frames. In addition, the bulk and incongruity of the UPVC frames is heightened where the casements have storm seals and the mullions and transoms have been adhered as opposed to being an integral part of the frame.
9. I appreciate that UPVC windows have been installed in the adjoining terrace, which forms part of the Listed Group, and in Stanley Terrace. Those windows also do not preserve the special architectural or historic interest of those buildings and are not therefore a precedent that should be repeated.
10. For the reasons given above, the UPVC windows fail to preserve the special architectural and historic interest of the building and do not preserve or

enhance the character or appearance of the PCA. In the context of the significance and special interest of the asset as a whole, and in the language of the National Planning Policy Framework (NPPF), the harm would be less than substantial. Because the harm is less than substantial, paragraph 208 of the NPPF says the harm should be weighed against the public benefits of the proposal, including securing its optimum use.

11. There are no public benefits which would outweigh the considerable importance and weight to be given to the harm to the heritage asset. As such, the works do not comply with the heritage aims of the NPPF, or the design and heritage aims of Policies NH9, NH11 and NH12 of, A Local Plan for Sefton, adopted 2017. The appeal on ground (e) therefore fails and listed building consent is refused.
12. The requirement to remove the UPVC windows and replace them with timber windows to match those which previously existed in terms of size, profile, sections, design and appearance does nothing more than take the building back to the condition it was in before the unauthorised works were carried out.
13. I conclude that the requirements would restore the character of the building to its former state and the appeal on ground (i) fails.

Other Matters

14. I recognise the circumstances relating to the appellant's purchase of this property, and it was remiss of your solicitor and estate agents to not explain the responsibilities that come with owning a listed building. However, those matters are not for my consideration in this appeal, and I must have regard to my statutory duties under the Act. I also appreciate the financial implications as a consequence of the unauthorised works and enforcement notice. The Council have recognised those costs and thus a period of 18months has been given to comply with the notice.
15. I understand that a new Event Centre is to be constructed close to the appeal site, and thus there will be a change to the appearance of the PCA. I do not know the precise details of this scheme, however, the works the subject of this appeal relate to unauthorised works to a listed building, and thus are not comparable to those of a new build construction. I therefore give this consideration little weight.

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Elizabeth Pleasant

INSPECTOR