



Appeal Decision

Site visit made on 14 August 2024

by Thomas Shields DipURP MA MRTPI

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

Decision date: 20 August 2024

Appeal Ref: APP/P4605/F/23/3332413

275 Monument Road, Birmingham, B16 8XF

- 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 Act").
 - The appeal is made by Mr I R Desai against a listed building enforcement notice issued by the Birmingham City Council.
 - The listed building enforcement notice was issued on 13 September 2023.
 - The contravention of listed building control alleged in the notice is without listed building consent, the installation of two double glazed upvc windows on the ground floor front elevation in the approximate position shown marked in green on the plan attached to the notice.
 - The requirements of the notice are:
 - (i) Remove the two double glazed upvc windows from the ground floor front elevation and reinstate two timber vertically sliding sash windows. The reinstated timber windows will each have 4 panes in a 2-over-2 arrangement. The timber astragal glazing bars must be structural in a lambs tongue profile and no wider than 22 millimetres. The glazing must be single glazed and must be fixed into the frames and astragals using putty. The windows should not have horns. Where the sash box and shutters still exists they are to be retained insitu, refurbished and reused. The windows are to be operated with cords and lead weights. The windows are to have a painted finish. Details are to be agreed with the Local Planning Authority before commencement.
 - The period for compliance with the requirements is 24 months.
 - The appeal is made on the grounds set out in section 39(1)(c),(e) and (g) of the Act.
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Decision

1. It is directed that the listed building enforcement notice be corrected and varied by:
 - in Section 2 header, deleting the word "LAND" and substituting "BUILDING";
 - in Section 3 header, deleting the words "BREACH OF PLANNING" and substitute instead "CONTRAVENTION OF LISTED BUILDING";
 - in Section 5(i), 6th line, deleting the words "box and shutters still exists" and substitute instead "boxes still exist"; and
 - in Section 5(i), 8th line, delete the words "Details are to be agreed with the Local Planning Authority before commencement".
2. Subject to the corrections and variations, 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 Act.

Procedural Matter

3. The appeal was lodged on grounds (c), (e) and (g) only¹. However, some of the appellant's arguments overlap into grounds (a) and (d). The Council's case would not be prejudiced by my consideration of the appellant's arguments in the context of these additional grounds given they were also aware of the appellant's arguments.

The Notice

4. Some of the terms in Sections 2 and 3 of the notice headers have been conflated with those used in planning enforcement notices issued under the Town and Country Planning Act 1990. However, for the sake of clarity to a recipient of a listed building enforcement notice, it should specify its terms and requirements pursuant to the Planning (Listed Buildings and Conservation Areas) Act 1990. Corrections to these terms, as I have set out above, can be made without injustice to the parties.
5. The requirements in Section 5 of the notice specify that "Details are to be agreed with the Local Planning Authority before commencement". However, a notice cannot require a person to "agree" details with the Council as it introduces uncertainty into what the person must do to comply with the notice, which should be clear on its face. Indeed the two parties may never "agree" the details each other seeks. Such a requirement is unenforceable. Deleting this element would not render the remaining requirements, or the rest of the notice, invalid.
6. I am satisfied I can make these corrections to the notice without injustice to any party. I have therefore done so accordingly using powers available to me under s41(1)(a) of the Act.

The Appeal Building

7. The appeal building is No. 275 Monument Road which forms one half of a pair of early C18 semi-detached houses comprising the Grade II listed building at 274 and 275 Monument Road. Both are finished in stucco and each have three bays to the front with a central door within an arched moulded surround, and one window either side at ground floor within moulded surrounds. The two floors are divided horizontally with a cornice band at first floor cill level. At first floor there are three windows with wide pilasters to each side. All windows remained as sash windows at the date of first listing. All of these features, taken together, form part of the special architectural and historic interest of the listed building, referred to in the Framework² as its 'significance'. I consider the form and composition of traditionally painted timber sash windows in the listed building are important key features of its significance.

Appeal on ground (a)

8. For an appeal on ground (a) to succeed it must be shown that the building is either not listed at all, or that it no longer merits its listed status. The relevant time for consideration is the time before the alleged works in the notice were carried out.

¹ Although ground (f) was marked on the appeal form it is clear the arguments therein related to ground (g)

² National Planning Policy Framework (December 2023)

9. The appellant suggests the listed building (and others in the area) has changed over time through alterations to the extent it no longer has any 'great architectural interest'. However, I have described the listed building and some of its constructional features at paragraph 5 above, and I am satisfied on that basis that it remains of significant historic and architectural merit. As such, it remains worthy of its listed status as a building of special architectural and historic interest.
10. The appeal on ground (a) fails.

Appeal on ground (c)

11. For an appeal on this ground to succeed an appellant must show that the works carried out do not constitute a contravention of sections 7 and 8 of the Act. Section 7 says that no person shall execute or cause to be executed any works to a listed building, including those for its alteration, in any manner which would **affect** its character as a building of special architectural or historic interest, unless the works are authorised. It should be noted that the question to be answered is simply whether the character of the building has been "affected" rather than whether the works are harmful or beneficial.
12. As set out previously the traditional timber single glazed windows in the listed building are intrinsic features of its overall character. The installed uPVC windows are of a noticeably modern construction and appearance with different shinier material, double glazed panes with no astragal glazing bars, and with differences in their proportions and frame sections. I find therefore that they affect the character of the building as one of special architectural or historic interest.
13. The appeal on ground (c) fails.

Appeal on ground (e)

14. An appeal on ground (e) is that listed building consent should be granted for the works referred to in the notice. Hence consent is sought for the installation of the two white uPVC double glazed windows at the ground floor front elevation.
15. Part of the appellant's case is that the uPVC windows were installed as a matter of urgency relating to health conditions. However, in terms of works that would have been justified as the "minimum measures urgently necessary" this does not extend beyond, for example, boarding-up of damaged windows. There is no reason why alternative windows and/or secondary internal glazing could not have been ordered and installed within a similar timeframe as the uPVC ones. As such, the installation of the uPVC windows does not fall to be considered as such urgent works. Had an appeal been lodged on ground (d) it would have failed for this reason.
16. I note that some of the timber windows in the listed building may not be the original historic ones and have been replaced with others over time. However, they have been replaced with appropriately comparable timber windows, reflecting the original character and appearance of the listed building in terms of materials, form and composition. As such, the traditional form and structure of timber windows in this listed building remains a significant feature of its overall character and historic interest.

17. Even minor differences between the form of historic windows and proposed replacements can have a significantly harmful effect on the integrity and special interest of a listed building. In this regard the uPVC windows have an inappropriate modern production sheen finish, no structural glazing bars, and the large double panes of glass give off a “double register” reflection in some views, echoing their incompatible modern design. The frames also appear thicker and heavier in composition than the more slender and traditional form of timber windows. Taking these factors in combination, I find the uPVC windows overall have a clearly modern appearance contrasting sharply and inappropriately with the traditional and historic fabric and character of the listed building.
18. I conclude that the works carried out fail to preserve the special architectural and historic interest of the listed building, in conflict with the overarching statutory duty at s16(2) of the Act which requires me to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest it possesses. This must be given considerable importance and weight in reaching my decision.
19. Although there is no statutory requirement to determine the proposed works against the Council’s Development Plan, it also conflicts with Policy TP12 of the Birmingham Development Plan 2031 which is a material consideration.
20. The appellant in part seeks to justify the need for the windows with reference to his age and general health conditions. In respect of these factors I must have due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Age and disability are protected characteristics and hence my decision has the potential to affect a person with such protected characteristics.
21. Following on from the above, there is no substantive evidence before me to demonstrate that the same level of well-being benefits could not have been achieved by alternative methods without resulting in the harm I have previously identified. I attach little weight to this consideration in support of allowing the appeal.
22. The harm to the listed building is significant. In the language of the Framework the listed building is a ‘designated heritage asset’ and in this context the harm falls to be considered as ‘less than substantial’. In accordance with Framework paragraph 208 the harm should be weighed against any public benefits.
23. In this regard I note the appellant’s references to the environmental and thermal advantages of uPVC double glazed units. However, while these provide private benefits they do not provide a level of public benefits which can be said to outweigh the identified harm.
24. To conclude, the installation of the windows conflicts with the s16(2) of the Act, and with the provisions of the Framework, which directs at paragraph 205 that great weight should be given to the asset’s conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
25. For these reasons the appeal on ground (e) fails.

Appeal on ground (g)

26. The ground of appeal is that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out.
27. Although not specifically argued by the appellant, the shutters referred to in the notice requirements do not form part of the alleged unauthorised works described at Section 3 of the notice. Consequently, the requirement in respect of the shutters is excessive. I have therefore varied the notice accordingly by deleting this element from the requirements.
28. The appellant argues that older windows could be cladded over the top of the uPVC ones to alleviate the effect of the works to the listed building. Such an argument falls within ground (j) which is not a relevant ground of appeal given the purpose of the notice under s38(2)(a) and ground (g). However, such further works would not alleviate the effect of the works, or restore the building to its condition before the works were carried out, and would likely result in greater harm than exists now.
29. For these reasons the appeal on ground (g) succeeds to the extent described above in respect of the shutters, but otherwise fails.

Thomas Shields

INSPECTOR