



Appeal Decision

Site visit made on 12 August 2024

by Thomas Shields DipURP MA MRTPI

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

Decision date: 21 August 2024

Appeal Ref: APP/C3810/F/23/3322586

Flat 7, 15 South Terrace, Littlehampton, BN17 5NZ

- 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 Ian Lloyd against a listed building enforcement notice issued by the Arun District Council.
 - The listed building enforcement notice was issued on 26 April 2023.
 - The contravention of listed building control alleged in the notice is without listed building consent, the installation of a uPVC window in the south facing top floor dormer opening of the building known as Flat 7, 15 South Terrace.
 - The requirements of the notice are:
 1. Remove the window constructed from uPVC from the eastern dormer opening in the roof of the building identified with a red outline below.
 2. Install a timber, sliding sash window in a traditional design of 2 over 2 with integral glazing bars and single glazing fixed into the frame using putty. The glazing bars shall be no greater than 26mm and of an ovolo design. The window shall match the dimensions of the adjoining window (in the same building) and include 'window horns' like those in the other windows in the building. The new timber window shall be painted white.
 3. Make good any damage to the fabric of the listed building resulting from the works using materials to match the existing building
 - The period for compliance with the requirements is 6 months.
 - The appeal is made on the grounds set out in section 39(1)(e) of the Act.
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Decision

1. It is directed that the listed building enforcement notice be corrected by:
 - in Section 1, first line, after the word "them", deleting the remaining first and second sentences, and substituting instead the following words:
"that the works specified in Section 3 below have been carried out to the listed building and are such as to constitute a contravention of section 9 of the Act";

in Section 1 after the word "information", inserting a new paragraph:
"The Council consider it expedient to issue this notice having regard to the effect of the works on the character of the building as one of special architectural or historic interest.";
 - in Section 2, first line, deleting the word "LAND" and substituting instead the word "BUILDING";
 - in Section 2, after the word "Terrace", inserting the following words: "part of the Grade II listed building at 13-15 South Terrace,";

- in Section 3, first line, delete the words "BREACH OF PLANNING" and substitute instead the words "CONTRAVENTION OF LISTED BUILDING";
 - in Section 4, after the word "NPPF.", insert the following words: "Pursuant to section 38(2)(a) of the Act it requires the steps specified in Section 5 below to be taken to restore the building to its former state"; and
 - in Section 5, deleting all of requirement 5.3.
2. Subject to the corrections, 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 ("the Act").

Procedural Matters

3. Some of the terms and expressions in the notice 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. The need to draft a listed building enforcement notice correctly becomes clear, for example, in that an appellant deciding whether particular grounds of appeal¹ in section 39(1) may or may not be relevant will need to know the purposes within section 38 of the Act for which the notice has been issued.
4. Fortunately, in the particular circumstances of this case, other than in relation to a contention which falls within ground (d)², none of the appellant's arguments could potentially fall within other grounds of appeal and hence there would be no injustice to any party by my correcting the terms and headings of the notice as set out in paragraph 1 above.
5. A notice must specify a period for compliance with its requirements. Although compliance periods have been specified for requirements 5.1 and 5.2, there is no period specified for 5.3. Consequently, this makes the notice at 5.3 invalid and can only be corrected by deleting the requirement.
6. I am satisfied these corrections can be made to the notice without injustice to the parties. I have therefore done so accordingly using powers available to me under s41(1)(a) of the Act.

The Appeal Building

7. The Grade II listed building is a terraced row of three Georgian three storey houses with attics and basements at Nos. 13-15 South Terrace, located in the Littlehampton Seafront Conservation Area (LSCA). Part of the special architectural and historic interest derives from the traditional architectural style and features evident in the front elevations. This includes the use of red brick courses with dressings and quoins (although No 15 later painted) and No. 14 having stucco and moulded cornicing. The form and composition of traditionally painted timber sash windows in the terrace are a key feature of the listed building's character and special interest.

¹ Grounds of appeal at s39(1)(g), (i), (j), (k) of the Act

² I have referred to urgent works under ground (e)

8. Section 16(2) of the Act 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. Also, 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 LSCA.

Appeal on ground (e)

9. 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 removal of the timber sash window in the roof dormer and its replacement with the white uPVC double glazed unit.
10. Part of the appellant's case is that the uPVC window was installed as a matter of urgency during winter conditions following severe damage to the window. However, in terms of works that would have been justified as the "minimum measures urgently necessary" this does not extend beyond the boarding-up works that were carried out by the appellant. The subsequent ordering and installation of a uPVC window does not fall to be considered as such urgent works. Consequently had an appeal been lodged on ground (d) it would have failed for this reason.
11. I note that some of the timber windows in the listed building are not 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.
12. Even subtle 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 replacement window has an inappropriately modern production sheen finish with non-structural glazing bars. It also has a fixed hinged top half opening outward horizontally from the centre, and so is not of a sash structure or function, and the frame appears thicker in profile and heavier in composition than the more slender and traditional form of timber window it replaced.
13. Taking these factors in combination, the uPVC replacement window overall has a clearly modern appearance contrasting sharply and inappropriately with the traditional and historic fabric and character of the listed building. As such I conclude that the works fail to preserve the special architectural and historic interest of the listed building in conflict with the overarching statutory duty as set out in the Act, which must be given considerable importance and weight. Although there is no statutory requirement to determine the proposed works against the Council's Development Plan, it also conflicts with Policy HER DM1 of the Arun District Local Plan (2018) which is a material consideration.
14. Also, while I accept that the high level position of the uPVC window is not as visible from the public domain as the ground and first floor windows, it nonetheless fails to preserve or enhance the character or appearance of the LSCA.

15. In the language of National Planning Policy Framework (December 2023) ("the Framework") the listed building and the LSCA are 'designated heritage assets'. In this regard the harm to the listed building is significant, although it falls to be considered, along with the lesser harm to the LSCA, as 'less than substantial' harm. As set out at Framework paragraph 208 less than substantial harm should be weighed against any public benefits.
16. In this regard I note the appellant's references to the eco-thermal advantages of uPVC double glazed units. However, while these provide private benefits these do not provide a level of public benefits which can be said to outweigh the identified harm.
17. To conclude, the works carried out conflict with s16(2) and s72(1) 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.
18. For these reasons the appeal on ground (e) fails.

Thomas Shields

INSPECTOR