



Appeal Decision

Site visit made on 23 April 2025

by **P N Jarratt BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 April 2025

Appeal Ref: APP/W1145/F/24/3340537

Follyfoot Equestrian Centre Sandymere Rd, Northam, Devon, EX39 1XR

- The appeal is made under section 39 of the Planning (Listed Building and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Sally Jobson-Scott against a listed building enforcement notice issued by Torridge District Council.
- The enforcement notice was issued on 30 January 2024.
- The contravention of listed building control as alleged in the notice is:
 - i) The earth cover over the building marked as X on the Plan at Appendix A of the notice has been removed.
 - ii) The bitumen/tar covering has been damaged and/or removed leaving the building open to the elements.
 - iii) Several of the concrete reinforcement bars have been exposed.
 - iv) A wooden structure has been attached to the east wall of the building, rainwater pipework has been attached to the building side of this structure that run across the building from east to west.
 - v) The curtilage of the building is being used to store items which include but are not limited to caravans, building material and rubble, shown as images 4-10 in Appendix B.
- The requirements of the notice are:
 - i) Remove all the items from the land, including but not limited to caravans, building materials and rubble, shown as images 4-10 in Appendix B, shown within the blue line on Appendix A and keep the area clear from storage in perpetuity.
 - ii) Return the external of the receiver station to the same condition as described in the English Heritage Listing number 1425450. Including but not limited to the following:
 - a) Repair any exposed reinforcing bars and patch the external concrete structure as necessary.
 - b) Re-tank (waterproof) the external concrete structure, (consult with Historic England and/or RAF Hendon as necessary, thus ensuring that no water can ingress the building.
 - c) Re-cover the whole structure with an earth and turf mound ("Traverse"). The top of the mound must be level with the mark on the chimney and the circumference of the slope of the Traverse must be no less than 3m from the bottom of the wall of the radar station at ground level, constructed at a 45 degree angle to the ground and level with the mark on the chimney of the building or 0.8m deep, whichever is the greater. As shown on Appendix B images 1-3.
 - d) Remove the three posts and fencing to the northeast of the building and remove the resultant debris from the site.
 - e) Remove the drainage arrangements from barn across the roof structure of the receiver station, and ensure future drainage is not damaging the structure from water ingress.
- The period for compliance with the steps set out in 6 is six months from the date this notice takes effect.

- The appeal is made on the grounds set out in section 39(1) (g) of the Planning (Listed Building and Conservation Areas) Act 1990 as amended.

Decision

1. It is directed that the listed building enforcement notice
 - i) be corrected by the deletion of the words in part 6 of the notice “steps set out in 6” and substituted with the words “the steps set out in 5”;
 - ii) and varied by:-
 - a) The deletion of requirement 5(i);
 - b) In first part of requirement 5(ii) the deletion of the words “Including but not limited to the following”;
 - c) In requirement 5(ii) (b) the deletion of the words “(consult with Historic England and/or RAF Hendon as necessary)”
 - d) In requirement 5(ii) (c) the deletion of the words “Re-cover the whole structure with an earth and turf mound” and substitute with the words “Re-cover the structure with an earth and turf mound except for that part where the animal shelter has been constructed and expressly excluded from the listing description”;
 - e) In requirement 5(ii) (c) the deletion of the two references to the word “chimney” and replace with the words “ventilation stack”; and
 - f) The deletion of requirement 5(ii) (d).

Subject to the correction and variations the appeal is dismissed and the enforcement notice upheld.

Preliminary Matters

2. Section 16(2) imposes a duty to have regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest that it possesses.
3. The appellant questions the validity of the notice on the basis that the cover letter dated 30 January 2024 refers to a different property; the date of 11 May 2022 on the notice is incorrect; the cover letter states that the notice takes effect on 15 June 2022; and the notice at item 6 should read item 5 and the subsequent numbering is also incorrect.
4. The Council provides no satisfactory explanation, or indeed apology, for errors in the cover letter but this does not invalidate the notice, it just demonstrates the inadequacy of the Council’s procedures.
5. The Council’s enforcement notice is poorly drafted with numerous typographical errors and not up to the standard expected of a legal document. Nevertheless, this does not invalidate it. Failure to state the date on which the notice takes effect will render a notice a nullity but this is clearly indicated as 18 March 2024 in section 7. The notice is signed by the Council’s authorised officer but the date of signature is illegible on the notice received by the appellant. However, this is not fatal to the validity of the notice.

6. Although reference is made in part 6 of the notice to the 'steps set out in 6', I have the power under s 41(1) to correct the notice to refer to 'the steps set out in 5' subject to there being no injustice to the parties, which is the case here as the appellant is aware of this error.
7. The appellant states that the boundary shown in the notice is incorrect and does not correspond with the established equestrian use of the land, or Historic England mapping. However, the Council disputes that the land has been used for equestrian purposes as no such planning permission or Lawful Development Certificate has been issued for such a use within the blue line shown on the plan attached to the notice. They indicate that the notice does not preclude the land being used for grazing.
8. The appellant considers that the blue line is inconsistent with the curtilage of the listed building which is shown on the Historic England listing map. So far as I am aware, the Historic England map should not be used as definitive indicator of the curtilage of a listed building, as curtilage is a matter of fact and degree determined by the decision maker on the basis of established case law. It is arguable whether all these elements are within a single extensive curtilage or whether each element can be considered to have a separate curtilage, but this is perhaps an academic argument regarding curtilage listed buildings that is not particularly material to the issues in this case. What is more relevant is whether any unauthorised works have affected the setting of a listed building, which in this case, the Council alleges that various items are being stored within the curtilage affecting the setting.
9. The Council quite justifiably are seeking to protect the integrity of the listed building and remove the stored materials from its vicinity but such storage represents an unauthorised material change of use of the land. This would be better tackled through planning enforcement procedures rather than listed building enforcement which is directed at the unauthorised works to the structure.

The site and relevant planning history

10. The appeal structure is the west receiver block forming part of a Grade II listed Northam Chain Home Radar Station built in 1941 and ceasing operations in 1944. Although the Northam Chain Home Radar Station is a single list entry as a Grade II listed building, it contains receiver blocks, sites of receiver towers, transmitter blocks, sites of transmitter masts, IHC buildings and a substation all of which are dispersed over a wide area characterised by its openness and generally undeveloped coastal zone.
11. The structure is a relatively low concrete building with two entrances, a flat roof and a ventilator stack, originally covered in earth. Some reinforcing bars are exposed and the bitumen covering of the structure is in a poor condition, falling away from the concrete in places. An animal shelter has been constructed on the east side of the receiver block, which the list entry specifically indicates is excluded from the listing as the earth covering protecting the east side of the receiver block and the construction of the lean-to shelter pre-dates the listing. The modern timber stable partitions within the central room of the structure are also indicated as not been listed.
12. Various items are stored in close vicinity of the listed building including a van body, equestrian paraphernalia and clutter all of which harm the setting of the listed building.

13. Following the taking of enforcement action, planning permission has been granted for a part retrospective all-weather turnout some 100m from the north-east of the appeal building (1/0838/2023/FUL). A stoned roadway has been constructed from the appeal site to the all-weather turnout.
14. A planning application for the erection of a stable building was dismissed on appeal in March 2023 (APP/W1145/W/22/3304623) in which I note the inspector was of the view that the barn attached to the listed building caused some harm and that the appellant indicated a commitment to relining the receiver block with bitumen and re-instating its earth covering, although this has not been carried out.

Reasons

15. 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.
16. The appellant states that the land has been in equestrian use since 1994 which includes the storage of equestrian equipment, show jumps, horse lorries, fencing, gates and various items associated with the use. The Council disputes that the land has an equestrian use as referred to above but there is no indication that any enforcement action against that use has been considered. It is not the purpose of this appeal to determine the lawful use of the land.
17. The appellant undertakes to carry out the following work:
 - i) Repair exposed bars and patch concrete.
 - ii) Re-tank the structure.
 - iii) Re-cover the structure with earth and turf to restore to its pre-2021 condition.
 - iv) Remove drainage arrangements from across the barn.
18. The appellant also indicates that building rubble has been removed and has agreed to remove a caravan.
19. It seems that the appellant recognises the need to reverse the unauthorised works carried out without the benefit of listed building consent and items (i), (ii) and (iii) generally coincide with the requirements set out in 5 (ii) (a), (b) and (c) of the notice. Requirement 5(ii)(e) regarding drainage arrangements will follow on from the re-covering of the structure with earth.
20. For the avoidance of doubt I will vary the requirements to make it clear that the notice does not require the re-covering of the whole structure with an earth and turf mound as the removed earth and the barn attached to its east side occurred prior to the listing of the receiver block. I will also substitute reference to the “chimney” with “ventilation stack” in the interests of accuracy.
21. In respect of requirement 5 (i), the notice appears to be seeking to address land use matters under s38 of the Act which is specifically designed to provide powers addressing unauthorised works to a listed building. Planning enforcement provides a more appropriate mechanism to consider the effect of unauthorised development on the setting of a listed building. Accordingly, I shall delete requirements 5(i) and

5(ii)(d). However, it is evident that in order to carry out requirement 5(ii)(c) it will be necessary to remove the van body and other externally stored items to do so.

22. I shall delete the words “Including but not limited to the following” in requirement 5(ii) as being vague and uncertain. I shall also delete reference in requirement 5(ii)(b) to “(consult with Historic England and/or RAF Hendon as necessary)” as this is similarly vague and uncertain.
23. Representations submitted by the Historic Environment Officer of Devon County Council draw attention to the fact that a hardstanding has been created on part of the ground cleared by the removal of the earth. Although this is not specifically referred to in the allegation in the notice, the carrying out of requirement 5(ii)(c) will remove part of it.

Conclusion

24. For the reasons given above I conclude that the notice should be corrected and varied but otherwise I shall uphold the listed building enforcement notice.

P N Jarratt

INSPECTOR