
Appeal Decision

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 20th April 2026

Appeal Ref: APP/T1410/F/23/3333257

27 Cavendish Place, Eastbourne BN21 3JB

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Edward Cooper against a listed building enforcement notice (LBEN) issued by the Eastbourne Borough Council.
- The LBEN was issued on 5 October 2023.
- The contravention of listed building control alleged in the LBEN is, without listed building consent, the removal of traditionally detailed and rebated single glazed timber sliding sash windows and the replacement of UPVC double glazed windows into a Grade II listed building ("the Works").
- The requirements of the LBEN are:
 - (i) Remove the UPVC windows and frames
 - (ii) Replace the windows with traditional timber windows of the kind characteristic of the terrace.
 - (iii) No works shall commence on site until details of all new external windows have been submitted to and approved in writing by the Local Planning Authority.
 - (iv) Make good surrounding fabric, where required, on a like for like basis.
- The period for compliance with the requirements is: 9 months.
- The appeal is made on grounds (a), (b), (c), (e), (f), (g) and (h) as set out in section 39(1) of the Act.

Summary Decision: No further action is taken.

The LBEN

1. The LBEN does not specify whether the purpose of the steps to be taken are pursuant to (a), (b) or (c) within section 38(2) of the Act. That section of the Act requires a LBEN to: "***specify the alleged contravention and require such steps as may be specified in the notice to be taken (a) for restoring the building to its former state; or (b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent; or (c) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with***".
2. It is important that a LBEN should be clear in its purpose with regard to section 38(2), not least because it should be clear to an appellant what specific grounds of appeal are available. Some grounds of appeal are only available dependent upon whether the LBEN was issued pursuant to (a), (b), or (c) within section 38(2). However, it appears from all the evidence before me that the purpose of the LBEN was intended to fall within section 38(2)(a) of the Act.
3. The alleged contravention at Section 3 of the LBEN refers to '*the removal of traditionally detailed and rebated single glazed timber sliding sash windows and the replacement of UPVC double glazed windows into a Grade II listed building*'. However, there is no indication in the LBEN or its attached plan as to which windows in the listed building the LBEN relates to. There is also nothing in the

appellant's submissions which indicate he understood which windows the LBEN attacks.

4. The Courts¹ have made it clear that a notice must be clear "*within the four corners of the document*" to an appellant, or any other person with an interest in the land, as to the precise nature of the contravention and what is required to be done to comply with a notice. Although the Council has subsequently stated that the windows in the front elevation are most appropriate, this would not have been clear to the appellant at the time of lodging his appeal, and when considering what grounds of appeal might be available to him, when referring to the LBEN itself.
5. Turning to the requirements at Section 5 of the LBEN, requirement ii) does not specify what constitutes a traditional timber window. Neither does it specify which windows are characteristic and in which terrace. There are insufficient details for the replacement windows for example: whether they should be constructed of hardwood or softwood timber; whether they should be single glazed; whether they should be of a casement or sash opening design; whether any glazing should be fixed with putty or other fixings, and no specified or otherwise minimum or maximum dimensions are given relating to the width and thickness of frames and glazing bars, or to any inset/reveal depth for the frame. That requirement is therefore vague and imprecise.
6. The Council has subsequently submitted photographs of an adjoining property stating that its '*preference would be for a new set of timber windows to be installed with matching details. The design of the windows differs between the floors, and any notice will need to take account of this. We would request 2 over 2 replacement timber sash cords at the central window on the ground, first and second floor bays, with 1 over 1 window to each side, on the upper level, one over one timber sash cords and at the basement, a 2 over 2 timber replacement sash window*'. It is also stated that the Council will accept either slimline 12mm double glazing integrated into the new windows, if that is possible, or secondary double glazing. Nonetheless, the suggested variations/corrections would materially alter the requirements and make them more onerous. They would therefore result in injustice to the appellant. Moreover, if the Council would accept slimline double glazing, then the purpose of the LBEN, in that instance, would not fall within section 38(2)(a) but 38(2)(b) of the Act.
7. Requirement iii) relates to the submission of details of all new external windows being submitted to and approved in writing by the Local Planning Authority. Having regard to *Clive Payne v The National Assembly for Wales and Caerphilly Borough Council* [2006] EWHC 597, that requirement introduces uncertainty for the appellant. On first receipt of the LBEN, it would not have been possible for the appellant to know what details might be approved by the Council, and consequently what they must do to comply with the LBEN. Furthermore, there is no mechanism through which the appellant could challenge any failure on the part of the Council to agree the details submitted, or should the appellant consider the subjective judgments made by the Council in these respects to be unreasonable or impossible to achieve. I have also had regard to *Oates v SSCLG & Canterbury CC* [2017] EWHC 2716 (Admin), [2018] EWCA Civ 2229; [2019] JPL 251 as to whether that requirement could be deleted if the remaining requirements would ensure compliance with section 38(2) of the Act. However, if that requirement was deleted,

¹ *Miller Mead v MHLG* [1963] JPL 151

as requirement ii) is vague and imprecise, compliance with section 38(2) of the Act would not be ensured. In any event, as I set out earlier, it is not clear as to which windows should be removed for replacement in requirement 5 i).

8. Overall, the requirements are so vague and open to interpretation that replacement windows, while complying with the LBEN requirements as drafted, could result in harm to the character of the listed building. As such, the requirements as drafted raise the question of whether they would serve the purpose of restoring the character of the listed building to its former state; potentially a ground of appeal under section 39(1)(i) of the Act which would not have been clear to the appellant, since the purpose within section 38(2) of the Act is not referred to in the LBEN.
9. In my judgement, the LBEN is hopelessly ambiguous and uncertain in relation to what is alleged and what is required to remedy the alleged breach. The LBEN is bad on its face and a nullity.

Conclusion

10. I conclude that the LBEN is a nullity. In these circumstances, the appeal under grounds (a), (b), (c), (e), (f), (g) and (h) set out in section 39(1) of the Act do not fall to be considered.

Formal Decision

11. Since the LBEN is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding, should the Local Planning Authority have kept a record of this LBEN on any register, they should consider reviewing it.

D Boffin

INSPECTOR