



Appeal Decision

Site visit made on 12 April 2019

by Mr K L Williams BA, MA, MRTPI

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

Decision date: 07 May 2019

Appeal Ref: APP/B2002/F/18/3202812

26 Flour Square, Grimsby, DN31 3LP

- 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 P Smith of the Owners of 26 Flour Square against a listed building enforcement notice issued by North East Lincolnshire Council.
- The enforcement notice, ref: EN/1043/17, was issued on 16 April 2018.
- The contravention of listed building control alleged in the notice is the removal of 13 timber windows and the insertion of 13 Upvc double glazed window units.
- The requirements of the notice are to:
 - i) Remove all 13 Upvc double glazed units (photographs 1-3 in the notice) the existing Upvc windows are to be removed carefully by hand to avoid damage to the original architrave and disposed of off-site.
 - ii) Install 13 new timber sash windows, as converted to top openers illustrated by photograph 4 in the notice. These should be fitted from the inside, tight to the opening – reusing the original box frame where existing. The new sash windows should be 2 over 2 vertical sliding sash of equal proportions to fit the openings with lambs tongue glazing bars no more than 16mm wide. The meeting bar and frame should be no more than 35mm wide. The sashes should have decorative horns to match photograph 4.
 - iii) As per photograph 4 the bottom sash of each window should be fixed shut using stainless steel screws not adhesive. The top sash should be hinged with stainless steel hinges spaced equally along the top horizontal member/transom, to open outwards.
 - iv) Joints to the frame and sashes shall be Mortise and Tenon with locking dowel detail. The windows shall be single glazed without vents. All new glazing shall be 6mm thick and fixed using pins and putty externally.
 - v) The exterior of the windows are to be finished in full gloss paint – colour (white or off-white) to match existing decoration, taking care not to seal putty in doing so. Internal finish to be painted (not stained) to suit interior décor (own choice). All window linings/architraves/shutters where original are to be retained and made good with matching details in timber. Where these have been removed, timber architrave should be made to match internal door architrave.
- The period for compliance with the requirements is 6 months.
- The appeal is made on the grounds set out in section 39(1) (g) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Summary of Decision: The appeal does not succeed. The listed building enforcement notice is corrected, varied and upheld.

The Listed Building Enforcement Notice

1. The requirement in paragraph 5.1 to dispose of the Upvc windows off site goes further than is necessary to remedy the alleged works to the listed building.

The notice will be varied without injustice to the main parties to remove this requirement, as set out in the Formal Decision.

Ground (e)

2. Although there was no appeal on ground (e), the appellants cite matters pertinent to whether listed building consent should be given for the Upvc windows now in place. I have therefore addressed them. The works were intended to improve the building's appearance and to provide a suitable working environment for the tenants occupying the building. There are supporting representations which refer to the works as an enhancement and to the resulting benefits. They include the thermal efficiency of the windows and the improved working conditions which have resulted.
3. The main issue is the effect of the works on the special architectural and historic interest of the listed building. No.26 Flour Square is significant as an example of an early 19th century house sited prominently near the port entrance and later converted to office and storage use. It is listed at grade II and is a designated heritage asset. Amongst other features it has a distinctive round arched entrance, with a recessed entrance door, Doric columns and fine detailing above the door. As with many historic buildings, its windows are prominent and important features, contributing positively to its historic character. On the principal elevation 2 windows flank the doorway and there is a range of 3 windows at first floor level. The position, character and detailing of the windows complements the arched entrance feature on this elevation. The stone cills and cambered lintels add further interest. There are a further 6 windows on a side elevation and 2 on the other side elevation.
4. Upvc is not a material that is characteristic of this listed building, or of the windows that were replaced. It lacks the texture of wood and can deteriorate to a dull appearance with weathering. The Upvc windows also fail to match the detailing of the previous windows, for example in respect of the horns on the upper sections of the windows and the glazing bars. The replacement of the windows has resulted in harm to the special architectural and historic interest of the listed building and to its significance. That harm would not be addressed by minor changes to the windows. Where, as in this case, the harm is less than substantial it is consistent with paragraph 196 of the National Planning Policy Framework, 2018 to weigh it against any public benefits. The replacement windows assist in the maintenance of the building and contribute to thermal efficiency, with resulting benefits to those occupying it. However, it has not been shown that similar benefits could not have been achieved with timber windows and, for example, secondary glazing. There are no public benefits which outweigh the harm which has resulted from these unauthorized works and listed building consent should not be granted.

The Appeal on Ground (g)

5. The main issue on this ground is whether the notice's requirements exceed what is necessary for restoring the building to its condition before the unauthorised works were carried out. The notice requires the replacement of the Upvc windows with timber sliding sash windows. The bottom sash would be fixed shut and top sash would be converted to top opening with hinged fixings. Photograph no.4 is attached to the notice. It is undated and shows one of the windows.

6. The appellants consider that relevant details in the listed building description are inaccurate. They observe that works to the windows were carried out in 1998, after the listing inspection but before the list entry was made. As a result of these works the notice's requirements are said to be inconsistent with the windows which were in place before their replacement with the Upvc windows.
7. The building was listed in June 1999. Amongst other things the listing description refers to "*Original 6/6 ground-floor sashes...First floor has C20 1/1 sashes*". It goes on to allude to "*6/6 first floor sash to right, C20 1/1 sash to left in original opening...one 6/6 ground floor sash to right; 3 first floor windows, 2 with 6/6 sashes, one with C20 casement in original opening*". The appellants' position on this matter is supported by an email from the Senior Listing Co-ordinator of Historic England, of 3 January 2019. It explains that an inspection of the building for listing took place in March 1993 but that the List entry was not published until June 1999. The email confirms that no record of any further inspection was found to have occurred and says that it is assumed that no re-inspection took place before the List entry was published.
8. Extensive changes were made to the building between 1993 and 1999, both internally and externally. They included works to replace all the windows with what the appellants describe as "top hinged mock sash casement windows". A letter of 14 January 2019 is from Mr Cattell of Rapide Frame Supplies and provides a photograph of one of the windows they replaced. It is described as a casement window with butt hinges which was a top opener and not a sliding sash. The letter goes on to say that there was no bottom sash, so it could not have been fixed with pins. A letter of 11 May 2018 is from Mr Firth of Firth UK Ltd. He refers to the previous windows as "mock sash casement windows".
9. The requirements of the enforcement notice use the terms "sash window" and "sliding sash". A sash window is one with has two frames fixed one above the other that open and close by sliding up or down. The balance of evidence in this appeal is that the windows which were replaced were not sash windows. The term "casement window" refers to windows that open by hinges. Hinging is usually at the side but, as in this case, can be at the top. While these definitions lend some support to the appellants' case, the Rapide Frames photograph (20170929_151342.jpg) closely resembles photograph 4 in the enforcement notice with regard to form, glazing pattern and detailing. The appellants also contend that beading was used rather than putty but this does not appear to be supported by these photographs.
10. I have also considered whether the matters raised by the appellants can be addressed by correcting the notice's requirements. It seems to me that this can be done by removing reference to sash windows in the requirements together with other corrections as set out in the Formal Decision. The main parties have had the opportunity to comment on this matter and I am satisfied that no injustice would result from these corrections. Subject to those corrections the requirements would not exceed what was necessary to restore the building to its condition before the works were carried out.

Conclusion on Ground (g)

11. The appeal succeeds to some extent on ground (g). However, the matters raised can be addressed by corrections to the enforcement notice.

The Period for Compliance

12. Although there was no appeal on ground (h) I take into account that the appellants were unrepresented. The work required to comply with the requirements of the notice will be substantial and intrusive. It will affect 13 windows and is likely to be disruptive to the businesses which occupy the building. The appellants say that, if replacement is required, they would prefer to install slimline double glazing. While that matter is beyond the scope of this appeal, an extended period would allow time for consideration of other options. In these circumstances a compliance period of 6 months is unreasonably short. Notwithstanding the Council's suggestion of 9 months I conclude that a period of 12 months is appropriate and reasonable.

Formal Decision

13. It is directed that the listed building enforcement notice be corrected as follows:

- i) By the replacement of the words in paragraph 5.2 with the words "Install 13 new top opening timber windows as illustrated in photograph 4 attached to the notice. These shall be fitted from the inside, tight to the opening and reusing the original box frame where existing. The new windows shall be 2 over 2 vertical sections of equal proportions to fit the openings, with lambs tongue glazing bars no more than 16mm wide. The meeting bar and frame shall be no more than 35mm wide, with decorative horns to match those shown in photograph 4.
- ii) By the replacement of the words in paragraph 5.3 with the words: "The top section shall be hinged with stainless steel hinges spaced equally along the top horizontal member to allow opening outwards.
- iii) By the replacement of the words in paragraph 5.4 with the words: "Joints shall be mortise and tenon with locking dowel detail. The windows shall be single glazed without vents. New glazing shall be 6mm thick and fixed using pins and putty externally.

14. It is further directed that the listed building enforcement notice be varied as follows:

- i) At paragraph 5.1 by the deletion of the words "and disposed of off-site".
- ii) At paragraph 6 by the replacement of the words "6 months" with "12 months".

15. The appeal is dismissed. The listed building enforcement notice is upheld subject to the above variations and corrections.

K Williams

INSPECTOR