

Appeal made against a listed building enforcement notice issued by Bromsgrove District Council on 5th April 2011

Appeal reference	APP/P1805/F/11/2153096
Planning Application	PI/2010/00093-IM
Description	<p>The contravention of listed building control alleged in the notice is without listed building consent the execution of alterations and works to the building, namely:</p> <ul style="list-style-type: none">▪ The removal of external render.▪ The removal of internal walls to the ground and first floor.▪ The removal of internal plasterwork.▪ The removal of two internal latched timber doors.▪ The replacement of internal roof rafters and installation of TLX Gold multifoil insulation.
Location	<p>28 Queen's Hill, Belbroughton, DY9 0DU</p> <p>The appeal property is a Grade II listed building, and the appeal site lies within the Belbroughton Conservation Area. I have therefore paid special regard to the desirability of preserving the special architectural and historic interest of the listed building, and of preserving or enhancing the character or appearance of the Conservation Area, as required by Sections 16(2) and 72(1) of the Act¹.</p>
Ward	Furlongs
Decision	Authority to pursue enforcement action agreed by Planning Committee on 7th March 2011

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Discussion

The steps required by the notice are to:

1. *Apply a NHL3.5 hydraulic lime render mixed in a 1:3 parts ratio with coarse, sharp, well graded sand, to the exterior of the building. (Excluding the new extensions previously approved under Listed Building Consent 09/0510 and Planning Permission 09/0511).*
2. *Remove the unauthorised concrete supporting pillar and reinstate a masonry wall between the lounge and dining room to the ground floor (the wall is shown in attached photographs A, B and C attached to the notice at Appendix 4). The position and extent of the reinstated wall shall correspond to plan no 1331/PIO approved on 1st October 2009 under Listed Building Consent 0910510 (attached to the notice as Appendix 3).*

3. *Reinstate the timber framed, wattle and daub walls between bedrooms one and three, and between bedrooms one and three and the first floor landing as shown in attached photographs D, E and F (attached to the notice as Appendix 4). This shall consist of air-dried oak timbers in sizes to match those which were removed without consent, with traditional mortise and tenon joints. The existing surviving sections of timber framing and wattle panels are to be retained and repaired. The position and extent of the reinstated walls shall correspond to plan no. 1331/PIO approved on 1st October 2009 under Listed Building Consent 09/0510 (attached to the notice as Appendix 3).*
4. *Reinstate a non hydraulic lime putty based plaster to all walls within the lounge, dining room, bedrooms one and three and first floor landing as shown in on the walls in photographs A to J (attached to the notice as Appendix 4).*
5. *Reinstate a riven lath and non hydraulic, haired, lime putty based plaster ceiling to the lounge, dining room, bedrooms one and three and first floor landing as shown in attached photographs A, I and J (attached to the notice as Appendix 4). The existing surviving sections of lath and plaster ceilings to the ground floor are to be retained and repaired.*
6. *Reinstatement of timber latched doors to bedrooms one and three as shown in attached photographs D and E (attached to the notice as Appendix 4). These shall be painted softwood boarded and battened doors, with Suffolk latches and tee hinges to match the detailed design of the doors which were removed without consent.*

Summary of decision: the appeal is dismissed, the listed building enforcement notice upheld with a variation, and listed building consent refused.

Appeal made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.

Appeal reference	APP/P1805/E/11/2156309
Planning Application	10/1109-SC
Description	The works proposed are an amendment to listed building consent ref. 09/0510 - change to the front door; change conservatory windows and roofing, and change the finish of external sandstone.
Location	28 Queen's Hill, Belbroughton, DY9 0DU
Ward	Furlongs
Decision	Refused (Delegated decision) - 4th February 2011

Background matters

Listed building consent and planning permission have previously been granted for a proposed 2-storey rear extension and single-storey conservatory to the appeal property. This included a number of alterations to the cottage, including blocking two doorways in the wall separating the two ground floor rooms, and formation of a single larger opening, removal of the staircase from the left-hand room, and location of a new kitchen in the right-hand room. A back extension and conservatory have now largely been built, although with variations to the design, which are in part the subject of the Section 20 appeal.

The Grounds of appeal

The listed building enforcement notice appeal on ground (d)

In the enforcement appeal on ground (d), in order to succeed, it is for the appellant to show on the balance of probabilities that:

- i. The works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;
- ii. It was not practicable to secure safety or health or, as the case may be the preservation of the building by works of repair or works for affording temporary support or shelter; and
- iii. The works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary.

All three parts must be satisfied in order for there to be success on this ground.

It was argued by the applicant that long term water damage to the building had caused the external render and internal plasterwork to deteriorate to the extent that it no longer adhered properly to the walls. This had been caused by serious flooding in 2008, when the floodwater level had reached the first floor. Also, the poor condition of the roof had allowed water to enter the building over a long period.

Regarding the removal of first floor walls and the two latched timber doors from the cottage, the appellant does not argue that these works were done on account of any urgency, or threat to safety or health. These elements of the unauthorised works do not therefore fall to be considered under ground (d).

Discussion

Removal of external render

On the balance of probabilities, the Planning Inspector does not accept that the appellant carried out the minimum works immediately necessary after flooding, given

the generally high degree of mechanical key provided by the substrate, and the long period for which the render remained in good condition.

It is likely that the render was originally applied in the region of 80 years ago, and it is apparent from photographs taken in April 2008 - before the flood in September of that year - that it remained in good condition, largely free from significant cracks or other defects. In the light of this, it could be expected that defects resulting from absorption of water during the curing process would have become evident relatively early in the life of the material, rather than some 80 years later.

According to the Council, the flood water had been more than a metre deep, it had not come up to first floor level. Adjacent cottages at 2 and 4 Drayton Road had also suffered from the flood, although being at a higher level this was to a lesser depth of about a metre. Even so, damage to the external render on these cottages had been relatively slight, and required no more than patch repairs with lime based render.

Given the relatively thick coating of render - of which I saw a fragment - the Inspector can understand that if a piece fell off, it might create a serious health and safety risk. However, in such a full appraisal should be made of the condition of the render, the likelihood of complete detachment, and whether measures could be taken to protect against possible danger from falling sections until such time as a comprehensive scheme for repair or replacement could be prepared. The appellant claims that he was given oral authority to proceed with entire removal of the render by the Council's then Assistant Conservation Officer. However, there is no record of this, the officer concerned left the Council in December 2009, and the render was not removed until August 2010. Given this 8 month gap I am sceptical about both the immediate need to remove the render, and the claimed risk to health and safety. Overall the Inspector, did not consider that entire removal of the render was justified.

Removal of internal walls

Internally, the appellant had removed a substantial brick wall with two door openings and argued that the structure had no proper foundation, was unstable, and constituted a significant health and safety risk.

The Inspector could see no good reason why temporary propping of the principal beams to prevent collapse would not have been possible, and considers the entire removal of the wall went far further than the minimum measures necessary.

Removal of internal plaster

The Inspector did not consider the works carried out were limited to the minimum necessary.

On questioning, the appellant suggested that the damp plaster caused danger in health and safety terms as a result of mould growth. However, no significant evidence was put forward to suggest that this had come about, or had been about to.

Furthermore, if proper measures had been taken to dry out the building after the flood, a problem of this nature would probably have been resolved.

Replacement of roof rafters

The Inspectors accepted that re-roofing - including the probable replacement of some of the structural timber - would most likely have been necessary. However, it cannot be considered that complete removal and replacement of the roof was the minimum necessary measure. There is no evidence to suggest any significant urgency to do this in the interest of safety, health or preservation of the building.

Conclusions on ground (d)

Overall, I consider that the removal of external render, internal plaster, internal walls, and replacement of roof rafters was not urgently necessary in the interest of safety, health or preservation of the building. Furthermore, it would have been quite practicable to secure these matters by temporary means, and it appears to me that all these works went well beyond the minimum measures immediately necessary. The appeal on ground (d) therefore fails.

The listed building enforcement notice appeal on ground (e)

This ground is that listed building consent should be granted for the works.

The Inspector concludes on the main issue that the unauthorised works have caused serious harm to the special architectural and historic interest of the listed building, and to the character and appearance of the Belbroughton Conservation Area. The appeal on ground (e) therefore fails.

The listed building enforcement notice appeal on ground (j)

On ground (j) the question is whether the steps required by the notice are in excess of what is necessary to alleviate the effects of the unauthorised works on the listed building.

The appellant again put forward the argument that lime-wash to the front elevation above a rendered plinth would be more appropriate. However, that would not alleviate the effect of the works on the listed building - exposing the considerable defects of the sandstone block work to permanent view - it would rather perpetuate that to a considerable degree.

None of the suggestions put forward by the appellant would alleviate the harm caused to the listed building. The appeal on ground (j) therefore fails.

The Section 20 appeal against refusal of listed building consent

The Council have no objections to the proposed changes to the design of the conservatory; the alterations to the positions and types of windows and doors in the

back extension, and the change of location of the kitchen - which would be within the back extension rather than the cottage. These works have largely been done, and the Inspector concurs with the Council's view.

Replacement of external render

The Inspector considers this to be an ill-considered scheme, which would result in the building having an untidy and unattractive appearance. Serious harm would be caused to the special interest of the listed building.

In addition to the listed building enforcement appeal that seeks reinstatement of the external render would be desirable in the interests of preserving the building's special interest.

The replacement of roof structure

Both the Local Planning Authority and the Inspector feels the replacement of roof structure has caused serious harm to the building's historic interest.

Rebuilding the chimney stacks

A further example of works being done in a somewhat haphazard manner, without adequate advance planning, or the Council's consent. Without proper justification for this part of the works both the Inspector and the LPA consider it likely that unnecessary works would be carried out, with possible loss of historic fabric, and that the special interest of the listed building would be significantly harmed.

Any need to reconstruct the chimney stacks would be revealed by undertaking a comprehensive assessment of the listed building, in relation to the advice of PPS5.

Window replacement

It is proposed to replace all windows in the original cottage, which are generally Crittall metal windows within timber frames.

Overall, the Inspector considers the proposed replacement of windows would cause significant harm to the architectural and historic interest of the listed building.

Reconstruction of lintels and cills

The Inspector concurs with the LPA that both the proposed cills and the lintels would cause harm to the appearance of the listed building.

Removal of the wall between the ground floor rooms, and replacement of parts of the first floor structure

Regarding the proposal to create a single open-plan living room on the ground floor, the arguments concerning the change to the historic plan form of the cottage apply equally

here, and the Inspector considers the historic interest of the building would be seriously harmed by the alteration. The appellant's wish to lead the 'modern life' is noted but it is not considered that this should be at the expense of causing such harm to an early 18th century cottage.

Again, it is likely that historic fabric would be lost, causing harm to listed building interests.

Removal of first floor internal wall and relocation of bathrooms

Two bathrooms are proposed on the first floor in the right-hand side of the cottage, instead of within the back extension as approved in 2009. To do this two new doorways would have to be created, which would result in significant alteration to the timber framing below the roof truss, and would significantly change the historic layout, causing further harm to the special interest of the building. In addition, the incorporation of two highly serviced rooms within the historic part of the cottage is likely to result in cutting into the floor structure to accommodate pipework.

Removal of a section of wall between the cottage and back extension

It is proposed to demolish the upper part of a sandstone wall between the cottage and the back extension. However, the creation of such an opening between the parts of the cottage would create a fluid open-plan space between the parts of the building. This would compromise the historic plan form, and alter the character of the interior of the cottage to a degree that both the architectural and historic interest would be harmed. The appellant argued that the wall is unstable, and needs to be part-demolished. Although it was possible to rock the top of the wall slightly, since it is not properly constrained, the Inspector can see no reason why a scheme for stabilising it could not be devised.

The Conservation Area

The Inspector came to the conclusion above that the works of re-rendering would result in the cottage having an untidy, unattractive appearance, which would cause serious harm to conservation area interests.

Summary of key issues

The Inspector concludes, that the changes to the conservatory design; the amendments to windows and doors in the back extension, and the re-location of the kitchen to within the back extension do not cause harm to the special architectural or historic interest of the listed building, and that the character and appearance of the Belbroughton Conservation Area would be preserved. He allowed the appeal insofar as it relates to those elements of the works, and to grant listed building consent. The re-location of the kitchen would entail no works to historic parts of the building, and does not consider any conditions would be necessary.

It is noted that the majority of the works have already been carried out, and the imposition of conditions is generally not necessary with respect to those, including the statutory time limit condition. However, to the extent that works remain incomplete, it is considered that it would be reasonable and necessary to impose a condition requiring works to be carried out strictly in accordance with the application drawings.

In relation to the remainder of the proposed works, it is considered that serious harm would be caused to the special architectural and historic interest of the listed building, and significant harm to the character and appearance of the Belbroughton Conservation Area. The Inspector dismissed the appeal insofar as it relates to those works and to refuse listed building consent.

Decision in full

Appeal Ref: APP/P1805/F/11/2153096

The listed building enforcement notice be varied by:

OMISSION of the words 'Reinstate the timber framed, wattle and daub walls between bedrooms one and three' from lines 1 and 2 of Requirement 3; and, SUBSTITUTION of the words 'Reinstate the timber-framed, lath and lime plaster walls between bedrooms 1 and 3, including the wattle and daub infill panel'. OMISSION of the words 'wattle panels' from line 7 of Requirement 3; and, SUBSTITUTION of the words 'the wattle infill panel'.

Subject to this variation the Inspector upholds the listed building enforcement notice, and refuse listed building consent for retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Appeal Ref: APP/P1805/E/11/2156309

The appeal is allowed insofar as it relates to the proposed amendments to listed building consent ref. LBC 09/0510 dated relating to alterations to the design of the conservatory, amendments to window and door positions and types in the back extension, and to relocation of the kitchen within the back extension, and listed building consent is granted for these works at 28 Queen's Hill, Belbroughton, DY9 0DU, in accordance with the terms of the application ref. 10/1109 dated 10th November 2010, and the plans submitted therewith subject to the condition that the works shall be carried out strictly in accordance with the application drawings, comprising the location plan and drawings no. 1331/S1 and 1331/W10.

In relation to the remainder of the works proposed under application ref. 10/1109 dated 10th November 2010, the appeal is dismissed.

Conclusion

The Inspector concludes; the Section 39 appeal should not succeed, and that listed building consent should be refused for the unauthorised works. The notice should be upheld, with listed building consent refused. He considers the Section 20 appeal should succeed in part, and grants listed building consent for those works. With respect to the

remainder of the proposed works, he considered the appeal should fail, and refuses listed building consent.

Costs application

No application for costs was made.

Appeal outcome

The appeals were, in the case of APP/P1805/F/11/2153096, **dismissed, the listed building enforcement notice upheld with a variation, and listed building consent refused**; and, in the case of 10/1109-SC, **dismissed in part and allowed in part**.

Recommendation

The Committee is asked to RESOLVE that the item of information be noted.