

PLANNING ENFORCEMENT APPEAL DECISIONS

Lead Officer: Tony Pomfret – Development Services Manager

To inform Members of recent appeal decisions in respect of three Listed Building Enforcement Notices served in respect of unauthorised works to 150 Queen Street, Whitehaven.

Recommendation: That the decisions be noted in the context of the Council's Local Plan policies and also in relation to performance monitoring.

Resource Implications: Nil.

1.0 SUPPORTING INFORMATION

1.1 On 2 December 2004 three Listed Building Enforcement Notices were issued in respect of unauthorised works to 150 Queen Street, Whitehaven which is a Grade II listed building.

1.2 In summary, the unauthorised works comprised:-

- Removal of lakeland green roofing slates from the rear roof; red sandstone ridges and cast iron rainwater goods and replacement with black imported roofing slates, terracotta ridge tiles and plastic rainwater goods.
- Removal of traditional timber windows from the rear elevation and the installation of uPVC replacement windows.
- Demolition of two chimney stacks above the corbel and removal of the traditional chimney pots.

1.3 Subsequent appeals against all three notices have been dismissed and the three Listed Building Enforcement Notices upheld. A copy of the Inspector's decision letter is attached to this report.

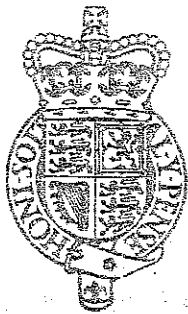
1.4 The unauthorised works constitute a criminal offence and were subject to court proceedings on 22 December 2005. The outcome will be reported verbally at the meeting.

1.5 Discussions have, however, already commenced with the owner of the building with a view to carrying out remedial works in the near future and certainly within the prescribed period of 6 months from the date of the Inspector's decision letter.

Contact Officer: Tony Pomfret – Development Services Manager

Others Consulted: Martin Jepson – Head of Legal and Democratic Services

Appendix: Inspector's decision letter dated 30 November 2005.



Appeal Decision

Site visit on 8 November 2005

by J D Waldron MCD BArch Architect

an Inspector appointed by the First Secretary of State

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Date

30 NOV 2005

1. The following appeals have been made by Jagdeep Singh Panesar under Section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991 against 3 listed building enforcement notices issued by Copeland Borough Council on 2 December 2004 concerning 150 Queen Street, Whitehaven, Cumbria CA28 7BA. The period for compliance with the requirements is, in each case, six months from the date on which the notice takes effect.

Notice 1: Appeal Ref: APP/Z0923/F/04/2000493

- The contravention of listed building control alleged in the notice is **Without listed building consent the removal of lakeland green roofing slates from the rear roof, red sandstone ridges and cast iron rainwater goods and the replacement with black imported roofing slates, terracotta ridge tiles and plastic rainwater goods.**
- The requirements of the notice are:
 - i. **Remove the black imported slates, terracotta ridge tiles and all plastic rainwater goods.**
 - ii. **Re-slate the roof using selected second hand lakeland green slates laid in diminishing courses with a natural red sandstone ridge.**
 - iii. **Install cast iron half-round gutters and cast iron round downspouts.**

The appeal is made on the grounds set out in Section 39(1)(a), (d) and (e) of the 1990 Act as amended.

Notice 2: Appeal Ref: APP/Z0923/F/04/2000494

- The contravention of listed building control alleged in the notice is **Without listed building consent the removal of traditional timber windows from the rear elevation and the installation of UPVC replacement windows.**
- The requirements of the notice are:
 - i. **Remove all the UPVC windows from the rear elevation.**
 - ii. **Install timber windows in accordance with the schedule and plans attached to this notice as annexe 1.**

The appeal is made on the grounds set out in Section 39(1)(a), (c), (e) and (g) of the 1990 Act as amended.

Notice 3: Appeal Ref: APP/Z0923/F/04/2000495

- The contravention of listed building control alleged in the notice is **Without listed building consent the demolition of two chimney stacks above the corbel and the removal of the traditional clay chimney pots.**
- The requirements of the notice are:
 - i. **Re-build the chimney stacks to the design as represented in the photograph attached to this notice as annexe 1 and finished in a smooth painted render.**
 - ii. **Re-fix four traditional clay chimney pots to each chimney stack of the design represented in the photograph attached to this notice as annexe 1.**

The appeal is made on the grounds set out in Section 39(1)(a), (c), (e) and (i) of the 1990 Act as amended

Background

2. The appellant appears to be subject of prosecution in respect of works enforced against. It is an offence under Sections 7 and 9 of the 1990 Act to execute works to a listed building that affect its character as a building of special architectural or historic interest, unless the works are authorised. On 15 June 2005 an officer of the Council signed a witness statement for the Magistrates Court indicating that the Council is satisfied that certain of the works enforced against pre-date the appellant's ownership of the building and that the appellant neither executed these works nor caused them to be executed.
3. In respect of the works enforced against under notice 3, the Council states in the written representations dated 8 March 2005 that the **"appellant's submission that the unauthorised works were undertaken by the previous owner (or other party) does not constitute a ground of appeal defined by Section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Liability for any existing breaches are incurred on transfer"**. The Council appears to be correct in law. The fact that the appellant did not execute some of the works enforced against or caused them to be executed is not ground of appeal under Section 39 of the 1990 Act.
4. The appellant indicates that he was unaware that the building was listed when the works were undertaken. The Council points out that a search of the Local Land Charges Register in 2003, when the building was purchased by the appellant, would have revealed that it was listed. However neither ignorance of the fact that it was listed nor ignorance of relevant law are defence against the listed building enforcement action instigated by the Council.
5. The appellant refers to verbal confirmation being received for the provision of UPVC windows at the rear of the property. However no information is given as to who gave the verbal confirmation, when it was given, or the context. In any event such verbal communication would be most unlikely to fetter a Council's ability to instigate listed building enforcement action.

The appeals on ground (a)

6. Under this ground of appeal it is necessary to consider whether No 150 is of special architectural or historic interest within the meaning of Section 1 of the 1990 Act. The assessment needs to be made on the basis of the building in its form before the works enforced against were carried out.

7. No 150 is a 3-storey townhouse with basement, listed at Grade II. It appears to date from the late C18-early C19. A fine feature of the building is the refined symmetrical front elevation which appears to be generally in its original form. It has a central door and doorcase with columns, frieze and cornice. The interior has been somewhat altered but contains original/early features. Overall No 150 is of distinctive character and charm. For the avoidance of doubt, the list description is not intended to be a comprehensive list of all a listed building's important features.
8. Paragraphs 6.10 and 6.11 of Planning Policy Guidance 15 (PPG15) set out the main criteria which the Secretary of State applies as appropriate in deciding which buildings to include in the statutory list. In my view No 150 is of significant architectural quality. It is of historic interest as a town house dating from the Georgian period illustrating an aspect of the nation's social history. It is of considerable group value with other listed buildings nearby in the Whitehaven Conservation Area, in particular No 151, a fine Georgian townhouse adjoining No 150 which is listed at Grade II*.
9. Paragraph 6.11 points out that most buildings of about 1700 to 1840 are listed, although some selection is necessary. No 150 is of definite quality and character and fully justifies selection as a building of special architectural or historic interest within the meaning of Section 1 of the 1990 Act, notwithstanding the building's former poor condition as referred to by the appellant. The appeals fail on ground (a).

The appeals on ground (c) in respect of notices 2 and 3

10. It is not part of the appellant's case that the works enforced under notices 2 and 3 were undertaken before the building was listed. Indeed the building appears to have been listed for many years. Thus the relevant tests are whether, in respect of the listed building, the relevant works enforced against **"affect its character as a building of special architectural or historic interest"** within the meaning of Section 7 of the 1990 Act.
11. The external envelope of the building appears to be of special interest within the meaning of paragraph 3.12 of PPG15, notwithstanding two small single-storey extensions which appear to have been added at the rear. The UPVC windows enforced against are out-of-character with a building dating from the Georgian period. The building appears incongruous without the chimney stacks and chimney pots, the removal of which is enforced against. I find no reason to doubt that the relevant works enforced against have affected the character of the listed building as a building of special architectural or historic interest within the meaning of Section 7. The appeals fail on ground (c).

The appeal on ground (d) in respect of notice 1

12. Under this ground of appeal it is necessary to demonstrate **"that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that 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 that the works carried out were limited to the minimum measures immediately necessary"**
13. The tests under this ground of appeal are strict. I do not doubt that the roof, guttering and downpipes were in need of attention in the interests of safety or health or the preservation of the building. However the relevant works enforced against would have needed to be planned and organised. Thus I am not persuaded that they were **"urgently necessary"** within the meaning of this ground of appeal and **"limited to the minimum measures immediately necessary"**. Moreover it would have been practicable to limit water ingress by immediate measures for affording shelter to the

roof namely by the provision of temporary sheeting. Key requirements of this ground of appeal have not been met. The appeal fails on ground (d)

The appeals on ground (e) in respect of notices 1, 2 and 3

14. Under Section 16(2) of the 1990 Act, when considering whether to grant listed building consent, special regard shall be given to the **"desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses"**. This requirement accords generally with the aims of the policies referred to by the Council, namely Policy ENV 42 of the adopted Copeland Local Plan 2001 and Policy 26 of the Cumbria and Lake District Joint Structure Plan 1991-2006.
15. The listed building is in the Whitehaven Conservation Area. Under Section 72(1) of the 1990 Act in respect of Conservation Areas **"special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area"**. This requirement accords generally with the aims of Policy 26 of the Structure Plan, as referred to by the Council.
16. I consider that the main issues are, first, the effect of the works enforced against on the special architectural quality of the listed building and, second, on the character and appearance of the Conservation Area.

First Issue

17. The roof is an important dominant feature of the building, as referred to in paragraph C.27 of PPG15. The replacement slates enforced against are on the upper part of the long rear roof slope. They, together with the terracotta ridge tiles and plastic rainwater goods, appear out-of-place and incongruous on what had formerly been a traditional green lakeland slate roof laid in diminishing courses with traditional red sandstone ridge and cast iron rainwater goods.
18. Paragraph C.30 of PPG15 advises that on roofs where the slates are laid in diminishing courses the character of the roof covering should not be damaged by a radical change in the range of slate sizes. It advises that the coursing should be retained and, where necessary, restored with matching materials. Paragraph C.32 advises that embellishments such as ridges should be preserved and paragraph C.24 advises that listed building consent should not normally be granted for a change of external plumbing material from cast iron to plastic. In my view the works enforced against in notice 1 harm the special architectural quality of the listed building contrary to the aims of Section 16(2), Policy ENV 42 and Policy 26.
19. The UPVC windows enforced against are substantially different to traditional timber windows appropriate to the listed building in terms of their form, method of jointing, fabrication and method of opening. The use of UPVC has introduced a modern material alien to the traditional detailing of a building dating from the late C18/early C19. The windows enforced against are contrary to the advice concerning replacement windows in paragraph C.49 of PPG15. They appear out-of-place and incongruous and devalue the special architectural quality of the listed building contrary to the aims of Section 16(2), Policy ENV 42 and Policy 26 notwithstanding that many of the UPVC windows cannot be seen from a public place, as the appellants indicate.
20. The demolition of the two chimney stacks above the corbel and the removal of the traditional clay chimney pots have seriously harmed the roofscape and integrity of this Georgian townhouse. Paragraph C.36 of PPG15 refers to chimney stacks as formal and functional features of the roofscape that should normally be retained, even when no longer required. The chimney pots would have been an important part of the traditional roofscape. The works enforced against under notice 3 have harmed the special

architectural quality of the listed building contrary to the aims of Section 16(2), Policy ENV 42 and Policy 26.

Second Issue

21. No 150 makes an important contribution to the character and appearance of the Conservation Area in a part of the area with a significant number of Georgian and early Victorian buildings, many of which are listed. The works enforced against have seriously diminished the contribution that No. 150 makes to the attractiveness of the street scene, and have harmed the character and appearance of the Conservation Area contrary to the aims of Section 72(1) and Policy 26.

Conclusion

22. PPG15 advises, at paragraph 3.42, that consent should not be granted to recognise a **"fait accompli"**. It is necessary to consider whether consent would have been granted for works **"had it been sought before they were carried out, while having regard to any subsequent matters which may be relevant"**. I have taken into account the non-traditional features in the area referred to by the appellant, including UPVC windows, and all the other matters raised. However I am not persuaded that consent would have been forthcoming for any of the works enforced against within the meaning of paragraph 3.42. In coming to this conclusion I have taken into account the cumulative effect that inappropriate works can have on a listed building's special interest, as referred to in paragraph 3.13 of PPG15. Such is the case here.
23. The works enforced against are contrary to the aims of policy in the development plan and national policy. The objections could not be overcome by the imposition of conditions and, on balance, are not outweighed by other material considerations. The appeals fail on ground (e). Listed building consent will not be granted for the works enforced against.

The appeal on ground (g) in relation to notice 2


24. The requirements of the notice are set out in the specification at annexe 1 and require the installation of two pane timber vertically sliding-sash windows with traditional sash cords and sash weights. On the information before me I am not persuaded that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works enforced against were carried out. The appeal fails on ground (g).

The appeal on ground (i) in respect of notice 3

25. The photograph attached to the notice shows the building before the works enforced against were carried out. The Council state that it was taken in 1999 as part of a photographic survey. The notice requires the chimney stacks and the chimney pots to be restored as shown in the photograph. I am not persuaded that the requirements of the notice exceed what is necessary for restoring the character of the building to its former state. The appeal fails on ground (i).

FORMAL DECISION

26. I dismiss the appeals against the three listed building enforcement notices, uphold the three listed building enforcement notices, and refuse to grant listed building consent for the works enforced against.



Inspector