



Appeal Decision

Site visit made on 26 May 2015

by Katie Peerless Dip Arch RIBA

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

Decision date: 9 June 2015

Appeal Ref: APP/Q1445/F/14/2216670

Marlborough House, 54 Old Steine, Brighton BN1 1NH

- 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 Anthony Antoniadis against a listed building enforcement notice issued by Brighton & Hove City Council.
 - The Council's reference is 2011/0975.
 - The notice was issued on 5 March 2014.
 - The contravention of listed building control alleged in the notice is set out in Annex A of this Decision.
 - The requirements of the notice are set out in Annex B of this Decision.
 - The period for compliance with the requirements is six months.
 - The appeal is made on the grounds set out in section 39(1)(d), (e) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The listed building enforcement notice is varied by the deletion of the words *'replace within the existing opening with traditional cast roof lights, with slim steel or cast iron frames, which lie flush with the roof covering. Each roof light to have genuine glazing bars placed vertically and centrally within the glazing. The roof lights to be top hinged and colour coated black'* in requirement 3 and *'The central opening must be infilled and the roof reinstated externally in natural grey slate to match the existing roof covering. The two outer openings must be replaced with traditional cast roof lights, with slim steel or cast iron frames, which lie flush with the roof covering. Each roof light to have genuine glazing bars placed vertically and centrally within the glazing. The roof lights must be top hinged and colour coated black'* in requirement 4 and substitute the words *'Reinstate the roof in materials to match the originals prior to the installation of the new rooflights'*.
2. Also, delete the words *'The matchboarding must be painted in a colour to be agreed in writing by the Local Planning Authority'* in requirement 7 and substitute the words *'The matchboarding must be painted in a colour to match the original'*. Subject to these variations, the appeal is dismissed and the listed building enforcement notice is upheld, and listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Main Issues

3. I consider the main issues to be: on ground (d): Whether the works were urgently necessary for the preservation of the building and, if so, that they were the minimum measures immediately necessary;

on ground (e): the effect of the works on the special architectural and historic character of the listed building and its setting within the Valley Gardens Conservation Area and

on ground (h): whether the time for compliance is sufficient.

Reasons

4. The appeal site is a Grade 1 listed building within the Valley Gardens Conservation Area. It originally dates from about 1765 but was remodelled in 1786 by the noted architect Robert Adam and some of the major rooms contain plasterwork and joinery designed by him. The building has apparently been vacant since 1997 and is in a poor state of repair, to the extent that it is included on the 'Buildings at Risk' register compiled by English Heritage (now Heritage England).
5. The appellant has been carrying out works to the building, apparently to convert it back into a residential use, and has been liaising with the City's Conservation Department. However, there has been disagreement about the extent and scope of the works that have been carried out and this has resulted in the issue of the listed building enforcement notice that is the subject of this appeal.

Ground (d)

6. An appeal on ground (d) claims that *'the works to the building were urgently necessary in the interest of safety or health or for the preservation of the building'* and that it was not practicable to secure these objectives 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'*. (My emphasis)
7. Although the appellant claims that works he has carried out were necessary for the preservation of the building, he has not explained why he considers this to be the case. A total of 5 dormer windows have been replaced with 'Velux' rooflights and, even if the windows were in need of repair, he has not explained why a like-for-like replacement could not have been carried out. Neither has he explained, if it was necessary to make the windows watertight, why temporary protection could not have been used.
8. Similarly, the installation of 6 'Velux' rooflights in the stable block extension at the rear does not constitute works that are *'urgently necessary for the preservation of the building'*. They might form part of the conversion works that the appellant is carrying out to the building but this does not justify their inclusion as part of an appeal under ground (d). It is not clear from the parties' representations if the rooflights are a new insertion or were replacements, but whichever is the case, they are again not justified under the ground (d) appeal.
9. Turning to the removal of the external timber porch, this might have needed repair but its total removal has not contributed to the preservation of the building. Even if it was in a dangerous condition, the appellant has produced no evidence to indicate that complete demolition of the feature was the minimum work necessary to ensure safety or that temporary support would not have been possible.

10. The removal of the internal finishes to the stable block and some areas of the basement may also have been part of the repair works but I have been given nothing from the appellant to show that this was the case. The finishes may have needed renewal but it is hard to understand why their removal could be said to be '*urgently necessary*' to the extent that they needed to be carried out without the benefit of listed building consent. For all the above reasons, the appeal on ground (d) fails.

Ground (e)

11. The ground of appeal asks that listed building consent is granted for the works that have been carried out. The appellant states that no works have been executed without consent from the authorised officer of the local planning authority but, although applications for planning permission and listed building consent for the works were submitted on 28 March 2014, this was after the issue of the listed building enforcement notice and they were still under consideration at the time the Council's Appeal Statement was submitted. I have not been informed of any update to this situation.
12. The Council also wrote to the appellant over several years, starting in 2009, outlining its concerns over works that were being carried out on the building, including the installation of the rooflights. The appellant must therefore have been aware that the Council did not consider that all the works were authorised.
13. In any event, the Council has explained why it considers the works have harmed the significance of the listed building and should not be granted listed building consent. Marlborough House is included in the highest category of buildings of historic and architectural interest and is therefore one of the most important heritage assets in the country.
14. Although the dormers in the main roof may not have been an original feature, one was shown on a drawing of the building in 1891 and, as photographs show that the others were of a similar design, it seems reasonable to assume that the others were added shortly afterwards. This drawing also shows that the rear porch was an existing feature at that time.
15. The dormers, although not original, were therefore part of the historic evolution of the building and were part of the changes made to accommodate the different uses to which it was put. Their loss diminishes the historic interest of the building and the insertion of modern rooflights in their place is, in my view, an inappropriate alteration to the roof form of the building.
16. I take a similar view about the rooflights in the stable block. As noted above, it is not clear whether they replaced earlier rooflights or are new insertions but, whichever is the case, they are modern additions which sit uncomfortably in the context of the extension and the main building. The porch was an historic feature of the building and I have been given no reason that justifies its removal and the consequent loss of the architectural interest that it brought to the building.
17. Some of the features cannot be seen from the public realm, but the porch and the rear dormers could be seen from a passage leading off East Street. Their installation has therefore had an impact on the wider Valley Gardens Conservation Area. As I have concluded that the dormers are harmful, they consequently fail to preserve the character and appearance of the conservation area.

18. Even though the internal features and the dormers on the inner roof slope could only be appreciated from within the building, this does not diminish the contribution they make to the intrinsic interest of the building. The form of the dormers and the internal finishes were traditional, historic and appropriate to the age and style of the building and the bare brickwork and blockwork that at present remains appears out of place and unfinished. I consider that it would be detrimental to the architectural character of the building to grant a listed building consent that allowed them to remain in this state.
19. The cumulative harm that the unauthorised works have caused to the architectural and historic interest may not amount to the substantial harm that the National Planning Policy Framework (the Framework) notes, in paragraph 132, should normally result in refusal of listed building consent. However, paragraph 134 requires any identified harm to be weighed against the public benefits before consent can be granted. The desirability of preserving the building or any features of special architectural or historic interest is required to be given special regard and therefore considerable importance and weight by section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (LBCA).
20. The appellant has put forward no public benefits that have arisen from the unauthorised works to set against the harm identified above in the balancing exercise and I therefore conclude that there is no justification for the harmful alterations that have been carried out. Listed building consent for them is consequently refused and the appeal on ground (e) fails.

Ground (h)

21. The appellant has not indicated how long he considers would be a reasonable period for compliance with the requirements of the listed building enforcement notice. The notice allows six months and this does not seem to me to be an unreasonable length of time to carry out the works required. Compliance with the notice would not require completion of the whole project, only those items specified. It is also the case that the Council has powers under section 38(5)(b) of the LBCA to vary the time for compliance if circumstances change, whether or not the listed building enforcement notice has come into force. The appeal on ground (h) consequently fails.

Other matters

22. The listed building enforcement notice, under requirements 3 and 4, calls for the 'Velux' rooflights to be replaced with traditional cast iron rooflights. As noted above, it is not clear whether such rooflights were removed in order to install the new versions. If there were no previous rooflights, it would be excessive to call for something other than the reinstatement of the roof to its previous state. I will amend the notice accordingly to reflect this.
23. Requirement 7 calls for the colour of the reinstated matchboarding to be agreed with the local planning authority. The wording of a listed building enforcement notice must tell the recipient precisely what is needed to comply with the requirements and cannot call for further approval from the local planning authority. I will therefore correct the notice to require the colour to match that of the boarding that has been taken out.

24. The Council has made clear that it considers the installation of traditional rooflights on the north and south roof slopes of the extensions would be acceptable but if the appellant wants to vary any of the above amended requirements to do so, he would need to apply for listed building consent to do so.

Conclusions

25. For the reasons given above I conclude that the appeal should fail.

Katie Peerless

Inspector

Annex A

The alleged breach of listed building control:

- i. The removal of two dormer windows to the main rear roof slope and installation of two Velux roof lights in these locations.
- ii. The removal of three dormer windows to the west facing inner valley roof slope and installation of three Velux roof lights in these locations.
- iii. The installation of three Velux roof lights to the south facing roof slope of the single storey rear extension (former stable block).
- iv. The installation of three Velux roof lights to the north facing roof slope of the single storey rear extension (former stable block).
- v. The removal of the timber and glass porch to the steps on the rear (west facing) elevation.
- v. The removal of the plaster finish to the internal faces of the basement walls.
- vii. The removal of the internal finishes to all walls of the former stable block and installation of brick pillars and concrete blocks to the internal faces of these walls.

Annex B

1. Remove the two unauthorised Velux roof lights to the main rear roof slope and reinstate dormer windows to match the size, proportions and design of the previously existing dormer windows and with natural grey slate covering to the pitched roofs with lead rolls to the ridge and hips and lead covering to the cheeks. The windows must be painted softwood side-hung casements of equal width, with two horizontal glazing bars to each casement. All joinery must be painted white. See attached photographs 1a, 1b and 1c showing, respectively, the unauthorised roof lights, remains of the previously existing dormers and interior view of one of the Velux roof lights.
2. Remove the three Velux roof lights to the west facing inner valley roof slope and reinstate the dormer windows to match the size, proportions and design of the previously existing dormer windows. The southern-most window must be two painted softwood horizontally sliding sashes of equal width, with each sash divided into six panes of glass by slim glazing bars. The cheeks must be fixed glazing in softwood framing and divided vertically by one glazing bar and horizontally by two glazing bars in a pattern to match the proportions of the sliding sashes. The roof must be flat and finished in lead. The other two windows must be painted softwood side-hung casements of equal width, with two horizontal glazing bars to each casement. They must have natural grey slate covering to the pitched roofs with lead rolls to the ridge and hips and lead covering to the cheeks. All joinery must be painted white. See photograph 2a showing one of the two pre existing windows to the north and 2b showing the pre existing window to the southern end.
3. Remove the three Velux roof lights to the south facing roof slope of the single storey rear extension (former stable block) and replace within the existing opening with traditional cast roof lights, with slim steel or cast iron frames, which lie flush with the roof covering. Each roof light to have genuine glazing bars placed vertically and centrally within the glazing. The roof lights to be top hinged and colour coated black. See photograph 3 showing the position of the unauthorised roof lights.

4. Remove the three Velux roof lights to the north facing roof slope of the single storey rear extension (former stable block). The central opening must be infilled and the roof reinstated externally in natural grey slate to match the existing roof covering. The two outer openings must be replaced with traditional cast roof lights, with slim steel or cast iron frames, which lie flush with the roof covering. Each roof light to have genuine glazing bars placed vertically and centrally within the glazing. The roof lights must be top hinged and colour coated black. See photograph 4 showing the unauthorised roof lights.

5. Reinststate the timber and glass porch to the steps on the rear (west facing) elevation to match the previously existing porch. The sides of the porch must be constructed of vertical softwood matchboarding ledged and braced on the internal faces. The gable end must be in horizontal softwood matchboarding. The windows must be horizontal sliding sashes (three to each side) with each sash divided into six panes. All joinery must be painted white. The roof must be covered in natural grey slate. The gutters and downpipes must be in cast iron and painted black. See photograph 5a showing the previously existing porch and photograph 5b following removal of this porch.

6. Reinststate the plaster finish to the internal faces of the basement walls where this has been removed using a lime plaster and providing a smooth finish.

7. Reinststate the softwood matchboarding from floor to eaves level on the internal faces of all walls of the former stable block at the rear of the ground floor, where the internal finishes have been removed or the walls rebuilt. The matchboarding must be painted in a colour to be agreed in writing by the Local Planning Authority. See photographs 7a, 7b, 7c and 7d showing the removal of the internal finish and unauthorised brick pillars and concrete blocks to the internal faces of the walls.

