



Appeal Decisions

Site visit made on 5 August 2013

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date: 12 August 2013

Appeal 1: APP/B3410/F/12/2186102 &

Appeal 2: APP/B3410/F/12/2186106

The Anchor Inn, 5 New Street, Burton upon Trent, Staffordshire DE14 3QN

- The appeals are made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs J Doughty (Appeal 1) & the Company Secretary, Marstons Plc (Appeal 2) against a listed building enforcement notice issued by East Staffordshire Borough Council.
 - The Council's reference is ENF/2007/00002.
 - The notice was issued on 21 September 2012.
 - The contravention of listed building control alleged in the notice is installation of five Upvc windows without listed building consent.
 - The requirements of the notice are 1) remove the five Upvc windows in the front elevation of the property and 2) install five replacement timber windows for the avoidance of doubt, in accordance with the joinery details on drawing number 2CD00738-PLR and 2004 Conservation Sash dated 16th March 2010, approved under listed building consent reference number P/2012/00344/CEH, dated 11th May 2010.
 - The period for compliance with the requirements is 90 days.
 - The appeals are made on the grounds set out in section 39(1) (e), (h) and (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
-

Decisions: Appeals 1 and 2

1. I direct that the listed building enforcement notice is varied by deleting 90 days as the period for compliance and substituting it with 6 months. Subject to this variation, the appeals are 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.

Reasons

Ground (e)

2. The appeal building is grade II listed and according to the list description is late 18th Century, with the late 19th Century inn front being identified as being good. In my view, the significance and special architectural and historic interest of the listed building relates to its age, design, use and detailing and the front elevation is a prominent and important aspect of its significance. The appeal site is also in the Burton Washlands/Town Centre Conservation Area. I consider that its significance relates to the history and development of the area and the older buildings, particularly those listed, together with their layout.
3. The design of the 5 replacement windows is very poor, resulting in a very utilitarian character and appearance. In particular, the frame sections are over

large and the top hung casements are set in from the main frames giving unequal opening sizes. This is exacerbated by having the opening casements of the second floor windows in a different position to those on the first floor, some having the top light opening and others the bottom. The glazing bars are poorly arranged, being set within the double glazing units. The appellant suggests the pattern of glazing is appropriate. However, while the number of divisions may be correct, these are irregularly spaced and very poor and not at all of an appropriate design or arrangement. In addition, the frames have mitred constructed corners and the smooth, mechanical finish of plastic. The windows fitted bear no resemblance to the character or appearance of timber sash windows. They cause considerable harm to the character and appearance of the front elevation and impact on the views of the inn front. They affect its significance and do not preserve or enhance the special architectural and historic interest of the listed building.

4. The Government's National Planning Policy Framework (the *Framework*) requires great weight to be given to the conservation of designated heritage assets, which include conservation areas and listed buildings. It draws a distinction between substantial harm and less than substantial harm to such an asset. For the latter, which applies here, the test is that the harm should be weighed against public benefits, including securing the optimum viable use. The current business provides a good use for the buildings. However, I have little evidence that the design of the windows would make any significant difference to the viability of the business, sufficient to offset the harm of the discordant materials and design.
5. I acknowledge that The Framework promotes sustainability and that it is wasteful having to remove those windows already inserted. However, the appellant could have avoided this had appropriate windows been provided at the time of replacement and I attach little weight to it. I also appreciate that timber sash windows would be more expensive than those provided. However, in my view, it is unlikely that the difference in cost would be such that it would make a material difference to the overall viability of the business.
6. The appellant suggests that replacement would interrupt the business, but the windows are at first floor level, so disruption to the main ground floor bar areas would be minimal and I attach little weight to this.
7. I note that there are very large, modern buildings opposite, but the appeal building forms part of an attractive row of older buildings, some of which are listed. While I note that there has been replacement of windows with Upvc ones in the adjacent building, generally the buildings in the row have timber windows. In any case, it is the replacement of the windows in the appeal building that has a great impact on the elevation of the listed building and it is this which is harmful and not moderated by what has occurred in the adjacent building. So whether the other plastic windows can be required to be replaced or not, the unacceptable harm remains to the listed building and the harm to the elevation of the listed building impacts on the character and appearance of the conservation area as a whole. The works undertaken harm the significance of the listed building, do not preserve its special architectural and historic interest and do not preserve or enhance the character or appearance of the conservation area. I conclude that the public benefits would not outweigh the harm or the conflict with the *Framework*. The appeal on ground (e) fails.

Ground (j)

8. The appellant suggests that the windows could be painted and glazing bars applied to the surface. In my view, the application of paint is unlikely to sufficiently modify the smooth surface of plastic and glazing bars planted on the surface are also unlikely to have a satisfactory appearance. In any case the poor arrangement of the opening casements and large sections would remain, so the harm would not be satisfactorily addressed. I conclude that the steps required do not exceed what is necessary to alleviate the effect of the alleged works. The appeal on ground (j) fails.

Ground (h)

9. I acknowledge that these windows will need to be purpose made and that it will take time to specify the works and arrange quotations and subsequent construction. It will also be necessary to undertake the replacement when it is not raining. In my view, some time in addition to the 90 days in the notice would be reasonable. However, 6 months, and not 9 months as requested, would be more than adequate to allow for the works to be arranged and completed. The appeal succeeds to this limited extent on ground (h) and the time for completing the works will be extended to 6 months.

Graham Dudley

Inspector

Philip Somerfield B.A. Dip T.P., D.M.S. M.R.T.P.I
Head of Regulatory Services

Date: 20 September 2012

Direct Line: 01283 508607

Direct Fax: 01283 508388

Reply to: Aida McManus

Our ref: ENF/2007/00002

*(please quote this reference on all
correspondence with us)*

IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY

Hand Delivery

Dear Madam

Town and Country Planning Act 1990 – Section 38
Listed Building Enforcement Notice – Unauthorised Upvc windows
The Anchor Inn, 5 New Street, Burton upon Trent, Staffordshire DE14 3QN

1. The Council has issued a listed building enforcement notice relating to the above land and I now serve on you a copy of that notice, in view of your interest in the land. I also enclose a second copy of the notice. Please sign and return this to me to acknowledge receipt of the notice. Copies of the notice are also being served on others who, it is understood, have interests in the land.
2. Unless an appeal is made to the Secretary of State, as described below, the notice will take effect on **23rd October 2012**. You must then ensure that the required steps for which you may be held responsible are taken within the period(s) specified in the paragraph 5 of the notice. If you fail to comply within that time you will be liable to prosecution and, on conviction, to a fine. Continuing contravention after conviction can lead to a further fine for each day the offence continues. The Council may also carry out remedial action.
3. If you wish to appeal against the notice, you should first read carefully the enclosed information sheet which explains how you can appeal online or obtain appeal forms. Guidance on completing the enforcement appeal form is available on the Planning Inspectorate website at www.planning-inspectorate.gov.uk . You or your agent should complete the appeal form

and send it to the Planning Inspectorate. You must also send a copy of your appeal form to the Council at the above address.

To be valid, your appeal must be received by the Planning Inspectorate **before** the date given in paragraph 2 above as the date when the notice takes effect i.e **23rd October 2012.**

Yours sincerely

Aida McManus

Aida McManus
Planning Enforcement Consultant
On behalf of East Staffordshire Borough Council
aida.mcmanus@eaststaffsbc.gov.uk

NOTES FOR PERSONS SERVED WITH A COPY OF AN ENFORCEMENT NOTICE

(These notes do not form any part of the enforcement notice)

PENALTIES FOR NON-COMPLIANCE

1. You have been served with a copy of a listed building enforcement notice which will come into effect on the date stated in paragraph 6 of the notice. You then have the period(s) set out in paragraph 5 of the notice in which to comply with the requirement(s) set out. If you fail to comply within that time you will be liable to prosecution and, on conviction, to a fine. The continuing contravention after conviction can lead to a further fine for each day the offence continues.

RIGHT OF APPEAL

2. You have a right of appeal against the notice to the Secretary of State. If you do appeal, the notice will not come into effect until the appeal is finally determined. Please refer to the guidance contained at www.planning-inspectorate.gov.uk for further information.

PROFESSIONAL ADVICE

3. If the issues are simple, you may decide to deal with the appeal yourself or with the help of someone not professionally qualified. Where legal or other complex issues are likely to be involved, it may be better to seek professional advice at an early date. Whoever the spokesman is, all representations will be carefully considered. If there is an inquiry, the Inspector will ensure that everybody gets a fair hearing whether professionally represented or not.

IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY

PLANNING (LISTED BUILDING AND CONSERVATION AREAS) ACT 1990
(as amended by the Planning and Compensation Act 1991)

LISTED BUILDING ENFORCEMENT NOTICE – UNAUTHORISED WORKS

Issued to:

1

Issued by: East Staffordshire Borough Council, The Maltsters, Wetmore Road, Burton upon Trent, Staffordshire DE14 1LS

1. **This is a formal notice** which is issued by the Council, because it appears to it that works have been or are being executed to the listed building referred to in paragraph 2 below those works are such as to involve a contravention of section 9(1) or (2) of the above Act. It considers that it is expedient to issue this notice, having regard to the effect of the said works on the character of the said building as one of special architectural or historic interest. The Annex at the end of this notice contains important additional information.

2. **The building to which this notice relates**

The building known as The Anchor Inn, 5 New Street, Burton upon Trent, Staffordshire shown edged in red on the attached plan ("the Land") which is included within a list of buildings of special architectural or historic interest compiled or approved under section 1 of the said Act.

3. **The matters which appear to constitute the breach of listed building control**

Installation of 5 Upvc windows without listed building consent.

4. **What you are required to do**

The Council requires you to take the steps specified below for the purposes of alleviating the effect of the works carried out without listed building consent:

- (1) Remove the five Upvc windows in the front elevation of the property
- (2) Install five replacement timber windows for the avoidance of doubt in accordance with the joinery details on drawing number 2CD00738-PLR and 2004 Conservation Sash dated 16th march 2010 approved under Listed Building Consent reference number P/2012/00344/CEH dated 11th May 2010

5. **Time for compliance**


90 days beginning with the day on which this notice takes effect.

6. When this notice takes effect

This notice takes effect **23rd October 2012** unless an appeal is made against it beforehand.

Dated: 21st September 2012

Signed:



Legal Services Manager (Solicitor)
(the Council's authorised officer)

on behalf of: East Staffordshire Borough Council, The Maltsters, Wetmore Road,
Burton upon Trent, Staffordshire DE14 1LS

Annex

YOUR RIGHT OF APPEAL

If you want to appeal against this enforcement notice you can do it:-

- On-line at the Planning Casework Service area of the Planning Portal (www.planningportal.gov.uk/pcs); or
- By getting enforcement appeal forms by phoning the Planning Inspectorate on 0117 372 6372 or by emailing them at enquiries@pins.gsi.gov.uk

You must make sure that they receive your appeal before the effective date on the enforcement notice.

In exceptional circumstances you may give notice of appeal by fax or letter. You should include:-

- The name of the local planning authority
- The site address
- Your address
- The effective date of the enforcement notice

The Planning Inspectorate must receive this before the effective date on the enforcement notice. This should immediately be followed by your completed appeal forms.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 6 of this notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in paragraph 5 of this notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

NORTHGATE SE GIS Print Template



This material has been reproduced from Ordnance Survey digital map data with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright.

