
Appeal Decision

Site visit made on 25 February 2020

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 19 March 2020

Appeal Ref: APP/L2820/F/19/3230593

Royal Hotel, Market Place, Kettering NN16 0AJ

- 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 Primetime Property Ltd T/A Royal Hotel against a listed building enforcement notice (LBEN) issued by Kettering Borough Council.
 - The enforcement notice, numbered ENFO/2019/00054 was issued on 22 May 2019.
 - The contravention of listed building control alleged in the notice is: the removal of timber frame sash and other windows and installation of replacement window frames in white PVCu and glazing.
 - The requirements of the notice are as follows:
 - i. Remove all unauthorised replacement windows; namely PVCu windows, in the rear, front and side elevations
 - ii. Re-instate the windows in the building prior to the unauthorised alterations in accordance with the following specifications:
 - (a) Single glazed double hung, white timber sash windows with small ogee horns to meeting rail on top sash only and balanced using traditional sash weights. Top and bottom sash to be of equal height
 - (b) Each sash to have six panes of glass of equal size, separated by traditional lambs tongue or broken lambs tongue glazing bars.
 - (c) The first floor windows in the semi-circular row window above the 'Emporio Bar' signage shall be reinstated to match those above which consist of a single glazed, single pane and white slender metal or timber frame.
 - (d) All glass to be putty fixed externally.
 - The period for compliance with the requirements is 4 months.
 - The appeal is made on the grounds (c), (d) and (e) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (PLBCAA).
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Decision

1. The appeal is dismissed. See formal decision below.

Matter of clarification

2. The LBEN only refers (in the allegation and the requirements) to the plastic PVCu windows as installed. Clearly there are other unauthorised windows including some powder-coated aluminium windows and some timber windows. These are not subject to this LBEN and I am not empowered to make any decision with regard to these other unauthorised windows.

Background information

3. The Royal Hotel was built in 1878 in what is referred to as a 'Jacobean' Style and was formerly known as The White Hart. It was listed in Grade II on 5 August 1975. It is constructed of red brick with stone dressings around window and door openings and has stone rusticated quoins. There is a distinctive semi-circular bow window to the

left of centre in the front/side elevation. This is referred to in the list description, as is the front porch with its Ionic pilasters. The building has a Welsh slated, Dutch-gabled roof behind a cornice and parapets. It has clearly been much altered over the years but is still decidedly recognisable from the list description.

4. The building lies in a prominent central location of the town on the Market Square at its junction with West Street. It lies within the Kettering Town Centre Conservation (KTCCA). The most relevant policy contained within the North Northants Joint Core Strategy (NNJCS) is Policy 2 (Historic Environment). This seeks to conserve and where possible, enhance the heritage significance of historic assets in a manner commensurate with their significance.

5. The Council also refers to the Kettering Town Centre Area Action Plan (KTCAAP) and the fact that the listed building lies within the town centre, where the Council has recently led on transforming the Market Place through new buildings and the regeneration of the space. A condition survey of the hotel was carried out in 2015.

6. The National Planning Policy Framework (NPPF) is a major material consideration, as is national Planning Practice Guidance (PPG). In reaching my conclusions I have particularly had regard to section 16 of the NPPF (Conserving and enhancing the historic environment) and to the conservation guidance in PPG. Because the building is listed in Grade II and also lies within the KTCCA, I have had special regard and have paid special attention to sections 16(2) and 72 of the PLBCAA.

The appeal on ground (c)

7. To be successful on ground (c) it must be comprehensively shown that the works carried out do not constitute a contravention of sections 7 and 8 of the PLBCAA. Section 7 of the PLBCAA states that '*Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest unless the works are authorised*' (my underlining). Section 8 sets out when works to a listed building are authorised.

8. It is indicated that the appellant had made every attempt to '*make the new windows the same as the old ones whilst complying with all modern rules and safety regulations for a commercial property*'. It is also stressed that the previous owners had '*changed multiple windows to single glazed aluminium which the Planning Department made no objection*' and, therefore, that these had set a precedent for the further window installations as carried out.

9. The Council does not accept the above points made by the appellant company and despite attempts to match the previous windows, considers that the unauthorised works have affected the character of the listed building. In a ground (c) appeal, irrespective of whether or not harm has been caused, the question to be asked is whether or not the character of the building, as one of special architectural or historic interest, has been affected. Having seen the building from both near and distant viewpoints, I consider that its character has been affected by the works. There is no listed building consent (LBC) in place and thus there has been a contravention. It follows that the appeal on this ground cannot succeed.

10. With regard to the installations of windows by previous owners, although it is contended that the Planning Department approved the works, there are no details before me. However, when such works are carried out each case must be assessed on its merits and a LPA is not time-barred from issuing a LBEN if it considers that works to a listed building have affected its character.

The appeal on ground (d)

11. This ground of appeal basically addresses situations where essential and urgent works were needed to preserve the listed building. The emphasis is on the words 'essential' and 'urgent'. This ground of appeal comprises three tests. The first is whether the works were urgently necessary in the interests of safety or health. The second test is whether or not it was practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support. The third test is whether or not the works carried out were the minimum measures immediately necessary to achieve the aims of safety, health or preservation. For an appeal to succeed on ground (d) all three tests must be met.

12. The appellant contends that the works were urgently necessary in the interests of safety or health and that it was not practicable to secure safety or health by works of repair or by temporary support. It is also argued that the works carried out were the minimum measures immediately necessary.

13. I have no reason to disagree with the appellant or the Council that, on the basis of the 2015 condition survey, most of the windows were in urgent need of repair and that, in some cases, in need of complete replacement. However, as also indicated by the Council, it does not follow that what has been done to replace the windows is acceptable. I now turn to the three tests.

14. On the first test it is evident that the windows which were replaced were in very poor condition. However, whilst accepting this, there is no indication that the new works were so 'urgently necessary', or that more appropriate windows could not have been installed. Clearly some replacements were necessary because of the dilapidated condition of the existing windows, but this cannot be an argument that the PVCu window or components themselves were urgently necessary in the interests of safety or health. The first test is not met.

15. Even if it had not been practicable to repair some of the windows, the issues regarding safety could have been addressed by their replacement with more appropriate components to the ones fitted. There is no evidence to show that some temporary solution could not have been put in place until it was clear that the LPA was satisfied with the replacement elements. I do not consider that it has been demonstrated that some temporary measures could have been carried out whilst LBC was sought for suitable replacements. Therefore, the second test is not met either.

16. Finally, having seen the PVCu windows, I do not consider that their installation constituted the minimum measures immediately necessary to achieve the aims of safety, health or preservation. There is nothing else to show that there were serious health and safety issues that necessitated new windows and door of the types installed. Therefore, the third test also fails and the appeal fails on ground (d).

The appeal on ground (e)

17. The main issues are as follows:

- The effect of the works on the character and integrity of the listed building;
- The effect on its setting;
- The effect on its features of special architectural and historic interest and;
- The effect on the character and appearance of the KTCCA.

18. Having seen the building from both near and distant viewpoints I share the Council's concerns about the effect of the PVCu windows as installed. The PVCu windows with their crude, heavy frames appear as inappropriate and alien additions to the elevations of this fine, town-centre, listed building. The unauthorised windows

have resulted in a very poor design overall and are so obviously visually harmful and conspicuous in this historically and architecturally interesting part of the town.

19. The PVCu windows installed in the narrow bay window, at the corner to West Street, are particularly obtrusive. The top-lights have more plastic showing than glazing. The frames are ludicrously thick and detract markedly from the character and appearance of the building and from the special architectural and historic interest of this narrow, double bay, stone feature between the main red brick sections of walling. I find it imperceptible that these, or for that matter any of the other PVCu windows, were meant to *'match the existing windows'*.

20. The PVCu windows to the upper floors are also out of scale and proportion and clash with the fine detailing of the remaining wooden, sash and case windows. The overall result is one of a complete 'hotchpotch' of inappropriate and visually harmful non-matching windows. At least the unauthorised timber and aluminium sections did not result in too much of a contrast with the sash and case windows but, when seen in conjunction with the PVCu installations, these are still harmful to the character and integrity of the listed building.

21. The unauthorised works also detract from the prominent setting of the building. It is evident from my inspection of this part of the conservation area that great efforts have been made by the Council and others to enhance and preserve its character and appearance. On the other hand the unauthorised installation of the PVCu windows at the Royal Hotel have, in my view, done nothing but harm the building, its setting; its features of architectural and historic interest as well as neither enhancing nor preserving the character or appearance of the KTCCA.

22. In conclusion, I find the works to be contrary to Policy 2 (Historic Environment) of the NNJCS, as well as to policies contained within sections 12 (Achieving good design) and 16 (Conserving and enhancing the historic environment) of the NPPF and to the conservation guidance in PPG. It follows that I do not consider that listed building consent should be granted for the retention of the PVCu windows as installed and that the appeal must also fail on ground (e).

Other Matters

23. I note that in the regeneration of the Market Place and other parts of the town centre, the Council has worked closely with building owners, including the appellant company, with a view to generally improving the historic and architectural significance of this part of the town. With regard to the Royal Hotel, the Council liaised with the appellant who had commissioned a condition survey of the building. The Council has also put forward a bid to Historic England (HE) that could lead to a Heritage Action Zone (HAZ) to cover regeneration within the KTCCA. It is indicated that, if this is successful, it could lead to funding for the works to the Royal Hotel.

24. I acknowledge that funding would assist the appellant company to reverse the harm caused by the installation of the inappropriate windows. However, irrespective of whether funding becomes available, the unauthorised windows should not be allowed to remain in place. Above, I have identified the harm to the integrity of the building; to its setting; to its features of special architectural and historic significance and to the character and appearance of the KTCCA.

25. If allowed to remain in place, as well as being totally contrary to local and national policies regarding the conservation of our heritage assets, I also consider that it would set a most unfortunate precedent which would undermine the work that the Council has already carried out within this part of the KTCCA. The fact that there are

other inappropriate non-PVCu windows cannot justify adding further to the visual harm and insensitive additions to the building and the streetscene in this part of Kettering.

26. In reaching my conclusions on the grounds of appeal I have taken into account all of the submissions made by the Council, by the appellant and by others. These include the initial submissions; the Council's statement and appendices; all of the plans and photographic submissions; the history of the site and the events leading up to the issuing of the LBEN and all of the other submitted correspondence. However, none of these carries sufficient weight to alter my conclusions on any of the grounds pleaded and nor is any other matter of such significance so as to change my decision.

Formal Decision

27. The appeal is dismissed and the listed building enforcement notice is upheld. Listed building consent is refused for the works carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Anthony J Wharton

Inspector