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## Appeal Decisions

Site visit made on 27 July 2015

by **Katie Peerless Dip Arch RIBA**

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

Decision date: 6 August 2015

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### Appeal A: APP/V2255/F/14/2219762

#### The Malthouse, Lynsted Lane, Teynham, Sittingbourne ME9 9RB

- 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 Albert Connor against a listed building enforcement notice issued by Swale Borough Council.
  - The Council's reference is ENF/GEN.
  - The notice was issued on 3 May 2014.
  - The contravention of listed building control alleged in the notice is the construction of a large metal chimney flue in the roof slope of the building highlighted in yellow, the approximate position of which is highlighted in blue on the plan attached to the enforcement notice.
  - The requirements of the notice are 1. Remove the unauthorised large metal chimney flue, making good where necessary; 2. Remove from the Land any debris caused by the removal of the large metal chimney flue.
  - The period for compliance with the requirements is 3 months.
  - The appeal is made on the grounds set out in section 39(1)(d), (e) and (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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### Appeal B: APP/V2255/F/14/2219769

#### The Malthouse, Lynsted Lane, Teynham, Sittingbourne ME9 9RB

- 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 Albert Connor against a listed building enforcement notice issued by Swale Borough Council.
  - The Council's reference is ENF/GEN.
  - The notice was issued on 3 May 2014.
  - The contraventions of listed building control alleged in the notice are: 1. the construction of a car port, the approximate position of which is highlighted in yellow on the plan attached to the enforcement notice. 2. The construction of a conservatory, the approximate position of which is highlighted in blue on the plan attached to the enforcement notice.
  - The requirements of the notice are: 1. Remove the unauthorised car port, making good where necessary; 2. Remove the unauthorised conservatory, making good where necessary; 3. Remove all debris caused by the removal of the unauthorised car port and the unauthorised conservatory.
  - The period for compliance with the requirements is 6 months.
  - The appeal is made on the grounds set out in section 39(1)(e) and (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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### Decisions

1. The appeals are dismissed and the listed building enforcement notices are upheld. 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.

### Procedural matter

2. The appellant has, in both cases, submitted an appeal on ground (j), that the requirements of the listed building enforcement notice exceed what is necessary to alleviate the effect of the works carried out. The Council has not responded to these grounds and appears to have mistaken them for appeals on ground (h), that the time for compliance is too short. I therefore confirm that I have considered the appellant's appeals as being made under ground (j).

### Main Issues

3. I consider the main issues in these cases to be the effect of the developments on the special architectural and historic character of the listed building and its setting.

### Appeal site

4. The appeal property, The Malthouse is a grade II\* listed building dating, according to the listing description, from the late 16<sup>th</sup> Century. The former coach house, to which the chimney, car port and conservatory have been attached, is also listed by virtue of lying within the curtilage of the main listed building.
5. The coach house has been converted to living accommodation and is linked, via the car port, to another barn-like structure which is a more recent addition to the site. The later building does not appear on the aerial photograph dated 1979, submitted by the appellant, and he states that it was built in the late 1990s.
6. The flue in the rear roof slope of the coach house serves a wood-burning stove within the building and has, apparently, recently been extended by about a metre, which the appellant states was necessary to meet the advice of the engineers who serviced the installation. It is a steel constriction with a cap, all painted black. The car port is an open fronted structure with an asymmetric part tiled roof. The conservatory is close to the boundary with the adjacent property at Cherry Trees and is constructed of timber windows on a brick plinth, a low mono-pitched slate roof with 4 rooflights and weatherboarding on the gable end.

### Reasons

#### Appeal A

##### Ground (d)

7. One of the reasons for allowing an appeal on ground (d) would be if the works carried out were urgently necessary for health or safety. In this case, whilst it might have been recommended to raise the height of the flue before it was considered safe for the stove to continue be used, the stove is not the only means of heating the building and it would have been possible to use alternative methods whilst consent for the flue was sought.

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8. In any event, the appellant has provided no written evidence to substantiate his claim that the flue presented an immediate danger to the occupants of the building. The appeal on ground (d) consequently fails.

*Ground (e)*

9. This ground of appeal asks that listed building consent is granted for the works that have been carried out. The appellant notes that this type of flue is a common addition to converted buildings and this may be so, but the flue in this case looks very utilitarian and detracts from the appearance of the coach house. It can be seen in conjunction with the main house and is in a clearly visible position on the roof slope. It is tall and its height accentuates the somewhat industrial nature of the structure, detracting from the wider setting of the main listed building and its curtilage. In my view, it appears out of place in this location, adding clutter and undue prominence to an ancillary outbuilding, which would traditionally have been subservient to the main house.
10. For these reasons I find that the flue is causing harm to the architectural interest of the coach house and consequently to the setting of the Malthouse. Whilst this does not amount to the substantial harm that the National Planning Policy Framework (the Framework), in paragraph 132, indicates should result in refusal of listed building consent, paragraph 134 notes that any identified harm must be set against the public benefits of the works before consent is granted. The appellant has not put forward any such benefits for consideration; all the justifications for the proposal are based on his personal reasons for wanting to retain the wood burning stove.
11. I also consider that the installation conflicts with the objectives of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) which requires special regard to be paid to the desirability of preserving a listed building and its setting and policy E14 of the adopted Swale Borough Local Plan 2008 (Local Plan) which, amongst other things, aims to preserve the architectural and historic interest of listed buildings and their settings.
12. I note that the appellant has drawn attention to the age of the LP and the supplementary planning guidance which is incorporated within it, but the historic heritage policy cited above is still in broad accordance with the requirements of the LBCA and the material considerations introduced by the Framework. It can therefore still be accorded significant weight as part of the adopted development plan.
13. The appellant has suggested that there may be a more acceptable solution to the problem of providing a workable flue for the building and, if necessary, asks that this a condition be attached to any listed building consent requiring the proposals to be the subject of a scheme to be submitted to the local planning authority for approval. However, I consider that, as this could mean a complete redesign of the flue, this would need to be the subject of a full application for listed building consent. I have not been provided with any detailed proposals and any scheme should be subject to the normal statutory consultation process. Therefore, for the above reasons, the appeal on ground (e) fails.

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*Ground (j)*

14. The appellant considers that it is unreasonable to require the removal of the flue extension as this would render the stove unusable. However, the Council is, through the listed building enforcement notice, requiring the removal of the whole structure, which it considers to be unauthorised. It notes that there is no reference to a proposed flue on the documentation relating to the conversion works. The appellant considers that listed building consent was granted for the original flue when the conversion works were authorised but no documentary evidence has been provided to support this statement.
15. I have found that it is the whole flue that is causing the harm identified above and it is the complete installation that is the subject of the notice. The requirement to remove the flue does not, therefore, go beyond what is necessary to alleviate the effect of its installation and the appeal on ground (j) consequently fails.

**Appeal B**

**Car port**

*Ground (e)*

16. The car port attaches the coach house to the modern outbuilding to its south east and, in my opinion, is detracting from the setting of the listed building through linking what was previously 2 separate and distinctly different phases of the development of the site as a whole. It causes confusion as to the origins of the curtilage listed coach house and diminishes the significance of the setting of the Malthouse. Consequently, I find that the addition conflicts with the policy background set out in previous paragraphs and listed building consent should not be granted for it. My findings on ground (j) are set out in the subsequent paragraphs dealing with the conservatory.

**Conservatory**

*Ground (e)*

17. The conservatory replaced an earlier structure that photographs confirm was attached to the south west elevation of the coach house. The appellant decided to replace this when it became dilapidated and began to construct a replacement, in a different style. The existing structure could have been repaired on a like-for-like basis without the need for listed building consent but there was no automatic right to replace it once demolished, even though listed building consent would technically have been needed to authorise this demolition. The Council has raised no objection to the removal of the previous 'Crittall' style conservatory, but as it has now been reconstructed using different design details and materials, it is consequently unauthorised.
18. The appellant submitted planning and listed building applications in 2010 for a replacement conservatory that he believes have been validated but which the Council has, apparently, so far declined to determine. The Council has made no comment on this but notwithstanding the situation in respect of the status of the applications, the detailing shown on the submitted plans and elevations do not accord with what has been erected on site and it is the conservatory as it exists that I am considering in this appeal.

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19. Whilst the previous addition has established the principle of a conservatory or vinery on the side of the coach house, the fact that the appellant considers the replacement to be an improvement on the previous situation is open to debate. In any event, the fact that the original conservatory might also have been causing harm is not a reason to allow another harmful addition, even though that harm might be considered to be of a lesser degree than previously.
20. The only details available for the original are 2 photographs that show a lean-to extension with full height glazed ends and a pitched roof, which the appellant says was corrugated with rooflights. The existing addition has a lower pitched roof and domestic style windows and the use of the brick plinth and solid gable ends gives it a more substantial appearance than the previous version.
21. I consider that the detailing and materials used in the new addition are not of the standard that is appropriate for an addition to a listed building. There is no precedent for the use of a slate roof in this context and the quality of workmanship in the brick plinth is poor. The use of weatherboarding and a fibre cement undercloak to the eaves are also features that depart from those on both the main listed building and the coach house. The addition has given the building a piecemeal appearance that detracts from its architectural and historic interest and the setting of the Malthouse.
22. Therefore, the addition has caused harm to the significance of the heritage asset and conflicts with the aims and objectives of the LBCA, the Framework and the LP policy cited above. Again, I have been given no details of any public, rather than private, benefits that the addition has brought about to set against this harm and the appeal on ground (e) fails.

*Ground (j)*

23. The appellant considers that the requirement to remove the existing conservatory is excessive, given the previous existence of the now demolished original addition. However, as explained above, the fact that there was a previous structure attached to the building is not an argument that would justify the provision of another unsuitable design, nor would the re-instatement of the original now be authorised without listed building consent.
24. The appellant asks that I consider a compromise solution that would avoid the demolition of the conservatory by considering modifications that would be more in line with the scheme put forward in the applications made in 2010. However, the difference between the scheme shown on the earlier applications and the building as constructed is, in my opinion, too great for it to be considered through this appeal and would need to be the subject of a full application and consequent consultation procedure.
25. It would mean the complete replacement of the roof covering and while it may well be that a scheme incorporating a glazed roof could result in the addition appearing more subservient to the host building and consequently more acceptable, this alone would not solve the problem of the poor quality of the existing brickwork. I therefore consider that the suggested modifications would have to be the subject of new applications for revised proposals.
26. In respect of the car port, the appellant has suggested no lesser steps that he considers would render the development acceptable and has indicated that it would be removed if listed building consent for it was refused. Consequently, I conclude that the appeal on ground (j) in respect of both elements enforced against should not succeed.

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27. However, I note, and can sympathise with, the attempts of the appellant to obtain approval of a revised design and understand his frustration that his applications remain undetermined or possibly not validated. Now that the original conservatory has been demolished and this demolition has not been enforced against, I suggest that the details required to accompany any application for a new conservatory would be satisfied by providing a drawing of the rear elevation of the coach house, without the original extension.
28. In the event that the appellant submits a revised application for listed building consent for the conservatory, I would draw the parties' attention to the provisions of SA38(5)(b) of the LBCA that gives the Council power to extend the period for compliance whether or not the notice has come into effect.

*Katie Peerless*

**Inspector**