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## Appeal Decision

Site visit made on 3 September 2015

by Mr Keri Williams BA MA MRTPI

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

Decision date: 16 October 2015

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**Appeal Ref: APP/V2255/F/3000123**

**Bayford Court, Crown Quay Lane, Sittingbourne, Kent, ME10 3JQ**

- 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 E Breaker against a listed building enforcement notice issued by Swale Borough Council.
- The Council's reference is 14/500123/ENF.
- The notice was issued on 26 September 2014.
- The contravention of listed building control alleged in the notice is the execution of alterations and works ("the Works") to the Building. They are set out in Schedule 1 of this decision.
- The requirements of the notice are set out in Schedule 2 of this decision:
- The period for compliance with the requirements is 12 months.
- The appeal is made on the grounds set out in section 39(1) (e), (g) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

**Summary of Decision: The appeal does not succeed other than in respect of the soil vent stack and the period for compliance. The notice is corrected, varied and upheld.**

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### Background

1. Bayford Court is a large, detached property within the built-up area of Sittingbourne. It is a listed building at Grade II and is divided into four dwellings. There is industrial or commercial development on three sides of the site, forming part of the Eurolink Industrial Estate. The rear aspect is more open with an extensive area for vehicle parking and several small buildings and mobile homes.
2. The appellant submits a heritage statement (January 2015). The building's significance is as a complex building of composite construction comprised of several distinct phases of extension to a late 16<sup>th</sup> or early 17<sup>th</sup> century house. This was originally a timber-framed building of two storeys and of three bays in length, with a two-storey porch on the principal, south facing elevation. The building evolved, with successive extensions in the 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> centuries and, more recently, an extension at the east end. The statement also refers to the radical changes to the building's setting, including the development of the adjacent industrial estate.
3. Bayford Court was listed in 1951. The listing description is: "*A timber-framed house with plastered front. 2 storeys. Tiled roof, 2 storied porch with the 1<sup>st</sup> floor jettied on brackets and hipped roof over. Stringcourse, 5 windows in all. 2*

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*sash windows with glazing bars intact. The other windows are casement windows or horizontally sliding sashes. 18<sup>th</sup> century addition behind.*

4. Drawing PD66/01, Bayford Court, Elevations: Existing and Proposed is dated March 1983. The Council also submits two photographs of the property. They are undated but said to be survey photographs from the late 1970's. There are three further photographs, also undated.

#### **The Enforcement Notice**

5. In a letter of 7 January 2015 the Council suggests a correction to paragraph 5 (b) of the notice. It refers to window WF2 as a uPVC window whereas it is, in fact, a timber window. This is a minor factual error which can be corrected without injustice to the main parties. I have corrected paragraphs 3 and 5(b) of the notice in the Formal Decision accordingly.
6. Following the site visit I drew the attention of the Council and the appellant to some further defects in the enforcement notice. Firstly, the doors at WD3 are shown on plan EN1 and are the subject of requirement (g). However, they are not part of the breach of control set out in section 3 of the notice. Similarly, window WG11 is shown on plan EN1, its removal is part of requirement (e) but it is not referred to in the breaches of control set out in the notice. Neither the Council nor the appellant suggest that injustice would arise were I to correct the notice to address these matters. I share that view. It is clear from the notice plan and its requirements that the WD3 doors and window WG11 are within the ambit of the notice. The appellant has had the opportunity to comment and his evidence addresses the WD3 doors and WG11 window. I have therefore corrected the notice's allegation accordingly.

#### **The Appeal on Ground (e)**

##### *Main Issue*

7. An appeal on this ground is that listed building consent should be granted for the works alleged in the enforcement notice. The main issue is the effect of those works on the special architectural and historic interest of the listed building.

##### *The Statutory Requirement and Relevant Policies*

8. Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act, 1990 requires that, when considering whether to grant listed building consent, there must be special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses. The policies of the National Planning Policy Framework (the Framework) are a material consideration. It is consistent with Framework paragraph 132 that, when considering the impact of works on a listed building, great weight should be given to conservation of the heritage asset. The more important the asset, the greater that weight should be. Policy E14 of the Swale Borough Local Plan, 2008 (LP) is a further material consideration. Amongst other things it allows development affecting a listed building only where its special architectural or historic interest is preserved. The Council has also adopted a supplementary planning guidance document entitled "Listed Buildings, A Guide for Owners and Occupiers." It includes relevant guidance on changes to doors and windows. Amongst other things it refers to the importance of using the same style and materials if windows in a listed building must be replaced.

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#### *The Windows*

9. The breach of control, as corrected, concerns the removal of 11 windows and their replacement with uPVC windows, the replacement of one timber window (WF2) with another timber window and the creation of 4 new windows.
10. Windows are often an important part of the special character of a listed building and in this case the variety of window types and styles contribute significantly to the character of Bayford Court and to the evidence of its evolution. The use of uPVC as a material and the related detailing, including heavy cross sections, inappropriate cills and internalised glazing beads, is not characteristic of the listed building and is harmful to its special interest. In addition, a variety of styles, including top hung lights, small top lights and bay windows have been used. The appellant does not defend the installation of uPVC windows. Indeed, he refers to his intention to replace the windows and provides related drawings. While the replacement window WF2 is of timber, its design is otherwise unsympathetic to the building's character and does not reflect the multi-paned window shown on drawing PD66/01 in that position. Drawing PD66/01 also shows a smaller window in a similar position to window WG10. However, the design and detailing of window WG10 and of window WF6 are not appropriate to the character of the listed building.
11. The notice addresses not only the replacement of window WF5 with a uPVC window but its repositioning, as shown on drawing EN1. The appellant seeks to retain the window's position having regard to the expense and inconvenience of relocating it and in order to better serve the internal layout. However, as the Council observes, a formalised layout of windows is uncharacteristic of the rear elevation and drawing PD66/01 shows the first floor window offset from that on the ground floor. In that context the repositioning of the replacement uPVC window which has been made is inappropriate and results in material harm.
12. I conclude that the replacement and additional windows result in material harm to the building's special interest and conflict with the policies and guidance set out above.

#### *The Doors*

13. The door and door frames which have been inserted at WD1 and WD2 have glazed upper panes and raised lower panels. They appear to be of a standard or "off the shelf" design. The door WD2 has replaced a former window which appears in one of the submitted photographs and French doors have been inserted at WD3.
14. The doors are unsympathetic to the building's special character and, as such, result in material harm to it, in conflict with the policies and guidance set out above. The appellant refers to the benefit of the doors for the residents. He also says that they could be replaced with doors of an improved design. However, they would be materially different from those in this appeal and little detail is provided.

#### *The Roof Lights, Satellite Dishes and Soil Vent Stack*

15. The roofs are of Kent peg tiles and the extent and variety of roof slopes is a significant part of the building's character and interest. The two rooflights, which have been inserted on a rear facing roof slope appear to be of a standard design and are set above the plane of the roof. The appellant suggests that



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alternative rooflights of an improved design could be satisfactorily integrated into the roof slope. However, such rooflights would be materially different from the rooflights which are the subject of the notice and no substantive details are submitted. The two satellite dishes are prominent and incongruous modern additions on the listed building's front elevation. Reference is made to other, unspecified, examples of satellite dishes on listed buildings. Nevertheless, the satellite dishes and the rooflights are harmful to the listed building's special interest and conflict with the policies and guidance set out above. The soil stack vent, on the other hand, appears as a minor linear addition. It is on the rear elevation and does not extend unduly above the eaves level. Although drawing PD66/01 does not show such a feature, it does not result in material harm to the building's special interest.

*Other matters and conclusion on ground (e)*

16. The effect of these works, while considerable, is not sufficient to amount to the total loss of the listed building's significance or substantial harm to it. In those circumstances Framework paragraph 134 provides that the harm should be weighed against any public benefit, including securing optimum viable use of the building. The appellant observes that windows WF6, WG10 and WG11 serve bathrooms and that the rooflights are the only windows serving a first floor bedroom. Reference is also made to the benefits of double glazed units with regard to noise and energy conservation. In addition, the doors at WD1, WD2 and WD3, each provides a second access to one of the dwellings. Without them, there would be reliance on only one access.
17. Some of the considerations advanced by the appellant are related to the living conditions of the occupiers of the four dwellings. No substantive assessment is submitted of noise, the merits of double glazed units, of their effect on the building's special interest or of alternative approaches to energy conservation. Nor has it been shown that the provision of a second access is an essential requirement, although reference is made in general terms to safety considerations. It may be that the appellant chooses to make applications for listed building consent for some of the proposals he alludes to, for example rooflights of a different form or the provision of windows for bathrooms, with appropriate design detail and supporting information. However, with the exception of the soil vent stack, the works as carried out are harmful to the listed building's special interest, which has not been preserved. The matters raised by the appellant do not amount to public benefits which outweigh that harm. I conclude that the appeal on ground (e) should succeed in respect of the soil stack vent but should otherwise fail.

**The Appeal on Ground (g)**

18. Some of the matters raised by the appellant under ground (g), such as the merits of the rooflights, the soil vent stack and the re-positioning of window WF5, are more pertinent to ground (e) and I have addressed them in that context.
19. The appellant refers to some of the works to windows and doors and says that they were not carried out by his family. He suggests that consideration is required of the likely condition of the building in November 2003, when it was sold by the Council to the appellant's family, and that some of the works may have been carried out by the Council prior to that date. There is, he says, an absence of records of works carried out by the Council. While I appreciate the

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appellant's concerns, an appeal on ground (g) is that the requirements of the notice exceed what is necessary for restoring the building to its authorised former state. In that context, it is not part of this appeal to determine who carried out the works. What is at issue is whether the requirements exceed what is necessary to restore the building to its authorised condition before the works which are the subject of the notice were carried out.

20. The evidence available in this case is limited. Nothing is submitted to establish the precise dates on which any of the works which are the subject of the notice were carried out. It seems to me that the best available information of the state of the building prior to the works is from the elevations shown as "existing" in drawing PD66/01. While that drawing also shows "proposed" elevations it appears uncertain whether any of the changes they show were in fact implemented. I also take into account the submitted photographs but, as I set out above, they are undated.
21. Drawing PD66/01 provides evidence of the position and pattern of windows and doors in 1983, including the position of window WF5 at that date. There is no evidence of uPVC windows in the building prior to the installation of those which are the subject of the notice. Nor are doors WD1, WD2 and WD3, the rooflights, or the satellite dishes shown on drawing PD66/01 or on any of the submitted photographs. I conclude on this ground that the balance of the evidence is that the notice's requirements do not exceed what is required to restore the building to its former authorised condition. The appeal should not succeed on ground (g).

#### **The Appeal on Ground (h)**

22. The appellant considers that the 12 month compliance period should be extended to 3 years. He refers to his recent acquisition of the property in difficult family circumstances, to the extent, significance and cost of the works required and to his willingness to engage with the Council to resolve matters.
23. The appellant has prepared drawings of replacement windows and has provided a heritage statement. He has also engaged professional advice and appears to have sought constructive engagement with the Council. The works required are extensive and are likely to be disruptive to the occupiers of the building. They require careful preparation. An extended period would also provide time for any applications for listed building consent to be determined. A 3 year compliance period would unduly prolong the harm to the listed building's special interest. Nevertheless, in all the circumstances a 12 month compliance period is unreasonably short. I shall vary the notice to extend the period to 2 years.

#### **Overall Conclusion**

24. Having regard to the above and to all other matters raised. The appeal should not succeed other than in respect of the soil vent stack. The notice should be corrected, varied and upheld.

#### **Formal Decision**

25. I direct that the listed building enforcement notice be corrected as follow:
- i) At bullet point 1 of paragraph 3 by the deletion of "WF2" in line 5 and the addition in line 5, after "WF7." of the words: "The removal of window WF2 and its replacement with a timber window."

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- ii) At bullet point 2 of paragraph 3 by the deletion of "WG10, WF5 and WF6" and the insertion of "WG10, WG11, WF5 and WF6"
  - iii) At bullet point 3 of paragraph 3 by the deletion in line 2 of "WD1 and WD2" and the insertion of "WD1, WD2 and WD3"
  - iv) At paragraph 5(b), line 1, by the removal of the words "the uPVC windows identified as WF1, WF2 and WF3" and their replacement with the words: "the uPVC windows identified as WF1 and WF3 and of the timber window identified as WF2".
26. I further direct that the listed building enforcement notice be varied at paragraph 6 by the replacement of the words "12 months" with the words "2 years".
27. I allow the appeal insofar as it relates to the installation of a soil vent stack on the north elevation of the building and grant listed building consent for its retention. I dismiss the appeal, refuse to grant listed building consent and uphold the listed building enforcement notice as corrected and varied insofar as it relates to:
- i) The removal of horizontally sliding sash windows, vertically sliding sash windows and casement windows which were replaced with uPVC windows at the approximate positions shown on the drawing attached to the notice as Drawing Number EN1 and identified as WG1, WG2, WG4, WG5, WG6, WG7, WG8, WG9, WF1, WF3 and WF7. The removal of window WF2 and its replacement with a timber window.
  - ii) The construction of new casement window openings at the approximate positions shown on Drawing Number EN1 and identified as WG10, WG11, WF5 and WF6.
  - iii) The construction of new door and door openings created at the approximate positions shown on Drawing Number EN1 and identified as WD1, WD2 and WD3. The construction of the door and door opening shown at WD2 required the removal of a casement later referred to in the Notice as WG3 on Drawing Number EN1.
  - iv) The installation of two roof lights cut into the north-west slope of the Building at the approximate positions shown on Drawing Number EN1 and identified as WF8 and WF9.
  - v) The installation of two satellite dishes to the south elevation of the Building at the approximate positions shown on Drawing Number EN1 and identified as SAT1 and SAT2.

*K Williams*

INSPECTOR



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#### SCHEDULE 1 THE ENFORCEMENT NOTICE ALLEGATION

Without listed building consent, the execution of alterations and works (the Works) to the Building namely:

- i) The removal of horizontally sliding sash windows, vertically sliding sash windows and casement windows which were replaced with uPVC windows at the approximate positions shown on the drawing attached to the notice as Drawing Number EN1 and identified as WG1, WG2, WG4, WG5, WG6, WG7, WG8, WG9, WF1, WF2, WF3 and WF7.
- ii) The construction of new casement window openings at the approximate positions shown on Drawing Number EN1 and identified as WG10, WF5 and WF6.
- iii) The construction of new door and door openings created at the approximate positions shown on Drawing Number EN1 and identified as WD1 and WD2. The construction of the door and door opening shown at WD2 required the removal of a casement later referred to in the Notice as WG3 on Drawing Number EN1.
- iv) The installation of two roof lights cut into the north-west slope of the Building at the approximate positions shown on Drawing Number EN1 and identified as WF8 and WF9.
- v) The installation of two satellite dishes to the south elevation of the Building at the approximate position shown on Drawing Number EN1 and identified as SAT1 and SAT2.
- vi) The installation of a soil vent stack to the north elevation of the Building at the at the approximate position shown on Drawing Number EN1 and identified as "Soil Vent Stack".

#### SCHEDULE 2 THE ENFORCEMENT NOTICE REQUIREMENTS

- a) Remove the uPVC windows identified as WG1 and WG2 on Drawing Number EN1 and replace them with joinery windows as shown on the attached Drawing Numbers EN6 and EN7, including the specification notes.
- b) Remove the uPVC windows identified as WF1, WF2 and WF3 on Drawing Number EN1 and replace them with joinery windows as shown on the attached Drawing Number EN3.
- c) Remove the uPVC windows identified as WG4, WG5, WG6 and WG9 on Drawing Number EN1 and replace them with joinery windows as shown on the attached Drawing Number EN5.
- d) Remove the uPVC windows identified as WF7, WG7 and WG8 on Drawing Number EN1 and replace them with joinery windows as shown on the attached Drawing Number EN4 including the specification notes.
- e) Remove the windows identified as WG10, WG11 and WF6 on Drawing Number EN1 and brick up the window openings using soft red stock bricks laid in lime mortar, to match existing, and render using two-coat lime plaster internally and externally and decorate to match surroundings.

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- f) Remove the window identified as WF5 on Drawing Number EN1 and reinstate the 3-light casement window as shown on Drawing Number EN5.
- g) Remove the doors identified as WD1 and WD3 on Drawing Number EN1 and block up the openings using soft red stock bricks laid in lime mortar, to match existing, and render using two-coat lime plaster internally and externally and decorate to match surroundings.
- h) Remove the door identified as WD2 on Drawing Number EN1 and reinstate the original 16-pane side-hung casement window, the details of which are shown on Drawing Number EN5, in its historic position under its historic brick arch the location of which is as shown on Drawing Number EN1 identified as WG3 and rebuild brickwork up to the underside of the window sill using soft red stock bricks laid in lime mortar, then render using two-coat lime plaster internally and externally and decorate to match surroundings.
- i) Remove the roof lights identified as WF8 and WF9 on Drawing Number EN1 and make good the internal and external finishes to match existing.
- j) Remove the satellite dishes identified as SAT1 and SAT2 and shown on Drawing Number EN1 and make good any screw holes and decorative finishes.
- k) Remove the soil vent stack identified as identified on Drawing Number EN1 from the north elevation of the Building making good any fixing holes and decorative finishes.
- l) Reinstatall all damage to the Building resulting from the Works and any damage cause by their removal pursuant to this Notice.