
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 23/11/21

gan Declan K Beggan BSc (Hons) MSc
DipTP DipMan MRTPI

Arolygydd a benodir gan Weinidogion
Cymru

Dyddiad: 04/05/2022

Appeal Decision

Site visit made on 23/11/21

by Declan K Beggan BSc (Hons) MSc
DipTP DipMan MRTPI

an Inspector appointed by the Welsh
Ministers

Date: 04/05/2022

Appeal Ref: APP/E6840/F/21/3281000

**Site address: 5 Little Hervells Court (also known as Envy), Chepstow,
Monmouthshire, NP16 5FF**

**The Welsh Ministers have transferred the authority to decide this appeal to me
as the appointed Inspector.**

- 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 Act').
 - The appeal is made by Mr Adam Vers of Kardinale Homes Ltd against a listed building enforcement notice (LBEN) issued by Monmouthshire County Council.
 - The Council's reference is E20/077.
 - The notice was issued on 13 July 2021.
 - The contravention of listed building control alleged in the notice is "without listed building consent – (breach of Condition) Condition 3 attached to DC/2017/00624 states 'All new works and finishes of making good shall match the existing original work adjacent in respect of materials used, detailed execution and finished appearance, except where indicated otherwise on the drawings hereby approved or as required by any condition (s) attached to this consent'.
REASON: To safeguard the character and appearance of the listed building. Following numerous site visits (*sic*) the property it was identified that the areas of new and rebuilt stonework is finished with a mortar that is not appropriate to the adjacent listed boundary wall. Therefore in breach of Condition 3 above."
 - The requirements of the notice are as follows:
 1. To remove existing light coloured mortar to the sides and (*sic*) top of the wall as shown in the areas of the wall on the attached photographs in Appendix B; and,
 2. Once the mortar has been removed the wall shall be repointed using a lime mortar which shall be of a colour to match shown on the attached photo in Appendix C.
 - The period for compliance with the requirements is three months from the date the notice takes effect.
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- The appeal is made on the ground (c) as set out in section 39 (1) of Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Act.
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Decision

1. The appeal is dismissed and the LBEN is upheld.

Procedural and Background Matters

2. The appeal was initially made on the incorrect appeal form. The appellant has submitted the correct form with the relevant grounds of appeal. All parties were given the opportunity to make additional comments on the grounds of appeal. My consideration of this matter has been based on the appeal form as revised along with any comments originally submitted by the Council or other parties.
3. The breach of planning control referred to above pertains to a condition attached to a listed building consent related to the construction of a dwelling within the grounds of a grade II listed property known as Lower Hardwick House. The wall referred to in the LBEN forms part of a curtilage structure associated with the listed property.

Reasons

Ground (c) appeal

4. An appeal on ground (c) is that the matters referred to in the EN do not constitute a contravention of the Act. To succeed on this ground of appeal it must be successfully argued that the works carried out have not altered the character of the listed building and thus there has not been a contravention of section 7 of the Act. Section 7 of the Act 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 or architectural or historic interest unless the works are *authorised* (my emphasis)". Section 8 sets out when works to a listed building are authorised.
5. In a ground (c) appeal the merits of the works are not considered. The issue at hand relates solely to whether or not the character of a listed building has been changed by the works carried out; this is irrespective of whether or not such works have been harmful to the listed building.
6. It must be conclusively shown, therefore, that the works have not altered the character of the structure and thus they do not constitute a contravention of the Act, or that a listed building consent [LBC] is in place for the works. The first issue to be considered, therefore, is whether or not LBC is required; clearly in this case, the creation of a new access through a listed wall and associated remedial works required such consent. That consent was given subject to a condition as detailed in the LBEN.
7. The second issue is whether there is any consent in place that has authorised the works subject to the LBEN. In this case Condition 3 attached to listed building consent Ref. DC/2017/00624 was quite specific in what it required i.e., all new works and finishes of making good shall match the existing original work in respect of materials used, detailed execution and finished appearance.
8. Lower Hardwicke House is described in its Cadw listing as a large Georgian house retaining its character which also has group value with Ashfield which is opposite. The period property is bordered by an attractive stone boundary wall of varying height that is a curtilage listed structure within which there is other development including a new dwelling that was granted planning and listed building consent in 2018 as referenced in the LBEN;

the appeal documents refer to this as an original boundary wall to the house as shown on the 1840 map.

9. Despite the creation of a new access opening in the wall to facilitate the new dwelling, nonetheless the existing boundary wall overall appears to be relatively well intact and is an attractive boundary feature associated with the historic listed building and the wider area which is also within the designated Chepstow Conservation Area as detailed in the Monmouthshire County Council Adopted Local Development Plan. The generally visually muted and aged nature of the mortar mix is intrinsic to the character of the wall. The wall with its mortar mix reflects a significant number of properties who exhibit similar historic features in terms of materials used and finishes. The wall therefore contributes not only to the listed Georgian property in terms of its special architectural and historic interest and its significance as a heritage asset, but also the wider area.
10. The new dwelling required the formation of a new access point through the listed boundary wall. As detailed in the LBEN, all required works of 'making good' to the wall entailed those finishes were to match the existing original work in respect of materials used, detailed execution and finished appearance in order to safeguard the character and appearance of the listed building. The existing boundary wall as detailed above is an attractive and pleasant boundary feature associated with the historic listed building. The appellant argues that due to the variation in mortar in the wall that the new mortar finished used is not unduly different and therefore there is no effect on the character of the listed structure, and in effect the works are therefore compliant with the relevant condition cited in the LBEN; I disagree.
11. Whilst I appreciate there is a degree of variation in the historic mortar used in the wall, nonetheless, despite that variation there is a broad similarity in its generally subdued weathered appearance which is commensurate with mortar that has existed for an extensive period of time; however, this is in stark contrast to the colour of the new mortar mix referred to in the LBEN that has been utilised over a significant area of the wall. The new mortar mix with its noticeable yellowish hue is substantially at odds with the overall subtle variations of the existing mortar mix which despite its differences, has a generally grey and darker character with a weathered tone. The sharp contrast of the new mortar mix as used catches the eye of the observer and whilst I appreciate that weathering may over time subdue the effects, nonetheless, this could take many years and even then it may still appear at odds with the mortar on the rest of the wall; this is not acceptable due to the detrimental impact on the character and appearance of the listed wall and as previously identified its special architectural and historic interest and its significance as a heritage asset.
12. Based on my observations on site and on the evidence as presented, it is clear to me that the works referred to in the LBEN have affected the listed structure as one of special architectural and historic interest. The mortar mix as referred to in the LBEN has an appearance that varies significantly from that currently used; this has clearly affected the character of the listed structure.
13. The permitted LBC does not authorise these works; it follows, therefore, that a contravention of the Act has occurred. The appeal fails on ground (c).

Other Matters

14. A third party has raised a number of other concerns relating to the site, however these are outside the scope of this appeal process.

Overall Conclusions

15. Based on the foregoing, and having considered all matters raised, I conclude that the appeal on ground (c) be dismissed, and the LBEN be upheld.
16. In reaching my decision, I have taken account of the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015 (the 2015 Act). I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives as required by section 8 of the 2015 Act.

Declan K Beggan

Inspector