

## Appeal Decisions

Site visit made on 3 April 2018

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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

**Decision date: 12 April 2018**

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**Appeal Ref: APP/N2345/F/17/3177202**

**21 Chaddock Street, Preston PR1 3TL**

- 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 Y Yusuf against a listed building enforcement notice issued by Preston City Council.
  - The enforcement notice was issued on 16 May 2017.
  - The contravention of listed building control alleged in the notice is the installation of double glazed units inside the windows on the ground floor elevation of the property and the installation of a modern style MDF door to the front doorway of the property.
  - The requirements of the notice are (i) Remove the internally installed uPVC double glazed units and any resultant debris; and (ii) Replace the front door to the property with a timber door as defined within the Supplementary Planning Guidance.
  - The period for compliance with the requirements is 6 months.
  - The appeal is made on the grounds set out in section 39(1)(d) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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**Appeal Ref: APP/N2345/W/18/3193151**

**21 Chaddock Street, Preston PR1 3TL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Y Yusuf against the decision of Preston City Council.
  - The application Ref 06/2017/0886, dated 25 July 2017, was refused by notice dated 24 October 2017.
  - The development proposed in the application is 'to extend 1.5 metre for new bathroom and toilet and make two doors'.
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### Decision

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1. The notice is a nullity and no further action will be taken in connection with this appeal. If the Local Planning Authority has kept a record of the listed building enforcement notice on any register, they should consider reviewing it.

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2. The appeal is dismissed.

### Procedural matter

3. The Council considered the application to be for a 'single storey extension to rear'. This is an accurate description of the proposed development and the appeal has been determined on this basis.

## Reasons

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4. In his judgement in the case of *Miller-Mead v MHLG* [1963] JPL 151 Lord Justice Upjohn stated that the test in deciding whether an enforcement notice satisfied the statutory requirement must be "Does the notice tell him (the recipient of the notice) fairly what he has done wrong and what he must do to remedy it".

5. The contravention of listed building control refers to 'the installation of double glazed units inside the windows on the ground floor elevation of the property'. The reference to 'windows' suggests that there is more than one window. But there is only one timber casement window on the ground floor elevation of the property, behind which has been installed a uPVC window. However, there are two windows on the first floor elevation of the property, which have been similarly altered, and the Council's statement consistently refers to 'windows' as opposed to 'window'. But the notice specifically refers to 'windows on the ground floor elevation' so it is unclear whether the notice is intended to cover the first floor windows. The notice is confusing and, with regard to windows, the Appellant cannot fairly understand what he has done wrong and what he must do to remedy the contravention of listed building control.

6. The contravention of listed building control refers to the installation of a modern style MDF door to the front doorway of the property. The Council, in their appeal statement, accepts that this alleged contravention has not occurred, rather that the door, and this was noted at the site visit, has been faced with plywood to cover up broken glass panels. The contravention has not occurred, as a matter of fact, and a ground (b) appeal, if it had been made, would have been successful. In their statement the Council require "The timber covering should be removed and a traditional style of door re-instated". But the requirement of the notice requires the replacement of the door. It is unclear therefore what the Council is requiring; is it the re-instatement or the replacement of the door? With regard to the door, therefore, the Appellant cannot fairly understand what he must do to remedy the contravention of listed building control.

7. The enforcement notice, taking all the aforementioned factors into account, does not tell the Appellant fairly what he has done wrong and what he must do to remedy it. Crucially, the notice cannot be corrected without causing injustice to the Appellant. The listed building enforcement notice is therefore a nullity.

8. The Appellant should be aware, however, that the Council may issue another listed building enforcement notice against the unauthorised works that clearly sets out the alterations that have affected the character and significance of the listed building and which sets out clear, fair, specific and complete requirements.

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9. The main issue is whether sufficient information has been provided to enable the impact of the proposed development on the appeal property, a Grade II listed building, and on the Avenham Conservation Area to be fully assessed.

10. 21 Chaddock Street is a two storey mid-terraced dwelling. At the rear of the main part of the dwelling is a flat roofed two storey addition and at the rear of this addition is a single storey monopitch roofed extension. The single storey element is not as wide as the two-storey element and there is a gap of about one metre between the single storey element and the boundary wall to a rear access way.

Planning permission 06/2016/0569 was granted on 18 May 2017 for an extension to the single storey element that would fill the gap and would have the same sectional profile as the single storey element.

11. The appeal application is for an additional extension to the single storey element which would be widened to be the same width as the two storey addition to the dwelling. But a drawing dated 9 June 2017 submitted with the application is confusing because it shows in plan the single storey element only extended by the permitted extension, but in elevation also to be widened to the width of the two storey element. An amended drawing (though not indicating any drawing revision) was submitted to the Council and is dated 2 October 2017. This drawing does show, in plan, the single storey element to be widened but was not accepted by the Council because they claim, amongst other things, that it is inaccurate.

12. The Council, in an e-mail dated 28 September 2017, asked the Appellant to submit additional information and amended drawings. This e-mail precipitated the submission of the amended drawing dated 2 October 2017. In a further e-mail dated 5 October the Council acknowledged receipt of the drawing and a Heritage Statement but stated that "...they do not address the issues raised in my e-mail of 28 September 2017". In that e-mail they requested the submission of the information requested in their e-mail of 28 September by 16 October 2017. No further information was submitted and the Council proceeded to determine the application for the reason that "The application contains insufficient information to enable the impact of the proposal on the Grade II listed building or the Avenham Conservation Area to be fully assessed...".

13. The appeal property is a listed building, and is therefore a building of architectural and historic interest, and is in a Conservation Area, which has been designated for its special character and appearance. Both these factors require a careful and considered assessment of the impact of the proposed development and this can only be carried out if appropriate and detailed information is submitted, for consideration by the Council in the first instance. The Council's e-mail of 28 September clearly sets out the information that they considered was necessary in this case. The information requested was not submitted and it was reasonable therefore for the Council to refuse the application for the reason stated in the notice of Refusal of Planning Permission.

14. No further information has been submitted at appeal stage but even if it had been it would be inappropriate to consider it because, as indicated above, the Council must be afforded the first opportunity to consider the merits of a properly detailed proposed development, particularly where the development is to a listed building in a Conservation Area. Insufficient information has been provided to enable the impact of the proposed development on the listed building and the Avenham Conservation Area to be fully assessed. The appeal is thus dismissed.

*John Braithwaite*

Inspector