



Appeal Decision

Site visit made on 30 December 2013

by David Nicholson RIBA IHBC

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

Decision date: 14 January 2014

Appeal Ref: APP/D0121/F/13/2193566
93 Old Church Road, Clevedon BS21 6PU

- 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 Brian Whiting against a listed building enforcement notice issued by North Somerset Council.
 - The notice was issued on 21 January 2013.
 - The contravention of listed building control alleged in the notice is without listed building consent, the installation of UPVC framed windows and UPVC doors into the building.
 - The requirements of the notice are (i) remove all of the UPVC framed windows and doors from the building. (ii) remove from the land all material associated with the removal of the unauthorised windows and doors from the building.
 - The period for compliance with the requirements is two years.
 - The appeal is made on the grounds set out in section 39(1)(a), (c) (d), (e) and (g) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. **The notice is a nullity** and no further action is taken.

Reasons

2. The notice seeks removal of the windows alleged to breach listed building control. However, it makes no provision for reinstatement. Complying with the requirements of the notice would,¹ grant consent for removal but not for any alternative windows to be inserted. To do so would leave the cottage open to the elements and would not be in the interests of preserving the listed building². No reasonable planning authority would normally grant consent for such works.
3. The courts have held that enforcement notices must be sufficiently precise for the recipient to know what must be done to remedy the matter. While removal of an element may usually be sufficient³, it is not enough for listed buildings as the purpose of enforcement is to preserve their character and special interest⁴. In my assessment, the Notice before me would require works which would be contrary to that statutory purpose and there is no ready means of correcting the Notice which is therefore a nullity.

¹ under s38(7) of the Planning (Listed Buildings and Conservation Areas) Act 1990 [LB&CA Act]

² contrary to the provisions of s16(2) of the LB&CA Act

³ under s174 of the Town and Country Planning Act 1990

⁴ under s38(2) the LB&CA Act

4. I have considered whether the Notice could be varied to include a process and timescale for approving details of replacement windows. However, case law⁵ establishes the need for certainty and, in my view, to vary the Notice to require the approval of details would expand its scope too far to lie within my powers.
5. I have concluded that the notice is a nullity and in these circumstances the appeal under the various grounds⁶ does not fall to be considered. In the light of this finding, should the Local Planning Authority have kept a record of this listed building enforcement notice on any register, they should consider reviewing it. This decision does not preclude the Council from taking further enforcement action if it considers that it would be expedient to do so.

David Nicholson

INSPECTOR

⁵ in *Payne v National Assembly for Wales* [2006] EWHC 597 (Admin)

⁶ set out in section 39(1) of the LB&CA Act as amended

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