



Appeal Decision

Inquiry held on 27 July 2010
Site visit made on 28 July 2010

by **Katie Peerless Dip Arch RIBA**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

**Decision date:
6 August 2010**

Appeal Ref: APP/X1545/F/09/2118508 144 High Street, Maldon CM9 5BX

- 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 the Rochford and South East Building Preservation Trust against a listed building enforcement notice issued by Maldon District Council.
- The Council's reference is ENF/1338/24/09.
- The notice was issued on 11 November 2009.
- The contraventions of listed building control alleged in the notice are:

The removal of three objects forming part of the Building, namely the two front, first floor box sash windows and the window frame on the ground floor of the front elevation of the cross wing.

The exposure of the timber frame on the exterior of the front (north) and side (east) elevations and works to leave the whole timber frame permanently exposed.
- The requirements of the notice are:
 - (i) The two first floor sash windows on the front elevation, including their box frames, weights, pulleys and cords, are to be returned to their original locations.
 - (ii) In the location of the front ground floor window, a window opening is to be reinstated that matches the size and dimensions of the sash window that was located directly above it. Re-introduce a complete timber box framed sash window to the front, ground floor elevation of the cross-wing to the same dimensions, design, details, materials and appearance as the box framed sash on front, first floor elevation of the cross wing.
 - (iii) All areas of the timber frame which are exposed on the front and side elevations of 144 High Street, Maldon, are to be battened and re-rendered with lime putty-based render applied to horizontal timber laths. The specification of the render is to be 1 part lime putty; 3 parts sand with plenty of horse hair. The render is to be applied in three coats. This work is to be carried out only in the month commencing 1 May 2010 when there is a minimal risk of freezing temperatures which could cause the render to fail. The render is to abut the framed window architraves.
- The periods for compliance with the requirements are:
 - (i) by 30 December 2009.
 - (ii) by 22 January 2010
 - (iii) between 1 May 2010 and 31 May 2010
- The appeal is made on the grounds set out in section 39(1)(b), (c), (d), (e) and (i) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Decision

1. I direct that the listed building enforcement notice be varied by the inclusion of '*and 144A*' after '*144*' wherever it appears in the address of the building subject of the notice, by the deletion of the words '*in the month commencing 1 May 2010*' in requirement (iii) and by the substitution of 10 months as the periods for compliance. Subject to these variations, I dismiss the appeal and uphold the listed building enforcement notice, and refuse listed building consent 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.

Preliminary matters

2. Although the appeal form does not include an appeal on ground (c), it is clear from the appellants' submissions that they consider that listed building consent is not required for the works that have been carried out, either because they are works of repair that do not affect the character of the listed building or because listed building consent has already been granted for them. The Council addressed these matters in its proofs of evidence and I will therefore consider an appeal on this ground.
3. At the Inquiry, the appellants confirmed that the property referred to in the listed building enforcement notice is registered as 144 (the ground floor shop) and 144A (the first floor residential unit). The Council did not challenge this and both parties accepted that I could amend the wording of the notice accordingly. I shall therefore do so, in the interests of accuracy and clarity.

Main issues

4. I consider that the main issues in this case are firstly, in respect of the appeals on ground (b): whether the allegations relating to the windows and the render have occurred as a matter of fact and if they have;

in respect of the appeal on ground (c), whether the works that have been carried out are already authorised, and if they are not;

on ground (d), whether the works that have been carried out were urgently necessary on the grounds of public safety and were the minimum necessary to achieve that aim and if they were not;

on ground (e); the effect of the works on the special architectural and historic character of the listed building and its setting within the Maldon Conservation Area. If this appeal fails then;

on ground (i), whether the requirements of the listed building enforcement notice would fail to restore the character of the building to its state prior to the carrying out of the alleged works.

Site and surroundings

5. The building at 144/144A High Street is a grade II listed structure attached to the adjacent listed building at No. 142 with which, together with No. 140 it originally formed a part. It is a timber framed structure below a pitched tiled roof and stands on a brick plinth.

6. The listing description suggests that the building was first constructed in the 16th Century, however an expert report¹ suggests an earlier date for the central core of the group, which is considered to have been a pair of 15th Century 'rentiers' or semi-detached hall houses. At some time in the history of the building, a jettied cross wing was added at the southern end and subsequently the original roof line was raised to give the original hall houses a full two storeys.
7. Other alterations have taken place since that time, including the underbuilding of the jettied first floor and a Georgian upgrading. This introduced the sliding sash windows and fully rendered elevations that were a feature of the building prior to the works that have recently been carried out by the appellants. The building stands within the Maldon Conservation Area and is one of numerous properties that had a similar 'make over' in the prosperous phase Maldon enjoyed during the late 18th/early 19th Centuries.
8. The building fell into disrepair in recent years and the appellants purchased it in 2007, with the aim of repairing it and bringing it back into beneficial use. A considerable amount of structural repair work has been undertaken to stabilise the building and this work is still on-going. During the course of the repairs, the appellants removed the external render, the first floor box sashes and the ground floor window frame that are subjects of the listed building enforcement notice.

Planning history

9. There have been a number of planning and listed building consent applications relating to the building, some of which are not relevant to this appeal. However, application ref: LBC/MAL/08/00425 gave consent for the '*removal of existing render and re-instatement of render to external elevations*'. The appellants maintain that this consent gives approval for replacing the render to the infill panels between the structural members, thereby exposing the timber frame of the building.
10. Other applications² sought permission to reinstate '*Tudor*' windows and a '*window in keeping with a 15-16th Century building*' into the first and ground floor openings on the front elevation of the main building and cross wing. These were both refused. Applications³ to replace the 20th Century shopfront with a bay window and entrance door were approved in 2007.

Reasons

Ground (b)

11. The appellants do not dispute that the first floor sash windows/boxes and the ground floor sash box have been taken out of their openings in the front elevation. However, they maintain that this was for the purpose of repair and the items are still on site. They also note that, at the time the Trust purchased the building, there were no sashes in the ground floor window and the frame had been modified so that any sliding sashes within the box could not have opened. These matters will be discussed in subsequent paragraphs.

¹ D. F. Stenning 2009

² Refs: LBC/MAL/09/00856 & LBC/Mal/10/00050

³ Refs: LBC/MAL/0701126 & FUL/MAL/07/01127

12. It is not disputed that the external render has been removed but the appellants submit that the alleged '*works to leave the whole timber frame permanently exposed*' are not a matter of fact and should be deleted from the listed building enforcement notice. However, the panels between the timber members have been re-rendered and the timbers have been limewashed. This indicates to me that works to implement the appellants' stated intention of permanently exposing the timber have already been undertaken. I therefore find no reason to amend the wording of the allegation in respect of the timber frame.
13. The issue of whether the removal of the windows for repair is authorised is covered under the appeal on ground (c) in subsequent paragraphs, but there is no dispute that the windows are not presently in their original positions. Therefore, for the reasons set out above, the appeal on ground (b) must fail.

Ground (c)

14. There was discussion at the Inquiry as to whether the repairs that were clearly needed to the first floor window cills could be carried out *in situ*, or whether the sash boxes needed to be removed in order to do the work. In my experience, which is supported by the views of the Council's structural engineer and the witness from the Society for the Protection of Ancient Buildings, it is not normally necessary to remove the whole unit to undertake repairs to the cill.
15. Notwithstanding this however, I accept that, if the sash boxes and windows that have been taken out of their openings were to be replaced after like-for-like repairs had been carried out, then such repairs would not need listed building consent. However, there is an expressed intention to change the window design and applications to this end have been submitted. The openings have also been modified in anticipation of reinstating Tudor style windows.
16. This indicates to me that, without the requirements of the listed building enforcement notice, there would be a strong possibility that the sashes would not be replaced voluntarily. It is an unsatisfactory situation to have temporary windows in the property and as no listed building consent has been granted for leaving the openings in the condition they are at present, the appeal on ground (c) in respect of the windows consequently fails.
17. Turning to the matter of the render, the appellants submit that listed building consent LBC/MAL/08/00425 allows the exposure of the timber frame. The description of the works refers to the '*removal of existing render and re-instatement of render to external elevations*' and a condition attached to the consent requires the work to be carried out in accordance with both the drawings and specification attached to the application.
18. The appellants point to paragraph 2.9 of the specification which refers to the re-rendering of '*panels and wall*'. They consider that the '*wall*' referred to is the brick plinth at ground floor level and that consequently only the panels between the frame members need to be re-rendered and not the timber itself.
19. However, the drawings submitted with the application do not show or note the exposure of the timber frame and there is no mention of this proposal in any of the other documentation. This work has radically changed the external appearance of the building and would therefore also require the grant of planning permission.

20. No such planning permission had been granted by the date of the Inquiry and I am not persuaded that anyone examining the listed building application would gain the impression that the timbers were to be left un-rendered. The reference to 'wall' in the specification would be likely, in my view, to be taken to include the frame as well as the panels. The report from the Assistant Conservation Officer makes no mention of exposing the frame and such a change would certainly have been the subject of discussion, had it been considered as part of the proposals.
21. I note that there the appellants had discussions with the Council about exposing the frame and that the Council indicated that this might be a possibility. However, this took place in 2009, after the grant of listed building consent for the removal of the render. The Council consistently maintained its stance that listed building consent would be needed for leaving the frame exposed and that this had not been granted by LBC/MAL/08/00425. I conclude therefore that the appeal on ground (c) in respect of the render also fails.

Ground (d)

22. The appellants maintain that the works were necessary for the safety of the public and the structural integrity of the building. They tell me that glass was falling out of the windows and render was dropping off, endangering the public on the High Street. I am also told that the insertion of the Georgian sash windows, which entailed cutting some of the structural members of the timber frame, had weakened the building, causing it to become unstable.
23. However, I am not persuaded that it was urgently necessary on safety grounds to remove the windows in their entirety. Temporary boarding of the sashes could have prevented any glass falling into the street and the building was not in any danger of collapse because of their retention. The building has survived in its current form for over 200 years and, whilst it has undoubtedly moved and 'racked' over time, this is predominantly due to the decay of some of the main structural members, rather than the historic works to the window openings.
24. With regard to the render, listed building consent was granted for its removal and this is not a contentious matter. It is the form in which it is to be replaced that is at issue between the parties and this is not relevant to an appeal under ground (d). Consequently, I conclude that the works were not urgently necessary for health and safety or the preservation of the building and the appeal on ground (d) fails.

Ground (e)

25. In the event of other grounds of appeal failing, the appellants ask me to grant listed building consent for the retention of the building in its current condition. As I do not have an application for the 'Tudor' replacement windows to consider as part of this appeal, the only option for which I could grant listed building consent in respect of the windows is to leave the openings as they presently exist, with temporary inserts. This situation is, as previously noted, unsatisfactory and I find that it is causing harm to the character and appearance of the listed building and damaging its historic interest. I shall not, therefore, grant listed building consent for the existing window openings.

26. I am told that the decisions to refuse the applications for the 'Tudor' windows that have already been submitted to the local planning authority will be challenged at appeal. However, that matter is not before me and should there be any future decision to allow the insertion of different windows, this would then override an extant listed building enforcement notice.
27. The appellants are of the view that the exposed timber frame is an improvement on what they refer to as the '*pseudo Georgian façade*' and consider that, in its present condition, the building is of greater historic interest than previously. However, the changes that were carried out in the Georgian era reflect the evolution of the building over the years and are, in themselves, an important part of its history. In any event, much of the timber frame is still visible from within the building and the evidence of its Tudor origins is therefore still readily apparent.
28. Guidance on the restoration of listed buildings is given in the Practice Guide that accompanies Planning Policy Statement 5: Planning for the Historic Environment (PPS5). Paragraph 160 of the guide sets out circumstances where such works might be acceptable and includes the provisos that the work is justified by compelling evidence of the evolution of the heritage asset, that it would respect its previous forms and that the current form of the building is not the result of a historically significant event.
29. I can appreciate that parts of the exposed timber frame appear attractive and I understand the public support the scheme has received. I also acknowledge the hard work and enthusiasm expended by the appellants in taking on and repairing the building. Nevertheless, I am not persuaded that their philosophical approach to the restoration is valid or the best solution for the listed property.
30. There have been many changes to the structure over the years, including the addition of the cross wing, the raising of the roof and the loss of the jettied first floor. There is also little evidence to support the contention that the whole of the timber frame as it exists today, particularly the underbuilt jetty, was ever exposed. Some of the timber is not of the best quality, lending weight to the theory that it was never intended to be left unrendered in the manner sought by the appellants' proposals. It is therefore unlikely that there was ever a point in its history when the building appeared in the form that the appellants now want to create.
31. In any event, parts of the frame have suffered decay and, whilst they have now been repaired, this has given the frame a patched quality in places which is rather unsightly. Some of the detailing of the repair work has been criticised by witnesses supporting the Council and there are fears that without a covering of render there could be water ingress that would lead to further decay. From what I saw at the site visit, I too have concerns that this could occur.
32. A properly applied three-coat render on timber lathes would provide the timber frame with protection from the weather whilst still allowing the building to 'breathe'. There is consequently no particular reason, other than the appellants' own preferences, to retain some examples of the important historic changes that the building has undergone, whilst discarding others.

33. It is clear that, in late Georgian times, the building was given a similar treatment to many other buildings in Maldon. These buildings now make an important contribution to the Maldon Conservation Area, and combine Tudor origins with later modifications that reflect the changing fortunes and historic expansion of the town.
34. The addition of Georgian features such as the lime-based rendered finish scored with ashlar lines to imitate stonework and sash windows with slender glazing bars also gave the building a simplicity and elegance typical of the era. To remove them now, in favour of a conjectural and possibly inaccurate restoration, would irrevocably destroy some of the building's history and detract from its character. It would consequently also fail to preserve the established character of the conservation area.
35. For all these reasons the works would fail to comply with national planning policy on listed buildings and conservation areas, the aims and objectives of saved policies BE1, BE13 and BE14 of the Maldon District Replacement Local Plan 2005 and the policies of PPS5, as amplified in the Practice Guide. I therefore conclude that the appeal on ground (e) should fail.
36. I note that the appellants consider the Council's attitude to their restoration proposals is inconsistent, in that planning permission and listed building consent have been granted for the re-instatement of a Georgian style bay window and doorway on the ground floor of the building, in place of the existing 20th Century shop front. However, the present shop front is of no architectural merit and there is photographic evidence of the former arrangement, which would not therefore be a conjectural insertion. Consequently, that scheme is not directly comparable to the appeal proposals.

Ground (i)

37. The appellants contend that the requirements of the listed building enforcement notice would not serve the purpose of restoring the character of the building to its former state. However, they clearly consider the 'former state' to be the Tudor origins, before the Georgian alterations. This is a misconceived assumption, because ground (i) refers to returning the character of the building to that which it possessed immediately before the contentious works were carried out. At that time, the building had sash windows and the elevations were rendered. The Council is seeking, through the listed building enforcement notice, to ensure that these elements are restored.
38. The fact that there were no sashes in the ground floor window at the time of purchase does not absolve the current owners of the listed building from carrying out the required replacement called for in the second schedule of the listed building enforcement notice. There are photographs, taken between 1986 and 2003, after the date of listing, which show the window with sashes. The appellants, as owners, now have the responsibility of replacing these missing elements.
39. The sashes each had six panes and it is not clear when they were inserted. However, in a photograph dating from about 1900, the window had eight over eight sashes, matching the first floor window above. It is most likely that this was the window that was installed as part of the works carried out in Georgian times and it is this design that the Council seeks to replace.

40. Given that the parties agree that an entirely new window will be needed for the opening, it does not seem to me to be unreasonable to seek the insertion of the earlier form of the window, the detailing of which would match the others on the High Street elevation.
41. Although the render was removed with consent, it has not been replaced and I have found that the subsequent works that have been carried out are intended to leave the frame permanently exposed. The requirements to replace the render and the windows will therefore ensure that the character of the building is restored to its former state and the appeal on ground (i) therefore fails.

Other matters

42. Although there has been no appeal made on ground (h), that is that the times to complete the requirements of the listed building enforcement notice are unreasonably short, the notice contains specific dates by which the works were to have been carried out. These dates have now passed and I must, therefore, set a new time scale for the completion of the requirements.
43. It is agreed between the parties that the external rendering can only be carried out when there is no risk of frost. It is also necessary for the window reinstatement to be completed before the rendering is carried out. I accept that these are specialist works and it is unlikely that contractors would now be available to carry them out during the summer of 2010.
44. I shall therefore amend the listed building enforcement notice to require all the works to be completed within 10 months of the date of issue of this decision, which will allow time for the window repairs prior to the rendering, which can then be carried out during the late spring of 2011. I shall amend the wording of requirement (iii), whilst retaining the obligation to carry out the work when there is no risk of frost damage.

Conclusions

45. For the reasons given above I conclude that the appeal should fail.

Katie Peerless

Inspector

APPEARANCES

FOR THE APPELLANT:

David Whipps, LARTPI He called Vernon Wilkinson	Solicitor, Holmes and Hill LLP Rochford & South East Building Preservation Trust
Christopher Baranowski Dip Arch(AA) RIBA	Architect, Rochford & South East Building Preservation Trust

FOR THE LOCAL PLANNING AUTHORITY:

Richard Turney	Of Counsel, instructed by the Solicitor to Maldon District Council
He called	
Timothy Howson BA(Hons) Dip Bldg Cons(AA)	Assistant Conservation Officer, Maldon District Council
Jacqueline Longman MSc	Conservation Officer, Maldon District Council
David Lodge	Society for the Protection of Ancient Buildings

INTERESTED PERSONS:

Mrs Ruby Bailie	Local resident
Mrs Jill Hipsey	Local resident
Mrs Barbara Armitage	Local resident
Alan Chapman	Local resident

DOCUMENTS

- 1 SPAB Technical Pamphlet 'The Repair of Timber Frames and Roofs'
- 2 Full copy of application LBC/MAL/08/00425
- 3 CV of Dr Joseph Bispham
- 4 Letter from Derek M Rona
- 5 Notes of Mr Turney's closing submissions
- 6 Newspaper article on repair of building in West Street, Rochford
- 7 Details of the restoration of Swan Hall, Southend on Sea

If you require an alternative accessible version of this document (for instance in audio, Braille or large print) please contact our Customer

Services Department:

Telephone: 0870 333 1181

Fax: 01793 414926

Textphone: 0800 015 0516

E-mail: customers@english-heritage.org.uk