



Appeal Decision

Site visit made on 1 November 2022

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2022

Appeal Ref: APP/F0114/F/21/3287443

The land at 10 - 16 Hampton Row, Bathwick, Bath BA2 6BJ

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
 - The appeal is made by Paul Stevens against a listed building enforcement notice issued by Bath and North East Somerset Council.
 - The enforcement notice was issued on 25 October 2021.
 - The contravention of listed building control alleged in the notice is failure to comply with condition No 2 of a listed building consent Ref 14/04369/LBA granted on 8 March 2016.
 - The works to which the consent relates are internal and external alterations for the renovation and extension of 11-14 Hampton Row to create 4 no. new 3 bedroom dwellings and 4 no. new 1 bedroom basement flats.
 - The notice alleges that the condition has not been complied with in that an unauthorised and inappropriate use of an external wall material (reconstituted stone) has been used on the rear and side walls without listed building consent.
 - The requirements of the notice are:
 - Requirement 1 Demolish the outer skin wall of the approved rear extension to Nos 12-14 Hampton Row. (The outer skin wall of Nos 12-14 Hampton Row is shown in APPENDIX A attached to this notice).
 - Requirement 2 Rebuild the outer skin wall of the approved rear extension to Nos 12-14 Hampton Row using natural Bath Ashlar stone to match that of the original external stonework of the Grade II listed building in terms of composition, colour, random dimensions, and style of mortar joints. An example of the original external stonework is shown in APPENDIX B attached to this Notice.
 - The period for compliance with the requirements is nine months.
 - The appeal is made on the grounds set out in section 39(1)(b), (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The appeal is dismissed and the listed building enforcement notice is upheld.

The Appeal on Ground (b)

2. An appeal on this ground is that the matters alleged to constitute a contravention of section 9(2) of the Act, that a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent, have not occurred. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
3. Condition 2 of listed building consent reference 14/04369/LBA required the submission of samples of external materials to the local planning authority and their approval prior to the development commencing. The development was required to be carried out in accordance with those approved details.

4. By decision reference 18/04212/COND dated 30 August 2019 the Council discharged that condition, with the details submitted listed on that decision. These included "Stone – Bath stone from Moonraker Masonry, Corsham (Photo dated 24.09.2018 'ashlar wall')".
5. It is common ground that the walls have been constructed in the material shown on the photo dated 24.09.2018 referred to in that decision notice. However, that is a reconstituted stone and not Bath stone from Moonraker Masonry, Corsham. The main issue under this ground is, therefore, whether the reconstituted stone used on the side and rear elevations of the building was approved by the listed building consent reference 14/04369/LBA and decision reference 18/04212/COND. If they had been approved, the contravention of section 9(2) of the Act would not have occurred.
6. The details submitted with the application for listed building consent under reference 14/04369/LBA are consistent in referring to the use of Bath stone for the construction of the rear and side walls of the development. It is reasonable for the Council to have inferred that would be a natural stone. Nevertheless, condition 2 of that listed building consent would have enabled another material to be submitted and approved, should that have been considered appropriate.
7. The Council visited the site to view the materials intended to be used in processing the application to discharge condition 2 of the listed building consent, reference 18/04212/COND. According to the site visit notes, they viewed a panel of stone that had been vandalised but was the panel in the photograph dated 24.09.2018. They noted that the Bath stone was from Moonraker Masonry, Corsham. By email exchange dated 5 October 2018, they sought confirmation of the materials proposed and the appellant responded to state that the "Bath stone is quarried at Moon Raker Masonry Corsham nr Bath".
8. The approval of details reference 18/04212/COND is clear that the Council intended to approve Bath stone from Moonraker Masonry, Corsham. It seems to me that the inclusion of reference to the photograph within brackets on the decision notice was inserted as an aid to interpret what the Council were permitting. However, the decision approved what was before the brackets and not what was within the brackets. What is contained within the brackets ought not to differ from the preceding phrase but, in this case, it did. The decision was to approve the Bath stone, not what was within the brackets. The effect of what is set out is somewhat confusing and unclear. Nevertheless, on the balance of probability, I consider that the Council did not approve the use of the reconstituted stone shown in that photograph.
9. The Council viewed the samples of material on site. The photographs indicate that they saw the Bath Stone from Moonraker Masonry as well as the reconstituted stone. They are both shown in one of the photographs supplied. However, the reconstituted stone is not mentioned in the decision, other than being shown in the photograph dated 24.09.2018
10. I note that the Bath stone supplied by Moonraker Masonry, Corsham was intended only for coping and verges and was not intended for use as facing stone on the external walls. However, it appears that the Council were not aware of that at the time of their decision. No other stone was approved in the discharge of the condition that would be suitable for the external walls. Consequently, if any other material was proposed to be used, this should have

been subject of a variation of the approval under the discharge of details, reference 18/04212/COND.

11. For these reasons, the works comprising the construction of the extension to the listed building with external wall materials other than those approved has occurred. The works fail to comply with the conditions attached to listed building consent reference 14/04369/LBA and approval of details reference 18/04212/COND.
12. On that basis, I conclude that the appeal under ground (b) should fail.

The Appeal on Ground (j)

13. An appeal on this ground is that steps required to be taken by virtue of section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building.
14. The appeal on this ground has been made on the basis that the reconstituted stone was approved, but that the relatively wide mortar joints do not reflect those on the remainder of the building. On that basis, the appellant suggests that the notice should specify works to repoint the building in a lime stone dust mortar to overcome the harm to the heritage asset. However, the enforcement notice relates only to the material used on the rear and side elevations. I have concluded in the appeal on ground (b) that the blocks used for the outer skin were not within the list of approved materials.
15. The requirements provide that the outer skin wall of the building should be reconstructed in Bath Ashlar stone. That would result in removal of the reconstituted stone and replacement with a stone that better reflects the Bath stone that I have concluded the Council had permitted. Given my conclusion on the appeal under ground (b), the requirements do not exceed what is necessary to alleviate the effect of the works executed to the building.
16. For these reasons, I conclude that the appeal under ground (j) should fail.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the listed building enforcement notice.

AJ Steen

INSPECTOR