

Enforcement List Item 2

Committee Date: 06.07.2016

Case No. ENF/13/00036/UDUR

Grid Ref: 302048 106988

Address:

5 Ways Lane, Cullompton, Devon, EX15 1DL

Alleged Breach:

Unauthorised removal of timber windows and replacement with uPVC windows in a grade II listed building.

Recommendations:

That Members, having regard to the provisions of the Mid Devon Development Plan in accordance with Section 38, Planning (Listed Building and Conservation Areas) Act 1990, (as amended) ("the Act") should grant authority to the Legal Services Manager to issue a listed building enforcement notice, requiring the removal of the two uPVC windows on the elevation, and the replacement with wooden windows to a specification provided by the Local Planning Authority. In addition, that authority be given to the Legal Services Manager to take any legal action deemed appropriate including prosecution or Direct Action in the event on non-compliance with the notice.

Site Description:

The property is a 17th century, grade II listed two storey residential cottage located within the Cullompton conservation area. It was created from the rear wing of a complex of buildings that were once part of 15 Pound Square.

Site Plan:



Site History:

14/00894/LBC Listed building consent for the installation of replacement timber windows PERMIT

Development Plan Policies:

Mid Devon Local Plan Part 3 (Development Management Policies)

National Planning Policy Framework paragraphs 132 and 134

Mid Devon Local Plan

Policy DM2 – High quality design

Policy DM27 - Development affecting heritage assets

Reasons/Material Considerations:

It was noted during a review of the Cullompton Conservation area in early 2013 that two wooden windows in the northern elevation of the building had been removed and replaced with uPVC units. One of these windows was a circular headed twelve pane sash window at first floor level, the other was a small square window at first floor level. There is a further sash window remaining at first floor level which is timber and single glazed.

Under sections 7 and 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) works that affect the character as a building of special architectural or historic interest require specific consent, and to carry out such works is an offence. It is the opinion of officers that the uPVC windows are inappropriate in appearance and have a detrimental impact on the character of the building; the materials used in both windows is unacceptable, with the design of the window at first floor being particularly inappropriate.

At the Planning Committee in November 2013, an enforcement report was considered by Members in relation to nineteen properties that fell within the Cullompton Conservation Area and Direction Article 4(2) Area. It was resolved at that meeting that delegated authority was to be given to the Legal Services Manager to defer the service of a Listed Building enforcement notice for 3 months to allow for the submission of the Listed Building consent application. In the event that no application be submitted the service of the Listed Building Enforcement Notice to require that the 2 x unauthorised uPVC windows on the northern elevation are removed and replaced with wooden windows to a specification provided by the LPA based upon historical detail within a 6 month compliance period.

Replacement windows (Alteration and Works) that affect its character as a building of special architectural or historic interest require Listed Building Consent, and it was hoped that this resolution would encourage the owner of the property to resolve the matter without the need for formal proceedings. Further negotiation took place, and an application for listed building consent for the installation of replacement timber windows (reference 14/00834/LBC) was submitted, and subsequently approved on 17th September 2014. A condition was attached to that approval which require the works to be begun within one year of the date of the consent.

The works to replace the windows have not taken place within the specified one year period. Consequently, the listed building consent has now lapsed. Despite letters having been sent, no contact has been made by the owner. Officers consider the most appropriate way forward is the issue of a listed building enforcement notice requiring the removal of the unauthorised windows, and their replacement with timber windows to a specification approved by the Conservation Officer.

It is considered that an appropriate time for compliance should be six months after the notice takes effect to allow the owner adequate opportunity to source the bespoke timber windows required and to have them fitted to the property.

Human Rights and Equality Issues:

When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies.

In addition, Members should note that the Human Rights Act 1998 (HRA 1998) makes it unlawful for the Council to act incompatibly with Convention rights. Decisions by the Committee must take account of the HRA 1998. Therefore, Members need to be aware of the fact that the HRA 1998 makes the European Convention on Human Rights (the Convention) directly applicable to the actions of public bodies in England and Wales. The specific parts of the Convention relevant to planning matters are Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

Article 6 deals with procedural fairness. If normal committee procedures are followed, it is unlikely that this article will be breached.

Article 1 of the First Protocol and Article 8 are not absolute rights and infringements of these rights protected under these are allowed in certain defined circumstances, for example where required by law. However any infringement must be proportionate, which means it must achieve a fair balance between the public interest and the private interest infringed and must not go beyond what is needed to achieve its objective.

Article 14 states that the rights under the Convention shall be secured without discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

The power to issue an Enforcement Notice is discretionary and should only be used where the Local Planning Authority are satisfied that there has been a breach or breaches of planning control. It must also be satisfied that it is expedient to issue the Notice having regard to the provisions of the Development Plan and to any other material considerations. Consequently the Council must decide based on the particular circumstances of each individual case the question of expediency. The decision to take enforcement action must be reasonable and not based on irrational factors or taken without proper consideration of the relevant facts and planning issues or based on non-planning grounds.

Options for action or remedy:

The list of options available is as follows:

Take no action: - This is not considered to be appropriate as the windows are not acceptable and are having a detrimental impact on the character of this listed building.

Prosecution - Works to a listed building are an immediate offence, and this remains an option. However, at this time your officers consider that it should be a priority to ensure the harm to this historic building is remedied, and prosecution will not secure this.

Issue a Listed Building Enforcement Notice - This is considered to be the most appropriate way to resolve this matter, and ensure that the building is returned to its previous condition.

Reasons for Decision:

As outlined in the report above, the current uPVC windows are considered by your Officers to be unacceptable. The owner has been given a substantial period of time to resolve the matter but has failed to do so, and formal action is now needed to bring this matter to a conclusion. The design and materials of the windows are considered to detract from the character and appearance of the listed building contrary to Mid Devon Local Plan Policy DM27 and guidance in the National Planning Policy Framework.

Steps Required:

The uPVC windows to be removed and to be replaced with timber windows to a specification to be provided by the Local Planning Authority at the time of issuing the Notice.

Period for Compliance:

Six (6) months from the date the Notice comes into effect.