

## Appeal Decision Notice

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Decision by M J Culshaw a Reporter appointed by the Scottish Ministers

- Listed Building Enforcement Appeal reference: P/LBE/270/12
- Site Address: Tower Place, Queen Street, Tain IV19 1AP
- Appeal by William H Parsons against the listed building enforcement notice dated 15 June 2007 served by The Highland Council
- Alleged breach of listed building control: Installation of PVCu windows and doors and PVCu frames to the aforementioned windows and doors of Tower Place, Queen Street, Tain IV19 1AP, as identified on the plans attached to the notice.
- Grounds of appeal under s.35(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:
  - (e) that listed building consent ought to be granted for the works;
  - (f) that copies of the notice were not served as required by section 34(6);
  - (h) that the period specified in the notice as the period within which any steps required thereby are to be taken falls short of what should reasonably be allowed;
  - (i) that the steps required by the notice would not serve the purpose of restoring the character of the building to its former state.
- Date of site visit by Reporter: 23 October 2007

Date of appeal decision: 18 December 2007

### Decision

I dismiss the appeal, refuse to grant listed building consent for the matters covered in the listed building enforcement notice, and direct that the notice be upheld. Subject to any application to the Court of Session, the listed building enforcement notice takes effect on the date of this decision notice, which constitutes the determination of the appeal for the purpose of section 131(3) of the Act.

### Reasoning

1. I deal first with the appeal under ground (f). Although the appeal forms indicate that this ground of appeal is relied on, the appellant's statement in support of the appeal makes no reference to any error in the service of the notices other than by indicating that this is the first correct notice to be served, and questioning whether it is out of time after seven years. The grounds of appeal set out in section 35 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 do not provide for any time limitation on the service of listed building enforcement notices and therefore it is not out of time. I have no



evidence to suppose that the notices were not served as required by section 34(6) of the Act. This ground of appeal therefore fails.

2. Appeal ground (e) is that listed building consent ought to be granted for the works the subject of the notice. This question was previously considered in 2006 by another reporter in relation to an appeal against the refusal of listed building consent (ref LBA/270/009). That appeal related to the proposed retention of a total of 16 windows and 2 doors in these premises. After carefully considering the essential attributes of the Tain Conservation Area within which the appeal premises lie, and the particular features of this listed building, he concluded that only some of the windows adversely affected the character or appearance of the property as a listed building and that of the conservation area sufficiently to warrant refusal of consent. These were the two main street-facing windows, three of the upper west windows and two windows either side of the first doorway, all of which he considered were more open to public view. His decision was to grant listed building consent in respect of all other openings, but to dismiss the appeal and refuse consent in respect of the openings he had identified.

3. The openings for which listed building consent was refused are those the subject of this listed building enforcement notice and appeal. Having seen the site and its surroundings I agree with the reporter's assessment of these openings and his decision to refuse consent. I do not agree with the appellant that these windows make the building quite good to look at – rather the reverse. Like the previous reporter I have taken account of the examples of plastic and replacement windows in buildings both elsewhere in the attractive Tain Conservation Area with its combination of impressive public and private buildings in local sandstone and in the vicinity of Tower Place. They do not alter my judgement that the detailing of these windows, the means of opening, the lack of differentiation between upper and lower panes and the use of PVCu in their construction are alien to the type of traditional sash and case window which would have preceded them, and thus are unsympathetic to and out of character with the listed building. The windows harm the appearance of the building as well as damaging their surroundings in terms of the character and appearance of the Tain Conservation Area. Appendix II of the Ross and Cromarty East Local Plan sets out the plan's aims of avoiding unsympathetic alterations to historic property within, amongst others, the Tain Conservation Area, and the retention of these windows would clearly be contrary to that aim. It follows that I see no merit in the argument that consent should be granted in response to this appeal. There have been no changes of circumstances since the earlier appeal decision drawn to my attention which would justify an effective reversal of that decision. I have noted the appellant's offer to plant trees to screen views of the windows, but this would not affect the main views of the windows from nearby, and in any event has not altered my judgement. This ground of appeal therefore fails.

4. I deal next with appeal ground (i) which states that the steps to be taken would not serve the purpose of restoring the character of the building to its former state. Although the appellant indicates that in his understanding the windows replaced many styles of wood and metal which had been renewed over many years, he has provided no evidence to support that assertion. All evidence of the condition and appearance of the windows before the present ones were installed has disappeared. The listing description refers to 16 pane glazing to the principal 3 bays of the building and while this is not conclusive of their construction and method of opening, on the balance of probabilities I have concluded that the planning authority's assessment of their previous appearance is correct. In the

circumstances the requirement of the listed building enforcement notice that the existing windows should be removed and replaced with timber sliding sash and case windows and timber frames, all to replicate the building's original fenestration, seems to me to be reasonable and proportionate.

5. Finally I deal with appeal ground (h). A period of three calendar months seems to me on the face of matters to be a reasonable period in which to procure suitable replacement windows and carry out works of this scale. The grounds of appeal give no reasons for this element of the appeal which would enable me to conclude otherwise.

6. I have taken into account all other matters which have been put forward in support of this appeal, but none is sufficient to alter my conclusion that the listed building enforcement notice should be upheld.

*This is the version issued to parties 18 December 2007*

M J Culshaw  
Deputy Chief Reporter