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Decision by Sue Bell, a Reporter appointed by the Scottish Ministers

- Listed building enforcement appeal reference: LBE-270-2001
- Site address: 10 Castle Road, Grantown on Spey, Morayshire PH26 3HJ
- Appeal by Mr Stephen Queen against the listed building enforcement notice dated 30 January 2019 served by Highland Council
- Alleged breach of listed building control: Unauthorised installation of uPVC windows and a uPVC front door in a Category C listed building within the Grantown on Spey Conservation Area without listed building consent.
- Ground(s) of appeal under s.35(1) of the Act: See paragraph (1) below.
- Date of site visit by Reporter: 29 April 2019

Date of appeal decision: 23 August 2019

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## 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 variation of the terms of the notice by:

- (1) In Part 4 iii - deletion of the last sentence "The design of which.....prior to installation."
- (2) In Part 4 - the deletion of the words "The time period(s) for compliance: by 30 September 2019." and the substitution therefore of the words "The time period(s) for compliance: 30 September 2021".

Subject to any application to the Court of Session, this notice takes effect on the date of the decision, which constitutes the determination of the appeal for the purpose of Section 35(3) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

## Reasoning

1. The appellant listed four grounds of appeal as provided for by section 35(1) of the above Listed Buildings Act:

- (d) that (i) works to the building were urgently necessary in the interests of safety or health, or for the preservation of the building;
- (e) that listed building consent ought to be granted for the works;
- (g) the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out; and
- (k) that steps required to be taken by virtue of section 34(2)(c) exceed what may reasonably be required to bring the building to the state in which it would have



been if the terms and conditions of the listed building consent had been complied with.

2. Ground (k) applies to circumstances where listed building consent has been granted, but it is common ground between the parties that no such consent was applied for or issued. Having considered the appellant's statements in relation to ground (k), it appeared to me that his comments were an appeal under Ground (j) - that the steps required to be taken by virtue of section 34(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building. In response to my request for clarification, the appellant has confirmed this. The authority was given the opportunity to comment on this amended ground of appeal, but confirmed that it did not have further comments.

3. The appellant has also raised concerns about the costs associated with measures included on the Enforcement Notice. I have interpreted these as an appeal under Ground (h), that the time allowed to comply with the notice is too short.

4. In summary, I have therefore considered the appeal under Grounds d, e, g, h, j and k as allowed for by 35 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

#### Works to the building were urgently necessary (Ground d)

5. The appellant has stated that he needed to replace the windows for several reasons including in the interests of security, safety, health and energy efficiency. Based on the information provided by the appellant, including the report provided by the builder, I accept that the windows which were removed were in a poor state of repair and required some remedial action. However, I do not consider that their condition was so poor that they required immediate and urgent replacement, which did not allow time for the appellant to seek consent for the works. The fact that the appellant had already obtained pre-application advice from the authority concerning replacement windows and had sought a quotation for installation of new windows, indicates to me that there was ample time to apply for the necessary consents.

6. Nor do I consider that total replacement of the windows was the minimum measure immediately necessary in the interests of safety, health or the preservation of the building. Other measures could have been employed on a temporary basis to ensure the property was secure and water tight.

7. For the reasons set out above I conclude that the appeal under Ground (d) fails.

#### Listed building consent ought to be granted for the works (Ground e)

8. In considering whether listed building consent ought to be granted for the works, I am required by section 14(2) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. As the property lies within the Grantown-on-Spey Conservation Area, I am also required by section 64(1) of the same act to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area in which the building is located.

9. Policies within the Cairngorms National Park Local Development Plan (Policy 1:7; Policy 3:4; and Policy 9) also provide support for the protection and enhancement of the appearance and character of the dwelling and surrounding area; for alterations to respect the design, massing, proportions, materials and general visual appearance of the area; and safeguarding listed buildings.

10. I note that the windows which were removed had aluminium frames and hence were not original features. The date at which these windows were replaced is not known. The authority has provided an image of the property, which it states pre-dates the listing of the property. This appears to show that the upper windows were wooden sash and case at that time. However, it is less clear whether the ground floor windows are wooden framed, or had already been replaced by aluminium frames. The style, materials and opening mechanism of the windows at time of listing is not specified.

11. Nevertheless, National guidance published by Historic Environment Scotland and local policies set out that uPVC will rarely be acceptable within a listed building. This applies even where a building's original windows have previously been replaced. In these circumstances, new windows should aim to regain or restore the original design, or improve the situation.

12. The appellant had sought and obtained pre-application advice from the authority, which clearly stated that the installation of uPVC windows would not be supported as these would fail to preserve or enhance the character of the listed building within the Grantown-on-Spey Conservation Area.

13. During my site inspection I viewed windows throughout the conservation area. As the appellant has noted, a number of properties in the immediate vicinity, including the neighbouring property, have non-conforming replacement windows and doors. However, more widely within the conservation area, I saw that there remains a preponderance of wooden sash and case windows, mainly painted white. By comparison, the frames of the replacement windows subject to this appeal appeared 'heavy' and the proportions of the frame and glazing were different to traditional sash and case windows. Also, their mechanism of opening does not mimic sash and cord opening and they appeared clearly different to the predominant style that I observed within the conservation area. Likewise, the door appeared a conspicuous modern addition.

14. I note that the appellant considers that the new windows and door are an improvement, both visually and practically, on the previous ones. Whilst I accept that functionally they may be an improvement, I do not find that they are an improvement in terms of maintaining or enhancing the special architectural interest of either the listed building or the Grantown-on-Spey Conservation Area. For the reasons set out above, I find that the brown uPVC windows and door do not restore the original design of the building and are not appropriate to the age and architectural style of the building. The introduction of uPVC into a listed building is also contrary to national and local policies. In conclusion, I find that the windows, by virtue of their massing, design, materials and opening mechanism fail to preserve the listed building and also fail to preserve or enhance the character or appearance of the Grantown-on-Spey Conservation Area and as such listed building consent should not be granted for the works. Therefore, the appeal fails under Ground (e).

Requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out (Ground g)

15. In order to restore the building to its condition before the most recent works were carried out, it would be necessary to re-install the windows that were removed. This is neither practical nor desirable. The appellant states that the previous windows have been destroyed. In any case, the windows that were removed were themselves replacement windows, which were not considered to preserve the special architectural or historic interest of the building or to preserve or enhance the character or appearance of the Grantown-on-Spey Conservation Area.

16. In such circumstances, S34(2)(b) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 allows for the local authority to specify works which they consider are required in order to alleviate the effect of the works which were carried out without listed building consent.

17. In this case, the authority has set out three steps to alleviate the works. Two of these requirements relate to the removal of the uPVC windows and door. As these are the features that have been added to the property and which detract from the architectural and historic interest of the property, this is an obvious form of corrective action.

18. The third requirement for corrective action has two elements: replacement of the uPVC windows with a traditional sash and case design and a timber door appropriate to the age and character of the building; and approval of the design of these with the planning authority. I will consider each of these elements separately.

19. Other than replacing the windows that have been removed and destroyed, it is not clear to me what steps less than those specified in the enforcement notice would be feasible and the appellant does not suggest what lesser steps would be appropriate.

20. Given the adverse effect that the replacement windows have on the character of the building of special architectural or historic interest and on the character and appearance of the Grantown-on-Spey Conservation Area, I do not consider that it would be either acceptable or desirable to take no corrective action.

21. In conclusion, I find that it would not be possible or desirable to reinstate the windows that have been removed. In that case, the requirements set out by the notice, to replace the uPVC windows and door with timber windows of a traditional sash and case design and a timber door appropriate to the age and character of the building do not exceed what is necessary to alleviate the effects of the works.

22. As noted above, the authority has included a requirement that the design of the replacement windows and door should be agreed with and approved by the planning authority prior to installation. Given the background to the installation of the uPVC windows, I understand why the authority might consider this requirement desirable. However, an Enforcement Notice must be clear and unambiguous in setting out what restorative action is required. Requiring approval of the design would introduce uncertainty about what needs to be done. This could present difficulties in determining whether an offence is committed if the agreement or approval of the planning authority could not be obtained.

23. Having considered the requirements for corrective action as a whole, I do not consider that the notice is a nullity. I find that the requirements set out in 4i – iii to remove the uPVC windows and door and to introduce timber windows of a traditional sash and case design and a timber door appropriate to the age and character of the building, provides sufficient clarity of what the appellant is required to do. It is only the last sentence of 4 iii, which requires the authority's approval, which would introduce any element of uncertainty.

24. Section 37 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 allows me to correct any defect in a listed building enforcement notice or to vary its terms if I am satisfied that this can be done without injustice to the appellant or the planning authority. I conclude that removal of the requirement to obtain the authority's approval can be omitted without any injustice to either party as the substance of the notice and the actions required (removal and replacement of the non-conforming windows and door) remain unchanged.

25. Whilst the appellant would not be required to obtain approval of the authority, there would be nothing to prevent him from seeking the authority's views and advice on what style of windows and door would be appropriate to the age and character of the building. Given the presence of other non-conforming windows and doors within the Grantown-on-Spey Conservation Area, the appellant may be best served by obtaining advice from the authority in preference to drawing on inspiration from surrounding properties.

26. For the reasons set out above, I find that the notice, in requiring removal of the non-conforming windows and door and their replacement with the specified types of window and door, does not exceed what is required to restore the building. Hence the appeal fails under Ground (g). Inclusion of the clause to require the authority's prior approval of designs for the replacement windows and door would introduce an element of uncertainty into what are otherwise a clear set of requirements. Consequently, I have amended the notice to remove this requirement.

#### Time allowed is too short (Ground h)

27. The appellant is concerned about meeting the costs of replacing the windows. The notice took effect on 10 March, and allowed a period of a little over six months for compliance (until 30 September 2019).

28. I appreciate that it may take some time to source, order and finance the replacement windows and door. I accept the suggestion from the authority that a period of 2 years would be a more reasonable time scale. I am satisfied that extending the period to 2 years would not significantly worsen the impact on the listed building or conservation area but would provide further time for the appellant to obtain the necessary funding. Given the time that has elapsed since the notice was served, I have determined this period as two years from the date of compliance of the original notice. The appeal under Ground (h) therefore succeeds and I have modified the time period accordingly.

#### The steps required exceed what is necessary to alleviate the effect of the works on the building (Ground j)

29. As noted under my discussion of Ground (g), it is not possible or desirable to replace the windows that were removed. Whilst the previous windows were, themselves, non-conforming and detracted from the character of the building, they were due for replacement, providing the opportunity to remove the harm to the building. I do not consider that it would be acceptable to retain the replacement windows, as they would maintain and extend the period over which there would be harm to the listed building and conservation area.

30. For the reasons I set out under Ground (g), I find that the replacement windows detract from the special interest of the building and from the appearance of the Grantown-on-Spey Conservation Area and that the steps set out in the Enforcement Notice are the minimum required to address this. Consequently, the appeal fails under Ground (j).

### Other matters

31. The appellant has identified several other properties in the vicinity of the appeal site that appear to him to have non-conforming windows. He has suggested that the enforcement action against his windows and not against other non-conforming windows in the locality is targeted and discriminatory.

32. During my site inspection I noted other properties that do not appear to have conforming windows, but there is no evidence before me as to whether these have been consented or whether the authority is undertaking enforcement action against other windows. The decision as to whether or not to take enforcement action is made by the relevant planning authority where they consider it expedient to do so having regard to the effect of the works on the character of the building of special interest. As an alleged breach of planning control was reported to the authority, it was required to investigate and decide whether or not it was expedient to issue the Enforcement Notice.

33. I have considered all other matters put before me in the appeal documents, but there are no points that would lead me to alter my conclusions.

*Sue Bell*  
Reporter