

Committee Date:25.08.09

DUNKESWELL
(Dunkeswell)

No.09/F0113
(Enforcement)

Date complaint received:
10 March 2009

Land Owner:

Mr S Smart

Location:

The Old Forge, Dunkeswell

Alleged Breach of
Planning Control:

Replacement windows

SITE LOCATION AND DESCRIPTION

The Old Forge is a grade II listed building sited on the southern edge of the village of Dunkeswell near the Royal Oak PH. The building is characterised by its thatched roof and plastered stone rubble walls. Built in the late 19th century the building was refurbished in the 1970's and a rear extension added in the 1980's. The windows to the property were at the time of listing 20 century casement windows with glazing bars.

BACKGROUND

An application for retrospective consent (08/3185/LBC refers) was refused Listed Building Consent on 29 January 2009 for the retention of replacement windows on the front elevation. These windows are double glazed and made of stained dark wood. Although at first they appear to be of a traditional casement design the pronounced gap between the beading and the frame, the aluminium seal, inappropriate internal glazing bars and the double reflection from the double glazing give them a modern appearance. In combination with the mid-brown stained appearance which is in contrast with the traditional white painted finish of the original windows they were considered to be incongruous and harmful to the character of the listed building. A subsequent application (09/0417/LBC refers) for replacement windows was granted consent on 29 April 2009. This application proposed modifying the existing windows by removing the double glazed panels and replacing them with single glazed units which would sit flush with the frame and painting the frames in white paint. It was considered that these amendments overcame previous concerns. These works now need to be undertaken and this report considers whether a Listed Building Enforcement Notice should be issued to ensure that the works to the existing windows are undertaken. Listed Building Consent for the new windows was granted on 29 April 2009 and expires on 28 April 2012.

RELEVANT PLANNING HISTORY

App.No:	Proposal	Decision	Date
09/0417/LBC	Replacement of windows	Approved	29.04.2009
08/3185/LBC	Retention of replacement windows on front elevation.	Refused	29.01.2009

TOWN/PARISH COUNCIL

The Parish Council comments on application 09/0417/LBC were that they supported the application but felt that, though strictly correct, making a resident put in single glazed windows to replace wooden double glazed windows that had been in situ for many years was not an item that was worthy of enforcement in this instance.

WARD MEMBER

Councillor Buxton commented on application 09/0417/LBC that “This should come before the Development Control Committee as the Parish Council and myself consider the work (which was done under a previous ownership over 10 years ago) is not out of keeping with the rest of the property.”

Councillor Buxton subsequently agreed that the above mentioned application could be approved under delegated powers as long as any proposed enforcement action was reported to the Development Management Committee.

CURRENT SITUATION

To date the works required to the unauthorised windows have not been carried out. While listed building consent was granted for three years there is no provision to require the works to be carried out to remedy the unauthorised works to this Listed Building.

CONSIDERATIONS AND ASSESSMENT

The proposed traditional form of window construction is consistent with the advice given in government guidance note PPG15 (Annex C para C.50). The retention of the existing windows has been refused on the basis that double glazed units are considered incongruous to the special character of the listed building (application no. 08/3185/LBC). The appearance of sealed units and applied glazing bars are considered inconsistent with the construction of traditional windows. Government guidance is explicit in resisting modern forms of window construction in listed buildings and there are dozens, if not hundreds of dismissed appeal cases for similar works to listed buildings. There is therefore considered to be a strong case for ensuring that these works are remedied.

The revised application proposed traditional casement windows modelled on the design and construction used in vernacular buildings of this type for over 300 years. The proposals meet the requirements of guidance in PPG15 and relevant Local Plan Policies. The approved works include the retention of the existing frames and sashes but removing the sealed units, glazing bars and timber beading. The retention of the sashes and frames is acceptable as this aspect of the existing windows is traditional in its construction. It is the glazing and glazing bars that were subject to previous objections. This will be replaced with authentic glazing bars and single glazing fixed with putty as per the approved cross sections. The finished windows will then be painted as per the specification. The requirements of the enforcement notice are therefore to replace the glazing bars and glazing, and paint the windows to an agreed colour. This is the minimum amount of work required to resolve the breach of planning control in this case and would only require the owners of the property to undertake the works that they themselves have proposed. It is however considered important to set a formal timetable for these works to be carried out and in order to do this an enforcement notice is required.

Members are reminded that under Listed Building legislation there is no 10 year rule on immunity as there is under planning legislation. The persons who carried out the works also committed an offence prosecutable in the courts. Provided the owners remedy the breach your officers do not recommend a prosecution in this case.

HUMAN RIGHTS ACT

Given the Listed Building Consent does not expire until April 2012 it is further considered that a longer than usual period can be given for compliance until the end of March 2012 so as to tie in with the remaining consent period.

Article 8 of the European Convention of Human Rights confirms that everyone has the right to respect for the private life and their home. Interference with this right by a Council is only authorised where the law allows and where the Council considers that action is necessary in a democratic society for, inter alia, the protection of the rights and freedoms of others. Furthermore, any action taken by the Council has to be proportionate in the sense that the Council does not require more than is reasonable or necessary to address the harm caused by the issue.

RECOMMENDATION

That the Head of Legal and Member Services be authorised to instigate such legal action as necessary to secure the removal of the existing glazing panels and their replacement with alternative glazed units to be agreed with the Council.

Period for compliance: Until the end of March 2012.

NOTE TO OWNERS

The Council expects the alternative glazed units to take the form of that granted Listed Building Consent on 29 April 2009.

List of Background Papers

Application file, consultations and policy documents referred to in the report.