



Decision by Steve Field, a Reporter appointed by the Scottish Ministers

- Listed building enforcement appeal reference: LBE-230-2047
- Site address: 43-45 Salisbury Road, Edinburgh, EH16 5AA
- Appeal by Mr Ahmed Saadi against the listed building enforcement notice, dated 2 March 2020, served by The City of Edinburgh Council
- Alleged breach of listed building control: installation of a raised section of decking to the side and rear of the property and associated timber, lean-to enclosure on top of the deck; in addition, the erection of a section of decking, with a timber balustrade, to the front elevation
- Grounds of appeal under s.35(1) of the Act: (g), (i) and (k)

Date of appeal decision: **1 June 2020**

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, 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 (the Act).

Preliminary matter

I consider that I have sufficient information to determine the appeal without the need to carry out a site inspection.

Reasoning

1. The appeal was made on the following grounds, as provided for by section 35(1) of the Act:

- (g) except in relation to such a requirement as is mentioned in section 34(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
- (i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose; 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.



I consider the three grounds of appeal, in turn, below.

(g) The steps required by the notice are excessive

2. Section 32(2)(b) of the Act applies in circumstances where the authority considers that the restoration required would not be reasonably practical or would be undesirable. The appellant describes the decking and balustrade at the front of the listed building and the deck and timber enclosure at the rear and side of the property as temporary structures which can be removed, if and when necessary. That description accords with the photographic evidence submitted by the appellant. I conclude that removal of the structures which are the subject of the enforcement notice would be reasonably straightforward. Given the lightweight construction of the structures, their removal would not damage the listed building. In terms of section 32(2)(b) of the Act, I find that their removal would be reasonably practical and would not be undesirable.
3. Section 32(2)(c) of the Act applies in circumstances where work has been carried out pursuant to listed building consent. The structures do not have listed building consent. I find that section 32(2)(c) of the Act does not apply in the case of this appeal.
4. Therefore, the test under ground (g) of the appeal becomes solely whether the requirements of the enforcement notice exceed what is necessary to restore the building to the condition it was in before the works were carried out.
5. The appellant explains that the purpose of the decking and balustrade at the front of the building is to stop children who are leaving that part of the premises from running directly out into the car park. He also considers that the structure has been built to complement the listed building. In my view, the character of the category 'B' listed building is defined to a large degree by its sandstone construction. According to the Historic Environment Scotland description of the listed building, the replacement front steps are concrete. However, in their now weathered condition, they make for a relatively unobtrusive addition. The timber decking is not characteristic of the late Georgian design of the building and jars with the otherwise well-preserved façade. The original, presumably cast-iron, railings at the front of the hotel have been replaced with a modern, steel design but these do recreate something of the solidity of what would have been there formerly. On the other hand, the timber balustrade built on the edge of the decking appears temporary and insubstantial.
6. Whilst I appreciate the appellant's motivation in trying to protect the safety of young people visiting his premises, I consider that the design and materials of the structure in question do not preserve the listed building or its setting. The council's Blasket Conservation Area Character Appraisal, 2001 advises that new design must respect traditional materials. The structure does not benefit from listed building consent. The appellant has not suggested any alternative steps to restore the building. I consider that the requirement to remove the structure at the front of the premises is not excessive as it is the only way to reinstate the building to its previous condition and relates only to development that does not have listed building consent.
7. In relation to the structures at the rear and side of the listed building, the appellant advises that five large, wooden, decked gazebos were in place before he acquired the property. He claims to have extended the decking in order to provide a level surface for

customers using the garden and enhanced the existing structure which, he considers, was looking old and tired. The appellant is also of the view that summer foliage in the garden will ensure that the development in the rear garden is not visible to neighbours or onlookers.

8. The Blasket Conservation Area Character Appraisal notes that private gardens make a significant contribution to the essential character of the area and, although there is no publicly accessible open space in the conservation area, it still enjoys a sense of spaciousness derived from the generously proportioned gardens. This relationship between building and associated garden ground is a key part of what defines the setting of the listed building at 43-45 Salisbury Road. The drawing produced by the appellant shows the enclosed seating area to the rear of the hotel as extending to over 20 metres long and 4 metres wide. The appellant's photograph of this structure shows that it is single storey in height. The plan accompanying the enforcement notice shows that the decking and seating area together cover almost half of the rear garden ground associated with the hotel. I consider that the scale of this structure is incongruous in the setting of a rear garden of what was built as a house and detracts from the open character of the conservation area.

9. As I have indicated above, the Blasket Conservation Area Character Appraisal states that new development must respect traditional materials. However, use of timber as a building material in a rear garden within a conservation area is not unusual. The timber cabin in the eastern part of the garden, approved by the council in 2012, is an example of what is acceptable. However, in my view, the extensive use of timber in both the decked area and the covered seating area goes beyond what may be considered reasonable. Photographs submitted by neighbours show that the enclosed area has a felted, mono-pitch roof. Again, this would not be out of place on a small outbuilding but, in the setting of the listed building, I consider this it is inappropriate on the size of building constructed. The blue and transparent plastic curtains attached to the east side of the enclosed structure are also out of place in the context of the listed building and wider conservation area.

10. A particularly unfortunate tension has been created at the southern end of the garden where the enclosed structure is viewed in direct juxtaposition with the traditional design of the listed building and partly obscures the view to the ground floor window in the north-west corner of the hotel. The scale of the unauthorised development is such that I do not accept the appellant's argument that adequate mitigation for its impact on the listed building will be provided by garden planting, even during the summer months.

11. I find that, by reason of their scale, design and materials, neither the rear decking nor the enclosed structure would preserve the setting of the listed building. The appellant advises that five, decked pavilion structures had been erected to the rear of the premises before the appellant bought the hotel. A photograph submitted by a local resident suggests there were three structures. Regardless, the replacement structure does not benefit from listed building consent. The appellant has not recommended any alternative steps. I consider that the requirement to remove the structures at the side and rear of the premises is not excessive as it is the only way to reinstate the building to its previous condition and relates only to development that does not have listed building consent.

12. I find that the appeal under ground (g) fails.

(i) The steps required by the notice would not restore the character of the building

13. Given the conclusions I have reached above in relation to the appeal under ground (g), I consider that, by ensuring the removal of the structures which do not have listed building consent, the steps required would restore the character of the building to what it was before these additions were carried out. The appellant has not provided evidence to indicate why this would not be the case.

14. I find that the appeal under ground (i) fails.

(k) The steps required in the notice exceed what may be reasonably required

15. Ground (k) can be used as a ground of appeal in circumstances where the council considers that the terms and conditions of a listed building consent have not been complied with. No listed building consent is in place for the structures referred to in the enforcement notice. Therefore, this is not a relevant ground of appeal in this case.

16. I find that the appeal under ground (k) fails.

Overall conclusion

17. Having found that the appeal fails under grounds (g), (i) and (k), I dismiss the appeal and uphold the enforcement notice.

18. I have considered all the other matters raised, including the 27 representations received regarding the appeal, but there are none which would lead me to alter my conclusions.

Steve Field

Reporter