

Planning Committee

02 February 2024

Agenda item 8

Enforcement- Holly Lodge, Coltishall- replacement windows in Listed Building

Report by Head of Planning

Summary

UPVc replacement windows have been installed in a listed building without listed building consent. The development is contrary to planning policy and permission could not be granted.

Recommendation

To serve a Listed Building Enforcement Notice.

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1. Site location and description

- 1.1. Holly Lodge is a large, detached dwelling situated off Church Loke in Coltishall, within the Coltishall Conservation Area. It sits in a plot of around 4 hectares, mainly laid to grass with trees and is well screened by tree belts, hedges and walls. To the south of the site sits the river Bure and a residential property, Mead Side, and there is further private land to the east and the church of St John the Baptist is to the north. The western boundary is formed by Church Loke, a private road which gives access to the Norfolk Mead Hotel, Mead Side and Holly Lodge.
- 1.2. Holly Lodge is comprised of the original dwelling, a substantial linked building to the east which was built on the site of a former swimming pool, further outbuildings to the east and a number of ancillary buildings elsewhere within the plot.

1.3. In January 1952 it was listed Grade II. The list description is as follows:

House, C18, altered and extended in C20. Colourwashed brick and render with black pantiled roof. 2 storeys, with north wing and C20 cross wing to west, flat roofed extensions to north, and large pyramidal roofed extension to east. Original facade to south, 3 windows, with central door flanked by canted bays. Central, part glazed entrance door and doorcase with panelled pilasters and consoles supporting projecting cornice. Sash windows with glazing bars. Brick dentil eaves and axial stacks. 3 roof lights. C20. extensions not of special interest.

2. The unauthorised development

- 2.1. As a member of the National Park family the Broads Authority is required to visit all listed buildings within its area every five years¹. The purpose of this Quinquennial Survey (QQ) is to monitor the condition of the listed assets and protect against unauthorised change. In 2021 the QQ visual inspection of Holly Lodge found that, with the exception of one window, all of the windows in the original dwelling had been replaced with white PVC units, along with a few other changes including lead canopies installed over the ground floor windows and faux shutters at the first floor. The owner of the property was contacted in 2022 and there have subsequently been meetings and correspondence about the works that have taken place. The discussions have been primarily about the windows.
- 2.2. The windows that have been installed in the property are modern double-glazed UPVC units in white. They are a mix of styles, depending on the opening, and include imitation sashes, bow windows and some semi-circular windows on the flank elevation. On the principal elevation there are full length bay windows in the central section, a full length French window on the western end and a wide, shallow window on the first floor at the eastern end. There are also a number of UPVC doors, with glazed panels, on the principal and rear elevations.
- 2.3. From the discussions with the owner, it is clear that the windows were replaced over 20 years ago. The owner advises that he bought the property in 1976 and was not told that it was listed, so did not know listed building consent was required to replace the windows. The sales particulars, which officers have seen, do not mention the listing, however it is clear in the Land Registry entry that the property is Grade 2 listed. The owner has said that prior to installing the windows, in 1991, he visited the offices of the Broads Authority and was told he didn't need permission; he was given a leaflet about Building Regulations. There is no record of this enquiry, but this is not uncommon for the time. The windows were installed some time after this.
- 2.4. The planning history shows that in 1978 and 1979 planning permissions were granted for, respectively, an extension and an enclosure to house a swimming pool which had

¹ As part of the annual Historic Environment Joint Statement Objective Delivery assessment.

previously been constructed. These are listed on Broadland District Council's website, but there are no documents, so it is not possible to ascertain whether or not the listed status was referred to.

- 2.5. In 1993 and 1994 planning applications were made for an agricultural building; neither was granted and an appeal was dismissed in 1995 in respect of the latter. In the appeal decision, the Inspector makes reference to the listed status of Holly Lodge.
- 2.6. The planning history indicates that the property was visited by officers of the LPA on a number of occasions after 1991, but there are no records to indicate whether or not the windows had been replaced at this time.
- 2.7. It must be noted that Holly Lodge should have been visited every five years under the QQ programme, totalling six inspections between 1989 and 2019. This would have been undertaken by Broadland District Council (as the constituent District Council) prior to the Broads Authority taking the planning service in-house in April 2007. In a report to Planning Committee in November 2009, Members were advised that, following the planning service coming in-house, a survey of all the protected structures in the Broads area had been undertaken. The report stated the survey had shown that some listed buildings had been subject to unauthorised works and this would need to be addressed. Holly Lodge is identified on the schedule as a listed building, but the undated file notes record that it had not been surveyed.
- 2.8. Members will be aware that development without planning permission will become immune from enforcement action after four years for operational development and ten years for a material change of use². This provision does not apply to Listed Buildings and immunity cannot be acquired.

3. The planning issues

- 3.1. The Broads Authority has a Local Enforcement Plan which sets out its approach to dealing with enforcement matters. It was reviewed and updated in July 2022. At paragraph 3.7 it states that "Whilst the law gives a Local Planning Authority strong legal powers to deal with breaches of planning control, in most cases the first choice of approach is to use negotiation to reach a satisfactory resolution in a timely manner. The negotiations would aim to achieve one of the following outcomes:
 - To apply for retrospective planning permission if the development is acceptable and would have got planning permission in the first place; or
 - To amend the development so it is acceptable and then apply for retrospective planning permission if the development is capable of being acceptable; or

² Note – this is due to change to ten years for both, under provisions of the Levelling Up and Regeneration Act

- To amend the development so it is in accordance with the approved plans if the amendments are acceptable; or
 - To remove the unauthorised development or cease the unauthorised use if the development is unacceptable and incapable of being made acceptable.”
- 3.2. In determining how to take this matter forward, the LPA must consider whether the unauthorised development is acceptable or capable of being made acceptable in planning terms.

The acceptability of the development

- 3.3. Adopted Local Plan policy DM11 (Heritage Assets) requires that “All development will be expected to protect, preserve, or enhance the significance and setting of historic, cultural and architectural heritage assets ...”, going on to state “Development that would affect a Designated Heritage Asset or its setting will be considered in the context of national policy, having regard to the significance of the asset.”
- 3.4. A listed building is a Designated Heritage Asset, so it is necessary to assess the effect of the works against the policies in the NPPF (2023). NPPF Paragraph 205 states:
- “When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance”.
- 3.5. In stating that great weight should be given to the conservation of the asset irrespective of the extent of the harm, para 205 has the effect of creating a presumption in favour of protecting the designated asset against any development which would harm its significance.
- 3.6. NPPF Paragraph 206 states:
- “Any harm to, or loss of, the significance of a designated heritage asset (from its alteration, or destruction, or from development within its setting) should require clear and convincing justification. Substantial harm to or loss of: (a) grade II listed buildings ... should be exceptional ...”.
- 3.7. This reinforces the protection accorded to the significance of a designated heritage asset, as set out in para 205, but allows for a justification to be provided for consideration. In stating that substantial harm to or loss of a Grade II listed building should be exceptional, it indicates that the bar is set high for the justification.
- 3.8. In considering the acceptability of the development, the LPA must first assess the level of harm resulting from the unauthorised development, which in this case arises from the impact on the listed building. It is acknowledged that the windows were replaced many years ago, however there is no immunity from enforcement action for listed buildings so this is not a planning consideration here.

- 3.9. The significance of Holly Lodge is primarily considered to lie in its evidential value, its historical value and its aesthetic value. The building is a good example of a relatively large 18th century house and retains many of the features of such a building. It contributes to the story of the development of Coltishall village and its brewery trade, in particular through its links with the 18th century diarist Mary Hardy, who lived in the house. Aesthetically, the building has some value and is an attractive house, built from vernacular materials and it enjoys a positive relationship to its surroundings which contributes to its aesthetic value.
- 3.10. Considering then the harm arising from the works, the removal of the historic timber windows has resulted in a degree of harm to all of the above values, which together make up its significance. The fabric of the historic windows that would have yielded information about the past, has now been lost. The design of the details of the windows and the glass within them could have told us much about the story of the house and wider area. Aesthetically, the design, detailing and operation of modern UPVc windows makes them look very different to traditional windows, and the frames, glazing bars and overlap of the sashes is also very different, as is the potential loss of the reflective quality of historic glass, all of which gives modern windows a much flatter and uniform appearance which reduces the aesthetic value of the building.
- 3.11. Historic England guidance states that, ‘Windows are the eyes of a building – they let in light and give views out – and profoundly affect its appearance. In addition, traditional windows bear witness to the artistic, social, economic and technological developments of past ages.’ Given the contribution that the windows make to the overall significance of the building it is considered that the alterations to Holly Lodge have caused substantial harm.
- 3.12. In this case, having established that the windows are integral to the significance of the designated heritage asset, it also follows that any justification for their replacement with something different must be exceptional. In this case, of course, the windows have already been replaced and so the argument is around whether or not the replacements can or cannot be retained.
- 3.13. As a general principle, it is the case that the installation of UPVc windows (and doors) in a listed building is rarely acceptable. This is because the manufacturing process does not adequately replicate the profile of traditional joinery, with the result that the units have a bulky appearance which is detrimental to the appearance and character of most traditional buildings. The impact is often exacerbated by the uniform plane of the glazed element, which lacks the relief created by traditional glazing bars and the overlap where the individual sashes or casements meet. It is acknowledged that UPVc products do vary, however even the better ones are rarely appropriate in a listed building. In this case, whilst it is acknowledged the replacement windows are of good quality, they do not replicate the fine detailing of traditional joinery and glazing and cause substantial harm to the appearance, character and significance of the dwelling. The works are therefore contrary to para 206, 207 as well as DM11.

- 3.14. In this case, the installation of modern UPVc windows has resulted in the loss of historic fabric, changed the appearance and character of the property and impacted adversely on its significance. The works are therefore contrary to DM11, in that the works have neither protected, preserved or enhanced the significance of the property.
- 3.15. It is concluded that the development is not acceptable and nor can it be made acceptable. The LPA must consider the expediency of enforcement action.

The expediency of enforcement action

- 3.16. When a breach of planning control has taken place and the LPA is considering what action is appropriate, it will need to look carefully at a number of factors. The factors are expediency, proportionality and consistency.

Expediency

- 3.17. Expediency may be explained as an assessment of the harm that is being caused by the breach. Harm may arise through a range or combination of factors, for example adverse impact on visual amenity due to poor design or materials, and this would be an example of direct harm arising from the unlawful development. There is also the generic harm which arises from a development which is in conflict with adopted policies and which, if it were not addressed, would undermine the policies in the development plan as well as the principles of the NPPF and NPPG. Furthermore, paragraph 59 of the NPPF states “Effective enforcement is important to maintain public confidence in the planning system”, demonstrating that this is a valid objective in itself.
- 3.18. In this case, given that substantial harm has been caused to the significance of the listed building, it is not possible to conclude that it is not expedient to seek to remedy the situation.

Proportionality

- 3.19. The second test is one of proportionality; enforcement action should always be proportionate to the seriousness of the harm being caused. In considering proportionality, it is also necessary in the interests of fairness to ask the question of whether or not action is justified given that the windows have been in situ for many years, so the harm to the designated heritage asset has already occurred, and there will be significant impacts on the owner of the building if he is required to remove and replace them.
- 3.20. In this case, substantial harm has been caused to the listed building with its character and appearance, as well as its significance, having been substantially eroded by the complete removal and replacement of all (but one) of the windows at the property.
- 3.21. The delay in discovering the breach is certainly very regrettable, and there is no explanation of why the replacement windows were not found earlier. Whilst the property is in a remote location, which is not casually passed, and is well screened by boundary treatments, there are nonetheless views from Church Loke of the semi-circular windows on the flank wall and a number on the rear elevation and it is clear that these are UPVc. As detailed at 2.6 and 2.7 above, there must also have been a

number of site visits by officers in connection with previous planning applications and inspections. However, as detailed above, there is no immunity period for a listed building, so, in legal and planning terms, the delay is not a factor here and the LPA has to proceed on the basis of its statutory obligations and seek to protect the designated heritage asset, which means requiring the replacement of the windows.

- 3.22. The impact on the owner will be significant in cost and inconvenience, and this is recognised. The LPA could mitigate this by allowing a long period for compliance and this will be considered. Subject to this, it is considered that enforcement action is not disproportionate.

Consistency

- 3.23. The third test is consistency and the Local Enforcement Plan identifies the need to ensure consistency so that a similar approach is taken in similar circumstances to achieve similar outcomes.
- 3.24. The need for listed building enforcement action, fortunately, is not a situation which often arises, however there is a precedent. This was a similar situation where replacement UPVc windows had been installed in a listed building in Oby without the required consent. This came to light as part of the 2008/2009 survey of listed buildings and it transpired that the windows had been installed around 12 years previously. A [report \(broads-authority.gov.uk\)](https://broads-authority.gov.uk) was brought to the Planning Committee in August 2012 and [authorisation \(broads-authority.gov.uk\)](https://broads-authority.gov.uk) was granted to serve a Listed Building Enforcement Notice if voluntary compliance could not be achieved. Voluntary compliance was achieved, in that an application for Listed Building Consent was submitted and approved in 2014 and the windows were replaced over an agreed period.
- 3.25. A similar approach has been taken in this current case, in that the landowner has been invited to submit a planning application to replace the UPVc windows with ones of a more suitable material and design and advised that any consent would be subject to an extended implementation timescale or a phasing scheme to mitigate the impact as far as possible. The owner has indicated that he does not wish to do this as he considers the existing windows to be acceptable. As an alternative, it has been suggested that he apply to retain the existing windows and then appeal against any refusal, but he has indicated that he does not wish to do this either. Separately, it is worth noting that he has said he would like Historic England (HE) to visit the property and consider delisting it, however HE will not consider this where there is an outstanding enforcement investigation.
- 3.26. The Local Enforcement Plan acknowledges that whilst the law gives an LPA strong legal powers to deal with unauthorised development, the preferred approach is always to seek to negotiate a solution and the fourth test considers whether this approach has been applied. In this case, it is considered that the LPA has gone as far as it can in terms of negotiation and formal action is the next step.

- 3.27. In considering expediency it is also necessary to take account of the impacts and costs of taking action, which would include the resources required to do this, as well as what is likely to be achieved. The more harm that is being caused then the more likely it is that it will be expedient to take enforcement action due to the need to stop the harm. Conversely, if there is little harm it may not be expedient to pursue the matter, particularly if the costs are high. In this case, there is significant harm to interests of public importance from development which is intrinsically unacceptable.
- 3.28. In conclusion, it is considered that the development is unacceptable, substantial harm has occurred and enforcement action can be justified as expedient.

4. Financial implications

- 4.1. The service of a Listed Building Enforcement Notice, as a first step, incurs relatively little cost. There will be officer time involved and legal advice may be needed. It is likely to be helpful to contract a heritage architect or surveyor to draw up precise specifications for the replacement windows to include in the Notice and there will be a cost associated with this. This will need to be met from the existing budget.
- 4.2. If compliance is not achieved voluntarily there will be costs associated with enforcing this. Members will be advised of progress through the regular update to Planning Committee, so there will be the opportunity to consider any additional costs.

5. Conclusion

- 5.1. The unauthorised development at the site is contrary to development plan policy and could not be granted planning permission.
- 5.2. The Local Enforcement Plan explains that where an unauthorised development is unacceptable and cannot be made acceptable, the LPA should seek to negotiate a solution. Officers have sought to find a resolution here other than through formal action, but there is no realistic prospect of this. It is recommended that a Listed Building Enforcement Notice is served requiring the removal and replacement of the existing UPVc windows. A compliance period of ten years would be appropriate.

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Background papers: Enforcement file, Historic Buildings and Conservation Area Review (PC 6 November 2009)

Appendix 1 – Location map

Appendix 1 – Location map

Holly Lodge, Church Loke, Coltishall



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