

# Listed Building Enforcement Appeal Decision

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<b>Appeal Reference:</b>	2023/E0037
<b>Appeal by:</b>	Mr John McCartney
<b>Appeal against:</b>	A Listed Building Enforcement Notice dated 20 November 2023.
<b>Alleged Contraventions:</b>	a) unauthorised removal of historic wooden lath and lime plaster ceilings; b) unauthorised removal of historic wooden lath and lime plaster to historic stud walling; c) unauthorised removal of historic lime plaster to solid brick / stonewalls; b) Unauthorised removal of timber joinery details to walling – skirting boards, dado rails and picture rails; e) Unauthorised removal of historic cornice and ceiling rose detailing; f) Unauthorised removal of historic stud walls and alterations to the layout of the building.
<b>Location:</b>	15 Northland Road, Londonderry BT48 7HY
<b>Planning Authority:</b>	Derry City and Strabane District Council.
<b>EN Reference:</b>	LA11/2022/0232/CA.
<b>Procedure:</b>	Informal Hearing on 22 May 2024.
<b>Decision by:</b>	Commissioner Mandy Jones, dated 13 June 2024.

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## **Grounds of Appeal**

1. The appeal was brought on Grounds (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k) as set out in Section 159 (1) of the Planning Act (Northern Ireland) 2011. There is a deemed listed building consent by virtue of Section 159 (4) (a). At the hearing, the appellant withdrew Grounds (a), (b), (f), (h), (i), (j) and (k).

## **Preliminary Matter**

2. Section 144 (2) of the Planning Act allows the planning appeals commission to correct any misdescription, defect or error in the EN, if it is satisfied that the correction can be made without injustice to the appellant or the council. Regarding paragraph 2 of the EN, in the interests of clarity, I propose to add, 'Londonderry', to 15 Northland Road, BT48 7HY. At the hearing the parties agreed this omission could be corrected.

**Ground (c) that the contravention of that section alleged in the notice occurred before 9 December 1978.**

3. No 15 Northland Road was listed on 6 June 1991. The Listed Building Enforcement Notice ( LBEN ), includes the last known floor plan layouts of the building recorded by Historic Environment Division following an inspection on 8 June 2015. Internal photographs dated 2015 were submitted as post hearing evidence which demonstrate that the alleged contraventions had not taken place at this time. The Council have stated that the works subject of the LBEN took place around 2022 and this was undisputed by the appellant. As the alleged contraventions did not occur before 9 December 1978, the ground (c) appeal fails.

**Ground (d) that the works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary.**

4. The Council were advised that the works carried out to the building were necessary after a leak from a water storage tank within the roof. I was told that officers from the Council accompanied by the Historic Environment Division ( HED ) Architect reviewed the works which had taken place. HED advised that the interventions carried out to the property appeared excessive in order to remedy the damage caused. HED also noted some timber decay and dry rot in two localised areas of the property ( at a bay window ceiling to the front elevation and at a roof valley to the rear ). HED acknowledged that these would have required repairs however the interventions at these locations are excessive in relation to the level of dry rot noted. HED also noted limited evidence of any water damage within the property which may have been caused by the leaking water storage tank. I was told that prior to any works taking place within the building, neither the Council nor HED were consulted in advance seeking advice on the listed building to discuss potential urgent works which were necessary.
5. At the hearing the appellant agreed that, in hindsight the levels of interventions to the building fabric were excessive in order to remedy any damage caused and were not limited to the minimum measures immediately necessary. As such, the appeal on Ground (d) fails.

**Ground (e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged or different conditions substituted.**

6. The main issue is whether the essential character of the listed building is retained and its features of special interest remain intact.
7. Section 45 (1) of the Planning Act ( Northern Ireland ) 2011 requires the Commission in dealing with an appeal, to have regard to the local development plan, so far as material to the application and to any other material considerations.

Section 6 (4) states that where regard is to be had to the development plan, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.

8. The Derry Area Plan 2011 (DAP) is the local development plan for the area in which the appeal site is located. The appeal site is located within the Central Area and Magee Conservation Area. Policy BE 2 : Listed Buildings states that there will be a general presumption in favour of the preservation of all buildings listed as being of special architectural or historic interest.
9. Overarching regional policy is provided by the Strategic Planning Policy Statement for Northern Ireland ( SPPS ). It sets out transitional arrangements which will operate until a local authority has adopted a Plan Strategy for the whole area. The SPPS retains certain existing policy statements including Planning Policy Statement 6 : Planning Archaeology and Built Heritage ( PPS 6 ). The SPPS sets out transitional arrangements to be followed in the event of a conflict between the SPPS and any retained policy. Any conflict between the SPPS and any retained policy under the transitional arrangements must be resolved in favour of the provisions within the SPPS. No conflict arises between the provisions of the SPPS and retained policy within PPS 6 in so far as it relates to the deemed appeal proposal. Within the SPPS, paragraph 6.13 highlights the importance of development respecting the character of the building and that features of special interest remain intact and unimpaired.
10. PPS 6, Policy BH8 Extension or Alteration of a Listed Building requires 3 criteria to be met when considering works to a listed building. Criterion (a) requires that the essential character of the building and its setting are retained and its features of special interest remain intact and unimpaired. Annex E31 of PPS 6 highlights the importance to the special interest of many historic buildings are internal features and all internal features and fittings of interest should be respected and left unaltered as far as possible.
11. No 15 Northland Road, is a large three storey brickwork building fronting Northland Road at its junction with Clarence Avenue with some outbuildings to the rear. The listing of the building includes the interior features as well as the exterior structure and fabric and the outbuildings to the rear. The contraventions include the significant removal and stripping out of internal historic fabric such as lath and lime plaster stud walls and ceilings, lime plaster to solid brick / stonewalls, historic cornicing and ceiling rose details, timber joinery detailing including skirting boards, dado rails and picture rails as shown on the Council's photograph's dated 15 August 2023. I would consider these works which have taken place to be excessive and detrimental to the essential character of the building and its features of special interest. As such, it is contrary to paragraph 6.13 of the SPPS, and PPS 6 Policy BH8 criterion (a).
12. Criterion (b) of Policy BH8 of PPS 6 requires that the proposed works make use of traditional and / or sympathetic building materials and techniques which match or are in keeping with those found on the building and criterion (c) requires that the architectural details match or are in keeping with the building.

- 13 The appellant submitted a suite of drawings within his Statement of Case including; Original Floor Plans, Existing Floor Plans and Proposed Floor Plans ( with brief notes regarding the reinstatement of the building fabric ). I was told that the appellant's scheme for guest house accommodation aims to incorporate the steps required ( set out in paragraph 4 of the LBEN ), however the proposed scheme goes beyond that set out in paragraph 4 as it includes significant internal alterations to the floor layouts. An appeal under Ground (e) is that listed building consent ought to be granted for the works defined in the alleged contraventions and I am unable to consider anything beyond this as set out in the appellants drawings.
14. In terms of listed building consent for the alleged contraventions as cited, there is a statutory duty to pay special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. Policy requires applicants for listed building consent to justify their proposals and to show why the works are desirable or necessary. As such, I require full information to enable assessment of the likely impact of the deemed proposals on the special architectural and historic interest of the building and its setting. In practical terms, I would expect to see detailed specifications and drawings of the restored elements and details showing their integration within the existing building fabric and details and specifications of any other associated restoration works. I consider the level of specialist information currently provided is unsatisfactory and falls short of these requirements to allow a full and robust assessment. Criterion (b) and (c) of Policy BH 8 have not been met.
15. In conclusion, the deemed proposals are contrary to paragraph 6.13 of the SPPS, Policy BE 2 Listed buildings of the DAP 2011 and PPS 6 Policy BH8 criterion (a), (b) and (c).The appeal on ground (e) fails.

**Ground (g) that the period specified in the notice as the period within which any step required thereby is to be taken falls short of what should reasonably be allowed.**

16. The time period set out in the LBEN for compliance is 90 days of the notice taking effect.
17. At the hearing I was told by the appellant that on 17 May 2024, an application for Listed Building Consent which addressed the alleged contraventions was submitted to the Council. The Council confirmed that an application for Listed Buildings Consent had been submitted, however, to date it had not been validated. Once validated, the Council could give no indication of when a final decision would be made. The Council agreed to the appellant's request to extend the time for compliance of the LBEN to 18 months. In these particular circumstances, I concur that this would allow a reasonable period of time to allow the application for Listed Building Consent to progress through the system, reach a conclusion and the refurbishment works to be carried out. If required, Section 141 of the Planning Act (Northern Ireland) 2011, allows the Council to extend any period specified. The appeal on ground (g) succeeds.

**The Decision is as follows:**

- **The notice is varied at paragraph 2 to read ‘Property at 15 Northland Road, Londonderry, BT48 7HY’.**
- **The appeal on Grounds (c), (d) and (e) fails.**
- **The appeal on Ground (g) succeeds and the period for compliance is extended to 18 months from the date of this decision.**

**The Enforcement Notice as so varied is upheld.**

**COMMISSIONER MANDY JONES**

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**List of Documents**

Planning Authority:       ‘A’    Statement of Case  
                                  ‘A1’   Post hearing information

Appellant:                   ‘B’    Statement of Case

**Appearances at Hearing**

Planning Authority:       Mr C Rodgers (Derry City & Strabane District Council )  
                                  Mr J Loughlin ( (Derry City & Strabane District Council )  
  
                                  Mr D Madden (Department for Communities, Historic  
                                  Environment Division)

Appellant:                   Mr L Ross (agent)  
                                  Mr J McCartney (appellant and owner)

