

## Agenda Item 7

**Development Control**  
Salisbury District Council, 61 Wyndham Road,  
Salisbury, Wiltshire SP1 3AH

*officer to contact:* Stephen Hawkins  
*direct line:* 01722 434691  
*email:* shawkins@salisbury.gov.uk  
*web:* www.salisbury.gov.uk

# Report

**Report subject** : Avon Lodge Veterinary Surgery 21 Stratford Rd Salisbury SP1 3JN  
**Report to** : City Area Committee  
**Date** : 2<sup>nd</sup> February 2006  
**Author** : Stephen Hawkins Enforcement Officer

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### Report Summary:

To consider the expediency of listed building enforcement proceedings in relation to:

- 1) The removal of original timber windows and subsequent installation of uPVC replacements in a Grade II listed building.

### Introduction:

Avon Lodge is a Grade II listed building, described in the listing as: "Circa 1830-50. 2 storey stock brick villa the centre of front breaking forward in broad canted bay, roof hipped over and hipped slate roof to whole, flat eaves. 3 windows 1st floor, recessed sashes, slightly cambered heads, glazing bars intact. Ground floor has 4 sash windows, 2 in canted sides of bay, no glazing bars. Projecting rendered central porch with block cornice and parapet. 2 narrow side lights to round headed entrance. Modern glazed door."

The building also appears to have been extended to the rear at single storey level in the 1980s. The building was formerly a dwelling but appears to have been used for many years as a veterinary surgery.

The building stands in its own grounds and set well back from the road. Whilst the road itself does not present any architectural merit, being a collection of buildings from 19<sup>th</sup> century to late 1980s, Avon Lodge is of particular note as it is the only remaining feature from this period in the locality.

Once a building is listed, consent is required for any works of alteration or extension which would affect its character as a building of special architectural or historic interest. It is a criminal offence to carry out such works without consent, which should be sought from the Local Planning Authority.



In February 2005, it was brought to the attention of the Council that nineteen uPVC windows had been installed in the listed building, replacing the original timber windows. The uPVC windows had clearly been in place for some years, however the required Listed Building consent had not been obtained at the time of their installation.

Whilst all of the windows in the building appear to have been replaced, in early negotiations Officers had indicated that the Council may be prepared, by way of compromise, to accept replacement only of the windows in the primary elevation – i.e. that which fronts onto Stratford Road.

Following an exchange of letters on the subject, the senior partner of Avon Lodge veterinary practice and his agent met with Officers in April 2005, to discuss the matter. The Council requested further information from the owner at this meeting, particularly relating to the cost involved to the practice to replace the windows.

When the costs were presented, the quotation was for all the windows in the building and the agent was approached to obtain a quote for just the 7 windows in the primary elevation. In addition, the Council requested detailed floor plans of the building following the partner's advice that his practice could not continue to function if the windows were replaced with timber sashes.

When this information was received, it was identified that 6 of the 7 rooms in the primary elevation were not temperature specific nor had a requirement for security – which was the initial reason given by the partner for the work being impossible in relation to a functioning veterinary practice. Additionally, the specialist window supplier had offered to undertake a 'trial' window to ascertain any potential problems and to give a more accurate idea of the timescale required to replace each window.

It was put to the partner that it would not present insurmountable difficulties to replace the windows in the primary elevation one at a time as most of the rooms were used as public rooms or offices. However, the owners were not prepared to take up the offer of a trial window and did not want to inflict any disruption on the day-to-day running of the vets' practice.

The most recent letters from the agent reiterate his client's standpoint on the matter and disputes the building's worthiness of listed status.

### **Planning history:**

Several applications, including:

83/0768	Internal alterations to existing house used as veterinary surgery, together with construction of new extension for same purpose at Avon Lodge	AC	01.11.83
85/0707	Internal alterations to existing house used as veterinary surgery, together with construction of new extension at Avon Lodge	AC	27.06.85

### **Considerations:**

#### Policy Background

In the Replacement Salisbury District Local Plan Policy CN3 is an important consideration in view of the effect on the character of the Listed Building:

*“Proposed development, including extensions or other alterations, which would in any manner affect the character or setting of a listed building will be permitted only if the following criteria are met:*

- (i) *new work respects the character of the existing building in terms of scale, design and materials;*
- (ii) *sympathetic natural materials, matching the original, are used in repair or replacement work;*
- (iii) *the historic form and structural integrity of the building is retained; and*
- (iv) *architectural or historic features, including internal features, are retained unaltered."*

Additionally, national guidance in PPG 15 (Planning and the Historic Environment) gives guidance on the importance placed by the Government on the protection of Listed Buildings. Listed Buildings can be robbed of their special interest as surely by unsuitable alteration as by outright demolition. They represent a finite resource and an irreplaceable asset. There should be a general presumption in favour of the preservation of listed buildings. While the listing of a building is not a bar to all future change, the starting point for the exercise of listed building control is the statutory requirement on local planning authorities 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.

PPG15 Annex C gives guidance regarding the replacement of windows in Listed Buildings at C49 and C50 This states that standard factory-made window units, such as uPVC, are almost always damaging to the character of historic buildings, as for reasons of strength, frame members are thicker than traditional timber. Also top opening windows are generally unsuitable as replacements for historic windows and should not be allowed. Installation of double glazed units is also explicitly discouraged due to the obvious changes to the profiles of glazing bars, styles and rails and the overall appearance of the windows.

#### Effect on Listed Building

The unauthorised uPVC windows are considered inappropriate within the context of this Listed Building for the following reasons:

- uPVC is a non-traditional material, and it does not respect the traditional character of the building.
- The method of opening of the windows, being top-hung (i.e. top section opening outwards and hinged at the top) means that the windows, when in the open position look unduly modern and out of place in relation to the building which traditionally was characterised by sliding sash windows.
- The double-glazing gives the windows a highly reflective quality, and the metal spacers within the sealed units look modern and stand out.
- The flat plastic glazing strips within the sealed units compound the flat appearance of the windows: There are no raised profiles and there are no shadows which are normally created by traditional glazing bars.

To retain the existing windows would therefore be contrary to policy CN3 and would also be inconsistent with the relevant guidance in PPG 15 referred to above.

#### Options for Enforcement

The purpose of undertaking listed building enforcement action is to secure the restoration of the building to its condition prior to the works having taken place.

Option 1 –to issue a Listed Building Enforcement Notice, requiring replacement of all of the unauthorised windows with new timber sash windows: This course of action would completely remedy the harm to the character of the listed building caused by the unauthorised windows. However, having regard to the large number of windows involved, such action may not be reasonably practicable. Moreover the length of time that the unauthorised windows have been in situ without enforcement

action and the lack of public views of the side and rear elevations of the building, together with their less distinctive character (as opposed to that of the front elevation), all make the merits of taking action to secure replacement of all nineteen of the windows on the building more open to question. Furthermore such action would impose significant costs on the owners.

Option 2-to issue a Listed Building Enforcement Notice, requiring replacement of the 7 unauthorised windows on the principal (front) elevation only: As noted above, Officers have since this matter was drawn to their attention sought to negotiate with the owners. To this end, Officers at an early stage suggested that a phased replacement of the 7uPVC windows on the principal elevation of the building could be an alternative to replacement of all of the windows.

Officers favour this option. Whilst it would not fully remedy the breach it would nevertheless mitigate the most obvious harm to the building from the public realm. It could also represent a more cost - effective remedy to the owners. A relatively long compliance period (i.e. up to one year) to ease any possible disruption to the veterinary practice could be specified. Although, as confirmed by the floor plan provided by the agent, six of the seven windows serve public areas or offices, the main problem in replacing the windows would be on one ground floor window leading off the x-ray room/ward. Nevertheless the above should prove capable of resolution within the period for compliance.

Option 3 –to take no further action at this time, provided the owners entered into a Unilateral Undertaking under Section 106 of the Town and Country Planning Act within three months of the date of the Committee meeting, the effect of which would be to secure the phased replacement of the unauthorised windows on the principal (front) elevation:

The effect of such an Undertaking would be similar to the enforcement action described under Option 2 above, with a longer compliance period.

As the present uPVC windows will soon be nearing the end of their useful life and are any case likely to be in need of replacement within the next few years, an undertaking from the owners to undertake the phased replacement of the windows may be considered as an alternative to formal enforcement action.

A longer period to replace the windows (i.e. up to 2 years) to ease any possible disruption to the veterinary practice could be also stipulated in any Undertaking.

Whilst this approach has merit and was initially favoured by Officers as an alternative to formal action, Members should be aware that to date the owners have not been prepared to bring forward proposals in this regard.

Option 4- to take no further action: It is noted that whilst the windows presently in the building are unauthorised and not considered acceptable in a Listed Building, they have been in place for up to 15 years and have, until recently brought no complaint.

Nevertheless, Officers would not wish to recommend that no action be taken on this matter as it would leave the matter unresolved and would not remedy the harm to the character of the building. To do so could also set an unwelcome precedent. Furthermore, the Council has been successful in pursuing similar cases against unsuitable windows in other Listed Buildings within the City area and elsewhere.

Option 5-to initiate prosecution proceedings: Whilst as already noted above the installation of the unauthorised windows was an offence, and even if it could be proven that the current owners were the persons who caused the works to take place, in view of the length of time which has elapsed it is considered unlikely that any proceedings brought by the Council in this regard would be viewed in a sympathetic light by the Courts. Moreover prosecution would not, in itself, remedy the breach.

## **PPG 18**

PPG 18 favours informal discussions to resolve matters without recourse to formal enforcement action

particularly where, as in this case, a small business is involved. However, the failure of negotiations to resolve matters should not hamper or delay formal enforcement action in cases where unacceptable harm to local amenity is being caused. This is also reflected in the Council's general approach to enforcement, outlined in the first chapter of the Local Plan.

It should be noted that since February 2005 informal negotiations have taken place with the owner in an attempt to regularise matters at this site without the necessity for formal enforcement action. However, the breach still continues at the site causing the harm identified above and it is considered, having full regard to the above guidance, that formal enforcement action to remedy the harm caused should therefore not be further delayed.

### **Human Rights**

Any enforcement action will interfere with the Owner's rights under Article 1 (1) of the Human Rights Act. However, if it is determined that such action is appropriate, the harm to the Listed Building is such that enforcement action is merited in the public interest of preserving the nation's heritage for future generations

### **Conclusions**

The replacement of the windows with unacceptable modern plastic ones is detrimental to the historic character and architectural value of this Grade II Listed building. Officers have outlined various options in relation to enforcement action above.

**RECOMMENDATION:** That the Head of Legal and Property Services be authorised to issue a Notice under Section 38 of the Planning (Listed Buildings and Conservations Areas) Act 1990 in accordance with Option 2 above, and serve on the appropriate person(s).

Alleging the following breach of listed building control:

Without Listed Building Consent, the removal of nineteen timber sash windows and their replacement with uPVC top hinged windows in the primary (south west) elevation of the building.

Requiring the following steps to be taken:

Within 12 months, remove the seven uPVC windows in the primary (south west) elevation of the building and replace them with timber sash windows which should all be double hung timber sliding sashes constructed with single glazing and with narrow profiled glazing bars, dividing the upper and lower sashes into 6 panes each, all in accordance with the attached plan.

Reasons for serving the Notice:

Avon House is a Grade II Listed Building. The unauthorised windows by reason of the use of uPVC in their construction, their method of opening and their general design incorporating top hung opening, double glazing with plastic glazing strips, fail to respect the traditional character of the building, seriously detracting from its character as a building of Special Architectural or Historic Importance. To retain the existing windows would therefore be contrary to policy CN3 of the adopted Salisbury District Local Plan and would also be inconsistent with guidance in PPG 15 Annex C.

### **Implications:**

- **Financial:** None at this time. There could be costs implication in the event of the Council having been found to have behaved unreasonably following any subsequent appeal proceedings.
- **Legal** : Detailed in the report.
- **Environmental** : Detailed in the report.
- **Council's Core Values:** Protecting the environment.
- **Wards Affected** : Stratford.
- **Human Rights** : Detailed in the report