
Appeal Decisions

Site visit made on 13 September 2016

by Nigel Burrows BA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 October 2016

Appeal A: APP/X5210/C/15/3141041

Land at 1-3 Flask Walk, London, NW3 1HJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Keith Fawkes against an enforcement notice issued by the Council of the London Borough of Camden.
- The enforcement notice, Ref: EN15/0463 was issued on 19 November 2015.
- The breach of planning control as alleged in the notice is the erection of a new roof at the rear of the property.
- The requirements of the notice are remove the new roof form and reinstate the original roof in terms of design, profile and materials.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld

Appeal B: APP/X5210/Y/16/3146875

1-3 Flask Walk, London, NW3 1HJ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Mr Keith Fawkes against the decision of the Council of the London Borough of Camden.
- The application Ref: 2016/0502/L dated 12 February 2016, was refused by notice dated 15 March 2016.
- The works proposed are described as 'Demolition of unauthorised rear roof covering Re-covering of previous [*sic*] slope of roof with natural welsh slate and enclosure of previous rear balcony area with lead clad extension.'

Summary of Decision: The appeal is dismissed

Background

1. The appeals relate to two adjoining terraced properties in the same ownership situated on the northwest side of Flask Walk, close to its junction with Hampstead High Street. The properties are currently used as a bookshop with ancillary accommodation above. These properties are Grade II listed and lie within the Hampstead Conservation Area.
 2. The enforcement notice subject of Appeal A is directed at works which, for the most part, appear to have been carried out to the rear of 3 Flask Walk. Appeal B arises from the Council's decision to refuse listed building consent for the works. An application for listed building consent was apparently considered by the Council, notwithstanding the fact that a Listed Building Enforcement Notice had been issued and had not been appealed.
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3. The appellant's description of the works subject of Appeal B includes a reference to the re-covering of the roof with natural welsh slate (as re-cited in the heading above). The Council's refusal notice describes the works as 'Erection of rear roof extension (retention)'. It is not entirely clear whether this description was agreed with the appellant. In any event, it appears to be a reasonably accurate description of the proposal. In effect, both appeals appear to relate to the works which have been carried out to the listed building.

Appeal A: ground (a) and Appeal B

Main Issues

4. There is one main issue common to both appeals, which is the effect of the roof alterations and additions upon the special architectural or historic interest of the listed building. There is a further main issue in Appeal A, namely the implications of this development for the character or appearance of the Hampstead Conservation Area.

Issue 1: Implications for the listed building

5. The relevant list entry for No's 1-3 Flask Walk states:-

"Pair of terraced cottages with later shops. No.1: early C18, altered and refronted mid C20. Painted brick. Tiled roof with dormer; noted to retain original roof timbers. 2 storeys and attic. 2 windows plus recessed entrance bay. Early C19 wooden shopfront with C20 fascia and slightly splayed window with some original glazing bars. 1st floor has recessed sashes. Parapet. No.3: early C18, altered. Stuccoed front with 'S' tie plate; rear timber framed with weatherboarding. Slated mansard roof with dormer. 2 storeys and attic. 2 windows. Reproduction C19 wooden shopfront. 1st floor has flush framed sashes with exposed boxing. Parapet. INTERIORS: not inspected."

6. It is apparent that the special significance of the building derives from its age, plan form, architectural detailing and materials, together with its contribution to the composition of the terrace of buildings within Flask Walk and its prominence in the Conservation Area.
7. The Council has cited various development plan policies in support of its case. However, it is necessary to bear in mind that the approach to listed buildings is underpinned by the statutory requirements placed upon decision makers by the Planning (Listed Buildings and Conservation Areas) Act 1990. Sections 16(2) and 66(1) of the Act indicate that in considering whether or not to grant listed building consent or planning permission for any proposals, the local planning authority (or the Secretary of State) shall have special regard to the desirability of preserving a building or its setting or any features of special architectural or historic interest which it possesses.
8. According to the submissions made on the appellant's behalf, the need for the works arose from a 'major problem' of water penetration into the building. The decision was apparently taken to construct a new roof over a small balcony at the rear of the listed building.¹ The appellant's Design and Access Statement (DAS)² states: *"The works of course have been carried out, and were executed by a builder, so the actual process of design was practical and sought solutions to day to day problems of water ingress, which was damaging stock stored internally. The design had the objective of providing (i) effective cover to prevent the ingress of rainwater, and (ii) maintenance of space and headroom in the enclosure of the balcony so that it could be used for storage."*
9. The DAS indicates the height of the rear parapet to 45 Hampstead High Street (also a listed building) was the 'controlling factor'. The intention was to provide a slated roof, which meant that a roof pitch of about 22° was required; in turn, this meant that a small increase in the height of the ridge was required. The Council cites photographic evidence which suggests the rear roof slope of the property previously extended to about half the depth of the first floor; a dormer window projected from this roof and a flat roof covered the rest of

¹ The submissions indicate this balcony gave rise to 'rainwater management problems'

² Lodged with the submissions made in relation to Appeal B

the 1st floor up to the boundary with 45 Hampstead High Street. This appears to be largely confirmed by the application drawings lodged with the application subject of Appeal B. These drawings also show the 'mansard roof with dormer' identified in the list entry.

10. However, the rear part of the mansard roof and the dormer has now been subsumed by the shallow-pitched roof which extends to the rear parapet abutting 45 Hampstead High Street. The articulation of the rear elevation of the historic building at roof level has been lost. The works which have been carried out detract from the character, architectural composition and detailing of the building, all of which contribute to its special significance.
11. The adverse impact of the works is accentuated by the insertion of the two modern roof lights projecting above the roof slope, by the odd lean-to return roof slope on the boundary to 5 Flask Walk and by the overhanging eaves to 45 Hampstead High Street (which appears to include a PVC fascia). The works appear out of character with a building of this period and design.³ The appellant emphasises the roof has been clad with natural slates. However, I share the Council's view that they have the unfortunate effect of looking like artificial slates.⁴ Even if the roof was to be re-covered with natural welsh slate (as suggested in the appellant's description of the works subject of Appeal B), this would not overcome the adverse impact of the roof on the character and architectural composition of the building.
12. A further over-arching concern in these appeals is the lack of any detailed information concerning the effect of the works on the fabric of the historic building. The retention of as much historic fabric as possible is a fundamental part of any good alteration or extension. It is not appropriate to sacrifice old work simply to accommodate the new. In this particular case, there is no firm evidence before me to show that a detailed assessment has been made of the effect of these works upon the building's historic fabric.
13. This concern is reinforced by the intention to use the new roof space for storage. It appears this space would need to be accessed by climbing through a window. There might be future pressures to enlarge this window opening to allow a more practical means of access, which is likely to have potential implications for the building's historic fabric.
14. In summary, I conclude these works harm the architectural and historic interest of the listed building. I further conclude they conflict with the development plan policies cited by the Council, including CS14 of the Core Strategy ⁵ and also DP24 and DP25 of the Council's Development Policies document ⁶ insofar as they require the highest standard of design for development and seek to preserve and enhance the Borough's heritage assets.

Issue 2: Implications for the Conservation Area (Appeal A)

15. Section 72 (1) of the Act places a general duty upon decision makers with respect to any buildings or other land within a conservation area to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
16. The submissions for the appellant claim the alterations and extensions are not very visible from the public realm. However, this is not a positive factor in favour of the works which have been carried out, especially bearing in mind the statutory duty under section 72 (1). In any event, they are readily apparent from the adjoining properties.
17. Incremental changes to individual buildings, such as unsuitable alterations or extensions, can have a detrimental effect, not only upon the building itself but also on the conservation area as a whole. In this instance the works have harmed the character, architectural composition and detailing of the historic building. The works obscure an appreciation of its rear elevation at roof level and its relationship to the adjacent buildings, including 1 Flask Walk. In this respect, the works have diminished the

³ The submissions for the appellant indicate the roof lights could be replaced with a more suitable design, but this would not be sufficient to overcome the adverse impact of the roof alterations and additions

⁴ Partly due to their relative uniformity and texture

⁵ Camden Core Strategy 2010 - 2025

⁶ Camden Development Policies 2010 - 2025

contribution that the building makes to its historic surroundings, including the setting of the adjacent listed buildings and the Conservation Area. As such, the works fail to preserve or enhance the character or appearance of the Hampstead Conservation Area.

18. The works also conflict with the relevant development plan policies, including CS14 of the Core Strategy and DP25 of the Development Policies document, insofar as they seek to preserve and enhance heritage assets, including conservation areas.

Other Considerations

19. The Council alleges the alterations and extensions harm the amenity of adjoining properties due to a loss of light. The Council is mainly concerned about the effect of the works on a bathroom window at 5 Flask Walk. However, the Council has not produced any firm evidence in support of this allegation, for example, any daylight analysis. The constraints of the site visit did not allow me to assess the relationship between the works and the window in question. In any event, given that the window apparently serves a non-habitable room, the Council has not demonstrated that the overall living conditions of adjoining occupiers would be compromised to an unacceptable degree.
20. Having said that, I find the adverse impact of the works on the listed building and the Conservation Area are compelling objections to the scheme which has been carried out. It is not obvious to me that the objections to the works could be addressed by conditions.

Summary

21. The Council's concern to protect its heritage assets is consistent with the objectives of the National Planning Policy Framework. Paragraph 132 gives 'great weight' to the conservation of a designated heritage asset. The more important the heritage asset, the greater the weight that should be given. I acknowledge that for the purposes of paragraph 134 of the NPPF, these works would lead to less than substantial harm to the significance of designated heritage assets. However, I conclude this harm would not be outweighed by any public benefits. In reaching this conclusion, I have borne in mind that the works were intended to address water penetration into the building. In this respect, it could be argued the works contribute to the continued stewardship of the building. However, my overall conclusion is that this benefit would be clearly outweighed by the harm caused to the building and to the Conservation Area.

Appeal A: ground (f)

22. The issue under the ground (f) appeal is whether the steps required by the enforcement notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the alterations and extensions.
23. The manner in which the Council has prepared the enforcement notice relating to the unauthorised works, including the formulation of its requirements, indicates that its purpose is to remedy the breach of planning control in accordance with section 173(4)(a) of the Act, by restoring the land to its condition before the breach took place.
24. The submissions for the appellant do not appear to advance any specific arguments to indicate what lesser steps might be substituted for the requirements of the notice. I have borne in mind the appellant's willingness to replace the roof lights and the suggestion that the roof could be re-covered with natural welsh slate. However, I have already discounted these options in the context of the ground (a) appeal. In any event, given the purpose of the notice, I conclude its requirements are not unduly onerous or excessive. It is not obvious to me that there are any lesser steps which would remedy the breach of control, or which would satisfy the purpose in section 173(4)(a). The ground (f) appeal fails.

Overall Conclusions

25. In view of my findings on the main issues, I conclude the appeals should not succeed. I have taken into account all the other matters raised in the written representations,

including the private property matters which have been raised by a third party. However, I find they do not alter or outweigh the main considerations that have led to my decisions.

Formal Decisions

Appeal A: APP/X5210/C/15/3141041

26. The appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/X5210/Y/16/3146875

27. The appeal is dismissed.

Nigel Burrows

INSPECTOR