
Appeal Decisions

Accompanied site visit made on 26 July 2016

by Felix Bourne BA(Hons) LARTPI Solicitor

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

Decision date: 25 October 2016

**Appeal refs: APP/K5600/X/15/3140834 (APPEAL A) &
APP/K5600/Y/15/3140833 (APPEAL B)
8 Campden Hill Square, London, W8 7LB**

- Appeal A is made under section 26K of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by section 61 of the Enterprise and Regulatory Reform Act 2013 against a refusal to grant a certificate of lawfulness of proposed works in relation to a listed building by the Royal Borough of Kensington and Chelsea London Borough Council (the Council).
- The appeal is made by Ms Erin Eisenberg.
- The application Ref CL/15/05570 dated 27 August 2015 was refused by notice dated 8 October 2015.
- The application was made under section 26H of the Act as amended.
- The use for which a lawful development certificate is sought is described in the application as "erection of timber slatted screen on mansard roof. Screen to be positioned next to southwest chimney stack" and, in the Council's Notice of Refusal, as "erection of timber slatted screen on mansard roof (Certificate of Lawfulness of proposed work to a listed building). Submitted drawing Nos. /CL/15/05570 and applicant's drawing Nos. C13141-104-A, 2 unnumbered sectional sketches, unnumbered photograph title 'proposed screen design'".
- APPEAL B is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended against a refusal to grant listed building consent.
- The appeal is made by Ms Erin Eisenberg against the decision of the Council.
- The application ref: LB/15/06453 dated 11 October 2015 was refused by notice dated 7 December 2015
- The development is described in the application as "construction of timber screen to roof) and, in the Council's Notice of Refusal, as "Construction of timber screen at main roof level".

Summary of decisions: The appeals are dismissed.

Main Issues

1. As to Appeal A, the main issue is whether the Council's decision to refuse to grant a Certificate of Lawfulness of Proposed Works was well-founded.
2. With regard to Appeal B, the main issue is whether the proposed works would preserve the listed building, its architectural interest and its setting and, linked to that, whether it would preserve or enhance the character or appearance of the Kensington Conservation Area.

Discussion

3. The appeal property is listed Grade II and lies within the Kensington Conservation Area. The Conservation Area is characterised predominantly by residential development of elegant terraced houses. Campden Hill Square comprises a central garden containing mature trees and planting which afford the Square a particularly verdant character, lined on three sides by terraces of fine houses which, on two sides, step up the steep hillside. No. 8 is a mid-terrace dwelling which is part of a group (Nos 3-13) of Grade II listed buildings which date from around 1828 to 1840 and are therefore very late Georgian, William IV, or very early Victorian.
4. No. 8 is the highest property in the terrace group, as it has an isolated mansard roof extension understood to have been erected in the 1930s. The proposed development subject of both appeals is the construction of a timber screen at the main roof level of the house, centrally positioned on top of the mansard and next to the forward chimney breast. The structure would have a width of around 550mm, a length of approximately 1250mm, and would project above the flat mansard roof by 850mm.
5. Section 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended, require that special regard is had to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest it possesses. In terms of the Conservation Area, Section 72(1) of the same Act requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of the area.
6. Looking at Appeal A, section 26H(1) of the same Act, as amended by section 61 of the Enterprise and Regulatory Reform Act 2013, provides that a person who wishes to ascertain whether proposed works for the alteration or extension of a listed building in England would be lawful, may make application to the local planning authority specifying the building and describing the works, with section 26H(2) stating that "for the purposes of this section works would be lawful if they would not affect the character of the listed building as a building of special architectural or historic interest".
7. The same proposed development has separately been granted a Certificate of Lawfulness under the Town and Country Planning Act 1990 (Council reference CL/15/05414) on the basis that the proposed works would not constitute development requiring planning permission, as defined in section 55 of the Town and Country Planning Act 1990 (as amended). In reaching that view the Council had regard to, amongst other things, the High Court judgment in the case of *Burroughs Day v Bristol City Council* [1996] 1 PLR 78). However, the Council's Reason for refusing the grant of a Certificate of lawfulness of proposed works under the listed buildings legislation was that "the proposed works would be unlawful because they would affect the special architectural or historic interest of the listed building and, therefore, would require listed building consent, in accordance with sections 26H and 26I of the Planning (Listed Buildings and Conservation Areas) Act 1990: sections 26H and 26I, as inserted by section 61 of the Enterprise and Regulatory Reform Act 2013 and the Planning (Listed Buildings)(Certificates of Lawfulness of Proposed Works) Regulations 2014".

8. The appellant maintains, in her Final Comments, that the proposed screen would not be visible from many important locations: however, whilst the extent of visibility from public vantage points would, as the site inspection revealed, be limited and would in some cases depend upon the time of year and the presence of any other obstructions, this is not the only factor that is relevant. In their Statement the Council point to the different tests arising under section 55 of the Town and Country Planning Act 1990 and under the Planning (Listed Buildings and Conservation Areas) Act 1990 Act as amended. Thus, by virtue of section 55(2) of the TCPA a number of operations or uses shall not be taken for the purposes of the Act to involve development of the land, these including (a) the carrying out for the maintenance, improvement or other alteration of any building of works which- (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building. This explains the Council's decision in respect of the grant of a Lawful Development Certificate under the Town and Country Planning Acts.
9. The legislative test is broader under the listed building legislation, with the decision-maker having to reach a judgment as to whether the proposed works would affect the character of the listed building as a building of special architectural or historic interest. I note that 8 Campden Hill Square was listed for group value: nevertheless, the judgment must be made in relation to the listed building itself. Whilst I have noted the existence of other rooftop structures on nearby properties, this again is not determinative. Notwithstanding the limited visibility of the structure, it would, as conceded by the appellant, be visible from some vantage points, and the erection of the proposed screen would introduce a permanent high level feature, of a modern and somewhat utilitarian design, which would alter the profile and appearance of the main Grade II building to which it would be directly fixed. As a matter of fact and degree this would affect the character of the listed building as a building of special architectural or historic interest. The Council's decision to refuse the certificate sought was therefore well-founded and Appeal A must therefore be dismissed.
10. Turning to Appeal B, the appellant's scheme is a relatively modest one and the appellant argues, in her Grounds of Appeal, that "the design of the screen is immaterial due to its hidden location". However, as indicated above, the development will be visible from some vantage points and in any event this is in any event only part of the story. Consideration must also be given to the effect of the scheme on the building itself. In that regard the design of the screen, and the materials from which it is to be constructed, are important, and I agree with the Council that these would be harmful to the special architectural and historic significance of this Grade II listed building. The screen would not represent an improvement to the existing profile of the roof, and would thus run counter to the Kensington Conservation Area Proposals Statement. It would also be in conflict with Policy C4 of the Council's Consolidated Local Plan which states, amongst other things, that the Council will require development to protect the heritage significance of listed buildings. It also means that the development would fail to preserve or enhance the character, or the appearance, of the Kensington Conservation Area. Thus, although the scheme is not a major one, it would nevertheless be harmful and, whilst I take no pleasure in frustrating the appellant's plans for her home, Appeal B must therefore also be dismissed.

11. In reaching my decisions I have also borne in mind the relevant provisions of the National Planning Policy Framework and of National Planning Policy Guidance. I have also had regard to Historic England's Good Practice Advice in Planning: 2, 'Managing Significance in Decision-taking in the Historic Environment'. These reinforce me in my view that the appeals should be dismissed.

Formal decisions

12. The appeals are each dismissed.

Felix Bourne

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INSPECTOR