
Appeal Decision

Site visit made on 25 October 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 28 October 2016

Appeal Ref: APP/K5600/F/16/3144607

Third Floor Flat , 18 Hornton Street, London W8 4NR

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Makram Girgis against a listed building enforcement notice (LBEN) issued by the Royal Borough of Kensington and Chelsea.
 - The enforcement notice was issued on 19 January 2016.
 - The contravention of listed building control alleged in the notice is the installation of upvc windows on the front elevation at third floor level.
 - The requirements of the notice are to remove the unauthorised upvc windows at third floor level on the front elevation of the property and reinstate timber framed windows of the same design and appearance as shown circled red on photo A attached.
 - The period for compliance with the requirements is three calendar months.
 - The appeal is made on grounds (c), (d) and (i) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The appeal is dismissed.

Matters of clarification

2. The Council refers to Policy CL4 of the Consolidated Local Plan 2015 (CLP). However, an appeal has not been made on ground (e) and I cannot consider whether or not listed building consent should be granted for the upvc windows.

The appeal under ground (c)

3. To be successful on this ground of appeal it must be successfully argued that the unauthorised works carried out have not altered the character of the listed building. In a ground (c) appeal the merits of the works are not considered. The question to be asked relates solely to whether or not the character of a listed building has been changed by the works. This is irrespective of whether or not such works have been harmful to the listed building.
4. The appellant contends that the works have not affected the character of the building and that, whilst the upvc windows are inherently of newer appearance, their shape size and colour has not changed. It is contended that the Council's use of the words '*harm*' and '*significant*' seem inapt and extraneous. It is further argued that the photographic evidence indicates that the current window frames are the same shape and style as the previous windows and that the Council is comparing the new windows against those in adjoining properties.
5. Having seen the upvc windows from both near and distant viewpoints, I agree with the Council that they have significantly affected the character of the building and that a contravention of listed building control has occurred. The upvc windows

are distinctly noticeable and the frame sizes are not the same as those set out in the photographic evidence from 2008 to 2012.

6. I do not agree with the appellant's contention that the appearance of the windows has not changed during the repair. It is clear that the frames are of different sizes types and design. From the information before me the style and design cannot be said to have been identical since 1983. In particular the mullion, between the first two window sections and the remaining four (taken looking from left to right when viewed from the street), is about twice the width of the others. This upsets the fine balance of the windows and the consistency of the frames as seen in photographic evidence (for the period between 2008 and 2012) and prior to installation of the upvc windows.

7. As a matter of fact and degree, therefore, I consider that the works carried out have affected the listed building as one of special architectural and historic interest. Listed building consent is required if works do affect the character of a listed building and in the absence of any consent a contravention of listed building control has occurred. Thus the appeal must fail on ground (c).

The appeal under ground (d)

8. This ground of appeal addresses situations where essential and urgent works were needed to preserve the listed building. The emphasis is on the words 'essential' and 'urgent'. The ground of appeal comprises three tests. The first is whether the works were urgently necessary in the interests of safety or health; the second test is that it was not practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support and the third test is that the works carried out were the minimum measures immediately necessary to achieve the aims of safety, health or preservation. For an appeal to succeed on ground (d) all three tests must be met and the onus is on an appellant to conclusively show that this is the case.

9. On the first test, although it is stated on behalf of the appellant that the works to the windows were '*urgently necessary in the interests of health and safety*' and that there was a '*sudden and extensive leak*', there is no firm and conclusive evidence to indicate that the upvc windows were necessary on either of the above grounds. It has not been shown that the health of any occupant of the house was at risk due to the condition of the previous windows and clearly there was no risk to public safety due to their condition. A previous letter to the Council only referred to the works as being for '*the general upkeep and maintenance of the property*'. Thus the appeal fails on this first test.

10. On the second test there is also no evidence to indicate that the works were so '*urgently necessary*' that some form of consultation (prior to the carrying out of the works) with the Council was precluded through pressure of time. Again if it was purely for '*upkeep and maintenance*' the works would only have been authorised if carried out strictly on a like-for-like basis. There is also no indication in this case that the appellant sought to involve planning or conservation officers prior to carrying out the unauthorised works. There is also no indication that temporary works could not have been carried out whilst the necessary consent was sought for the required works. Thus it does seem to me that the situation was of such a pressing nature that the works carried out were so '*urgently*' necessary for safety or health reasons.

11. Finally on the basis of the submissions and from what I have seen, the works enforced against cannot be said to be the '*minimum measures*' necessary. Nor has it been conclusively shown that the work carried out was '*immediately*' necessary

to overcome any health or safety issue. The appeals fail, therefore, on all of the tests and cannot succeed on ground (d).

The appeal under ground (i)

12. To be successful on this ground it must be conclusively shown that the steps required by the notice for the purpose of restoring the building to its former state would not serve that purpose. However, there is no evidence submitted to show that the requirements would not serve their purpose. From the Council's submissions and from my own inspection it is clear that if the requirements are all followed then the character of the listed building would be restored. This is evidenced by the 2008 to 2012 photograph and the photograph attached to the notice which forms part of the steps required. The appeal, therefore, also fails on ground (i).

Other Matters

13. In reaching my conclusions I have taken into account all other factors put forward in support of the appeal. These include the initial grounds of appeal, including the photographs; the references to the windows of other properties (particularly Nos 20 and 22); the fact that conservation is important to the appellant and that every effort has been made to appropriately repair and maintain the building. I have also taken into account the final comments dated 25 April 2016. However, none of these matters alters my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision that the appeal should be dismissed.

Anthony J Wharton

Inspector