
Appeal Decision

Site visit made on 25 October 2016

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 31 October 2016

Appeal Ref: APP/E5900/Y/16/3152830
103 Bow Road, London E3 2AN

- 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 Samuel Jenyo against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/16/00451, dated 19 February 2016, was refused by notice dated 7 June 2016.
 - The works proposed are Erection of a three storey rear extension. Installation of UPVC window at 2nd floor level to the rear of the building.
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Decision

1. I dismiss the appeal.

Main Issue

2. This is the effect of the works on the architectural and historic significance of the listed building, and the character and appearance of the Tredegar Square Conservation Area.

Reasons

3. The appeal concerns an application for listed building consent and section 38(6) of the Planning and Compulsory Purchase Act 2004 on the primacy of the Development Plan does not apply to applications and appeals made under the Planning (Listed Buildings and Conservation Areas) Act 1990. Section 16(2) of the latter Act requires special regard to be had to the desirability of preserving the listed building or its setting or any special architectural or historic features it possesses. Section 72(1) of the same Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. These duties are reflected in Policies 7.4, 7.6 and 7.8 of the London Plan (2016), Policies SP10 and SP12 of the Core Strategy (2010), and Policies DM24 and DM27 of the Managing Development Document (2013).
 4. Paragraph 132 of the National Planning Policy Framework states that when considering the impact on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Listed buildings and conservation areas are designated heritage assets. The courts have determined that considerable importance and weight should be given to harm found to the significance of listed buildings.
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5. The appellant cites various matters in the grounds of appeal that need to be addressed:-

Ground 1. The development is at the rear of the building and the reasons for the refusal is that poor build quality material was used without stating which materials were of poor build and without giving an opportunity for the applicant to correct the alleged poor quality material (not an admission). The Officer's Report makes reference to red Fletton bricks and painted rendered walls, and in any event the decision is now to be made afresh at appeal with the benefit of the site inspection. The requirement of section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is to carry out works to a listed building that affect its character only when authorised by consent under section 8. Section 9 makes it an offence to carry out such works without consent and section 10 sets out the requirements for making an application for that consent. Section 16 gives the power to grant or refuse consent. Whilst conditions could be attached to a grant of permission that accorded with section 16(2) as previously cited in this Decision, there is no provision for requiring changes that call into question the basis of that grant of consent.

Ground 2. The decision was made more than 8 weeks from when the application was submitted. There is provision for an appeal against failure to determine, but that option was not taken up.

Ground 3. Prejudice was caused to the applicant in that at first, the LPA had refused to consider the application and it was only after the applicant had made a judicial review application to the High Court (CO/5854/2015) that it decided to look at the application. Thus causing prejudice in that it had not used a fresh mind in considering the application and had thus not acted fairly. Whatever went before, this Decision is made afresh as if the application had been made to the Secretary of State in the first instance, and with the benefit of the site inspection.

Ground 4. No notice was given to the applicant to correct any inappropriate material or poor building material as stated in its reasons for refusal before making the decision. This appears similar to ground 1 and the response is the same. The possible use of conditions to alter the works will be considered later in this Decision.

Ground 5. The decision is against the law and not supported by evidence. If the appellant considers the Council's decision to be against the law, this would need to be taken up under a separate regime than the present listed building consent appeal process. As stated in response to ground 3, this Decision is made with the benefit of the site inspection, the representation from both parties and as a result of neighbour consultation, and is made with reference as applicable to statute, policy and national guidance.

6. The findings of a previous Inspector are relevant, and they concern an appeal against an Enforcement Notice issued by the Council for what appears to be the same works (Ref; APP/E5900/F/2219802, dated 24 April 2015). The Appeal was dismissed and the Notice upheld. The Inspector explained in paragraphs 8 to 12 that the appeal was only made on ground (b) which is a claim that the matters mentioned in the allegation had not occurred, and that this claim was bound to fail as the works had clearly been carried out, albeit not by the appellant.

7. In particular paragraph 12 sets out the Inspector's view on whether he should consider ground (e) on whether listed building consent should be granted, but he concluded that as this ground had not been pleaded and no representation had been provided, it would be incorrect to consider this. He concluded, as quoted by the appellant, *'however, despite the submissions by the Council relating to the effects of the unauthorised works carried out, the appellant is not precluded even at this stage from applying for listed building consent'* and that is the position now, with that consent having been refused by the Council and this appeal made.
8. All of the foregoing is by way of preamble, as the requirement now is to consider the merits of the works that have been carried out as set out in the main issue above.
9. The building is part of a short terrace and there is reference to a larger part of the terrace continuing beyond a later building to the west. As noted by the previous Inspector, there have been changes to the presentation of the terrace over time, but the appeal property is the only one in this group with a rear projection of the height now in place. Others have part-width or full-width garden level additions but the rear wall of the terrace has mostly not been added to. The appeal works are a discordant feature for that reason, and whilst there is limited information about that which was in place and has now been covered, the rear wall would have followed the line of those on either side without the closet wing often found in such terraced properties.
10. As well as being a discordant feature for that reason, the method of construction and the massing of the addition are at odds with the traditional architectural treatment of a closet wing and in particular the use of render and stained timber windows jars with the finer architectural detailing of the rear of these properties, notwithstanding the later alterations in place elsewhere. The pitched roof sloping down from the main house at top floor level is an uncharacteristic feature and there appears to be un-rendered common brickwork at high level visible from the adjoining Addington Road.
11. This latter place appears to be the only location to get a public view, but the interests of listed buildings does not rely on such a public view, they being preserved for their intrinsic value as determined in the listing process. Without the addition, there appears no reason to consider the terrace as being other than a building worthy of its listing. There are however a number of private viewpoints that would feature the addition, and weight does attach to this in consideration of the effect on the character and appearance of the conservation area.
12. The use of upvc on an upper window to the rear elevation is also part of this appeal, and whilst significantly compromised in any event by the nearby presence of the rear addition, in isolation the use of such material does detract from the interest of the listed building and should not be permitted. Comparison with other window on the rear elevation nearby shows the difference in detailing and glazing which in this case causes unacceptable harm.
13. The rear addition and the window fail to preserve the architectural or historic significance of the listed building and its setting in the Tredegar Square Conservation Area, contrary to the requirements of the 1990 Act, the Framework and Development Plan policies previously cited. The proposal causes harm to designated heritage assets.

14. The level of harm is 'less than substantial', a differentiation required between paragraphs 133 and 134 of the Framework, 'substantial harm' being more often reserved for total demolition or works that virtually remove the significance of the building. In this case paragraph 134 applies and this states that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. There are public benefits in the provision of additional accommodation in this highly accessible location close to railway stations and bus routes as well as local facilities. However, no evidence has been presented to indicate that the previous amount of accommodation was incapable of being occupied beneficially and providing income for the upkeep of the listed building. It is concluded that the harm caused is not outweighed or otherwise justified by the benefits.
15. Returning then to the use of conditions, and the appellant's first ground of appeal, that opportunity should be given for changes to be made. Whilst there are shortcomings in the detailed execution of the works, the appeal fails to a very great extent by reason of the size and bulk of the extension when considered as a rendered finish with pitched roof that does not integrate with the architectural design of the terrace. That shortcoming is not capable of being made-good by the use of conditions in this retrospective application without calling into question the lawfulness of granted consent in the first place. The failings are fundamental to the proposal at appeal. The web-based Planning Practice Guidance states at Paragraph: 012 Reference ID: 21a-012-20140306 that *'depending on the case, it may be possible for the local planning authority to impose a condition making a minor modification to the development permitted. A condition that modifies the development in such a way as to make it substantially different from that set out in the application should not be used.'*
16. To conclude, the addition and the use of a upvc window causes harm that is not outweighed by public benefits and is contrary to statute, national guidance and local policy. For the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR