

Appeal Decision

Site visit made on 3 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: 10 November 2016

Appeal Ref: APP/X5990/F/16/3150446

11 Cunningham Place, London NW8 8JT

- 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 Jatin Jethal Lavchand Shah against a listed building enforcement notice issued by the City of Westminster Council.
 - The enforcement notice was issued on 22 April 2016.
 - The contravention of listed building control alleged in the notice is: the removal of the previously existing single-glazed sash windows at ground, first and second floor level in the front elevation of the building, and the installation of double-glazed sash windows at ground, first and second floor level in the front elevation of the building.
 - The requirements of the notice are:
 - 1) Remove the two double-glazed, timber sash windows at ground floor level, outlined by red lines on Photograph B.
 - 2) Remove the three double-glazed, timber sash windows at first floor level, outlined by red lines on Photograph B.
 - 3) Remove the two double-glazed, timber sash windows at second floor level, outlined by red lines on Photograph B.And following completion of steps 1 – 3 above;
 - 4) Install two white-painted, timber-framed, single glazed double-hung sash windows at ground level at the positions outlined by red lines in Photograph A to match in facsimile the detail design of the windows shown outlined by green lines at ground floor level on Photograph C.
 - 5) Install three white-painted, timber-framed, single glazed double-hung sash windows at first floor level at the positions outlined by red lines in Photograph B to match in facsimile the detail design of the windows shown outlined by green lines at ground floor level on Photograph C.
 - 6) Install two white-painted, timber-framed, single glazed double-hung sash windows at second floor level at the positions outlined by red lines in Photograph B to match in facsimile the detail design of the windows shown outlined by green lines at ground floor level on Photograph C.
 - 7) Make good any damage to the building by undertaking the above requirements.
 - The period for compliance with the requirements is 3 Months
 - The appeal is made on grounds (c) and (e) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 10 October 2016.

Decision

1. The appeal is dismissed. See formal decision below.

Matters of clarification and background information

2. The appeal building was listed in Grade II in 1970. It is a four storey, mid-terraced property, on the western side of Cunningham Place, close to the junction

with Aberdeen Place. It comprises a basement flat (11A) and a maisonette (No 11) which is the property subject of the listed building enforcement notice (LBEN). It lies within the St John's Wood Conservation Area (SJWCA) and the surrounding area is predominantly residential. There is another single Grade II listed building to the south and a Grade II* listed building at the corner of Cunningham Place and Aberdeen Place.

3. The notice relates to the removal of the single-glazed sash windows at ground, first and second floor levels in the front elevation of the maisonette part of the building and their replacement with double-glazed sash windows. In the 'Facts and Grounds' statement, dated 21 June 2016, the appellant refers to ground (c) as; *'That the matters alleged to constitute a contravention of section 9(1) or 9(2) have not occurred'*. This is a ground (b) appeal which would be bound to fail because the replacement windows are in place. However, it is clear from the rest of the statement that the appeal is made on ground (c) and that is how I have dealt with it.

4. In relation to whether or not listed building consent (LBC) should be granted (the appeal on ground (e) the most relevant development plan policies are the London Plan Policy 7.8 (conserving significance of heritage assets); City Plan Policy S25 (Heritage) and UDP policies DES10 (Listed Buildings) and DES1 (Principles of Urban Design and Conservation). The Council's Supplementary Planning Guidance 'Repairs and Alterations to Listed Buildings (SPG) is a material consideration.

5. All of the policies and guidance accord with the principles and policies set out in sections 7 (Requiring good design) and 12 (Conserving and enhancing the historic environment) of the National Planning Policy Framework (NPPF). I have had regard to the NPPF as well as to relevant sections of Planning Practice Guidance (PPG) relating to listed buildings and conservation areas. In relation to the statutory duties set out in the PLBCAA I have had special regard and paid special attention to sections 16(2), 66(1) and 72 of the Act'

The appeal on ground (c)

6. To be successful on this ground of appeal it must be conclusively shown that the works carried out do not constitute a contravention of sections 9(1) or 9(2) of the Planning (listed Buildings and Conservation Areas) Act 1990 (PLBCAA). This could be because there is either a listed building consent (LBC) in place for the works or that LBC is not required for the carrying out of the works. Clearly there is no LBC in place and the question to be considered, therefore, is whether or not LBC as required for the installation of the replacement windows.

7. Section 7 of the PLBCAA states that, with regard to a listed building, *'no person shall execute or cause to be executed any works.....for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest'*. The critical point is whether the works, whether acceptable or not, would affect the character of the building. For example major elevational works would alter its character but replacement of elements such as windows or doors on a strictly like-for-like basis are unlikely to affect its character or appearance.

8. Where windows are replaced and are not like-for-like the character of the building is usually affected. In this case the windows and frames have not been replaced as facsimiles of the previous windows. Although the physical changes are not major, having seen the new windows with their different frames and double-glazed window panes, I consider that as a matter of fact and degree the character of the listed building has been affected. It follows, in my view, that LBC should have been applied for in the first instance. This was not the case and so a contravention of

section 9(1) of the PLBCAA has occurred. The appeal on ground (c) must, therefore fail. I now turn to the merits of the windows under ground (e).

The appeal on ground (e)

Main issues

9. The main issues are:

- The effect of the double glazed windows on the character of the listed building, its setting and its special architectural and historic features and;
- The effect of the double glazed windows on the character and appearance of the SJWCA.

Reasons

10. Having seen the unauthorised windows from both near and distant viewpoints, I share the Council's concerns on the impact that they have had on the building itself, and on the character and appearance of the SJWCA.

11. The replacement windows are clearly based on the general dimensions of those which they replace and I accept that they are of high quality. However, I do not accept the appellant's contention that they match the exact dimensions of the original single-glazed sash and case windows. I note that a special non-reflective glass has been chosen and that the double-glazed windows are clearly more thermally efficient than the previous windows. But again the windows must be assessed in their totality and in relation to how they physically alter the appearance and character of the building and its immediate surroundings.

12. From a distance the differences between old and new are not so noticeable. However, on closer inspection I agree with the Council that the new windows are noticeably more modern, with poor detailing, visibly thicker frames and other obtrusive elements such as the black spacer bars and the highly reflective effect on the glazing. This latter effect was most noticeable during my site visit and it resulted in the listed building looking completely at odds and out of character with the glazing of adjacent and nearby buildings.

13. I consider, therefore, that these particular double-glazed windows have unacceptably harmed the integrity and character of the listed building. In turn this inappropriate and jarring appearance has affected the setting of the building itself and the appearance of other buildings within the terrace. The loss of the original sash and case windows by these harmful replacements has also had a detrimental effect on the special architectural and historic features of the building: namely the window openings and their surrounds.

14. In conclusion I find that the windows are contrary to policies DES10 and DES1 of the UDP as well as being contrary to policy S25 of the City Plan. Nor do they accord with the requirements set out in sections 7 and 12 of the NPPF. Whilst I acknowledge that the harm is 'less than substantial' as referred to in paragraph 134 of the NPPF, this harm is not outweighed by any public benefits. The only benefits accrue for the building owner in that the new glazing is more efficient.

15. However, there are other ways of achieving better thermal qualities and even double-glazed sash and case windows when appropriately designed and detailed can be acceptable in listed buildings. In this case and for the reasons set out above the replacement windows are not acceptable. The Council would not have granted LBC for these in the first instance and there can be no justifiable reason to grant listed building consent at this appeal stage. The appeal also fails on ground (e), therefore, and LBC will not be granted for the works carried out.

Other Matters

16. In reaching my conclusions on the grounds of appeal I have taken into account all other matters raised by the Council and on behalf of the appellant. These include the full statements of the parties; the initial facts and grounds pleaded; the photographic submissions; the Design and Access Statement and all of the other submissions. However, none carries sufficient weight to alter my conclusions on each of the grounds of appeal and nor is any other factor of such significance so as to change my decision.

Formal Decision

17. The appeal is dismissed and the listed building enforcement notice is upheld. Listed Building Consent is refused for the works carried out in contravention of section 9(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Anthony J Wharton

Inspector