

Appeal Decision

Hearing held on 25 October 2016

Site visit made on 25 October 2016

by Joanna Reid BA(Hons) BArch(Hons) RIBA

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

Decision date: 18 November 2016

Appeal Ref: APP/T5720/Y/16/3150110

The Butcher's Shop, 157 Arthur Road, Wimbledon, London SW19 8AD

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to vary or discharge conditions of a listed building consent.
 - The appeal is made by Mr Trevor Reed against the decision of the Council of the London Borough of Merton.
 - The application Ref 15/P3304, dated 26 August 2015, sought to vary condition No 4 of a listed building consent Ref 15/P0036 granted on 22 April 2015.
 - The works proposed are the reinstatement of a partition wall between the shop and the access to upper floor residential uses.
 - The condition in dispute is No 4 which states that: "Within one month of completion of the partition wall, full details of the tiling pattern, extent of salvaged tile usage and samples of replacement tiles, which shall replicate the original tiles, shall be submitted to and approved by the local planning authority. No tiling works shall be commenced until the details (*sic*) are approved."
 - The reason for the condition is: "In the interests of the preservation of the special architectural or historic interest of the listed building and to comply with policy CS14 of Merton's Core Planning Strategy 2011 and policy DM D4 of Merton's Sites and Policies Plan 2014."
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Decision

1. The appeal is allowed and the listed building consent Ref 15/P0036 for the reinstatement of a partition wall between the shop and the access to upper floor residential uses granted on 22 April 2015 by the Council of the London Borough of Merton is varied by deleting conditions numbered 4 and 5.

Procedural matter

2. At the hearing, the Council explained that, due to computer generated errors, its decision notices for the applications referred to in the heading above include references to planning permission whereas they should have referred to listed building consent. As the main parties agreed that the intent of the Council's decision notices is clear, the appeal has been made on a listed building consent appeal form, and because I do not consider that anyone's interests would be prejudiced, I shall deal with the appeal as made.

Main issue

3. The Former Butcher's Shop at 157 Arthur Road (the listed building) was listed in Grade II on 12 November 2014. With this in mind, from my inspection of the site and its surroundings, and from the representations made at the

hearing and in writing, I consider that the main issue is whether condition 4 is necessary to preserve the special architectural or historic interest of the listed building.

Reasons

4. The mid-terrace appeal building formerly included a butcher's shop and related facilities in the ground and lower ground floors (the shop), and a maisonette mainly on the upper floors over the shop. A door in the shop front gave separate access, through a narrow hall, to the maisonette from Arthur Road.
5. The Council granted planning permission for conversion and extension of the maisonette to provide 3 one-bedroom flats (the flats) in September 2014. Building works for this, including stripping out, were underway when English Heritage¹ inspected the building on 8 October 2014, following an application for designation made by an interested party or parties. English Heritage's consultation report is dated 16 October 2014. After consultation, the building was included in the statutory list in Grade II on 12 November 2014. The Council also granted planning permission for the change of use of the use Class A1 shop to use Class A2 (financial and professional services) in April 2015.
6. The appellant's agent was not advised in writing or instructed in writing by English Heritage or the Council to stop the building works at any time between 8 October 2014 and 12 November 2014. So, the building works continued. In order to satisfy Building Regulation requirements in respect of sound and fire, the wall between the ground floor hall and the shop needed to be replaced by a new wall, which would be sited a little further into the shop. The main parties agree that the wall between the hall and the shop was removed before the building was listed. Planning permission was not required for the removal of the existing internal wall because it did not constitute development.
7. The list description describes the listed building much as it existed on 8 October 2014, as a former butcher's shop, 1904, and it explains that the residential accommodation on the upper floors is not of special interest. It states that the principal reasons for listing include its rarity, architectural interest, decorative scheme and intactness. However, some of the features that are noted in the list description were removed before the building was listed. They include the 'matchboarded' ceiling to the shop, which has been replaced by new boarding, and 'wrought iron brackets carrying a rail for hanging meat', which have gone.
8. Whilst it does not specifically refer to the wall that has been removed, the list description states that 'Notable historic features are limited to the front, which is covered from floor to ceiling in the same green, white and brown tiles as on the façade, laid in decorative chequered panels with a brown dado rail and a tiled frieze with swags and green borders.' Despite the partly frosted appearance of the shop window, which the Council says is unauthorised, these tiles can still be seen on the outside, and inside on one side wall and the historically altered back wall in the front room of the shop. So, some of the continuity in the exterior and interior wall finishes, which are important to the character and historic function of the listed building as a traditional butcher's shop, can still be appreciated from within and outside the listed building.

¹ The relevant part of English Heritage became Historic England at the start of April 2015

9. The historic form, features and materials are important to the special architectural interest of the listed building, and to its significance as a former traditional butcher's shop. The historic decorative tiled walls contribute positively to the character and significance of the listed building, so it is desirable to preserve them.
10. The application for listed building consent, ref 15/P0036, proposed a wall in a new position, including a modest step towards the front, which would allow the width of both the wall and the hall to be increased. The hall face would be painted, and the shop face would be tiled from floor to ceiling. The tiling would include decorative panels similar to those existing on the opposite shop wall, where the historic tiles are in a range of colours and shapes, including some with tree and swag motifs. As only roughly 14% of the 2 latter historic tile types were salvaged from the wall that was removed, replica tiles were also proposed. The new wall has been built. Both sides have been painted so that the shop can be used by its present occupier as solicitor's offices.
11. The replica tiles would be costly, so the appeal proposal seeks to tile the wall in new plain field tiles, closely colour matched to the historic tiles, in the same pattern, with the salvaged tiles randomly distributed across the wall. Grouping the salvaged tiles together was also suggested at the hearing. As no replica tiles are proposed, the application seeks for the condition to be varied.
12. In exercising my statutory duty there is no statutory requirement to have regard to the provisions of the development plan, so I shall deal with relevant policies in the Development Plan as a material consideration. The *National Planning Policy Framework* (Framework) states that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. This is reiterated in Planning Practice Guidance (PPG).
13. There was no wall between the hall and the shop at the time that the building was first included in the statutory list, so the wall that was removed before then was not part of the listed building. Thus, its reinstatement, albeit in a different form, position and mostly new materials, would not be necessary to preserve the listed building. Because the shop is now in use as solicitor's offices, it is also not necessary for the wall to be ceramic tiled.
14. The Council would like to see much of the previous appearance of the removed tiled wall reinstated in the new position, so that the interior at the front of the shop would more closely reflect the list description. This is in line with Historic England's advice to the Council that like for like replacement tiles should be restored to the interior of the building, to preserve its historic integrity.
15. However, the wall has been built using modern techniques and materials in a different place and in a different configuration. It is substantial in scale, and the proposed tiling pattern would, at best, only mimic what was there before. So it would not amount to restoration supported by convincing evidence as advised in *Making Changes to Heritage Assets Historic England Advice Note 2*. Even if all of the new tiling were to closely match the colour and texture of the historic tiled walls, it would lack the patina of age and use. So, the shop side of the new wall would not look or feel like the historic walls, and wherever the few salvaged tiles were to be put, they would probably not be in their original places. Thus, the tiled wall required by the condition would not be authentic. As a significant proportion of the wall finishes in the front of the former shop

- would be a modern imitation, the positive contribution of the historic fabric to the character and integrity of the listed building would be harmfully eroded.
16. Taking the Council's view into account, the appellant's revised scheme aims to achieve a similar patterned tiled finish using new plain field tiles and the fairly few salvaged tiles. The differences between the tiled finishes on the historic walls and the mainly modern tiled finish on the new wall would be clear to most people inside the building. However, for some passers-by, the general impression of a unified tiled interior would be misleading and, on closer inspection, the interior finishes would be potentially confusing. As the new tiled wall was never part of the historic butcher's shop, but it could look as though it was, the significance of the asset would be unacceptably damaged.
 17. In the terms of the Framework, the harm that either the replica tiled wall or the mainly plain tiled wall would cause to the listed building would amount to less than substantial harm. Framework paragraph 134 explains that where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. As the present uses of the listed building would not change, its optimum viable use is not relevant here. Both schemes seek to restore some of the lost historic appearance of the butcher's shop interior, but as there are photographs that show the wall truthfully, as it once was, this public benefit attracts little weight.
 18. Taken together, the public benefits attract fairly little weight, so they are not enough to outweigh the less than substantial harm that either of the proposed tiled walls would cause. Moreover, insufficient clear and convincing justification has been put to me to show why either of the proposed tiled walls would be necessary to conserve the heritage asset in a manner appropriate to its significance as a former traditional butcher's shop.
 19. By contrast, the listed building has new uses, and as some changes would reasonably be expected to have been made to the building, the new wall does not look out of place from inside or outside. Because the flat painted finish of the new wall differs from the richly decorative tiled finish of the historic walls, and the alignment of the new and historic walls clearly changes where they meet, there is no confusion between the historic fabric and more recent works. Thus, the new wall preserves the positive contribution of the historic parts of the interior to the special interest and significance of the asset. As the existing wall conserves the heritage asset in a manner appropriate to its significance, as a former traditional butcher's shop, the condition in either form is not necessary to preserve the special architectural interest of the listed building.
 20. Whilst the appellant's agent suggested or agreed to the tiled finish for the new wall, the PPG² advises that any condition that fails to meet any of the 6 tests should not be used. This applies even if the applicant suggests it or agrees on its terms. The appellant's agent explained that the tiled finish would have undesirable acoustic properties for the present use, and that replica tiling would be disproportionately costly. As there is no need for replica tiles, or for a tiled finish, and because any tiled finish would be more costly than the existing finish, either of the proposed tiled finishes would place an unjustifiable burden on the appellant. So, either condition would also not be reasonable.

² PPG Ref ID: 21a-005-20140306

21. For all of these reasons, I consider that condition 4 is not necessary to preserve the special architectural interest of the listed building, and I shall delete it. The existing works also satisfy Policy 7.8 of *The London Plan*, Policy CS 14 of the *London Borough of Merton LDF Core Planning Strategy* and Policy DM D4 of the *London Borough of Merton Sites and Policies Plan and Policies Maps*, which all aim to conserve heritage assets, and the Framework, which aims to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.
22. Turning to other conditions that were imposed on the listed building consent ref 15/P0036, condition 5 states that: "The tiling of the new partition shall be carried out in strict accordance with the approved details within 3 months of completion of the partition wall." Because there is no requirement for a tiled finish to the new partition wall, it follows that condition 5 is not necessary, and so I shall delete it. It should also be noted that, with regard to condition 2, although the plans show a tiled finish to the partition wall, this finish has been omitted by the deletion of conditions 4 and 5.

Conclusion

23. For the reasons given above and having regard to all other matters raised, the appeal succeeds.

Joanna Reid

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Nigel Edward Husband
Laura Dootson

Appellant's architect, H&C Architects LLP
Appellant's architect, H&C Architects LLP

FOR THE LOCAL PLANNING AUTHORITY:

Sue Wright

Development management north team leader,
Council of the London Borough of Merton

INTERESTED PERSON:

Dr David Dawson

Local resident, representing the Wimbledon Park
Residents' Association, Ms DeNica Fairman, his
wife and himself

DOCUMENTS PUT IN AT THE HEARING

- 1 Neil Milligan's note of 25 October 2016
- 2 Robert and Rina McCann's email of 11 October 2016 15:47
- 3 Application plans and documents for listed building consent ref 15/P0036

DOCUMENTS PUT IN AFTER THE HEARING

- 4 Plans LBA04 and LBA05³
- 5 Application form for removal or variation of a condition for application
ref 15/P3304

³ Omitted in error from Document 3