
Appeal Decisions

Site visit made on 11 October 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 13 December 2016

Appeal A Ref: APP/X5990/C/16/3154848

The buildings(s) and associated land at First Floor Flat, 48 Kendal Street, London W2 2BP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Omar Al-Ethawi against an enforcement notice issued by City of Westminster Council.
 - The notice was issued on 4 May 2016.
 - The breach of planning control as alleged in the notice is, without the requisite planning permission and within the last four years, the removal of steel framed, leaded, clear single glazed windows, as shown in Photograph Set B attached to the notice, and the installation of aluminium framed double glazed windows, as shown edged in red in Photograph Set A attached to the notice.
 - The requirements of the notice are:
 - 1) Remove the unauthorised aluminium framed double glazed windows shown edged in red in Photograph Set A attached to the notice; and
 - 2) Reinstate steel framed, leaded, clear single glazed windows, to match in design, detailing and materials those which previously existed, as shown in Photograph Set B attached to the notice.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
-

Appeal B Ref: APP/X5990/C/16/3154855

The buildings(s) and associated land at Second Floor Flat, 48 Kendal Street, London W2 2BP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Omar Al-Ethawi against an enforcement notice issued by City of Westminster Council.
 - The notice was issued on 4 May 2016.
 - The breach of planning control as alleged in the notice is, without the requisite planning permission and within the last four years, the removal of steel framed, leaded, clear single glazed windows, as shown in Photograph Set B attached to the notice, and the installation of aluminium framed double glazed windows, as shown edged in red in Photograph Set A attached to the notice.
 - The requirements of the notice are:
 - 1) Remove the unauthorised aluminium framed double glazed windows shown edged in red in Photograph Set A attached to the notice; and
 - 2) Reinstate steel framed, leaded, clear single glazed windows, to match in design, detailing and materials those which previously existed, as shown in Photograph Set B attached to the notice.
 - The period for compliance with the requirements is six months.
-

- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
-

Appeal C Ref: APP/X5990/C/16/3154863

The buildings(s) and associated land at Third Floor Flat, 48 Kendal Street, London W2 2BP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Omar Al-Ethawi against an enforcement notice issued by City of Westminster Council.
 - The notice was issued on 4 May 2016.
 - The breach of planning control as alleged in the notice is, without the requisite planning permission and within the last four years, the removal of steel framed, leaded, clear single glazed windows, as shown in Photograph Set B attached to the notice, and the installation of aluminium framed double glazed windows, as shown edged in red in Photograph Set A attached to the notice.
 - The requirements of the notice are:
 - 1) Remove the unauthorised aluminium framed double glazed windows shown edged in red in Photograph Set A attached to the notice; and
 - 2) Reinstate steel framed, leaded, clear single glazed windows, to match in design, detailing and materials those which previously existed, as shown in Photograph Set B attached to the notice.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
-

Summary Decisions: The appeals are dismissed and the enforcement notices are upheld.

Procedural Matters

1. These appeals relate to first, second and third floor flats in the same building at 48 Kendal Street, London W2 2BP, within the Bayswater Conservation Area. The appeals are all against enforcement notices issued by the City Council in respect of, in summary, the removal of steel framed, leaded, clear single glazed windows and the installation of aluminium framed double glazed windows. The appeals are made on the same grounds, namely grounds and (a) and (f) set out in section 174(2) of the 1990 Act. The appeals on ground (a) each raise the same main issues. It is therefore convenient to determine these appeals together in the same Decision, as requested by the appellant.
 2. Although the host building is not itself statutorily listed, it adjoins a terrace of listed buildings at Nos. 4 to 16 Porchester Place. The enforcement notices do not allege any harm to the setting of these listed buildings, and neither the appellant nor the Council made direct reference to this issue in their evidence. However, in considering whether to grant planning permission for development that affects a listed building or its setting, I have a duty under Section 66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the setting of listed buildings.
 3. In order to discharge that duty, I therefore sought the views of the appellant and the City Council as to whether the breach of planning control affects the setting of the adjoining listed buildings. I have taken these views into account in considering this issue. In this context, I must emphasise that this is not a matter introduced by the City Council: it is a matter initiated by myself pursuant to the duty upon me imposed by Section 66 (1) and upon which, in
-

the interest of fairness and natural justice, I am required to seek the views of the appellant and the City Council. The omission of any allegation of harm to the setting of the listed buildings does not make the enforcement notice invalid, particularly given that the City Council, in issuing the notice, did not consider that there was any harm to setting of the listed buildings. Similarly, the appellant has had an opportunity to comment on this issue and availed himself of that opportunity. I am therefore satisfied that the appellant has not been caused any injustice by me considering this issue which, in any event, I am required to do under the provisions of Section 66 (1).

The appeals on ground (a) and the deemed planning applications

4. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issues raised are:
 - the effect of the development on the character and appearance of the host building, and
 - whether the development alleged in the notice preserves or enhances the character or appearance of the Bayswater Conservation Area.

Character and appearance of the host building

5. The appeal property is a brick-built four storey building believed to date from 1904, located at the junction of Kendal Street and Porchester Place. The windows to which the enforcement notices relate are all on the elevation facing onto Porchester Place. This elevation comprises a retail unit on the ground floor with three floors of residential accommodation above. The windows at first and second floor levels are contained in a prominent bay feature, and are set within heavy surrounds. The third floor window is practically flush with the surrounding brickwork and is not set within the same heavy surrounds as the windows at first and second floor level, although detailing is provided by decorative brickwork above the window.
6. By contrast, the elevation to Kendal Street is less articulated, with the windows at all floors being flush with the brickwork and detailing limited to decorative brickwork above each window. The windows in this elevation are also of a different design, and appear to be sliding-sash windows rather than the side or top hung windows in the Porchester Place elevation. The two elevations of the building are linked and unified by a vertical banding on a chamfered corner, and by a detailed cornice to the parapet. Consequently, and notwithstanding the difference in articulation between the two elevations, the host building displays a coherent appearance that exhibits a number of features typical of a building of its period.
7. The appeal property is not statutorily listed and is not individually identified as being an unlisted building of merit. However, Conservation Area Audit No.6: Bayswater (Conservation Area Audit) explains that the unified townscape which is characteristic of Bayswater means that virtually all of the unlisted buildings in this conservation area will be deemed by the City Council to be unlisted buildings of merit. Having regard to the features of the appeal building as described above, I take the view that the statement in the Conservation Area Audit quoted above applies to this building.

8. Prior to the installation of the aluminium framed double glazed windows, the fenestration at first, second and third floor levels on the Porchester Place elevation comprised of steel framed, leaded, clear single glazed windows. These are shown in Photograph Set B attached to the enforcement notices and also in photographs dated April and June 2009, but are also apparent in a series of photographs taken between 1962 and 1974 included in the City Council's evidence. On the evidence of those photographs, the windows in the Porchester Place elevation of the building were consistent with the character and appearance of a building of this period.
9. The aluminium framed double glazed windows differ from the steel framed single glazed windows that they replaced in two main respects: the profile of the framing and the absence of individual panes in the former. I consider these differences in turn below.
10. I take the appellant's point that, in purely numerical terms, the increase in the profile or width of the frames may not be significant. However, in visual terms, this increase in the profile of the frames has significant implications given that the profile of the frame to each edge of the window is increased. It is therefore the cumulative impact of the increased width of each individual frame that determines the overall impact, together with the attendant decrease in the surface area of the glazing.
11. The thinner profile of the steel framed single glazed windows ensured that these windows did not dominate the elevation onto Porchester Place, particularly given that those at first and second floor sat within the heavy surround that is part of the prominent bay feature. The cumulative effect of the thicker profile on each edge of the individual windows of the aluminium framed double glazed windows is to alter the proportion of the framing to the glazed surface area, taken across not only each individual window pane but also the window opening as a whole.
12. The effect on the third floor window is somewhat different, insofar as the individual windows are separated only by their respective frames rather than the heavy surround at first and second floor levels. The appellant considers that the difference in the profile of the framing is less apparent at this level, but I take the opposite view. In the absence of a heavy surround, the increase in the width of the individual frames, multiplied due to the presence of the six separate window panes, fundamentally alters the proportions between the framing and glazed surface area. This substantially alters the appearance of this window when compared to the thinner profile of the steel framed single glazed window.
13. Looked at in this way, the thicker profile of the aluminium framed double glazed windows has a significant effect on the appearance of the Porchester Place elevation. This is particularly apparent in longer views from Kendal Street, from where the thicker profile of the window frames can be viewed in the context of the building as a whole. In these longer views, the thicker profile of the aluminium framed double glazed windows appears out of keeping with the character and appearance of this period property.
14. The other difference between the aluminium framed double glazed windows and the steel framed single glazed windows is the absence of individual panes in the former. The individual panes of the steel framed single glazed windows would have reflected light at different angles in a manner common to

properties of the period. The absence of this feature in the aluminium framed double glazed windows is a significant retrograde step that fails to reflect the traditional character and appearance of the host building.

Character or appearance of the Bayswater Conservation Area

15. The character and appearance of the Bayswater Conservation Area is derived in part from the unified townscape comprised mostly of residential terraces and houses of a consistent scale. Architectural details and the use of materials vary according to the age, function and status of the property but the consistent theme is one of high quality traditional buildings set within a regular composition of streets and squares. In this respect, I am again mindful of the explanation in the Conservation Area Audit that virtually all of the unlisted buildings in this conservation area will be deemed to be unlisted buildings of merit.
16. In the vicinity of the appeal site, this character and appearance is expressed in the terraces that front onto Kendal Street and Porchester Place. Although of varying height and detail, with the terraces in Porchester Place also featuring retail and commercial uses at ground floor level, this group of traditional buildings are of high quality and provide a unified townscape. The overall character and appearance of this part of the conservation area is consistent with that of the Bayswater Conservation Area as a whole.
17. On the north side of Kendall Street, directly opposite the appeal property, the character and appearance is markedly different. This side of the road is dominated by unexceptional post-war development, some of which is substantial in height and bulk. These buildings are outside the Bayswater Conservation Area and, whilst they form part of the setting of that conservation area, they do not undermine the positive contribution that the terraces in Kendall Street and Porchester Place make to the character and appearance of the conservation area as a whole.
18. As identified in the Conservation Area Audit, one of the characteristics of the conservation area is the unified townscape. This in part derives from the consistently high quality of the traditional buildings within it. The installation of the aluminium framed double glazed windows on the Porchester Place elevation of the appeal property fails to reflect the traditional character and appearance of the host building, and therefore detracts from the quality of this traditional building. This in turn disrupts the unity of the townscape, and as such fails to preserve or enhance the character or appearance of the Bayswater Conservation Area.

Conclusion on the main issues

19. I conclude that the removal of steel framed, leaded, clear single glazed windows and the installation of aluminium framed double glazed windows at first, second and third floor levels of the appeal property harms the character and appearance of the host building and fails to preserve or enhance the character or appearance of the Bayswater Conservation Area. I therefore conclude that the development alleged in the enforcement notice is contrary to Policies 7.4 and 7.8 of The London Plan, as well as Policies S25 and S28 of the Westminster City Plan (City Plan) and Policies DES1, DES5 and DES9 of the City of Westminster Unitary Development Plan (UDP). These policies indicate, amongst other things, that the heritage assets in Westminster will be

conserved. The development also fails to accord with the importance attached in the National Planning Policy Framework (Framework) to the desirability of sustaining and enhancing the significance of heritage assets, a matter to which I attach great weight.

20. I have a duty under section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 to pay special attention to the desirability of at least preserving the character and appearance of the conservation area. For the reasons given above, I consider that the installation of the aluminium framed double glazed windows, for which planning permission is sought, fails to achieve that objective. In terms of paragraph 134 of the Framework, the harm to the character and appearance of the conservation area as a whole can be described as "less than substantial" harm to the significance of the heritage asset. Nevertheless, given the statutory duty, that harm carries considerable importance and weight. No public benefits have been advanced to weigh against that harm, which is sufficient reason by itself to refuse planning permission on the deemed application.

Other Matters

21. As indicated above, although not itself statutorily listed, the host building adjoins a terrace of listed buildings at Nos. 4 to 16 Porchester Place. The terrace of listed buildings therefore forms part of group of high quality buildings that includes, in the appeal property, a building deemed to be an unlisted building of merit. The setting of these listed buildings is therefore one characterised by high quality buildings. This setting contributes to the significance of the listed buildings as a designated heritage asset by reinforcing the architectural merits of the listed buildings by association with other high quality buildings.
22. The appellant considers that the adjoining listed buildings are architecturally distinct from the appeal property, and that there are no similarities in terms of windows size and style. The appellant accordingly considers that the installation of aluminium framed double glazed windows preserves the special architectural and historic merit of adjoining listed buildings, and that the setting of these buildings will be maintained and preserved. The City Council explains that the enforcement notice did not allege any direct harm to the setting of any adjoining listed buildings because the special architectural and historic interest of the listed building remain to be appreciated.
23. Whilst I recognise that there are some significant differences in architectural styles between the appeal property and the adjoining listed buildings, it is the setting in association with other high quality buildings that contributes to the significance of the designated heritage asset. For the reasons set out above, I have concluded that the installation of the aluminium framed double glazed windows harms the character and appearance of the host building. Accordingly, although the features of the listed building itself are unaffected and remain to be appreciated in their own right, the setting in which they are viewed is harmed by the erosion of the quality of the appeal property, with which the listed building is viewed in association. I therefore conclude that the installation of the aluminium framed double glazed windows fails to preserve the setting of these listed buildings. In accordance with the Framework, this is also matter to which I attach great weight and is another reason why the deemed planning application should not be granted.

24. The appellant has suggested that, if I find the construction, material and finish of the aluminium frames to be acceptable but considered that single glazing was preferable, then a condition requiring the replacement of the double glazing with single glazing could be imposed. The appellant has provided a form of wording for such a condition, including a requirement that details should be provided to the City Council for approval. However, for the reasons set out above, I do not consider that the construction, material and finish of the aluminium frames to be acceptable. The proposed condition would therefore not overcome the harm identified in those respects.

Conclusion on the ground (a) appeals

25. Having regard to the above, I find that the installation of the aluminium framed double glazed windows is contrary to policies in the development plan and that there are no material considerations of sufficient weight to indicate that the deemed planning application should be determined otherwise than in accordance with it. I therefore conclude that planning permission ought not to be granted. Accordingly, the appeals on ground (a) fail.

The appeals on ground (f)

26. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of the notices include the removal the unauthorised aluminium framed double glazed windows and the reinstatement of steel framed, leaded, clear single glazed windows. The purpose of the notice must therefore be to rectify the breach of planning control.
27. The appellant has put forward two alternatives to full compliance with the notices. The first is the replacement of the double glazing with single glazing with the leaded glazing bar pattern of the former windows being replicated. The second is to add external leaded bars to the existing glazing that have been chemically blackened and which would include soldered joints.
28. However, neither of these lesser steps would achieve the purpose of the notices. Neither of the proposed lesser steps would address the profile of the framing to the windows. Moreover, whilst it may be possible to replicate the pattern of the leaded glazing bars, neither of these lesser steps would replicate the variation in reflected light from individual panes that is a characteristic of this type of window and which contributed significantly to the character and appearance of the host building and wider conservation area. Consequently, although these solutions would incur less cost and disruption to the appellant, neither would overcome the planning difficulties caused by the breach of planning control.
29. Accordingly, the appeals on ground (f) fail.

Conclusion

30. For the reasons given above I conclude that these appeals should not succeed. I shall uphold the enforcement notices and refuse to grant planning permission on the deemed planning applications.

Formal Decisions

Appeal A Ref: APP/X5990/C/16/3154848

31. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/X5990/C/16/3154855

32. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C Ref: APP/X5990/C/16/3154863

33. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer

INSPECTOR