
Appeal Decision

Site visit made on

by P N Jarratt BA DipTP MRTPI

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

Decision date: 23 January 2017

Appeal Ref: APP/F0114/F/16/3155136

Flat 2, 15 Alfred Street, Bath, BA1 2QX

- 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 John Harford against a listed building enforcement notice issued by Bath and North East Somerset Council
 - The enforcement notice, numbered 14/00129/LBWORK, was issued on 23 June 2016.
 - The contravention of listed building control alleged in the notice is the conversion of the sub-basement and vaults to additional living accommodation.
 - The requirements of the notice are:
 1. Remove the external security light and wiring (as shown on photo MA1) from the west elevation and make good the stonework using an appropriate lime mortar;
 2. Remove the damp proof membrane installed to the soil floor of the sub-basement hall and remove all material from the site (sub-basement shown on photo Ma2 and MA3);
 3. Dismantle the concrete, chipboard and wooden flooring laid to the sub-basement hall and remove all material from the site (sub-basement shown on photo Ma2 and MA3);
 4. Remove the radiators fitted to the sub-basement hall and WC;
 5. Remove by hand the timber and plasterboard partitioning including door to the WC in the sub-basement;
 6. Remove all wall tiles, ceiling lights and electrical wall plates, the toilet, was basin and all plumbing work from the WC area and remove all materials from the site;
 7. Remove by hand using non-power tools the cementitious water proof coating and plaster from the walls of the sub-basement hall and WC and replace with a lime plaster (sub-basement shown on photo MA1 and MA2);
 8. Remove all recessed ceiling lights and electrical wall plates from the sub-basement hall and sub-basement rear room (room shown on photo MA4);
 9. Dismantle the concrete, chipboard and wooden flooring laid to the sub-basement rear room and remove all material from the site including the damp proof membrane;
 10. Remove the radiator and associated pipes from the sub-basement rear room;
 11. Re-plaster the exposed stone wall within the sub-basement rear room using traditional lime plaster (stone wall shown on photo MA4);
 12. Remove the shower partition and wall tiles, plasterboard ceiling and walls, cabling, plumbing, radiators, cupboards, all timber batons, timber stud walls and Newton waterproofing system from the walls and ceiling in the two vaults, remove material from the site and finish the walls with three coats of limewash (vaults shown on photo MA5, MA6 and MA7).
 13. Dismantle the floor to both vaults (including the removal of the geo-textile fabric, drainage system, pea gravel, flooring membrane, concrete, foam insulation, chipboard, wooden flooring and tiles) and remove all material from site (vaults shown on photo MA5, MA6 and MA7);
 14. Re-instate the floor level in the two vaults by 300mm with a soil floor.
 - The period for compliance with the requirements is 10 months.
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- The appeal is made on the grounds set out in section 39(1) (c), (e) and (g) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
 - **Summary of Decision: appeal allowed, notice quashed and listed building consent granted.**
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Procedural Matter

1. The appellant appears to be drawing an incorrect connection between the description of the breach in the notice and a material change of use as the use of the appeal premises has been in C3 residential use since the 1970s. The reference in the notice to "the conversion of the sub-basement and vaults to additional living accommodation" appears to me to be an accurate description. Conversion is not the same as a material change of use as a non-habitable part of a dwelling is capable of being converted into habitable accommodation without any material change of use taking place.
2. The appellant raises issues over the distinction that is necessary between 'works' and the requirements of the notice as these invoke separate grounds of appeal. He has assumed that each and every element of the requirements is a constituent part of the section 9 works. I note however that the list of requirements has been based on the schedule of works provided by the appellant to the Council. Additionally the appellant considers that the Council has not been specific about what the harm is and how it has been caused.
3. Notwithstanding these concerns, I am satisfied that the notice is clear on its face and needs no correction or variation.
4. The security light referred to in step 1 of the requirements had been removed at the time of my site inspection.

Application for costs

5. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Main Issues

6. The main issue in the ground (e) appeal is whether the works subject to the notice preserve the listed building or its setting or any features of special architectural or historic interest it possesses.

Appeal Site

7. The appeal site is a lower ground floor apartment in an end terrace Grade II listed building within the Bath Conservation Area and World Heritage site. The building conforms to the standard Palladian model arranged over six floors with basement and sub-basement levels set down below pavement level. Although the main rooms of the appeal property are at basement level to Alfred Street, a lower level access is provided from St Andrews Lane at the side. At basement level there is access to a courtyard through the kitchen, from which there are unconverted ashlar Bath stone vaults under the footway of Alfred Street. Stairs lead down from the hall to the small sub-basement hallway which gives access to a bedroom, WC and two vaults converted into a room and a utility/shower room.

Policy Background

8. Section 16 of the LBCA requires special regard to be paid to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses, before granting listed building consent. In addition to the duties under the Act referred to above, the policies of the 2014 Core Strategy for Bath and North East Somerset and the saved policies of the 2007 Local Plan are also material considerations in these cases.
9. Policies CP6 and B4 of the Core Strategy refers to environmental quality and the World Heritage site and saved Policy BH.2 of the Local Plan refers to the protection of listed buildings and their settings.
10. These policies are also broadly in accordance with the aims of the National Planning Policy Framework (the Framework) which is also a material consideration in these cases. Paragraphs 132 and 134 of the Framework note that great weight should be given to conserving the significance of heritage assets and that any harm must be outweighed by public benefits of the proposal, including securing the optimum viable use of the building, before listed building consent is granted.

Reasons

Appeal on ground (c)

11. An appeal on this ground is that the matters if they occurred do not constitute a contravention.
12. There is disagreement between the parties over the state and condition of the sub-basement prior to the works having being carried out. The Council makes reference to James May's Toy Stories attached as Appendix 1 to their statement which describes to the invention of plasticine in the appeal property. It makes reference to the appellant's assessment of the property from which the Council has concluded that the vaults and basement had been unaltered or upgraded despite the former uses of the building. Reference is also made to the appellant's own photographs of the sub-basement and the works in progress. These show that the sub-basement contained two arched brick vaults that appear largely in their original form although electric lighting is present. The larger room in the sub-basement is a former housekeepers' room.
13. The appellant refers to the listing description not making any reference to the interior of the building. This is not uncommon and the lack of such description does not remove the requirement to obtain listed building consent for any works that would affect its character as a building of special architectural or historic interest.
14. The Council draws particular attention to the lowering of the floor level in both vaults, the underpinning of the central wall between the vaults, the use of modern materials, the installation of a waterproofing system and the exposure of masonry. Additionally, the replacement of a concrete floor is not considered as a repair.
15. The sub-basement contributes to the integrity and intrinsic character of the building. The Council's knowledge of the state of the appeal property prior to the works being carried out appears to be limited but I nevertheless consider

that the nature of the works to be substantial and that, as a matter of fact and degree, the totality of the works as alleged have affected the character and appearance of the listed building which has led to a contravention of section 9.

16. The appeal on this ground fails.

Appeal on ground (e)

17. An appeal on this ground is that listed building consent ought to be granted for the works.
18. The Council considers that works carried out are not reasonable to create a habitable space or reasonable to be carried out to a listed building considering the significant use of modern materials. Additionally the failure to apply for consent for works such as the Newton damp-proofing system has meant that the Council has been unable to assess whether the works were necessary and there has not been discussion about alternative methods of repair to the vaults was possible.
19. The Council resists the conversion of vaults and refers to three appeal decisions in support. However I note that the decision at 4 Lower Camden Place, Bath refers to works to vaults under the footway which is not the case in this appeal. Another case in Bristol relates to the formation of a garage and creation of a new opening which again is distinguishable from the current appeal. The third appeal in Grosvenor Place in Bath relates to the conversion of the remainder of the existing vault in a Grade I listed building also under a footway. Consequently I attach limited weight to these appeals which are distinguishable on their facts.
20. The heritage statement submitted with the appeal sets out the history of the development of Alfred Street and of the house in which various alterations to the sub-basement level is referred to, including early C20 commercial intervention, war damage in 1942 and the conversion of the building into flats in the 1970s. The heritage statement concludes that on the basis of research, that the two asymmetrical brick vaults were reformed in 1911 as a substitute for the primary masonry vaulting as part of a department store redevelopment of St Andrews Terrace. At some time cement slurry had been applied to the arches but this led to some delamination of the brickwork. At the time of the acquisition of the property in 1994, the appellant opened up what had been a closed off and derelict space that had been sub-divided with plywood screens and doors, with a lino floorcovering over a shattered concrete floor. Temporary measures were put in place to pump out groundwater.
21. The appellant's supporting structural report sets out surface water penetration issues with the property and the efforts made to mitigate the risk of damage to the fabric of the building. The Newton water management system with integrated sump and pit has been in place for a number of years and effectively deals with the water issues, removing on average 750 litres of water each day. I note that it is a system that has been utilised in many Grade I and II listed buildings throughout the country and the Council has not provided any convincing reasons why the removal of the system would be in the longer term interests of the structural integrity of the building.

22. The evidence indicates that the sub-basement has benefitted from occupation in the past and has been a functional service area. Its more recent conversion has been achieved without substantially compromising the essential character of the space although the appearance of the vaults has changed from that of a damp, little used space to modern habitable rooms. The housekeepers' room remains much the same albeit modernised and with a section of the wall having exposed stonework which the appellant states is a temporary situation pending the drying out of the room. The two vaults are spatially similar to that prior to the work being done, albeit that the floor has been lowered by a small degree and that the Newton waterproofing system has been installed. A WC existed previously in the sub-basement and there was a stainless steel sink in a frame in what is now the utility room. The most significant change is that the sub-basement has been brought up to modern habitable standards with dry walls and floors.
23. However, the interventions caused by the carrying out of the works have led to a level of harm to fabric and interest of the listed building but only to a limited degree. In the context of paragraph 134 of the Framework I consider that the degree of harm to the significance of the heritage asset to be less than substantial but that this is outweighed by the longer term protection of the building from water penetration and active use of the sub-basement. Whilst this may have private benefits to the appellant, I regard the protection the building is clearly a public benefit.
24. I consider that the works, subject to a condition necessary to reinstate the plaster in the former housekeepers' room, satisfies the Framework and accords with the policies of the Core Strategy and the saved policies of the Local Plan.
25. For the reasons given above I conclude that the appeal should succeed. It is therefore unnecessary for me to consider the appeal on ground (g).

Conclusion

26. Although the Council has not had the opportunity to scrutinise the works to the listed building through the mechanism of an application for consent, or being able to consider amendments to those works where appropriate, I do not consider that the harm caused is substantial and that the works can be made acceptable through a condition requiring the plastering of the exposed stonework in the former housekeepers' room.

Decision

27. The appeal is allowed and the listed building enforcement notice is quashed. Listed building consent is granted for the retention of the works for the conversion of the sub-basement and vaults to additional living accommodation at Flat 2, 15 Alfred Street, Bath, BA1 2QX subject to the following condition:
- 1) The exposed stone wall within the sub-basement rear room shall be re-plastered using traditional lime plaster within 10 months of this decision.

P N Jarratt

Inspector