
Appeal Decisions

Site visit made on 17 February 2017

by David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC

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

Decision date: 10th February 2017

Appeal No.1: Appeal Ref: APP/X5990/Y/16/3163180
35 Clifton Place, London, City of Westminster W2 2TR

- 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 & Mrs Gigon against the decision of City of Westminster Council.
 - The application Ref 16/01658/LBC, dated 24 February 2016, was refused by notice dated 23 May 2016.
 - The works proposed are replacement windows.
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Appeal No.2: Appeal Ref: APP/X5990/W/16/3163179
35 Clifton Place, London, City of Westminster W2 2TR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Gigon against the decision of City of Westminster Council.
 - The application Ref 16/01657/FULL, dated 24 February 2016, was refused by notice dated 26 May 2016.
 - The development proposed is replacement windows.
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Decisions

Appeal No.1: Appeal Ref: APP/X5990/Y/16/3163180

1. The appeal is dismissed.

Appeal No.2: Appeal Ref: APP/X5990/W/16/3163179

2. The appeal is dismissed.

Main Issues

3. These are, in respect of both appeals, a) whether the proposed works and development would preserve the Grade II listed building known as Flat 2 35 Clifton Place (listed as Sussex Place, W2 (south west-side) Nos 10 to 18 (even) and No 35 Clifton Place) or any features of special architectural interest that it possesses and b) whether they would preserve the character or appearance of the Bayswater Conservation Area.

Reasons

Significance

4. The special architectural interest and significance of No 35 Clifton Place (and its associated neighbours) is most evidently expressed in the Neo-Classical proportions, stucco'd render, architectural detailing and fenestration of its street-facing elevations. The buildings comprise four floors with basement and dormer attic, and these express a hierarchy governed by Neo-Classical architectural principles. Hence the first floor above the basement (lower ground and ground floor) is given primacy by its attenuated height, whilst the second and third floors diminish in scale above. The double-hung sash windows in these openings play, and historically have always played, a significant role in articulating this architectural and stylistic language.
5. The windows collectively and individually also embody special interest as works of very sophisticated historic carpentry. This is not only expressed in the complex fabrication and balancing mechanisms of the box frame, but also in the refined profiles of the constituent elements of rails, styles and glazing bars of the sashes themselves. A further constituent of special interest is the selected material for fabrication of these fixtures, which in many cases would have been of Baltic heartwood Deal, tight-grained softwood recognised for its lightness and durability. Beyond these functional attributes, such fixtures also offer aesthetic qualities, from the elegant pointed profile of the Lamb's Tongue glazing bars to the ensemble and shutters and window linings, often tied stylistically to the wider decorative schema of the principal spaces they light. A more subtle register of special interest and significance lies in the softer profile of the timber as a result of the patinated layers of protective paint applied to the carpentry. This in turn conveys a wider sense of authenticity and one of component integrity with the historic fabric of the structure as a whole. All the windows the subject of these appeals express these attributes, and it is not disputed that they are fixtures that date from the initial building and finishing of the terrace in the mid C19.
6. From my inspection of the boxes and frames of both windows that all appeared to be in essentially sound condition, saving a degree of paint cracking suggesting minor areas of decay on two of the bottom rails. I also noted that the larger windows on the first floor have been the subject of upgrading in the past, there being micro-fibre brush systems fitted to the parting beads and rails.

The proposed works and development and effect on special interest

7. The proposals seek the complete replacement of the windows in the first and second floors of the Clifton Place elevation. These are indicated as being formed in hardwood, finished in acrylic paint and designed as 'exact replicas of those currently in situ. The justification for these works is that they will deliver a substantial improvement in environmental performance. It is asserted that 'so poor (great?) is the heat loss from the existing windows' that the appellants currently reside away from the property.
8. It is further asserted that although the windows are, by the appellant's own account capable of repair, the cost of doing so would be prohibitive. This

position apparently being based on the current windows requiring a great deal of work in order to ensure their retention. It is concluded by the appellants therefore that 'it would be 'more efficient' to replace the windows. However, such a position is not supported by any evidence to indicate the relative costs of the two programmes nor indeed the level of environmental performance gains anticipated or by what specific technical means.

9. The main thrust of the appellant's argument is rather that, on the basis that the windows can be replicated precisely in all respects so that they are indistinguishable from the street, then no significant harm will be caused to the value of the heritage asset or to the character or appearance of the conservation area. On this basis it is stated there would be no material conflict with the policies of the development plan.
10. It may well be the case that in purely visual terms there would be no significant or material harm to the aesthetic value of the building as a result of the works. It may be possible that the incongruous quadrant profiles to the putty fixings of the glass shown on the drawings could be replaced with the chamfered profiles of the original. It may also be possible to specify a programme of paint application that may be sufficient to simulate the layered patina of the present fixtures. Both these measures could be secured through condition. If this were the only consideration in judging whether the proposals would preserve the special interest of the listed building as the Act requires, then the appeal should be allowed.
11. But such an approach would fail to take into account the evidential value of the fixtures, their value as fabric of clear historic provenance and their authenticity as constituents of a building of similarly constituted elements designated at a national level for its cultural heritage, or more specifically its special architectural interest. This is no arbitrary view. It is a well-established principle that historic window carpentry does, in very many cases, make a very significant contribution to the special architectural interest of such designated listed buildings for all these reasons. Indeed, there is detailed advice set out in publications formulated over a number of years promulgated by English Heritage¹ (now Historic England) setting this out and the measures by which they may be safeguarded as such.
12. In this case, the windows in question are undisputedly contemporaneous with the first build of the structure in the mid C19. Furthermore, they make a very significant contribution to the special interest of the building in terms of their evidential and aesthetic value. Moreover, they are essentially of sound repair and are capable of further upgrading to achieve a higher level of environmental performance. Their loss and replacement in these circumstances is not in my view justified, as such an outcome would result in a significant diminution of the heritage interest of the building.
13. In this context, the proposals would clearly fail to preserve the special architectural interest of the listed building, contrary to the expectations of the Planning (Listed Buildings and Conservation Areas) Act 1990, the desirability of which is a consideration the Courts have determined as a matter of considerable importance and weight. Moreover, it would fail to accord with the expectations of paragraph 132 of the Framework which anticipates great

¹ Framing Opinions, English Heritage, Traditional Windows – Their Care, Repair and Upgrading, Historic England 2014.

weight being afforded to the conservation of designated heritage assets. For the same reasons they would also conflict with the policies of the development plan that seek to underpin these national statutory and policy objectives, namely policies S25 and S28 of the Westminster City Plan and policies DES5 and DES10 of the Unitary Development Plan (UDP).

Effect on the conservation area

14. For the reasons given above, I conclude that the proposed works and development would fail to preserve the special architectural and historic interest of the listed building. For the same reasons, the proposal would also diminish the contribution that the listed building makes to the conservation area, and thereby fail to preserve it, again contrary to the expectations of section 72 of the Act, to paragraph 132 of the Framework and policy DES9 amongst others of the UDP.

Other matters

15. The appellants rely heavily on the grant of permission for the replacement of windows in the adjacent Sussex Place property² and on the reasoning of the inspector in another appeal in respect of window replacement in a building within the City³. Whilst I was able to inspect the replacement windows in the building during my visit, the detailed circumstances of the case, nor indeed and reference to an accompanying grant of listed building consent, are before me. In the absence of these matters, I can afford only limited weight to their de facto replacement in the context of this appeal. I also conclude from the planning permission reference that this case was determined in 2011, prior to the publication of the Framework and the later policies of the City Plan referred to above. This again diminishes the weight to be apportioned that case in relation to that before me.
16. The previous Inspector's decision, given the subject of the appeal, the broadly common proposals and geographic proximity, is certainly a material consideration of some weight in relation to this case. However, his conclusions here are again made in a different policy context, firstly in relation to STRA29 of the UDP (no longer cited in the current appeal) and once again without reference the national policy context of the Framework. More significantly in relation to the application of the statutory test to consider whether such works preserve the listed building, this decision predates the Court of Appeal judgement in the Barnwell case⁴. This consideration, such as it is set out by the Inspector, is reflected in the oblique reference as to whether the works preserved the listed building in relation to the letter of policy STRA29 of the UDP⁵.
17. The Barnwell judgement makes emphatically clear that the desirability of preserving the listed building (or its setting) is a matter of considerable importance and weight for the decision maker to take into account. It goes without saying that such a judgement also carries very significant weight in any such other consideration, and this is expressly reflected in the terms of my reasoning set out above. Moreover, paragraph 132 of the Framework was not before the Inspector at the time of his decision. This makes clear that 'great

² Westminster Planning Permission Ref: 11/07204/FULL.

³ Appeal Ref: APP/X5590/E10/1239416.

⁴ East Northamptonshire v. Secretary of State for Communities and Local Government [2015] 1 W.L.R. 137.

⁵ Paragraph 9 of the appeal decision: Ibid.

weight should be given to a (Designated Heritage) (A)sset's conservation'. Again, others have determined elsewhere quite reasonably that this is a consideration of considerable weight commensurate with the statutory duty to preserve set out above.

18. Taken as a whole therefore, these considerations significantly diminish the relevance of the findings of the Inspector in respect of that case, and this is reflected in more recent decisions by other Inspectors dealing with analogous matters in a more recent policy/judicial context presented by the Council⁶. Accordingly I give the decision cited by the appellants only limited weight in relation to the case before me.

Planning balance and conclusion

19. In accord with paragraphs 133 and 134 of the Framework, it is for the decision maker, having identified harm to designated heritage assets, to consider its magnitude. In this case I conclude that, on balance, the proposal would lead to less than substantial harm, rather than substantial harm when assessed in the context of the significance of the assets as a whole. In such circumstances the Framework further requires that any such harm is weighed against any public benefits the works might offer.
20. The proposed development and works, nor the asserted improvement in environmental performance they might bring, are defined in terms such as a *public benefit* by the appellants. However, I have no difficulty in accepting that in very broad terms, that is increasing thermal efficiency thus reducing carbon emissions, they may in principle, be considered as such.
21. However, The gains, such as they may be, are not quantified, or set against less invasive alternative approaches to demonstrate they are such an optimal approach meriting weight as a public benefit. Nebulous and unquantified, they cannot be afforded more than very limited weight in this regard. In any event, even when considered with the other matters that may way in favour of the proposals, these are considerably outweighed by the significant harm to special interest that I have identified.
22. Conclusively, whilst that harm may be judged less than substantial in relation to paragraph 134 of the Framework, this does not mean it merits less than substantial planning objection, especially where the statutory duty to preserve the listed building has not been met.
23. For the reasons given above and having considered all matters raised in evidence, I conclude that both the appeals should fail.

David Morgan

Inspector

⁶ Appeal Ref: APP/X5990/W/15/3140511 & APP/X5990/E/13/2205586.