
Appeal Decision

Site visit made on 21 March 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 30 March 2017

Appeal Ref: APP/N5660/F/16/3155567
20 Hanover Gardens, London SE11 5TN

- 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 Ms Margaret Thurer against a listed building enforcement notice (LBEN) issued by the London Borough of Lambeth (the LPA).
 - The enforcement notice was issued on 30 June 2016
 - The contravention of listed building control alleged in the notice is: the erection of metal railings around the perimeter and installation of timber decking over the entire roof of the lower ground floor single storey rear extension (the unauthorised railing and decking) along with the installation of a silver metal flue up the central rear elevation of the building (the unauthorised flue).
 - The requirements of the notice are as follows:
 - A) Remove the unauthorised railings and decking from the premises;
 - B) Remove the unauthorised flue from the premises.
 - C) Make good any damage to the building as a result of the works undertaken by requirements (A) and (B) above.
 - The period for compliance with the requirements is three months.
 - The appeal is made on grounds (c), (e), (g) and (k), as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (PLBCAA).
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Decision

1. The appeal succeeds in part on ground (e). Otherwise the appeal is dismissed and the LBEN is upheld as varied. See formal decision below.

Background information

2. The stock brick, three-storey, end of terrace plus basement appeal property is a Grade II Listed Building located within the St Mark's Conservation Area (SMCA). It is occupied as two separate residential units with a flat at basement level and another dwelling, from upper ground floor to second floor level. It was listed in March 1981 and is included in the list for its group value.
3. The relevant policies comprise policies 7.6 (Architecture) and 7.8 (Heritage Assets and Archaeology) of The London Plan (LP) and policies D5 (Enforcement); Q11 (Building Alterations and Extensions; Q20 (Statutory Listed Buildings) and Q22 (Conservation Areas) of the Lambeth Local Plan (LLP).
4. The policies are up-to-date with the National Planning Policy Framework (NPPF) which is a material consideration, as are some of the Council's Supplementary Planning Documents (SPG). In reaching my decisions I have had regard to the NPPF and in particular to sections 7 (Requiring good design) and 12 (Conserving and enhancing the historic environment). I have also had regard to relevant sections of Planning Practice Guidance (PPG). Because the appeal property is listed in Grade II and within the SMCA, I have had special regard and paid special attention to the duties set out in sections
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16 (2) and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA).

The Appeal on ground (c)

5. To be successful on this ground it must be conclusively shown that the works carried out have not altered the character of the listed building. In a ground (c) appeal the merits of the works are not considered. The question to be asked relates solely to whether or not the character of the building has been changed by the works. This is irrespective of whether or not such works have been harmful to the listed building, which is dealt with in ground (e). The Appellant, the Council and the occupant of the basement flat have all have referred to the three elements of the works carried out: the metal railings, the decking and the flue. I have considered each aspect of the works accordingly.

The metal railings

6. Having seen the metal railings in-situ, I agree with the Council and the occupant of the basement flat that the addition of the railings has affected the character and appearance of the listed building. At this stage I make no judgement as to whether or not the railings are harmful but it is evident to me that if there were no railings around the edge of the flat roof the character of the listed building would not have been affected. The fact that the railings are physically fixed to the listed building also means that LBC is required for such works. There is no LBC in place and so the appeal on ground (c) must fail in relation to the metal railings as fixed around the edge of the terrace.

The wooden decking

7. It is contended by the Appellant that there is no material difference between the wooden decking and the original roof material. However, I disagree. The decking is distinctly noticeable as a finish to the roof. It does not have the character or appearance of a simple felt or tiled roof covering. Again, although not making any judgement at this stage, I consider that it does affect the character of the listed building and, therefore, that listed building consent is required for such works. There is no consent in place and it follows, therefore, that the appeal also fails on ground (c) in relation to the wooden decking.

The Boiler flue

8. Unfortunately, the fact that the flue might have been in place since 1998 can carry no weight in relation to an appeal against a LBEN. Unlike a planning enforcement notice, there is no time limit as to when a LPA can issue a LBEN. Again, although the flue is not visible from the street, it still has a physical and visual effect on the character of the listed building. It can be seen from other rear gardens and properties and from within the adjacent school playground. Because it affects the character of the listed building (whether negatively, positively or neutrally) listed building consent is required. With none in place there has been a contravention of listed building control and the appeal also fails on ground (c) in relation to the fixing of the boiler flue. The appeal, therefore, fails on ground (c) in respect of all three elements of the works carried out at the property.

The Appeal on ground (e)

Introduction and clarification

9. This ground of appeal is made on the basis that LBC ought to be granted for the three elements of the works as carried out; the metal railings, the wooden decking and the flue. The notice relates to the effect of the works on the listed building and the

reasons for issuing the notice initially refer to the effect on the listed building. There is also reference to the issue of overlooking, but the policies quoted (Q20 and Q22 of the LLP) relate to the protection of listed buildings and conservation areas. The occupier of the basement flat also refers to planning issues regarding the use of the flat roof as an external terrace and in particular that the use of the terrace has resulted in unacceptable levels of noise and disturbance and that there has been a loss of privacy.

10. However, the Council has not issued a Planning Enforcement notice and the evidence is quite clear (corroborated by the occupant of the basement flat) that the roof has been used as a terrace for nearly 20 years. Having inspected the works it is also evident to me that the railings and decking have been in position for some considerable time. The Appellant refers to the earlier conversion works allowing the terrace to be built but there is no evidence to indicate exactly what was granted permission and/or consent at that time.

11. Despite the Council's contention (statement paragraph 4.1) that there is '*No relevant planning history*' for the property, there is firm evidence that permission was granted on appeal for a two storey rear extension (T/APP/5023/A/78/04686/G6) in 1978. Clearly this was never built. However, from all of the submissions, it seems to me that the Council is precluded from taking planning enforcement action against the use of the roof as a terrace due to the timescale involved. But that does not alter the fact that listed building consent is still required for the works which are the subject of the LBEN. I have referred above to the fact that there is no timescale restriction placed on a LPA with regard to the issue of a LBEN.

12. I must deal with the LBEN on its face in relation to the works carried out. I have noted that the objections by the basement owner are made on the basis of both harm to the listed building, as well as harm to living conditions through loss of privacy and noise and disturbance. Although clearly related, the latter points are planning matters and as indicated above the LPA has not enforced specifically on the basis that the use of the terrace for planning purposes is unlawful.

13. If the LPA had have enforced on this basis, it is likely, on the balance of probabilities, that an appeal under ground (d), relating to the relevant timescale, would have been successful. But this does not alter the fact that the works carried out are in contravention of the PLBCAA and that without listed building consent they are not lawful. I now turn, therefore to the question of whether or not consent ought to be granted for the three items of work.

The main issues

14. In all cases the main issues are firstly, the effects of these works on the integrity and character of the listed building and on its setting and on its features of special architectural and historic interest and, secondly, the effect of the works on the character and appearance of the SMCA. Again I deal with each part of the works.

The metal railings

15. The arguments that the railings cannot be seen by the public, because they are at the rear of the property, can carry no weight. Irrespective of their position they have affected the character of the listed building. Having seen the railings, however, I do not consider that they have detrimentally affected the character or integrity of the building or indeed its setting. I acknowledge that there are no similar railings to the rear of other properties in the terrace, but they are of a design that is typical of the age of the property, unlike the '*scaffolding*' appearance of the railings to a roof terrace in a neighbouring property. The appeal railings are indeed similar to boundary railings to

the fronts of the other houses in the terrace and in themselves do not cause harm to the listed building.

16. Neither has the fixing of the appeal railings caused harm to any of the special architectural or historic features of the listed building and the colour is also appropriate. When seen from the rear of the property (from within the playground) they are not distinctly noticeable due to their slender section and although the inner lining (sheet bamboo) is visible, the overall effect from the outside of the terrace is negligible. The planting, within the basement flat garden and along the boundary with the adjoining house, goes some way to screening the railings but, even without this current screening, I consider that the character of the listed building and its setting are preserved. It follows in my view, that the character and appearance of the SMCA are also preserved.

17. In conclusion on the metal railings I consider that they accord with the above relevant local and national policies relating to the conservation and enhancement of our heritage assets. Listed building consent for their retention, therefore, ought to be granted and the appeal succeeds on ground (e) in relation to the metal railings.

The timber decking

18. The wooden decking is well weathered and is not significantly raised above the natural level of the roof. Again the fact that it cannot be readily seen is not relevant in terms of any argument in favour of its retention. However, I consider that it is visually acceptable in this location. In my view, it does not detract from the character or integrity of the listed building and I agree with the Appellant that it is not significantly different in appearance to a tiled or even felted roof. It does not cause any harm to the special architectural and historic features of the property and I am satisfied that this part of the works also accords with the relevant policies set out above. The appeal also succeeds, therefore, on ground (e) in relation to the decking.

The boiler flue

19. Having seen this element of the works from both near and distant viewpoints, I share the Council's and the basement occupier's concerns about the effect that it has had on the character, integrity and setting of the listed building. Due to its size, height and materials it is seen as an obtrusive, bulky and visually harmful addition to the rear of the property. It detracts markedly from the other fine features of the rear elevation. In particular it appears totally discordant against the brickwork and the door and window openings. It has the appearance of a small industrial flue when seen against the much smaller diameter rainwater and drainage pipework and is completely inappropriate as fixed to the face of the listed house. I have noted the reference to it being painted black in order to mitigate its effect but I do not consider that this would sufficiently improve its overall appearance so as to render it acceptable.

20. I do not consider that listed building consent should be granted for this element of the works and the appeal fails on ground (e) in relation to the metal flue

Overall conclusions on ground (e)

21. I have found that the metal railings and the wooden decking preserve the character and setting of the listed building as well as the character and appearance of the SMCA. Listed building consent will be granted for their retention. Conversely I have concluded that listed building consent should not be granted for the metal flue. The appeal under grounds (g) and (k), in relation to the metal railings and wooden decking do not, therefore, need to be considered but I now deal with them below in relation to the metal flue only.

The Appeal on ground (g) in relation to the metal flue

22. Before the flue was fitted, and whenever that might have been, the rear of the building would have been clear of such an inappropriate and visually harmful addition. Its removal will, therefore, clearly restore it to that pre-flue condition. I do not consider that the requirement to remove it is excessive and I have already indicated that a simple change in colour would not overcome the harm which I have identified above. I have already referred to the fact that there is no time limit relating to when a LBEN can be issued. In conclusion I do not consider that the requirement exceeds what is necessary for restoring the building to its condition before the works were carried out. I agree with the LPA, therefore, that the appeal should be dismissed on ground (g) with regard to the flue.

The Appeal on ground (k) in relation to the metal flue

23. There is no evidence of any listed building consent being in place for any of the items which are the subject of the notice. Thus there is no consent for the flue. A ground (k) can only be successful if a requirement exceeds what is necessary to bring the building to the state it would have been in if the terms and conditions of a listed building consent had been complied with. In this case, therefore, there cannot be a valid appeal on ground (k). I also agree with the LPA, therefore, that the appeal should be dismissed on ground (k) with regard to the flue.

Other Matters

24. In reaching my conclusions in this appeal I have taken into account all of the other matters raised by the Appellant, the Council and by the occupant of the basement flat. These include the references to the pre-1998 conversion; the fact that parts of the Appellant's arguments are irrelevant; the references to other properties, metal railings and pipes; the initial grounds of appeal; all of the matters set out in the final comments dated 29 November 2016; the details relating to the 2011 structural report; the fact that the property is no longer let and the complete contents of the letter, dated 18 October 2016, from the occupier of the basement flat.

25. However, none of these carries sufficient weight to alter my conclusions on the grounds of appeal in relation to each of the three elements which were the subject of the LBEN.

Formal Decision

26. The appeal is allowed in part on ground (e) and listed building consent is granted for the metal railings and the timber decking over the entire roof of the lower ground floor single storey rear extension at No 20 Hanover Gardens, London SE11 5TN.

27. I therefore direct that the LBEN be varied by deleting in full requirement 5.A), in part 5 of the notice (WHAT YOU ARE REQUIRED TO DO).

28. I also direct that the LBEN be varied by deleting the word '*requirements*'; the bracketed letter '(A)' and the word '*and*' in requirement 5.C) and by substituting the word '*requirement*' therefor. The new requirement 5.C will now read '*Make good any damage to the building as a result of the works undertaken by requirement (B) above*'.

29. Otherwise the appeal is dismissed and the LBEN is upheld as varied. Listed building consent is refused for the remaining works (namely the installation and fixing of the silver metal flue) carried out in contravention of the PLBCAA.

Anthony J Wharton

Inspector