

Appeal Decision

Site visit made on 5 July 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 14 July 2017

Appeal Ref: APP/X5990/F/17/3167295

The building and associated land at Flat 1, 99 Park Lane, London W1K 7TH

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Nimba Properties Ltd against a listed building enforcement notice (LBEN) issued by the Council of the London Borough of Westminster (the LPA).
- The enforcement notice was issued on 15 December 2016.
- **The contraventions of listed building control alleged in the notice are as follows:**
 - a) The erection of a ground floor brick built rear extension on the roof of the existing lower ground floor level rear extension elements of which are shown in red in Photograph F and G and highlighted in red on Elevation Plans 1 & 2 attached.
 - b) The removal of a recessed timber garage door at lower ground floor level on the Culross Street elevation and infilling of garage opening with concrete bricks as show outlined red in Photograph L attached.
 - c) The removal of a single glazed timber framed window & heightening of window opening to facilitate installation of a new timber framed double glazed window at lower ground floor level on the Culross Street elevation of the property, as shown outlined in red in Photograph O, the location of which is shown highlighted in red in Elevation Plan 5 attached.
 - d) The installation of a boiler flue at lower ground floor level on the Culross Street elevation of the property, as shown outlined in red on Photograph N attached.
 - e) The installation of a glazed structure erected over the front basement lightwell on the Park Lane elevation of the property, elements of which are shown outlined in red in Photograph A, B, C, D, and E and highlighted in red in Floor Plan 1 attached.
- **The requirements of the notice are as follows:**
 - a) Remove the glazed structure erected over the front basement lightwell on the Park Lane elevation of the property, elements of which are shown outlined in red in Photograph A, B, C, D, and E and highlighted in red in Floor Plan 1 attached;
 - b) Make good any damage caused by the installation or removal of the unauthorised glazed structure erected over the front basement lightwell, ensuring all remedial works are carried out in materials and detailing to match the fabric of the building immediately prior to the works being undertaken;
 - c) Remove the ground floor rear extension from the roof of the existing lower ground floor rear addition, elements of which are shown in red in Photographs F and G and highlighted in red on Elevation Plans 1 & 2 attached.
 - d) Restore the roof of the lower ground floor rear addition, the rear elevation of the Property at ground floor level and rear boundary party walls adjoining Nos 33 Culross Street and 97 Park lane to their former condition prior to the erection of the unauthorised ground floor rear extension, examples of their former condition are shown outlined in yellow in Photographs H, I, J and K and highlighted in yellow in Elevation Plans 3 and 4 attached.
 - e) Remove the concrete block infill at lower ground level on the Culross Street elevation of the Property as shown outlined in red in Photograph L attached.
 - f) Return this part of the property to its former condition by reinstating recessed black painted timber bi-folding garage doors at lower ground floor level in the Culross Street elevation of the Property to match in design and appearance the former timber bi-folding garage doors that previously existed as shown edged yellow in Photograph M attached,

- g) Remove the boiler flue installed at lower ground floor level on the Culross Street elevation of the Property as shown outlined in red in Photograph N attached.
 - h) Make good any damage caused by the installation or removal of the unauthorised boiler flue at lower ground level on the Culross Street elevation of the property, ensuring all remedial works are carried out in materials and detailing to match the fabric of the building immediately prior to the boiler flue being installed.
 - i) Remove the white painted timber framed double glazed window installed at lower ground floor level on the Culross Street elevation of the Property as shown outlined in red in Photograph O, the location of which is shown highlighted in red in Elevation Plan 5 attached.
 - j) Restore the window opening at lower ground level on the Culross Street elevation of the Property to its former size, as shown highlighted in yellow in Elevation Plan 6 attached, ensuring all remedial works are carried out in materials and detailing to match the fabric of the building immediately prior to the works being undertaken, and
 - k) Reinstall a white painted timber framed single glazed window at lower ground level on the Culross Street elevation of the Property to match the design, size and appearance of the former timber framed single glazed window, as shown in Photograph P attached.
- **The period for compliance with the requirements is Nine Months.**
 - **The appeal is made on ground (g) only** as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The appeal succeeds to a limited degree in that the requirements of the LBEN are varied by setting out alternative steps to be carried out. See formal decision below.

Matters of clarification and background information

2. The appeal is made on ground (g) only. Such an appeal is made on the basis that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works (as set out in the allegation above) were carried out. The merits of the case do not fall to be considered and none of the policy or guidance matters referred to in the representations is relevant to my decision. I am not empowered to consider whether or not listed building consent should be granted for the various works carried out, but I have noted the contents of the submitted Heritage Statement. I have also taken into account latest position regarding what has been granted planning permission (PP) and listed building consent (LBC) (see below).

3. Although the initial grounds of appeal (submitted with the appeal form) were headed 'Ground G', the appellant's detailed statement (dated 16 May 2017) at paragraph 22 refers to the requirements exceeding what is necessary '*in order to avoid harm to the building in listed building terms*'. In essence this is also an appeal under ground (j) which would allege that the steps required exceed what is necessary to alleviate the effects of the works carried out. I have, therefore, considered all of the reasons as to why the requirements of the notice are considered to be excessive.

4. The appeal site is a ground and lower ground floor flat (Class C3), which forms part of this Grade II listed, five storey, end of terrace building located midway along Park Lane on its eastern side. The Georgian town house was built between 1823 and 1825 by John Goldicutt. There are other Grade I and Grade II listed buildings within the terrace and the listing for No 99 dates back to 1958. The buildings are also within the Mayfair Conservation Area (MCA).

5. The appeal flat and the rest of the building has a detailed planning history and this is set out in section 4 of the Council's Delegated Report (Appendix 1 to its appeal statement) as well as being referred to on behalf of the appellant. Various planning permissions (PP) and listed building consents (LBC) have been granted and/or refused over the years and both the appeal flat and Flat 3 have been the subject of enforcement investigations.

6. The relevant PPs, LBCs and enforcement actions relating to Flat 1 are as follows:

- PP and LBC were granted on 6 October 2010 for '*Alterations to openings on the Culross Street façade at lower ground level including removal of garage and installation of a single storey glazed extension to the rear and ground floor and internal alterations at lower ground floor and ground floor levels. Associated plant at lower ground floor level and in the pavement vaults* -(refs: 1006447/FULL and 10/06153/LBC (the 2010 PP and LBC).
- On 8 October 2012 a Council Enforcement Officer (EO) noted unauthorised works to the basement, including the installation of glazing over the front lightwell (item (e) of the alleged contraventions above).
- On 20 November 2012 letters were sent by the Council advising that the lightwell works were unacceptable and should be removed.
- On 10 April 2013 PP and LBC for the proposed retention of the glazing were refused (the April 2013 refusals). The glazing remained in-situ.
- On 19 February 2014 the EO team received a complaint that works to the rear of the property were contrary to the 2010 PP and LBC (item (a) above).
- On 4 March 2014 letters were sent advising that the solid brick rear extension was contrary to the 2010 PP and LBC. Removal was requested within 3 months.
- Between March 2014 and June 2014 the unauthorised works remained in place and at a site meeting on 11 June 2014 further unauthorised works were noted.
- These included the installation of a new timber framed double glazed window; item (c) above; the installation of a white boiler flue; (item (d) above) and the infill of the garage door opening (item (b) above).
- On 4 September warning letters were issued relating to these works.
- On 26 July 2016 PP and LBC were refused for, amongst other things '*alterations to front lower ground floor lightwell, alterations to rear extension at ground floor level, reinstatement of window to Culross Street elevation and internal alterations*' - refs 16/01413/FULL & 16/01414/LBC (the July 2016 refusals).
- On 7 February 2017 PP and LBC were granted for the '*erection of rear ground floor extension, reinstatement of window on Culross Street elevation, alterations to front lower ground lightwell and loss of garage door at lower ground level* -refs: 1611223/Full & 16/11224/LBC (the February 2017 PP and LBC).

7. The February 2017 PP and LBC were granted subject to a number of conditions and condition Nos 3 and 5 of the PP required the submission and approval of samples and details of facing materials. These conditions have not been discharged and it was clear from my inspection that none of the works relating to the February 2017 PP and LBC had been carried out. However, it is clear that the LPA is satisfied that if the works are carried out they would be acceptable on planning and listed building grounds. The works, amongst other things relate directly to each of the items (a) to (e) as set out in the allegations to the LBEN.

Assessment

8. In paragraph 22 (sections 'a' to 'e') of the appellant's detailed statement, the ground (g) arguments are set out for each of the contraventions as set out in the LBEN. I deal with each separately below.

Ground floor rear brick extension

9. It is argued that the recent grant of PP and LBC for a similar structure represents a material consideration and a fall-back position. It is also argued that the condition of the building prior to the alleged breach is not sufficiently clear and that the rear addition is attached at a lower level in part of a wholly non-original phase of the property. This is evidenced by paragraphs 5.4 to 5.7 of the Heritage Statement. On the basis of the above

it is contended, therefore, that requirements (c) and (d) of the LBEN exceed what is necessary to restore the building to its former condition and/or to avoid harm in listed building terms.

10. The Council does not accept these arguments under ground (g) and stresses that the proposals granted PP and LBC in February 2017 were for an extension that is materially different from the unauthorised structure. The February approved 2017 proposal was for a replacement of the unauthorised extension with a brick-facaded structure with a solid roof and lower in height.

11. Although the Council acknowledges that the PP and LBC now granted could, in principle, be a fall-back position it is stressed that no works can commence until the relevant conditions are discharged. Until the conditions are discharged it is indicated that the works relating to the PP and LBC cannot lawfully be commenced. It is argued, therefore, that it is not excessive to require the removal of the unauthorised rear extension in its entirety and to restore the site to its condition before the unauthorised extension was built.

12. I can understand both positions and agree that there is, in principle, a fall-back position. However at this stage none of the conditions to the February PP (and LBC) have been discharged and no works to provide the acceptable alternative extension have been commenced. The unacceptable unauthorised extension remains in place and there is no absolute guarantee at this stage that the works will be carried out in accordance with the PP and LBC as granted. With this in mind I do not consider that the requirements of the LBEN exceed what is necessary to restore the building to its condition before the unauthorised rear extension was built.

13. Having inspected the property and having seen the submitted photographs, I see no reason to question the Council's contention that by complying with the requirements (c) and (d), this part of the building could be restored to its condition before the unauthorised extension was built. However, it is also evident that if the February 2017 PP and LBC had been fully complied with (including the discharge of relevant conditions) the building would also be in a condition which was acceptable on listed building grounds with a rear extension which did not harm the integrity or character of the building as one of special architectural and historic interest.

14. In these particular circumstances, therefore, I consider it to be reasonable and appropriate to vary the requirements of the notice by setting out an alternative requirement. This would give the appellant the choice of either complying with the notice as drafted or carrying out the February 2017 PP and LBC works fully in accordance with the permission and consent granted. I am satisfied that such a course of action will not cause any injustice to the appellant, the Council or any other party/person.

Removal of Timber Garage door and infilling of garage opening with concrete bricks

15. The same arguments relating to the fall-back position are set out by the appellant for these works. It is also clear that there is no evidence to suggest that the mere removal of the garage doors has caused any harm to the listed building. What has caused harm however is the blockwork infilling and even though this is referred to as being of a temporary nature the requirements of the notice would restore the building to its former condition. Again the photographic submissions indicate that this is possible and I do not consider that, in itself, this requirement exceeds what is necessary for such restoration.

16. However, for the same reasons as set out above, in relation to the unauthorised extension, I consider that the notice can be appropriately varied to provide the clear alternative of either restoring the garage door or carrying out the works in full accordance with the February 2017 PP and LBC.

Removal of single glazed timber framed window

17. The Council has no objection in principle to the removal and replacement of the original timber framed, single glazed window. What it objects to is the unauthorised double-glazed replacement window. Clearly, if the requirements are complied with at (i), (j) and (k) of the LBEN, then the previous condition of the building would be restored. However, if the February 2017 PP and LBC are carried out fully in approval with the submitted drawings and required conditions, the listed building would not be harmed.

18. Again, therefore, for the same reasons as set out above, in relation to the unauthorised extension, I consider that the notice can be appropriately varied to provide the clear alternative of either carrying out the works as required at (i), (j) and (k) or carrying out the work to replace the window, fully in accordance with the February 2017 PP and LBC.

The installation of a boiler flue

19. The February 2017 PP and LBC, in relation to the flue, proposes that a flue be set behind a black metal grille in the same location. However, the permission and consent required additional drawings to be submitted and at this stage these have not been provided. In my view the requirements of the LBEN as drafted clearly do not exceed what is necessary to restore the building to its condition prior to the unauthorised flue being fitted. However, if acceptable drawings are provided and the works are carried out in full accordance with the February 2017 PP and LBC, I can see no reason why the works could not be required as a variation to those which are set out in the LBEN. Again, therefore, I shall vary the LBEN accordingly.

Glazed structure erected over front basement lightwell

20. The fall-back position is again referred to, as is the necessity to seal the area around the basement lightwell due to the granting of PP and LBC for the basement swimming pool. I find, therefore, that it would be unreasonable to restore this part of the building exactly to its condition before the works (that is open to the lightwell). However, I do not consider it excessive to require the removal of the glazed structure from its unauthorised and exposed position.

21. With regard to this element of the works, therefore, I shall again vary the requirement and, as for the other works, require that the LBEN be varied to provide the clear alternative of either carrying out the works as required at a) or carrying out the work to this part of the building fully in accordance with the February 2017 PP and LBC.

Overall conclusions

22. On the basis that the February 2017 PP and LBC have not been implemented (and cannot be if the relevant conditions are not discharged), I do not consider that the requirements as drafted can be said to exceed what is necessary for restoring the building to its condition before the works (as set out in the allegation) were carried out. It may not be the appellant's choice but to comply with each of the requirements a) to k) inclusive would, as a matter of fact and degree, have the effect of restoring the building to its condition before any of these unauthorised works commenced.

23. However, the February PP and LBC have resulted in alternative and acceptable solutions to both the appellant and the Council. For the reasons given above, therefore I shall vary the LBEN as stated. But the notice still needs to be upheld (as varied) to ensure that the harmful unauthorised works are removed. It is clear that the appellant accepts that this is necessary and it seems equally clear that it is the intention to fully comply with the February 2017 PP and LBC.

Other Matters

24. In reaching my conclusions I have taken into account all of the other matters raised on behalf of the appellant and by the Council. These include the full planning history of the works to Flat 1; the detailed statements; the detailed appendices; the photographic evidence; the Council's final comments set out in their letter of 9 June 2017 and the submitted drawings. However, none of these carry sufficient weight to alter my conclusions as set out above. Nor is any other factor of such significance so as to change my decision.

Formal Decision

25. The appeal succeeds to a limited degree in that the Listed Building Enforcement Notice is varied to provide alternative requirements.

26. I direct that the Listed Building Enforcement Notice be varied by amending Part 6 (WHAT YOU ARE REQUIRED TO DO) on page 3 as follows:

1. By adding the words '*EITHER carry out the following requirements a) to k) in full*' immediately above the first requirement at 6 a).
2. By adding the words '*OR carry out the following requirements m) to t) in full*' immediately after the last requirement at 6 k) page 4.
3. By adding requirements m) to t) as follows:
 - m) *Remove the glazed structure erected over the front basement lightwell on the Park Lane elevation of the property, elements of which are shown outlined in red in Photograph A, B, C, D, and E and highlighted in red in Floor Plan 1 attached to the LBEN. Carry out replacement works (alterations to front lower ground floor lightwell) fully in accordance with the Planning Permission 16/11223/FULL and Listed Building Consent 16/11224/LBC dated 7 February 2017 (Note: including compliance with all attached conditions).*
 - n) *Make good any damage caused by the installation or removal of the unauthorised glazed structure erected over the front basement lightwell, ensuring all remedial works are carried out in materials and detailing to match the fabric of the building immediately prior to the works being undertaken;*
 - o) *Remove the ground floor rear extension from the roof of the existing lower ground floor rear addition, elements of which are shown in red in Photographs F and G and highlighted in red on Elevation Plans 1 & 2 attached to the LBEN. Carry out replacement works (Erection of rear ground floor extension) fully in accordance with the Planning Permission 16/11223/FULL and Listed Building Consent 16/11224/LBC dated 7 February 2017 (Note: including compliance with all attached conditions).*
 - p) *Remove the concrete block infill at lower ground level on the Culross Street elevation of the Property as shown outlined in red in Photograph L attached to the LBEN. Replace the concrete block infill fully in accordance with the Planning Permission 16/11223/FULL and Listed Building Consent 16/11224/LBC dated 7 February 2017 (Note: including compliance with all attached conditions).*
 - q) *Remove the boiler flue installed at lower ground floor level on the Culross Street elevation of the Property as shown outlined in red in Photograph N attached to the LBEN. Replace with flue behind black grille fully in accordance with the Planning Permission 16/11223/FULL and Listed Building Consent 16/11224/LBC dated 7 February 2017.*
 - r) *Make good any damage caused by the installation or removal of the*

unauthorised boiler flue at lower ground level on the Culross Street elevation of the property, ensuring all remedial works are carried out in materials and detailing to match the fabric of the building immediately prior to the boiler flue being installed.

- s) *Remove the white painted timber framed double glazed window installed at lower ground floor level on the Culross Street elevation of the Property as shown outlined in red in Photograph O, the location of which is shown highlighted in red in Elevation Plan 5 attached to the LBEN.*
- t) *Reinstate the window fully in accordance with the Planning Permission 16/11223/FULL and Listed Building Consent 16/11224/LBC dated 7 February 2017.*

27. Otherwise the appeal is dismissed and the Listed Building Enforcement Notice is upheld as varied.

Anthony J Wharton

Inspector