



---

# Appeal Decision

Site visit made on 19 February 2018

**by Anthony J Wharton BArch RIBA RIAS MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 March 2018**

---

## **Appeal A - Ref: APP/X5210/F/17/3177045 Flat 2, 7 Regent Square, London WC1H 8HZ**

- 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 Mr Raphael Bude against a listed building enforcement notice (LBEN) issued by the London Borough of Camden (the LPA).
  - The enforcement notice, numbered EN16/0157 was issued on 24 April 2017.
  - The contravention of listed building control alleged in the notice is: Inappropriate partition work, damage to decorative plaster cornice, removal of decorative fireplaces, inappropriate sealing of door opening and installation of a casement rear window in place of a traditional timber sash unit.
  - The requirements of the notice are as follows:
    - a) To remove the unauthorised partition, fireplaces, door panel and window and completely reinstate the plan form, fireplaces, cornices and window to match the original marked as 'existing' on drawing 1610-10 Rev F and the rear window to be reinstated in accordance with drawing 1610-20 Rev B, granted listed building consent on 4 August 2016 (ref.2016/2487/L). See appendix.
    - OR
    - b) To remove the unauthorised partition, fireplaces and door panel and reinstate the decorative plasterwork and window, carrying out the partitioning, fireplace installation, door sealing and window works fully in accordance with drawing 1610-10 Rev F, 1610-11 Rev B, 1610-12 Rev A and 1610-20 Rev B granted listed building consent on 4 August 2016 (ref 2016/2487/L) (see appendix).
  - The period for compliance with the requirements is six (6) months.
  - The appeal was made on grounds (b), (c), (e), (f) (g), (h) and (i), as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) as amended.
- 

## **Appeal B - Ref: APP/X5210/F/17/3177060 Flat 2, 7 Regent Square, London WC1H 8HZ**

- 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 Mr Anton Brazili against a listed building enforcement notice (LBEN) issued by the London Borough of Camden (the LPA).
  - The enforcement notice is the same as that set out above in Appeal A.
  - The contravention of listed building control alleged in the notice is set out above.
  - The requirements of the notice are set out above.
  - The period for compliance with the requirements is set out above.
  - The appeal is made on the same grounds as Appeal A, as set out above.
- 

### **Decisions**

1. The appeals succeed to a limited degree with regard to the rear window and also on ground (h) only.
2. Otherwise the appeals are dismissed; the LBEN is upheld as varied and consent is refused for the works carried out in contravention of the PLBCAA.

## Clarification of the grounds

2. Grounds (g), (i) and (k) are normally mutually exclusive and cannot simultaneously be pleaded in relation to the same requirement. However the requirements of the notice are in the alternative and, therefore grounds (g) and (i) would apply in Requirement Options (a). It also seems that, in relation to Option (b), there are ground (k) arguments.

3. Because the requirements are in the alternative I must deal with the LBEN as drafted. From a full reading of the appellant's case I consider that the various arguments being pleaded (in relation to the alternative requirement being excessive), can fall under one or more of the above grounds and I deal with them below.

4. In summary, I have considered all the grounds/arguments as pleaded plus the implied ground (k) arguments. This is how I have dealt with the appeals and I am satisfied that this course of action will not cause any injustice.

## Introduction and background information

### *The listing*

5. The LBEN relates to the ground floor flat of the property at No 7 Regent Square. The building is a terraced brick townhouse, built in the 1820s, on the south side of the square and lies within the Bloomsbury Conservation Area (BCA). The property was listed in Grade II on 14 May 1974, as part of the grouping, Nos 1 to 17 Regent Square. The list description is as follows:

#### *CAMDEN*

*TQ3082NW REGENT SQUARE 798-1/90/1380 (South side) 14/05/74 Nos.1-17 (Consecutive) and attached railings*

#### *GV II*

*Terrace of 17 houses. c1829. Darkened yellow stock brick with later patching, Nos 7-10 refaced. Stucco ground floors and plain 1st floor sill bands, Nos 9 and 10 channelled. End and central houses with stucco 2nd floor sill bands and cornices with blocking course; recessed houses with plain stucco 3rd floor sill bands and parapets. Symmetrical composition with projecting end houses (Nos 1-2 and 16-17) and central houses (Nos 7-11). 4 storeys and basements. 2 windows each. Round-arched ground floor openings. Doorways with pilaster-jamb's carrying cornice-heads; fanlights (some radial) and panelled doors. Gauged brick flat arches (Nos 11-17 reddened) to recessed sashes; end and central houses 1st floor sashes in shallow round-arched recesses. Cast-iron balconies to 1st floor windows (except No.1). INTERIORS: not inspected. SUBSIDIARY FEATURES: attached cast-iron railings with tasselled spearhead finials to areas. (Survey of London: Vol. XXIV, King's Cross Neighbourhood: London: -*

6. Although the interiors were not inspected at the time of listing, the LPA refers to the ground floor appeal flat as being a two-room unit which had largely retained its historic layout until recent works. It refers to the key features of the ground floor unit including the layout of the front room with its curved wall to the rear. Until altered it is stated to have retained original fireplaces to front and rear rooms; the original decorative plasterwork cornices, as well as original skirting boards.

7. I have been supplied with copies of photographs of the original fireplaces. It is accepted on behalf of the appellants (in the final comments dated 8 January 2018) that the Council's case is correct with regard to the removal of the original fireplaces. I have noted that this conflicts with information set out in the submissions.

### *Planning History*

8. Following a complaint in February 2016 about '*extensive internal and structural alterations taking place in flat 2 no.7 Regent Sq with no planning application*' a Council officer visited the site. It was noted that a significant amount of original material had been removed from the rear room, including the fireplace and the officer advised the builder that works needed to stop and that a site visit (with the owner present) needed to be arranged. It was requested that all removed material be retained on site.

9. However materials (including the rear room fireplace) were removed and at a further site visit, later in February, the Council noted that the works had continued and that a second fire place had been removed from the front room and that works to sub-divide the room were under way. The Council requested that a listed building consent (LBC) application be made and this was done in May 2016. In August 2016 LBC was granted for '*Internal alterations to ground floor flat including relocation of the bathroom from the front to the rear room and including associated servicing and making good damaged features and replacing the rear window*'.

10. The LBC, ref. 2016/2487/L, allowed for various works to the ground floor flat including partitioning; removal of non-original partition(s) within the rear room and repositioning of the bathroom and kitchen to the front room. The new partitioned bathroom, within the front room, was to be lower than the ceiling of the room and was to be set in from the curve of the wall and to include a shadow gap at its base.

11. The bathroom was shown to be clad with diagonal tongue and groove oak boards to differentiate it from the historic plastered walls. The kitchen units were to be fixed to the new bathroom wall and the services, including waste and ventilation were to be installed without affecting the historic fabric in a central run beneath the floorboards. The original fireplaces were to be reinstated to the front and rear rooms and decorative plasterwork and ceilings were to be restored and damaged areas reinstated. A door into the rear room was to be sealed and new oak floorboards were to be installed. Finally an existing casement window to the rear room was to be replaced with a 6 over 6 timber sash window.

12. The works were not carried out in accordance with the drawings. Amongst other things the partitioning has been built without separation from the ceiling and without a shadow gap at the base; wall finishes and kitchen units are not as approved; the walls of the partitioned bathroom continue up to the ceiling; the bathroom wall cuts across the cornice and the plaster treatment fails to provide a contrasting appearance for the partitioned space.

13. Neither of the original fireplaces have been reinstated; the decorative plaster cornice has been affected and the door is not as detailed in the approved drawings. Finally the modern casement window has been retained, rather than the installation of the approved sash and case window.

### **Matters of clarification**

#### *Leasehold and freehold situation*

14. In the appeal statements on behalf of the two appellants it is indicated in the first that (in Appeal A) Mr Raphael Bude is the leaseholder of Flat No 2 and that he does not occupy the flat. In the second statement it is confirmed that Mr Anton Brazili (appellant in Appeal B) is the freeholder of the building (and therefore Flat 2) and that he does not occupy the appeal Flat either. The flat is occupied by a tenant of the leaseholder, Mr Raphael Bude.

### *Validity of the notice*

15. It is argued in both appeals that the LBEN is not precise since the plan attached to the notice does not distinguish which flat, at No 7 Regent Square, is subject to the notice issued. However, although the red line is shown around No 7 in total, the plan still indicates the location of Flat No 2. I was able to inspect Flat No 2, which is clearly recognisable as a self-contained unit within the overall property. Furthermore there are submitted drawings showing the layout of the flat and there can be no doubt that the LBEN relates only to the flat which I inspected.

16. Both appellants (as leaseholder and freeholder) are aware that the notice relates to the flat and have had the opportunity to appeal the LBEN as issued. The LBEN, therefore, clearly cannot relate to any other flat, leaseholder, freeholder or owner of any of the other flats in the building. The appellants have not been prejudiced by the fact that the location plan attached to the LBEN plan simply identified the location of No 7 and its various flats. Thus, on this point, I do not accept that the LBEN is invalid.

17. Section 8 of the PLBCAA deals with situations whereby works to listed buildings or their demolition are authorised. I note that the LBEN, in section 1, states that there *'has been a contravention of section 8, in respect of the building within a conservation area'*. However, at sections 3 and 4, the LBEN clearly indicates that the alleged contravention of the PLBCAA is the carrying out of works without listed building consent (LBC). The allegation is that there has been a contravention of section 7 of the Act. In any case the listed building does lie within the BCA.

18. Section 7 of the PLBCAA states *'that 'Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special or architectural or historic interest unless the works are authorised'*. I deal below with the ground (c) appeal but again I do not consider that this point renders the notice invalid.

19. It is a fact that the installation of a new window in a listed building, within a conservation area, would normally require planning permission, as well as LBC. However the LPA has issued a LBEN and I can only deal with the notice as issued. I accept that a decision in relation to whether or not LBC is issued, could affect any future planning application for the window.

20. But, in such a situation, if LBC was not to granted for a window, it is unlikely that planning permission would be granted. Conversely, if LBC was granted for a window it would be difficult for a LPA to refuse planning permission unless the window caused other harm such as overlooking and/or loss privacy for neighbouring occupants. In any case, I do not accept the argument that just because a planning permission could be affected, the LBEN as issued is invalid. I deal with the specific rear window below.

21. With regard to the areas of damaged cornice I noted these during my site inspection and the LPA has referred to them as being able to be identified from the drawings. From my inspection it is evident that the cornice has been damaged or cut into, by the new partition walls. There can be no doubt, therefore that the reinstatement of the cornice is the stretch between where the unauthorised partition has cut into the body of the cornice.

22. Finally the reference to the relevant development plan policies these seek to protect all of the Borough's heritage assets and this includes their conservation and enhancement in accordance with section 12 of the National Planning Policy Framework (NPPF). Thus, I do not accept the contention that appropriate policies do

not apply. They are not the starting point in relation to the determination of decisions relating to LBC but, nevertheless, they are significant material considerations with regard to the conservation and enhancement of the historic environment and assets of the Borough.

23. In conclusion on the validity points I reject all of the contentions that the LBEN is either a nullity or that it is invalid. I now turn the grounds of appeal.

### **The Appeals under ground (f)**

24. It is claimed that the notice was not served correctly because it was not served on Mr Richard Bude, the leaseholder of the flat. The LPA indicates that the notice was served on all those who had an interest in the land based on Land Registry searches carried out at the time the notice was issued.

25. However, it is evident that Mr Richard Bude was aware of the notice and is indeed one of the appellants. He cannot, therefore, claim to have been prejudiced by non-service. Section 176(5) of the 1990 Act is clear in setting out that the Secretary of State (and therefore an appointed Inspector) may disregard the fact that an appellant was not served with a notice, if he/she has not been substantially prejudiced by the failure to serve. That is the case here and thus the appeals under ground (f) must fail.

### **The Other Grounds - Introduction**

26. The alleged unauthorised works involve alterations to partitions and general layout; removal of fireplaces and their replacement with others; the sealing of a door opening; removal of and/or damage to decorative plaster and cornices and the fitting of a casement window in place of a sash and case window. This latter window was detailed on drawings 1610-10 Rev F and 1610-20 Rev B, which relate to the LBC granted for works at the flat in August 2016 (ref 2016/2487/L) and as referred to above. The alleged contravention with regard to the window is that that it has not been replaced in accordance with the LBC.

### **The Appeals on ground (b)**

27. To be successful on this ground it must be shown that the matters alleged to constitute a contravention of the PLBCAA have not occurred as a matter of fact. The key word is '*alleged*'. From my inspection of Flat 2 it is evident that partitioning work has been carried out (not in accordance with the approved drawings); that the original fireplaces were removed and new ones installed; that decorative plasterwork and cornices have been affected by the partition; that there is a casement window in place to the rear and that a door has been covered over in the rear room.

28. Thus, what is alleged in the notice (as the alleged contraventions) has occurred as a matter of fact. Whether or not they are contraventions or whether or not LBC should be granted are matters to be considered under the other grounds below. But both appeals fail, therefore, under ground (b).

### **The Appeals on ground (c)**

29. To be successful on this ground of appeal it must be successfully argued that the works carried out have not altered the character of the listed building and therefore that there has not been a contravention of section 7 of the PLBCAA. Section 7 of the PLBCAA states that '*Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a*

*building of special or architectural or historic interest unless the works are authorised*'. Section 8 sets out when works to a listed building are authorised.

30. 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 a listed building has been changed by the works carried out. This is irrespective of whether or not such works have been harmful to the listed building. The full merits are considered below under ground (e).

31. Again, having inspected the works carried out, I consider that all aspects of the alterations have affected this part of the listed building as one of special architectural and historic interest. The partitioning works have affected the character of the original layout; the removal of original fireplaces (original features of special architectural and historic interest) means that the rooms are no longer perceived as historic rooms but as modern alternatives. This affects the character. Similarly the covering of the door and the rear window (irrespective of when it was installed) have also had visual impacts which in my view have changed part of the character of the listed building.

32. There is no dispute that works the subject of the notice were carried out not in accordance with the LBC (including the rear window) and I have indicated above that all of the works have affected the character of the building. There is no LBC in place for these works (including the rear casement window) and it follows, therefore, that a contravention of the PLBCAA has occurred. The appeals also fail, therefore, on ground (c).

### **The Appeal on ground (e)**

#### *Introduction*

33. The relevant development plan policies are G1 (Delivery and location of growth); D1 (Design); D2 (Heritage) and A1 (Managing the impact of development) of the Camden Local Plan (CLP). These have superseded the previous development plan policies which were in place when the LBEN was issued. As indicated above the development plan policies are not the starting point in a LBC decision but they are material considerations. The policies are up-to-date with the National Planning Policy Framework (NPPF) which is also a major material consideration. In this case I have had particular regard to sections 12 (Conserving and enhancing the historic environment) and 7 (Requiring good design) of the NPPF. Because the building is listed in Grade II, I have had special regard to the requirements of section 16(2) of the PLBCA and to the heritage guidance set in national Planning Policy Guidance (PPG). I do not consider that any of the internal works carried out have affected the character or appearance of the BCA.

#### *Main Issue*

34. The main issue is the effect that the various works enforced against have had on the character and integrity of the listed building and on its features of special architectural or historic interest. I have dealt below with each of areas of work as set out in the LBEN.

#### *The Partitions*

35. The partitions around the kitchen and bathroom areas were shown on the approved drawings. In order to retain the character of the ground floor certain details were required which would distinguish the new works from the historic form and layout of the front and rear rooms. The details included gaps to the top of the

bathroom partition; different materials to the walls of the new kitchen and bathroom; a gap at floor level and retention of the curved end walls.

36. The partition has been built without any consideration being given to the historic features. The dividing wall between the kitchen and the bathroom has a plaster finish, rather than the approved boarding and it goes right up to the ceiling. In doing so it cuts across the original cornice to the room and is indistinguishable in its appearance from the plain plastered walls in the rest of the room. This has affected the cornice which is crudely cut into and also detracts from the perception of the original rooms and in particular the curved rear wall to the front room.

37. In my view the partition works as carried out are most insensitive and result in an obtrusive and visually harmful new feature within the two former rooms. I consider that this has resulted in significant harm to the integrity and character of the listed building and that some of its features of special architectural and historic interest (the cornice and the rear curved walls) have been detrimentally affected. I do not consider that this aspect of the works, as carried out, should be granted LBC and the appeal fails on ground (e) for this part of the works.

#### *The removal of the fireplaces*

38. I have been provided with photographs of the original fireplaces within the two rooms and it is evident that the replacements are of different sizes, proportions and details. There is no dispute that the fireplaces were removed and I have referred above to the final comments submitted on behalf of the appellant and the discrepancy within the submissions.

39. Having seen the replacement fireplaces I do not consider that they are appropriate replacements for those removed. The new fireplaces are of a less historical design and look out of place in terms of scale, size and detailing. I agree with the LPA that they are harmful to the character of the listed building and I do not consider that LBC ought to be granted for their retention. The appeals also fail on ground (e), therefore, in respect of this part of the works.

#### *The sealing of the door*

40. The approved drawings would have retained the door (albeit sealed) to the rear room together with its framing and architraves. This would have helped to retain the original character of the rear room. Instead the door has been insensitively boxed in and covered. Again I share the LPA's concerns about the effect that this element of the works has had on the integrity and character of the listed building and on another of its features of special architectural and historic interest. LBC will not be granted, therefore, for the unauthorised work to the door/doorway and the appeals fail again on ground (e) in this respect.

#### *The cornices*

41. I have already referred above to the crude manner in which the inappropriate partitioning cuts across the cornice (in two locations across the back wall). This has had a detrimental effect on another important special architectural and historic feature of the building. LBC is not granted therefore for the retention of the works as carried out. With regard to the appellants' queries about what needs to be done to repair the cornices, this is obvious from the drawings and from my inspection. I do not accept, therefore, that the appellants are not clear which sections of cornice are affected or what they are required to do to rectify the situation. The appeals also fail on ground (e) with regard to the cornice works.

### *The rear window*

42. From the representations (including part of the Statutory Declaration), photographs and my own inspection of the rear casement window, it seems to me that no new work has been carried out. Although it is evident that it was not the original window and that LBC was granted for its removal and replacement with a sash window, no works have been carried out to the window. It would appear that, in relation to the LBC, the appellants have chosen not to carry out this aspect of the approved works.

43. Although a LPA can issue a LBEN at any time, this notice was issued due to the non-compliance with the LBC. However, because the notice is in the alternative the requirement is either to revert to the pre-existing situation, the rear casement window, or to insert the new window as per the approved drawings. It follows that if the appellants do not wish to insert the new window then LBC would not be required for the retention of the casement window which existed at the time the notice was served. The LBEN is not aimed at the window being put in place since the date of listing. Rather it is aimed at the non-compliance with the LBC. In the overall circumstances, therefore, I consider it appropriate to correct and vary the LBEN with regard to the window.

44. In summary, therefore, I consider that the appeals fail on ground (e) in relation to all of the unauthorised works carried out. As the rear window was an existing window which was in place at the time of the issuing of the notice and, in effect no works have been carried out, as indicated above the LBEN will be corrected and varied.

### **The Appeals on ground (g)**

45. It is stated that in relation to Option (a) this ground is only argued if the LPA are requiring the removal of the kitchen and bathroom. Clearly if option (a) were to be carried out it would mean reverting back to the existing layout shown on drawing 1610-10 Rev. F. I have found in the appellants' favour in relation to the rear window and it follows, therefore, that I find Option (a) to be excessive in part. The LBEN will, therefore be corrected in the allegation section and varied in the requirements section accordingly.

### **The Appeals on ground (i)**

46. To be successful on this ground it must be shown that the steps required for the purposes of restoring the building to its former state would not serve that purpose. However again it is clear that if Option (a) were to be carried out the layout would revert to that which was present prior to any works commencing (including the rear window). The appeals must fail, therefore on ground (i).

### **The implied Appeals on Ground (k)**

47. If the works were carried out in accordance with Option (b) (including the rear window) it is evident that the steps required would not exceed what is necessary to bring the building into the state it would have been in if the terms and conditions of the LBC had been complied with. The appeals cannot succeed, therefore in relation to any implied ground (k) arguments.

### **The Appeals on ground (h)**

48. Having considered the situation regarding the leasehold and tenancy of the appeals flat and noting the amount of work now required to be carried out, I consider that it would be reasonable to allow a 12 month compliance period. I

shall, therefore extend the period from 6 months to 12 months by varying the LBEN. This will also ensure sufficient time for the appellants to liaise with the LPA.

### **Other Matters**

49. In reaching my conclusions on all of the grounds of appeal I have taken into account all of the matters raised by the appellants, the Council and an interested person (the occupant Flat 4, Handel Street). These include the full planning history; the initial grounds of appeal; the Statutory Declaration; the photographic evidence and the final comments. However, none of these carries sufficient weight to alter my conclusions on the questions of validity and the grounds pleaded. Nor is any other factor of such significance so as to change my decision.

### **Formal Decisions**

50. The appeals succeed to a limited degree with regard to the rear window and on ground (h) only.

51. I direct that the notice be corrected by deleting the words '*and installation of a casement window in place of a traditional timber sash unit*' in part 3 – THE CONTRAVENTION AS ALLEGED' -.

52. I direct that the requirements in part 5a) and 5b) of the LBEN -WHAT YOU ARE REQUIRED TO DO- be deleted in their entirety and the following requirements be substituted therfor:

*'5 a) To remove the unauthorised partition, fireplaces, door panel and completely reinstate the plan form, fireplaces and cornices to match the original marked as "existing" on drawing 1610-10 Rev F.*

OR

*5b) To remove the unauthorised partition, fireplaces and door panel and reinstate the decorative plasterwork, carrying out the partitioning, fireplace-installation and door sealing works fully in accordance (with the exception of the rear window) with drawings 1610-10 Rev F; 1610-11 Rev B and 1610-12 Rev A granted listed building consent on 4 August 2016 (ref 2016/2487/L).*

53. I direct that the LBEN be varied by deleting the word and figure '*six (6)*' in part 5 of the LBEN – WHAT YOU ARE REQUIRED TO DO - and by substituting therefor the word and figure '*twelve (12)*'.

53. Otherwise both Appeal A and Appeal B are dismissed. The LBEN is upheld as corrected and varied and listed building consent is refused for the works carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990.

*Anthony J Wharton*

Inspector