
Appeal Decision

Site visit made on 17 September 2019

by P N Jarratt BA DipTP MRTPI

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

Decision date: 23 September 2019

Appeal Ref: APP/P4605/F/18/3201110

Acorn House, 22 High Street, Sutton Coldfield, B72 1UX

- 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 CR8 Architectural Ltd against a listed building enforcement notice issued by Birmingham City Council.
 - The enforcement notice, numbered 2017/1241/ENF, was issued on 20 March 2018.
 - The contravention of listed building control alleged in the notice is :
 - (i) Demolition of chimney breast in front ground floor room;
 - (ii) Demolition of fitted cupboard to the right of chimney breast in front ground floor room;
 - (iii) Introduction of concrete lintel providing structural support due to demolition of historic chimney breast;
 - (iv) Removal of wall, door frame and door between front ground floor room and stair lobby;
 - (v) Removal of walling door frame and door between rear ground floor room and stair lobby;
 - (vi) Blocking up and partial demolition of principal staircase at ground floor;
 - (vii) Removal of fire surround to rear inglenook style fireplace.
 - The requirements of the notice are:
 - (i) Reinstate the demolished chimney breast in front ground floor room. This should be undertaken using bricks and lime mortar, to match the historic fabric removed in both materials and appearance;
 - (ii) Reinstate fitted cupboard to the right of chimney breast in front ground floor room, all materials and joinery detailing to match that removed;
 - (iii) Reinstate wall, door frame and door between front ground floor room and stair lobby to match the historic fabric removed in both materials and appearance;
 - (iv) Remove concrete lintel and reinstate structural support provided by the chimney stack as stated above;
 - (v) Reinstate wall, door frame and door between rear ground floor room and stair lobby to match the historic fabric removed in both materials and appearance;
 - (vi) Removal of partitioning covering the principal staircase, replacing any removed elements, any damage caused by the unauthorised works should be made good;
 - (vii) Reinstate rear timber fire surround to match the historic fabric removed in both materials and appearance.
 - The period for compliance with the requirements is 3 months.
 - The appeal is made on the grounds set out in section 39(1) (e) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
 - **Summary of Decision: Appeal succeeds in part and notice varied and upheld**
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Preliminary Matters

1. This appeal relates only to the enforcement notice and not to non-determined applications 2018/00142/PA and 2018/00143/PA, contrary to the appellant's description of the appeal in the statement of case. No appeals were lodged in respect of the non-determined applications.
2. The appellant is critical of the level of communication provided by the Council on the applications but this is a matter between the Council and the appellant and is not a material consideration in respect of this appeal.

The site and relevant planning history

3. The appeal site is one of a pair of three-storey, brick built, mid-terraced properties. Together with No 24, they comprise 'Acorn House' which is an C18th Grade II listed building and situated within the High Street Sutton Coldfield Conservation Area.
4. Following the approval of alterations in connection with office refurbishment in 1990 (1990/02955/PA), relevant applications are as follows.
5. Applications for the change of use of ancillary upper floor residential accommodation into two self-contained apartments and alteration to shopfront were refused planning permission and listed building consent in December 2017 (2017/07683/PA and 2017/07743/PA).
6. Works commenced on site prior to the determination of these applications by the Council and enforcement action was progressed. The enforcement notice issued in March 2018.
7. Applications were submitted in January 2018 for planning permission (2018/00142/PA) and listed building consent (2018/00143/PA) for change of use to offices (Use Class 2A) and a two-bedroom dwelling (Use Class C3) and for internal and external alterations. Although these applications were submitted in January 2018, they were not determined until July 2019 as it had been wrongly concluded by the Council that appeals had been lodged against non-determination, based on information provided by the appellant. In respect of the listed building refusal, it was considered that the amount of alteration and harm/loss of original features and fabric would fail to preserve the listed building and its original features of special architectural and historic interest and would result in harm that would not be outweighed by public benefits.

Planning policy

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 Development Plan policies for Birmingham are also material considerations in these cases.
9. The Birmingham Development Plan 2017 at paragraph 6.68 refers to the protection of the historic environment being an essential element in ensuring a sustainable future and Policy TP12 gives great weight to the conservation of the City's heritage assets.
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 193 - 196 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.

Appeal on ground (e)

11. An appeal on this ground is that listed building consent ought to be granted for the work. I consider that the main issue is the effect of the work on the special architectural or historic character of the listed building and its setting.
12. The significance of the building relates to its simple Georgian architectural features and to its historic plan form and layout indicative of the functional and utilitarian nature of the building. The central chimney stack, staircase and rear inglenook/range fireplace suggests an internal layout from an earlier period. The narrow plot width is indicative of a medieval burgage plot and it is possible that the current building was encased or re-fronted in the Georgian period and contains earlier fabric.
13. The alleged unauthorised works listed in the notice are all internal to the building.
14. The appellant states that the chimney breast was a 'venting stack' that replaced the original chimney breast/stack which was removed in the 1960s. However, the Council does not agree with this and suggests it was likely that it had been original or adapted, being bricked up and vented. I also note that the chimney breast/stack exists at first floor level. In the absence of any photographic or other evidence showing the property prior to the removal of the chimney breast, I rely on the drawings attached at Appendix 1 to the Council's statement which shows Reception Office 1 on the ground floor as it existed at the time of the 1990 planning application in the existing plan (Drawing No 1810/1). This shows an existing projecting deep section of wall, which I consider to be the chimney breast, with a cupboard to its right-hand side. The fact that it has been adapted to provide venting of the property does not diminish its significance and the introduction of the concrete lintel would have led to the loss of historic fabric.
15. The cupboard has been removed but the appellant states that this has been retained with the intention of it being repositioned elsewhere in the premises. I was not able to inspect the cupboard which the appellant states has plywood shelves but I note from a photo in the appellant's heritage and design statement that it had panelled doors.
16. The 1990 existing plan also show that there was an internal opening between the rear Office 2 and No 24 adjacent and an open passage between Reception Office 1 and Office 2. The 1990 permission proposed the introduction of new fire doors and frames between Reception Office 1 and Office 2 thereby creating an enclosed lobby giving access to the staircase. As the doors and frames are modern additions, their removal does not harm the historic fabric. However, attached to the chimney breast was a short section of original wall, the loss of which is harmful and this, coupled with the works to the staircase enclosure, has resulted in a significant change in the plan form of the building.

17. The staircase has been altered over time. The 1990 proposals show the opening up of part of the side wall enclosing the staircase, the formation of new steps and a new wall built between the rear staircase wall and the central staircase wall. The Council is not unduly concerned about the removal of the altered section of stairs but is concerned about the loss of the walls enclosing the staircase. I concur with this view as the form and enclosure of the staircase has a high level of significance of the building in terms of its historic layout and functionality.
18. The removal of the wood surround from the inglenook fireplace has resulted in an exposed beam to what might be a c1920 fireplace. The Council considers that exposed beam inglenook fireplaces are not characteristic of the Georgian Period, although this is disputed by the appellant. The wood surround would have been contemporary with the fireplace but as it has been disposed of, there is no available evidence to assess its significance. Whilst this is regrettable, I do not consider the exposing of the beam or loss of the fireplace surround to cause harm to the special character of the building. I attach little weight to the appellant's argument that the loss of the chimney breast in the front office improves the view of the rear inglenook fireplace which provides little justification for the unauthorised works. In any event the rear fireplace would be visible from the front office through the removal of the more recent door and frames of the stair lobby.
19. The appellant considers that the central positioning of the staircase hindered the commercial use of the building but no evidence has been submitted to demonstrate this to be the case or why the building could not have been converted differently in a manner that preserved the property's historic features. The unauthorised works separate the ground floor from the upper floors, (which at the time of my site inspection were only accessible by a ladder) and this physical separation does not represent the optimum viable use of the building. Although there is clear public benefit in the continuing occupation and use of the listed building, this should not occur if any benefit is outweighed by the harm caused.
20. The appellant also points out that No 24 has been updated with uPVC windows with the appeal property as one of the only buildings boasting its original features. However, what may have taken place at No 24 is not justification for carrying out harmful works to the appeal property.
21. I note a local historian's concern for the appellant's disregard for the historic value of the building.
22. I conclude that with the exception of the removal of the fire surround to the rear fireplace, the internal works have caused harm to the significance of the listed building through alterations to its historic building plan and form and through the loss of historic fabric. Although the degree of harm is less than substantial in the context of paragraph 196 of the Framework, I do not consider that any public benefits arising, including securing the building's optimum viable use, outweigh the degree of harm caused. The works are also contrary to policies in the Birmingham Development Plan intended to protect the built heritage
23. With the exception of the removal of the fire surround to the rear fireplace, the appeal on this ground fails.

Conclusion

24. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant listed building consent for one part of the matter the subject of the notice, but otherwise I will uphold the listed building enforcement notice and refuse to grant consent on the other part.

Decision

25. It is directed that the listed building enforcement notice be varied by deleting reference to the removal of fire surround to the rear inglenook style fireplace under (vii) of the allegation and under (vii) of the requirements, for which listed building consent is granted.
26. The appeal is dismissed and the listed building enforcement notice is upheld as varied, insofar as it relates to various internal alterations set out in allegations (i) to (vi) and listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

P N Jarratt

Inspector