



Appeal Decision

Site visit made on 17 September 2019

by JP Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 04 October 2019

Appeal Ref: APP/X5990/Y/3223899

18 Hertford Street, London W1J 7RT

- 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 Mrs Ashoob Cook (Gouray Limited) against the decision of City of Westminster Council.
 - The application Ref 18/03941/LBC, dated 13 May 2018, was refused by notice dated 11 September 2018.
 - The works proposed are minor alterations to existing service staircase and introduction of a small passenger lift.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the appeal relates to a listed building, I have had special regard to sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). I have also taken account of the guidance within section 16 of the National Planning Policy Framework (the Framework).
3. The Framework was updated in February 2019, after the application was determined by the Council. However, the parties have been able to take account of any relevant changes during the course of the appeal.

Main Issue

4. The main issue is whether the proposal would preserve a Grade II listed building, 18 Hertford Street, and any of the features of special architectural and historic interest that it possesses.

Reasons

5. The appeal property is a Grade II listed terraced, Georgian townhouse, built circa 1768-70, as part of Henry Holland's development of the south side of Hertford Street. It comprises 4 storeys plus a basement and is constructed of stock brick. Drawing on the list description, its doorway to the left is flanked by white ionic columns with an impressive enriched frieze above and a semi-circular patterned fanlight. Black wrought iron railings enclose the basement with an overthrow lamp holder over the entrance. It is three bays wide with recessed sash windows under flat red brick arches with a white stone sill band at first floor level. The main elevation resolves at a parapet. Altogether, it

- presents an elegant façade to the street informed by simplified classical principles and proportions.
6. The interior is not referred to in the list description. However, that is not unusual, as access was not always possible at the time of survey. Moreover, listings are primarily for identification purposes and do not provide an exhaustive or complete description of the special interest of the listed building. In this case, although the property has been subject to some internal changes, including conversion to residential flats, it possesses a fine principal staircase from ground to first floor level and a secondary service stair in a smaller adjacent compartment which connects all floors.
 7. The principal staircase is of a curved cantilevered design with a landing giving access to the secondary stair. Although less grand, the secondary stair is also cantilevered but with straight flights, climbing from ground to third floor level. It is of stone construction and runs around an open well with a simple but elegant iron hand rail and balustrade.
 8. In commenting on a previous scheme¹, Historic England (HE) attributed some significance to the service stair, observing that it appeared to be entirely original and *'represents the survival of a high degree of original fabric, provides evidence of historic circulation patterns, and is an example of high quality building techniques and materials'*. Cantilevered staircases are not uncommon, but they exhibit an intriguing ingenuity in design with the lack of any visible means of support creating a gravity-defying illusion. Therefore, I consider that the simple elegance and design of the secondary stair contributes to the architectural and historic interest of the building.
 9. An HE publication, *'London terrace houses 1660-1860 – a guide to alterations and extensions'*, confirms that: *'the principal and secondary staircases ... are vital parts of the character and plan form of most domestic listed buildings and should be kept'*. Paragraph 10.135 of the Council's Unitary Development Plan (UDP)² also indicates that, in most cases, where they are of architectural and historic interest, it is expected that original staircases will be retained. The Council's Supplementary Planning Guidance: Repairs and Alterations to Listed Buildings³ notes that: *'Secondary staircases may also be of interest and should normally be retained. Cantilevered stone staircases are a feature of the higher class of terraced house...'*
 10. Given the above factors, I find that whilst the special interest of this Grade II listed building derives principally from its elegant façade, its internal features and original fabric, such as its main and secondary stair, also contribute to its significance.
 11. It is proposed to install a small passenger lift within the secondary stair compartment, which would run from the first to the third floor, with the lift casing extending down to ground floor level. About 100mm would be cut from each of the stone steps of the stair to enlarge the central void to accommodate the lift. The iron hand rail and balustrade would also be removed, with the handrail re-used, albeit in an adapted form.

¹ 17/06648/LBC – HE Letter dated 11 September 2017

² Adopted January 2007

³ Adopted December 1995

12. However, although the modified staircase would be retained, sawing off 100mm from the steps and removing the simple yet elegant metal balustrade would represent a fundamental alteration to its original form and involve significant loss of historic fabric. Moreover, the previously open well would be occupied by the lift and associated equipment. The void would be enclosed by powder-coated steel casing with glass infill panels, which would, notwithstanding the transparent elements, adversely affect the legibility of the cantilevered design of the stair, which can currently be fully appreciated. Therefore, the scheme would harm a significant original feature of this historic listed building.
13. The appellant refers, on a number of occasions, to the building being listed for its '*Group Value*'. However, although the list description refers to it as part of the development of the south side of Hertford Street, it is individually listed rather than as part of a wider listed terrace. Even if that were the case, it does not dissipate the level of protection afforded by the Act to either external or internal features which contribute to the special interest of the building.
14. Whilst the 100mm loss from each step is reduced from a previously refused scheme, where 150mm was to be removed, the current proposal and the removal of the balustrade will still significantly alter the form, fabric and legibility of the stair to its detriment, as already described.
15. The appellant refers to various other alterations to the building, including its conversion to flats, which appears to have taken place in 1922. The implication appears to be that because there have been previous alterations, that justifies the appeal proposal or mitigates its effect. However, the building has retained much of its basic plan form and some original features. The fact that there has been a degree of change over time, which is not of itself unusual, does not necessarily justify further alterations, if they are harmful. Indeed, it could equally be said that, as the building has undergone change, the retention of the remaining historic elements becomes even more important. In any event, all proposals must be considered on their individual merits.
16. As the staircase is towards the rear of the building, it would not be apparent from the entrance or main hallway and is only likely to be seen by occupiers of the flats or visitors. However, listed buildings are safeguarded for their inherent architectural and historic interest, irrespective of whether or not public views can be gained.
17. Given the above, I conclude that the proposal would fail to preserve the special historic and architectural interest of the Grade II listed building at 18 Hertford Street. However, as the changes would affect a secondary staircase to the rear of the building and do not involve the removal of the stairs in its entirety, I consider the extent of the harm to be, in the language of the Framework⁴, 'less than substantial'.
18. Nonetheless, Framework paragraph 193 makes clear that when considering the impact of a proposed development on the significance of a designated heritage asset, 'great weight' should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm. Similarly, Framework paragraph 194 says that any harm to, or loss of, the significance of a designated heritage asset, including

⁴ Paragraphs 193 and 194

from its alteration, should require clear and convincing justification. Therefore, the harm that I have identified attracts great weight and importance.

19. In such circumstances, paragraph 196 of the Framework advises that the harm should be weighed against the public benefits of the proposal, which can include securing the optimum viable use of listed buildings.
20. The Planning Practice Guidance (PPG) says that public benefits '*should be of a nature or scale to be of benefit to the public at large and not just a private benefit.*' It also goes on to indicate that '*benefits do not always have to be visible or accessible to the public in order to be genuine public benefits, for example, works to a listed private dwelling which secure its future as a designated heritage asset could be a public benefit.*'⁵
21. The appellant cites examples of approvals given for an external wheelchair accessible lift and internal stair lift at the Foreign and Commonwealth Office (FCO) in King Charles Street, London (Grade I listed) and a scheme at the Wallace Collection, Hertford House, London (Grade II* listed) for an internal lift within a secondary stairwell. However, the FCO is a national government building providing a public service whilst the Wallace Collection is a major art collection open to the public. Moreover, the FCO scheme involves a wheelchair accessible lift, whereas the appeal proposal would not provide wheelchair access as the lift would only operate from first floor level.
22. Therefore, whilst I have relatively limited details of those schemes, providing access to a wide range of members of the public is likely to have attracted significant weight in the balance in those proposals. There is little comparison between such buildings and the functions they fulfil, and a private house divided into flats, albeit they are all listed buildings. Consequently, I give those other schemes limited weight in considering the appeal proposal before me.
23. According to the appellant, the main benefit derived from the lift would be '*the easier and convenient everyday comings and goings for everyone, and in particular disabled people, the elderly and those with restricted movement.*' However, whilst there may be visitors to the house, that benefit is essentially a private benefit for the occupants of flats on the upper floors. It is not clear how many of the occupiers fall into the categories referred to. It is said that the appellant wishes to reside at the property but, '*due to injuries sustained*', has difficulty climbing the stairs, and that other residents on the upper floors also experience some difficulty.
24. Whilst I have sympathy with those aspects, the building is limited to four storeys, which is not untypical of many residential listed buildings in the West End of London. Ultimately, individual occupiers of the flats would have been aware of the access arrangements before purchasing or renting them and been able to decide if they were suitable. Generalist propositions about convenience, access and disability for private occupiers are not sufficient to outweigh the clear harm that would be caused to an original stone staircase, albeit a service stair, in a generally well-preserved 18th century listed building.
25. Moreover, in this case the accessibility benefits are undermined by the fact that the lift would only be available from first floor level, because of restrictions posed by the access to the basement flat. Therefore, older people or the

⁵ Paragraph: 020 Reference ID: 18a-020-20190723

disabled would still need to be able to negotiate either the principal staircase, which the appellant considers to be '*easy-going*', or the secondary staircase to reach first floor level before being able to make use of the lift. That would be likely to exclude those who, for example, were dependent on a wheelchair or unable to easily climb a stair. Consequently, I am not persuaded that the proposal would significantly improve ease of access for a wide range of people. Moreover, this would ultimately be a private rather than a public benefit, as there is no convincing evidence that the lift is necessary to, in the words of the PPG referred to above, '*secure its future as a designated heritage asset.*'

26. The appellant holds that the proposal would make the accommodation far more viable. However, no compelling evidence has been presented to suggest that the building is not viable in its current form or use as residential flats. Indeed, it appears that it was converted into flats in 1922 and there does not appear to be any clear reason why that use, in a prime location in the West End of London, would not continue. Therefore, I cannot see that the continued viable use of the building is dependent on the appeal proposal being approved.
27. Various brief general references are made by the appellant, including in a 'Supporting Statement'⁶, to disability legislation and the Equality Act 2010 (EA), all of which I have considered. In particular, I have had due regard to the Public Sector Equality Duty (PSED) contained in s149 of the EA, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
28. 'Age' and 'disability' are amongst the 'relevant protected characteristics' listed in s.149(7) of the EA. I have considered the impact that dismissing the appeal may have on older people and those with a disability. However, I have also taken account of the limitations of the proposal and on the range of people with such relevant protected characteristics who could benefit given the first-floor level of the lift, the general nature of the concerns and that the site is a private house. Overall, I am not persuaded that any negative consequences of dismissing the appeal on those groups would outweigh the identified harm to the special interest of the listed building.
29. Part 'M' of the Building Regulations 2010 (as amended) (BR) has also been referred to, in relation to the gaps between each spindle on the existing stair being about 225mm rather than the 99mm allowed under current BR. The appellant suggests that the existing gaps are wide enough for a small child to slip through. However, the BR relate primarily to building work in relation to newly erected dwellings or the material change of use of buildings. Whilst relevant, they are not necessarily intended to be applied retrospectively to historic buildings, many of which may not comply with various aspects of current building regulations, as a justification for other works.
30. HE points out in its publication '*Easy Access to Historic Buildings*' (EAHB)⁷ that the '*need to conserve the special characteristics of historic buildings is recognised in Approved Document M*⁸ which goes on to say that requirements

⁶ Prepared by Anthony Blee, dated January 2019

⁷ June 2015

⁸ The Building Regulations 2010: Access to and use of buildings – Approved Document M (2015 Edition incorporating 2016 amendments).

for accessibility should be balanced against preserving historic buildings. In this case, the proposal to remove all the balusters forming part of an original stair would not preserve the special interest in the building. If some change is considered necessary for safety reasons, there may be other non-destructive or reversible ways of mitigating any potential hazard, which can be undertaken separately from the current proposal. I note that a similar assessment has been made by a heritage consultant, acting on behalf of a resident of one of the flats at the appeal property who objects to the proposal.⁹

31. The appellant also refers to the same HE EAHB publication, which does offer general support to improved access to historic buildings. A specific section within that document, cited by the appellant in support of their case, provides advice regarding lifts. It states that:

'The best way to provide accessible circulation between different floors of a building is to install an integrated and suitably sized passenger lift. As well as helping wheelchair users it can also be of benefit to ambulant disabled people, older people and people with pushchairs. A passenger lift is more likely to be feasible in larger buildings. Where space is at a premium, or a lower-cost solution is required, a short-rise platform lift may be a more viable solution.'

'Passenger and platform lifts are best located in the less-sensitive parts of historic buildings, for example secondary staircases and light wells or in areas that have already been disturbed or altered.'

32. Whilst that advice is noted, most of the examples illustrated in the relevant section of the EAHB relate to sizeable buildings with public access, such as 'The Queen's House, Greenwich', where a new staircase with a lift replaced a service stair which had already been altered. Earlier in the document¹⁰ HE re-iterates that: *'The application must demonstrate why any potentially damaging works are necessary or desirable, thus establishing that a balance is being struck between conservation and access.'* It also states, referring to *Approved Document M* that *'the aim should be to improve accessibility where practically possible, provided that the work does not prejudice the character of the building ...'*
33. Although the proposed lift would be located at a secondary staircase, in this case the stone cantilevered stair with its simple iron balustrade contributes to the special interest of the building. Furthermore, it is not an area of the house that has already been significantly disturbed or altered, save for the creation of the basement flat. Instead, unlike the Queen's House example, the staircase appears to be in its original historic form. No convincing justification for works which would adversely affect the character of the building has been provided beyond relatively vague statements about general convenience and improved access. Moreover, whilst there would be some advantages for users of the upper floor flats, the overall benefit to older residents or the disabled would be limited by the remaining steps at the street entrance and the lack of any lift provision between the basement and first floors.
34. The Council has drawn my attention to an appeal decision relating to 6 Lygon Place.¹¹ That proposal involved the removal of a secondary staircase and the

⁹ Appeal Submission prepared by Architectural History Practice (AHP), dated: May 2019

¹⁰ Page 7

¹¹ APP/X5990/Y/18/3197704

installation of a lift from the lower ground floor to the fifth floor. Although it is recognised that scheme involved the removal of the entire stair, it is of some relevance in that it demonstrates that a stone, cantilevered secondary stair was considered to contribute to the special interest of the listed building. In that case the loss was not considered to be outweighed by the alleged public benefits, although the possibility of alternative locations for a lift also appears to have been a relevant factor.

35. Appeal decisions relating to 67 Eaton Place (the Eaton Place appeals) are cited by the appellant.¹² A phrase in paragraph 14 of the decisions is referred to, where the Inspector states: *'It would simply be another change in the development of the history of the building.'* The appellant suggests that the proposed lift in the appeal before me would constitute a similar change and that *'its modest scale and appropriate design would cause no harm'*. I have already dealt with the issue of harm above.
36. Furthermore, the proposal in the Eaton Place appeals was to extend an already approved scheme with an additional floor on a closet wing to accommodate a lift. There does not appear to be any mention of alterations to an existing stair, secondary or otherwise. Therefore, although it involves a lift, the detail of that scheme bears little factual resemblance to the appeal proposal before me. Consequently, I give it little weight in the determination of this appeal.
37. Overall therefore, I find that there are no clear public benefits that would be sufficient to outweigh the 'less than substantial harm', which must still be given great weight, to the special interest of the listed building. It follows that the proposal fails to satisfy the requirements of the Act and paragraph 192 of the Framework.
38. It would also be contrary to policies S25 and S28 of the Westminster City Plan¹³ and policy DES 1 of the Council's UDP which, whilst supporting improved accessibility, indicate that any upgrades should be sensitive, well-designed and in accordance with the overriding aim of ensuring that Westminster's extensive heritage assets, including its listed buildings, are conserved.

Other Matters

39. Although the appeal building is within the Mayfair Conservation Area (MCA), given that the proposed works would affect part of the interior of one listed building within it, I am satisfied that they would not harm the character and appearance of the MCA, considered as a whole. I note that the parties appear to take the same view and I see no reason to disagree.

Conclusion

40. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

JP Tudor

INSPECTOR

¹² APP/X5990/E/08/2022281 & APP/X5990/A/08/2062280

¹³ November 2016