



Appeal Decisions

Site visit made on 18 September 2019

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

an Inspector appointed by the Secretary of State

Decision date: 29 October 2019

Appeal A - Ref: APP/X5990/W/19/3229171

22 Clifton Hill, London NW8 0QG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Tufan Ergin against the decision of City of Westminster Council.
 - The application Ref: 19/00782/FULL, dated 1 February 2019, was refused by notice dated 9 April 2019.
 - The development proposed is installation of a timber fence above existing brick boundary walls to the rear garden and above a brick dividing wall in the front garden.
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Appeal B - Ref: APP/X5990/Y/19/3229180

22 Clifton Hill, London NW8 0QG

- 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 Mr Tufan Ergin against the decision of City of Westminster Council.
 - The application Ref: 19/00585/LBC, dated 25 January 2019, was refused by notice dated 9 April 2019.
 - The works proposed are installation of a timber fence above existing brick boundary walls to the rear garden and above a brick dividing wall in the front garden.
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Appeal C - Ref: APP/X5990/Y/19/3229230

22 Clifton Hill, London NW8 0QG

- 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 Mr Tufan Ergin against the decision of City of Westminster Council.
 - The application Ref: 19/01165/LBC, dated 15 February 2019, was refused by notice dated 12 April 2019.
 - The works proposed are installation of a wall mounted retractable canopy and housing, an outdoor heater and two loudspeakers with mounting brackets.
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Decision - Appeal A

1. The appeal is dismissed insofar as it relates to the installation of a timber fence above a brick dividing wall in the front garden.
2. The appeal is allowed and planning permission is granted insofar as it relates to the installation of a timber fence above existing brick boundary walls to the rear garden at 22 Clifton Hill, London NW8 0QG in accordance with the terms of application, Ref: 19/00782/FULL, dated 1 February 2019 and the plans submitted with it, except insofar as they relate to the installation of a timber

fence above a brick dividing wall in the front garden, subject to the following condition:

- 1) The surface of the timber fence in the rear garden hereby permitted is to be left untreated unless otherwise agreed in writing by the local planning authority having regard to the fence being left to weather to a natural silver-grey finish.

Decision - Appeal B

1. The appeal is dismissed insofar as it relates to the installation of a timber fence above a brick dividing wall in the front garden.
2. The appeal is allowed and listed building consent is granted insofar as it relates to the installation of a timber fence above existing brick boundary walls to the rear garden at 22 Clifton Hill, London NW8 0QG in accordance with the terms of application, Ref: 19/00585/LBC, dated 25 January 2019 and the plans submitted with it, except insofar as they relate to the installation of a timber fence above a brick dividing wall in the front garden, subject to the following condition:
 - 1) The surface of the timber fence in the rear garden hereby consented is to be left untreated unless otherwise agreed in writing by the local planning authority having regard to the fence being left to weather to a natural silver-grey finish.

Decision - Appeal C

3. The appeal is dismissed.

Preliminary Matters

4. In relation to Appeal A and Appeal B, neither the application forms nor the Council's decision notices provide a sufficiently accurate description of the proposed development/works, which the parties agree relate to fences within the rear and front gardens of the property. Therefore, I have used an amended description in the banner headings above as it more accurately describes the development/works. That is also reflected within the formal split decisions relating to those appeals.
5. The development/works in relation to Appeals A, B and C have already been carried out, as confirmed in the application forms and were in place at the time of my site visit, when I was able to see their effects. The appeals are, therefore, intended to regularise the position and to enable the development/works to be retained.
6. As the appeals relate to a listed building within a conservation area, I have had special regard to sections 16(2), 66(1) and 72(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).¹

¹ February 2019

Main Issues

7. The main issues are:

Appeals A and B - whether the proposals preserve the special interest and setting of the listed pair of semi-detached houses at 22 and 24 Clifton Hill, of which the appeal property is one; and, their effect on the character and appearance of the St. John's Wood Conservation Area (SJWCA).

Appeal C - whether the works preserve the special interest of the listed pair of semi-detached houses at 22 and 24 Clifton Hill, of which the appeal property is one; and, their effect on the character and appearance of the St. John's Wood Conservation Area (SJWCA).

Reasons – Appeals A and B

Listed building

8. The appeal property is one of a pair of semi-detached houses, built circa 1840, which were first listed together at Grade II in 1970. They are two storeys high with semi-basements and form part of a row of similarly designed mainly semi-detached villas on the northern side of the road. These Victorian villas are characterised by stucco façades, projecting porches, a regular pattern of fenestration and slate, hipped roofs.
9. The houses are set back from the road, with front gardens bounded by low walls, a number with black metal railings on top, supplemented by hedges with other greenery behind. The rear elevations are simpler in materials and detailing, comprising exposed stock brick, but they are well-proportioned and retain a restrained elegance. The villas are set amongst generous rear gardens, many with mature trees in this leafy suburban part of the SJWCA.
10. The architectural quality, materials and age of the listed building form its special interest, with the gardens and street setting, which largely reflect the original layout, also contributing to the significance of this heritage asset.
11. The front gardens of the villas along this pleasant, tree-lined avenue with their low walls, piers, railings and hedges form part of the attractive setting of the listed building. That setting enables the elegant stuccoed façade and architectural detailing of Nos 22 and 24, a form with historic integrity, to be experienced and appreciated.
12. A timber fence within the front garden of the appeal property is sited on top of a stock brick dividing wall, which separates the appeal property from the garden of the adjoining semi in the pair. The fence is constructed of horizontal wooden slats and attached to the existing wall by long, vertical hardwood posts. Although there are minor gaps between the slats, the fence presents as an essentially solid structure. According to the appellant, the total height of the existing wall and fence is about 1.4 metres, with the fence extending the full depth of the garden, from the front boundary back to the main elevation of the house.
13. The style and design of the fence lacks historic integrity and is wholly inappropriate and discordant sited within the frontage of this listed building, which is of high quality and architectural interest. Whilst the fence is atop a stock brick dividing wall rather than the main front boundary, it is visible from

- various points along the road. Its form, design and height detract from the setting of the listed building and undermine the ability to fully appreciate its elegant façade and detailing without unwelcome distraction.
14. Given the above factors, I conclude that the front garden fence has an adverse effect on the setting of the listed building and fails to preserve its special interest. Therefore, that element of the development/works does not comply with the requirements of the Act or paragraph 192 of the Framework.
 15. Of the various development plan policies cited by the Council, the clearest conflict is with policies S25 and S28 of the Westminster City Plan (WCP)² and policies DES 1 and DES 10 of the Councils Unitary Development Plan (UDP)³ which collectively seek to conserve Westminster's heritage assets, including the settings of listed buildings, and to ensure high standards of design.
 16. Turning now to the fencing in the rear garden. That is in the same form as the front garden fence and again attached to the existing brick walls by wooden vertical posts. It encloses the garden on all three sides. Although the size of the timber panels varies relative to the height of the walls, they are positioned so as to give a consistent height around the perimeter of the garden. According to the appellant, the average height of the fence and wall combined is about 2.2 metres.
 17. Setting is the surroundings in which a heritage asset is experienced.⁴ The generous rear garden of the appeal property, reflecting its original layout, forms part of its setting and gives a sense of space and openness in which the listed building can be appreciated. It has a physical and historic relationship with the heritage asset which contributes to its significance. The surrounding neighbouring gardens also contribute, creating a wider green, spacious setting to the rear of the appeal property and other listed buildings in the row.
 18. The garden of the appeal property and other gardens have historic stock brick boundary walls dividing them, with many supplemented by wooden trellis and more solid timber fences. The fence in the rear garden of the appeal property is atop the original boundary wall and does not, therefore, compromise the openness of the garden area or its spatial relationship with the rear elevations of the listed building.
 19. Setting has an important visual element, but the fence would not be prominent in any views from surrounding properties towards the listed building, which would be across the leafy, backdrop of gardens with mature trees and planting. Indeed, the fence itself has plants and shrubs growing next to and above it. The appellant says that the fence will be left untreated and that it will weather and fade over time to a silver-grey colour, which will soften its appearance. That aspect could be secured by condition.
 20. I conclude, therefore, that the rear garden fence does not harm the setting of the listed building or diminish its special interest. It follows that it satisfies the Act, paragraph 192 of the Framework and relevant development plan policies.

² November 2016

³ Adopted January 2007

⁴ Annex 2: Glossary – National Planning Policy Framework

St. John's Wood Conservation Area

21. Detached and semi-detached villas are a common feature of the SJWCA, with their stucco and brick materials, generous landscape settings and consistent scale creating a sense of uniformity, despite some variation in architectural styles. As with the appeal property, they are enhanced by trees and soft-landscaping along roads and within rear gardens, which provide a soft edge to the urban environment. According to the SJWCA Audit⁵, open areas and gaps to the sides and rear of buildings which allow views towards greenery and trees are also of value. The role of front boundary treatments in providing a continuity to street frontages is also recognised. Those elements combine to create the pleasant arcadian character and appearance of the SJWCA, which contributes to its significance.
22. The SJWCA Audit comments on the importance of boundary walls and enclosures to the character of the conservation area. It says that the SJWCA has *'suffered as a result of inappropriate rebuilding or replacement of front walls, using poor quality materials, fences or trellises. Other front boundary enclosures do not reflect the rest of the street, having been made higher or more solid – and in some cases both.'*⁶
23. As established above, although the front garden fence is atop a dividing wall and is obscured in some views, it is still clearly visible from public vantage points along the road, particularly walking from the south-west towards the appeal property. The predominant boundary treatments to the front along the road are low brick walls, hedges and metal railings. The height of the fence, rising above the existing low brick side wall, combined with its length and the solid impression created by its form and materials draws the eye and appears incongruous in the immediate street scene.
24. It is accepted that there is some trellis fencing adjacent to other front gardens along the road. However, much of that trellis appears lower and more lightweight, with greater space between the wooden slats giving a generally more open effect. Whilst there are some isolated examples of more solid-type fences, I consider that they generally have a negative visual effect within this environment.
25. Although the appellant refers to the appeal fence as a 'trellis', the minimal gap between its horizontal slats gives it more the appearance of a solid garden boundary fence than a lattice-type structure intended to support growing plants. Indeed, that part of the front garden of the appeal property nearest the dividing wall, comprises artificial turf, gravel and paving, so there appears to be little possibility or intention to grow plants up or through the fence. Whilst the colour of the natural hardwood fence may soften and fade with age, that is not sufficient to mitigate its adverse effect, given its position next to the front elevation and adjacent to the public footway and road.
26. I conclude, therefore, that the incongruous design, height and location of the fence to the front of the property has a detrimental effect on the character and appearance of the SJWCA.
27. Turning again to the rear garden fence. The rear gardens of the properties along Clifton Hill back on to those of the houses along Springfield Road. The

⁵ Published 16.06.2008 (Adopted Supplementary Planning Document)

⁶ Paragraph 5.3

gardens are generous in size and their boundaries are marked by a combination of mature trees, shrubs and tall fences or trellises, as illustrated in photographs supplied by the appellant and as apparent on my site visit. Consequently, views across gardens and towards buildings would be partial and limited to those obtained from the upper floors of surrounding houses, even allowing for seasonal changes which may affect trees and other greenery.

28. Although there are gaps between buildings, the rear garden at the appeal property is at a lower level than, and distant from, the street. Views towards it from the highway are largely obscured by existing built forms, including the front boundary wall and hedge.
29. Within the garden, there is already a solid wooden boundary fence to the rear of the garden of the adjacent property on Springfield Road, which backs onto the appeal site. That fence appears to be slightly higher than the new fence at the appeal property. There is also a marginally taller lattice fence running along the boundary wall of 24 Clifton Hill, the adjoining semi in the pair. To the north-east, there is extensive planting along the boundary within the adjoining garden at 20 Clifton Hill. There also appears to be a relatively solid-looking dividing fence between the garden at No 20 and gardens along Springfield Road.
30. Therefore, it is clear that there are a variety of relatively tall fences, mature trees and vegetation stretching across the back gardens of the properties adjacent to the appeal site, which offer privacy but also contribute to the pleasant, leafy character and appearance of this part of the SJWCA. The SJWCA Audit's concerns about boundary structures, discussed above, appear to relate primarily to inappropriate structures of poor quality on front boundaries. The rear boundary fence does not fall into those categories.
31. Accordingly, views across the verdant gardens from the upper floors of the appeal property or from other surrounding properties are not negatively affected by this natural hardwood fence. The fence is to be left untreated and should, therefore, according to the appellant, weather and fade over time to a silver-grey colour, which would further soften its appearance. That aspect could be secured by condition. It is also relevant that the fence is said to have replaced a previous trellis fence at the property.
32. Given the above factors, I do not agree with the Council that the rear timber fence at the appeal property is '*starkly different*' in appearance or excessive in height compared with other fences in adjacent gardens. These rear boundary fences, including at No 22, are softened by adjacent planting and greenery. In that overall context, the fence would not appear prominent or have a negative effect.
33. Overall therefore, I conclude that the fencing in the rear garden does not adversely affect the character and appearance of the SJWCA.

Conclusion – Appeals A and B

34. I have found that the fence in the front garden would be harmful to the setting and special interest of the listed building and to the character and appearance of the SJWCA. However, as it is sited on a dividing wall, rather than on the main front boundary, and is only prominent in some public and private views, I

consider that the level of harm to the significance of the designated heritage assets is, in the language of the Framework, 'less than substantial'.⁷

35. In such circumstances, the Framework indicates that the harm should be weighed against the public benefits of the proposal.⁸ The appellant refers to additional security offered by fences, but that appears to be mainly in relation to the rear garden fence and is ultimately a private benefit. The lower front garden fence would, in any case, offer little protection in that respect. Therefore, I cannot see that the front garden fence offers any public benefits of sufficient weight to outweigh the heritage harm identified, which must be given great weight and importance.⁹
36. As I have not identified harm to heritage assets in relation to the rear garden fence, I find that part of the development/works complies with the Act, the Framework and relevant development plan policies.
37. Given my findings and as the rear garden fence is clearly severable, both physically and functionally, from the front garden fence, with both already in place, it is appropriate for me to issue a split decision in relation to both Appeal A and Appeal B.
38. For the reasons given above and having regard to all other matters raised, I conclude that Appeal A and Appeal B should be allowed in part, insofar as they relate to the rear garden fence and dismissed in part, insofar as they relate to the front garden fence.

Reasons – Appeal C

39. The principal factors contributing to the special interest of the pair of Grade II listed houses at 22 and 24 Clifton Hill and the significance of the SJWCA have already been identified above. Those elements are also relevant to this appeal.
40. Although like many early Victorian buildings, the rear elevation of the appeal villa is less ornate than its main public façade, its composition is still pleasing. The exposed London stock brickwork, regular pattern of fenestration and hierarchy are informed by classical principles and proportions, which contribute to the special historic and architectural interest of the building.
41. The retractable canopy, outdoor heater and two speakers are mounted on the lower part of the main rear elevation. These pieces of equipment are all coloured black. The canopy and heater are in the space between two windows, above and below, with the speakers on either side. The canopy and its housing stretch horizontally across almost half of the rear wall. The submitted plans indicate that when in operation it extends about 3.5 metres. The other half of the rear elevation is occupied by a modern single storey conservatory extension.
42. The contemporary canopy, heater and speakers appear as discordant and alien features attached to the otherwise simple, unadorned rear elevation of this early Victorian villa. The length, colour and position of the canopy, even in its retracted state, makes it a prominent feature. There is already a small CCTV

⁷ Paragraph 193

⁸ Paragraph 196

⁹ Framework paragraph 193

camera and an electric lamp affixed to the same area of the wall, which the appellant advises benefit from a separate consent.

43. Overall, I share the Council's view that, in combination, the canopy, infra-red heater and two speakers, add significant visual clutter to the lower part of the otherwise simple and coherent form of the main rear elevation, notwithstanding the conservatory addition.
44. The positioning of the canopy and heater, in the gap between windows, disrupts the considered proportions of the rear elevation and its fenestration. The heater is also off-centre relative to the windows and flat brick arch. In any case, notwithstanding the unsympathetic positioning and lack of regard to the features of the historic building, the additional clutter of these modern accoutrements is wholly at odds with the historic materials and architectural quality of the rear elevation.
45. Although the items are to the rear of the building and would not be visible from public vantage points, listed buildings are safeguarded for their inherent architectural and historic interest, irrespective of the extent of public views or access. The appellant has, as a compromise, offered to remove the two speakers. However, I do not consider that would sufficiently mitigate the harm that would still be caused by the remaining equipment.
46. I conclude, therefore, that the works fail to preserve the special interest of the listed building, of which the appeal property forms part. Consequently, the works do not satisfy the requirements of the Act or paragraph 192 of the Framework or development plan policies, insofar as those policies are relevant.
47. As the works involve the fixing of a small number of items of equipment to the lower part of the rear wall of the building, I consider the level of harm to be, in the words of the Framework, 'less than substantial'. Nonetheless, that harm must still be given considerable importance and weight and, as the equipment is for private benefit and use, there are no clear public benefits which would outweigh the harm.¹⁰
48. The Council consider that the works fail to preserve or enhance the character and appearance of the SJWCA. However, despite the harm caused to the listed building, the items would not be prominent in public or private views. Given their scale and the lack of wider prominence, I do not consider that they would harm the character and appearance of the SJWCA, considered as a whole.

Conclusion – Appeal C

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

Conditions – Appeals A and B

50. As I have allowed Appeals A and B in part, it is necessary to consider the conditions suggested by the Council in the event that the appeals were allowed, taking account of relevant guidance.¹¹ A condition requiring the development/works to be carried out in accordance with the submitted plans is unnecessary as the development/works are complete, and the plans are

¹⁰ Paragraph 196 of the Framework

¹¹ Paragraph 55 of the Framework and the Planning Practice Guidance

referred to in the formal decisions. Conditions restricting hours of work and relating to new works and improvements are unnecessary for similar reasons.

51. A condition relating to the finish of the fence to the rear of the property is included, in respect of both appeals, to safeguard the special interest of the listed building and the character and appearance of the SJWCA.

JP Tudor

INSPECTOR