The Planning Inspectorate

Appeal Decision

Site visit made on 30 September 2019

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 19 November 2019

Appeal Ref: APP/U5360/C/18/3215921
Land at 93 Stoke Newington Church Street, London N16 0AS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Joel Braham o/b The Good Egg against an enforcement notice issued by the Council of the London Borough of Hackney.
- The enforcement notice was issued on 9 October 2018.
- The breach of planning control as alleged in the notice is Without planning permission the erection of two unauthorised outbuildings within the rear garden at ground floor level.
- The requirements of the notice are: Remove from the Property the two unauthorised outbuildings (Green and Brown) marked A and B on the attached site plan;
  Make good all damage to the Property resulting from the removal of the unauthorised works and restore the relevant parts of the Property to the condition they were before the unauthorised outbuildings were constructed; Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been made on ground (a), an application for planning permission is deemed to have been made under s177(5) of the 1990 Act.

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the erection of two unauthorised outbuildings within the rear garden at ground floor level at 93 Stoke Newington Church Street, London N16 0AS.

Preliminary Matters

2. The appeal site includes a Grade II listed building at 93 Stoke Newington Church Street (the Listed Building) and its associated garden. It is located within the Stoke Newington Church Street Conservation Area (the Conservation Area).

3. A restaurant use is in operation at ground floor level in the Listed Building. As part of the listed building consent and planning permission for the restaurant business, an outbuilding was permitted in the rear garden space of the Listed Building. This sits between the two unauthorised outbuildings which are the subject of the notice.

The Appeal on Ground (a) and the Deemed Planning Application

4. The appeal on ground (a) seeks to demonstrate that, in respect of any matters comprised in the notice which constitute a breach of planning control, planning permission ought to be granted.

Main Issues

5. The Council's reasons for issuing the notice refer to the effect on the listed building. However, the allegation does not refer to works to the Listed Building itself. The concern therefore relates to the effect on the setting of the Listed Building. I consider then the main issues to be the effect of the unauthorised outbuildings on heritage assets.

Statutory and Policy Context

6. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA) requires special regard to be given to the desirability of preserving listed buildings or their settings, or any features of special architectural or historic interest which they possess. Section 72(1) of the PLBCA states that special attention must be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas.

7. Case law has confirmed that any harm to these heritage assets must be given considerable importance and weight. It has also clarified that 'preservation' of a heritage asset can be achieved by development which leaves character or appearance unharmed.

8. Policy 24 of the Hackney Core Strategy (2010) (CS) indicates that all development should create local distinctiveness including through identifying with and respecting the architectural, historic quality and character of the area. Policy 25 of the CS encourages all development to make a positive contribution to the character of Hackney's historic and built environment.

9. Policy DM1 of the Hackney Development Management Local Plan (2015) (LP) states that the Council will require all development to have regard to heritage assets and to the particular circumstances of the site. Policy DM28 of the LP expects that development in or adjacent to Conservation Areas will preserve or enhance those areas. Proposals for development involving any alterations to a listed building or within its curtilage should not adversely affect the internal or external appearance or character of the building, curtilage or its setting.

10. Policy 7.4 of the London Plan (2016) (London Plan) expects, amongst other things, development to be informed by the surrounding historic environment. Policy 7.6 of the London Plan anticipates that architecture should incorporate design appropriate to its context.

11. Paragraphs 189-202 of the National Planning Policy Framework (2019) (Framework) require identification and assessment of the significance of heritage assets affected by development. Great weight must be given to the conservation of those assets, and an assessment made as to whether any harm would be substantial or less than substantial. If the harm would be less than substantial, this then necessitates the weighing of that harm to the heritage asset against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

Reasons

Listed building and its setting

12. The significance of a heritage asset may be archaeological, architectural, artistic or historic according to the Framework. Significance derives not only from the physical presence of the asset, but also from its setting.

13. The Listed Building is a three storey mid terrace stock brick property with attractive brick arch detailing over its sash windows which feature glazing bars. It is identified in its listing as of group value with properties at 75-93 Stoke Newington Church Street, with the other buildings in the group sharing similar detailing and contributing to an elegant streetscape. Much of the significance of the Listed Building as a heritage asset derives from the high quality architectural design and craftsmanship of its front elevation.

14. The appeal site garden forms part of the surroundings in which the Listed Building is experienced and so is part of its setting. The group value of the Listed Building as described means that the adjacent gardens also form part of its setting. Thus, the rear elevation of the Listed Building is seen in the context of a large single storey structure in the garden adjacent, which is of far greater depth than that of its host building. An area of car parking is next to the other site boundary.

15. Accordingly, this part of the Listed Building's setting has changed significantly from the time when the heritage asset was constructed, when it would have been residential garden space.

Conservation Area

16. The Conservation Area includes Abney Park which has a tranquil character in part due to the presence of the cemetery and its imposing monuments. The part of the Conservation Area around Stoke Newington Church Street itself where the appeal site is located, contains a mix of commercial and residential uses. This gives it a gently bustling and relaxed character.

17. Commercial frontages in this area show variation in design. However, the consistent architectural detailing of the front elevations of properties lining Stoke Newington Church Street results in a pleasing coherence to the street scene and contributes to the architectural significance of the Conservation Area.

18. The Conservation Area encompasses the rear spaces of a number of the buildings along Stoke Newington Church Street, seeking presumably to preserve their existing/previous character as residential gardens. However, particularly in close proximity to the appeal site, these spaces have already been eroded by built development as detailed above.

19. As a consequence of the development of the rear garden spaces of the Stoke Newington Church Street properties close to the appeal site, these do not strongly contribute to the significance of the Listed Building or Conservation Area, even excluding the presence of the unauthorised outbuildings.

Effect of the unauthorised outbuildings

20. In common with the permitted outbuilding, both of the unauthorised outbuildings are of very modest size relative to the size of the Listed Building

and adjacent built development. Their form, scale and materials are akin to domestic storage sheds.

21. As such, whilst they clearly do not replicate the detailing or materials of the Listed Building, they do not appear incongruous in their rear garden setting nor within this part of the Conservation Area. They are not attached to the Listed Building and are clearly modern additions and so do not create any false sense of being an original element in any way.

22. The outbuildings are located within a section of the rear garden space which is fenced off from the outside area used for customer seating. Within their separate area, they are fairly tightly spaced. However, the presence of the outside seating area for customers retains a sense of openness at the rear of the Listed Building, which reflects the fact that this would in the past have formed a residential garden.

23. An existing brick wall prevents the unauthorised outbuildings from being readily apparent in views from the street. The unauthorised outbuildings are no doubt visible from upper storeys of nearby buildings. However, from here, they would be seen in the context of other built development in the rear garden spaces and are comparatively discreet due to their small size.

24. Clearly, the presence of development which does not preserve the Conservation Area or setting of the Listed Building is not a justification to permit further erosion of that character. Nonetheless, I must consider the actual context of the appeal site. The Council comments that the original listing for the property made reference to the rear of the property. However, the Council does not identify how any features of the rear elevation are harmed by the development.

25. I find that the unauthorised outbuildings do not result in any harm to the significance of heritage assets. Accordingly, it is not necessary for me to assess any public benefits of the development as required by the Framework. In reaching this conclusion, I have undertaken my statutory duties as detailed above.

26. The outbuildings therefore accord with local policy related to the preservation of the historic environment as detailed above, and regarding the incorporation of design appropriate to the context contained in Policies 24 and 25 of the CS, Policies DM1 and DM28 of the LP and Policies 7.4 and 7.6 of the London Plan. There would be no conflict either with national policy in paragraphs 189-202 of the Framework as detailed above

27. Although Policy 25 of the CS encourages all development to make a positive contribution to the area, I have found that the outbuildings have a neutral effect. However, as the development preserves the setting of the listed building and character and appearance of the Conservation Area as required by other development plan policies, it accords with the development plan, read as a whole.

Conclusion

28. For the reasons given, and taking into account all other matters raised, I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore need

to be considered. No conditions are necessary as the development has already been carried out.

V Bond
INSPECTOR