



Appeal Decision

Site visit made on 26 September 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 21 January 2020

Appeal Ref: APP/H5390/C/18/3211740

212 Blythe Road and 152 Addison Gardens, London W14 0HH

- 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 Michael Edwards-Ker against an enforcement notice issued by the Council of the London Borough of Hammersmith and Fulham.
 - The enforcement notice was issued on 7 September 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission: Demolition of the front facades above the first floor window heads at No 212 Blythe Road and No 152 Addison Gardens and erection of replacement facades above the first floor window heads at No 212 Blythe Road and No 152 Addison Gardens.
 - The requirements of the notice are to:
 1. Demolish the rebuilt front facades above the first floor window heads at No 212 Blythe Road and No 152 Addison Gardens.
 2. Rebuild the front facades above the first floor window heads at No 212 Blythe Road and No 152 Addison Gardens to match the original elevation (as shown on the attached photo below) using timber sliding sash windows and red bricks which match the colour of the original brickwork to the front elevations of the buildings at first floor level.
 3. Reinstate the string course above the first floor window heads to the bay window at No 212 Blythe Road.
 4. Reinstate the string courses, stucco window surrounds and stucco mouldings at second floor level at No 212 Blythe Road and No 152 Addison Gardens to match the original elevations (as shown on the attached photo).
 5. Rebuild the parapet wall on the front façade at No 212 Blythe Road and No 152 Addison Gardens incorporating the Stucco detailing and string courses to match the original elevation (as shown on the attached photo).
 - The period for compliance with the requirements is within twelve (12) months of the date on which the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Formal Decision

1. It is directed that the enforcement notice be corrected by the deletion of Requirement No 3 and also varied by deletion of "within twelve (12) calendar months" and the substitution of "within eighteen (18) calendar months" of the date on which the notice takes effect as the period for compliance. Subject to this correction and variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background

2. Planning permission was refused (ref 2016/03234/FUL) in June 2018 for a partly retrospective scheme involving the demolition and replacement of the front façade at No 212 Blythe Road. In considering that both the proposed works, along with those already carried out at the adjoining property, No 152 Addison Gardens, involved the removal of characteristic architectural features, caused harm to the building and also the conservation area of which it forms part, the Council subsequently issued an enforcement notice.

The Appeal on Ground (c)

3. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof falls on the appellant, and is on the balance of probability.
4. The appellant's case in this respect is his claim that, on 17 February 2016, the Council's Building Control team gave out information that no planning permission would be required for urgent repairs to be carried out at No 152. It appears that the appellant satisfied himself with this assertion as no planning permission had been requested for works already carried out to the front elevations at Nos 214 and 216.
5. In order to qualify as development, works would have to meet the definition of s55 of the 1990 Act. S55(2) excludes certain works that "do not materially affect the external appearance of the building". In this particular instance there have been significant alterations carried out involving the removal of front facades, the roof parapet, the original sliding-sash, timber windows, and the use of noticeably different brickwork for the reconstruction. Given the extent of the above, and when comparing the building's current physical appearance with that evident from previous photographs, it is clear that the works carried out have materially affected the external appearance of the building.
6. In light of the above I must disagree with the appellant's assertion that the "152 repairs do not constitute a breach of planning control." Instead, I find that the works undertaken at both properties required the benefit of planning permission. Indeed, this was sought in part in July 2016, but was subsequently refused. In the circumstances, the ground (c) appeal does not succeed.

The Appeal on Ground (d)

7. On this ground the Appellant must successfully demonstrate, on the balance of probability, that the breach of control alleged in the notice commenced at least 4 years before the date of the issue of the enforcement notice.
8. In this particular case a previous enforcement notice, identical in its requirements, was issued on 25 May 2018, but was later withdrawn as the necessary attachments were not included. In instances such as this, where a technical error has occurred, s171B(4)(b) provides that if within the appropriate 4 or 10-year period the Council has taken or "purported to take" enforcement action in respect of a breach of planning control they have a further 4 years in which to issue a subsequent notice.

9. It is clear in this case that the Council took action but, due to the original notice being defective, it had to be withdrawn. I am satisfied that the two notices allege identical breaches, along with identical remedial requirements and in light of this, and in accordance with the relevant legislation, the 'material date', or the date 4 years before the enforcement notice was issued, is 25 May 2014.
10. Three photographs provided are important in this regard. Attached to the enforcement notice is a Google Street View map dated July 2008 which the Council has used to illustrate the appeal buildings' physical and architectural features relating to the notice's requirements. A second such photograph, provided by the appellant as 'Attachment 16', is dated July 2014 and shows that the string course above the first floor bay window at No 212 had been removed. This would accord with the appellant's claim that this particular alteration took place earlier in May 2012, and is confirmed by the appellant's photograph dated August 2012 ('Attachment 20') where the said string course is clearly absent. On this basis, and during the appeal process, the Council agreed with the appellant's claim and has requested in writing that the enforcement notice's Requirement 3 should be deleted. Given my findings I agree with the Council's approach and I find that this particular element is immune from enforcement action. I shall correct the notice, accordingly.
11. Notwithstanding the above the July 2014 photograph shows that the original façade brickwork at first floor level remained largely intact, no alterations mentioned in the enforcement notice at second floor level had yet been undertaken, and the stucco roof parapet was still evident. Indeed, the appellant, in commenting that the main development was not begun until 2016 (and was completed that summer) confirms that at the material date the identified breach of control, save for the string course above the first floor bay window having already been removed, had yet to take place.
12. Accordingly, the ground (d) appeal fails.

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

Main Issue

13. This is the development's effect on the character and appearance of the area, with particular regard to its conservation area location, and also the effect on the properties themselves.

Reasons

14. The site falls within the Lakeside Sinclair Blythe Road Conservation Area. The properties within were built as a period age residential area and the Conservation Area is typified by buildings of mainly 3 or 4 storeys with prominent architectural features redolent of the time.
15. Although some relatively minor works to the building had already taken place in 2012 it is understood that, subsequently, No 152's second floor window cill collapsed and, in December 2015, masonry from the building's roof fell to the ground. Following this, the appellant commissioned a structural survey to assess the state of the building's front façade and the repairs considered necessary. On this basis the consultant engineer remarked that, although it was not possible to be precise as to the extent of the repairs, remedial measures should be undertaken as soon as possible.

16. The National Planning Policy Framework (the Framework) says that applicants, through the submission of Heritage Statements, should describe the significance of heritage assets affected by development proposals, including any contribution made by their setting. In this instance no such Statement has been provided and the appellant's justification for such, in his own words, is that "No 152 is not a heritage asset of any importance." Although not necessarily evident from the 2008 and 2014 photographs the appellant describes the building's disrepair prior to the works carried out. In the circumstances I consider that this would have strengthened the need for a Heritage Statement to have been commissioned. Further, the absence of any such assessment is directly contrary to the aims and requirements of Key Principles AH1 and AH2 of the Council's Planning Guidance Supplementary Planning Document (SPD).
17. Whilst I accept that repair works were likely needed quickly, temporary remedial measures could have been employed to protect the building and also the public from any crumbling masonry along the façade. Moreover, any such measures would not necessarily debar the building from being renovated appropriately with regard to making good its original architectural detailing. I also note the e-mail dated 16 June 2016, sent by the Council's enforcement officer to the appellant's representative. Here, mention is made of the "red-brick terrace of Addison Gardens" and, importantly, it indicates that enforcement action will result "if any works are carried out in a brick other than the existing 'red brick'." In the event, I understand that a brick known as 'Red Kent Mix' was largely used for the rebuilding works. This is clearly of a much lighter shade than the red brick type characteristic of the original building and also the immediate area.
18. The appellant considers that no harm to the designated heritage asset has occurred. Further, the appellant comments that although the original red brick facades were an original characteristic feature, this is not the case today. I disagree with this assertion as, from my site visit, it is clear that Addison Gardens and much of the northern side of Blyth Road is largely comprised of this traditional brickwork. However, the brickwork type is only one aspect of the development. The Council has particular concerns as to the loss of characteristic features which includes the original stone detailing and corning and loss of the roof parapet. Although the appellant says that their replacement would be a "very difficult and lengthy job" this does not weigh significantly in favour of the development. The works undertaken were carried out at the owner's risk.
19. Accordingly, I share the Council's concerns. Further, I am not convinced by the appellant's argument that the altered façade, in reflecting that of Nos 214 and 216 and should therefore be considered favourably. These neighbouring elevations were apparently also altered without the benefit of planning permission and their resultant appearance is not typical of the surrounding area nor the Conservation Area as a whole.
20. I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. In this regard I find that the proposal is contrary to the objectives of the SPD's Key Principles CAG2 and CAG3, both of which seek a good standard of design and appearance for new development within

conservation areas and also policy DC8 of the Hammersmith and Fulham Local Plan (LP) which is concerned with the restoration of heritage assets and employing high quality design to achieve this.

21. Although I find that the harm is less than substantial, there are few, if any, public benefits that arise to weigh against this. Whilst I note the appellant's assertions that the repairs themselves have brought about public benefit in terms of safety, and are of high quality, these matters are not so substantive as to outweigh the visual harm caused. and my findings that the works went beyond what was necessary to address the degree of disrepair.

Conclusion on Ground (a) Appeal

22. I conclude that the development fails to preserve or enhance the character or appearance of the Conservation Area of which it forms part, and is harmful to the character and appearance of the building itself. It is also in material conflict with LP policies DC1, DC4 and DC8, SPD Key Principles AH1, AH2, CAG2 and CAG3 and Framework paragraphs 192 and 193.
23. For the above reasons, and having had regard to all matters raised, the appeal on Ground (a) does not succeed.

The Appeal on Ground (f)

24. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be to remedy the breach of planning control or to remedy any injury to amenity. In this case it is clear from the requirements of the notice that its purpose is to remedy the breach by restoring the property to its condition prior to the breach.
25. Under ground (a) I have found that planning permission should not be granted for the development. Notwithstanding this, in terms of the appeal on ground (f), there is no properly articulated alternative scheme before me that would satisfactorily remedy the breach. Although the appellant comments that each brick could be hand-painted to address the problem or the building's façade could be stained such measures would not address the significant loss of the characteristic architectural features and detailing.
26. The appellant's 'Attachment 15', labelled as Drawing 06, is titled 'Proposed Elevations', but the drawing's limited annotations are not fully explained. Besides, this drawing was not considered as part of the previous planning application (ref 2016/03234/FUL) and, as such, it has not been subject to formal consultation. Given the circumstances, and in the absence of any detailed or obvious alternative scheme to support this particular ground, the appeal on ground (f) must fail.

The Appeal on Ground (g)

27. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The enforcement notice, as corrected, requires the remedial works to be carried out within 12 months of the notice taking effect. However, the appellant has requested that this period be increased to 20 months as the required demolition and rebuilding works cannot reasonably take place whilst the first floor flat is occupied.

28. The appellant comments that the first floor flat would have to be vacated to allow for the works to be carried out, and I consider that the extent of the works would likely necessitate this. As such, any tenancy agreement would have to be adjusted, accordingly. Mention is also made of contractual matters relating to the remedial works themselves and, given also the extent of the works, I consider that a 12 month period would likely be insufficient.
29. Accordingly, it would be reasonable to extend the period for compliance and I consider that a period of 18 calendar months from the date the notice takes effect would be reasonable in the circumstances. Should further time prove necessary it would be open to the Council, under s173A(1)(b) of the 1990 Act as amended to vary the notice to extend the compliance period.
30. Accordingly, the appeal on ground (g) succeeds to that extent.

Overall Conclusion

31. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the deemed application.

Timothy C King

INSPECTOR