



Appeal Decision

Site visit made on 4 August 2020

by Katie Peerless Dip Arch RIBA

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

Decision date: 17 August 2020

Appeal Ref: APP/X5990/F/19/3237400

11 Hill Road, London NW8 9QE

- 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 Mr Siddharth Prasad against a listed building enforcement notice issued by City of Westminster Council.
 - The enforcement notice, numbered 17/63864/P, was issued on 15 August 2019.
 - The contravention of listed building control alleged in the notice is, without the benefit of listed building consent, the demolition of the boundary wall to the side and rear of the Property and the construction of a new wall of materially different finish, layout and appearance in its place.
 - The requirements of the notice are 1) Remove the brick garden wall between points (X) and (Y) on Plan A attached to the enforcement notice, which runs along the South West elevation of the building along the Alma Square highway frontage as shown on photograph A; and 2) Rebuild a brick wall to match in design, materials and appearance the rear garden wall that previously ran along the South West elevation of the building along the Alma Square highway frontage as shown in Photographs A, B, C and D. In particular the rebuilt brick wall must comprise the following:
 - a. The section labelled "A" on Plan A attached to the enforcement notice must be built using the bond, details and design as shown in Elevation 1 attached to the enforcement notice; and
 - b. The section labelled "C" on Plan A attached to the enforcement notice must be built with the detailed curved section, bonding details and design as shown in Elevation 2 attached to the enforcement notice and photograph C; and
 - c. The other areas of the wall not included in requirements 2.a and 2.b must be built using the bond, details and design as shown in Elevation 3 attached to the enforcement notice; and
 - d. The entire wall must be finished with a blended soot wash to match the appearance of the wall shown in Photographs A, B, C and D; and
 - e. The mortar for the brickwork and the repointing shall be a lime-based mortar, comprising non-hydraulic lime and sharp sand in a ratio of 1 part lime to 3 parts sand. The pointing finish shall be brushed and flush with the face of the brickwork.
 - The period for compliance with the requirements is twelve months.
 - The appeal is made on the grounds set out in section 39(1)(b), (e) and (i) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The appeal is allowed and the listed building enforcement notice is quashed. Listed building consent is granted for the retention of the new boundary wall to the side and rear of the Property at 11 Hill Road, London NW8 9QE, subject to the conditions attached as Annex A to this Decision.

Main Issues

2. I consider that the main issues in this case are, on ground (b): whether the works alleged to constitute a contravention have occurred as a matter of fact and, if they have, on ground (i): whether the rebuilding of the wall as required by the notice, which is intended to restore the character of the building to its former state, would serve that purpose and on ground (e): the effect of the works on the architectural character and historic interest of the listed building and its setting in the St John's Wood Conservation Area.

Site and planning history

3. The appeal property is a grade II listed mid-19th century semi-detached house within the St John's Wood Conservation Area and is a good example of this type of historic property. The site is on a corner plot with brick boundary walls to Hill Road and Alma Place and it is parts of the wall on the Alma Square frontage that are the subject of the listed building enforcement notice (LBEN).
4. In 2014, planning permission and listed building consent¹ were granted for works to the house which also allowed for partial demolition of the boundary wall in the canted section shown as "A" on the plan attached to the LBEN, to allow access to the site for construction purposes. Attached conditions provide for the wall to be reinstated upon completion of the works.
5. The majority of the wall frontage around the property has been demolished and rebuilt and the area covered by the LBEN is shown on the attached plan as the length between points X and Y. Retrospective applications² for planning and listed building consent for this wall were refused in 2018.

Reasons

Ground (b)

6. Although there is no dispute that the section of wall between points X and Y has been rebuilt, this includes the canted section where an opening has been left, served by gates of a temporary appearance. Consent was granted for the demolition of part of the original wall to form an opening in this position until the works to the house were completed, which (on the appellant's submission) they have not yet been. The appellant therefore maintains that this means that the alleged works have not occurred with respect to this part of the development and an appeal on ground (b) should succeed in relation to this section.
7. Nevertheless, for an appeal to succeed on ground (b) it must be shown that the allegation (or part of it) has not taken place as a matter of fact. It is clear that that all the section of wall included in the allegation has been demolished and whether or not there was consent for this would be the subject of an appeal on ground (c), which would claim that the relevant works are not a contravention of listed building control.
8. For this reason, the appeal on ground (b) must fail but I will consider the appellants arguments as if they had been made under ground (c).

¹ Refs: 14/05007/FUL and 14/05008/LBC

² Refs: 18/01187/FULL and 18/01188/LBC

Ground (c)

9. As previously noted, consent was granted for the partial demolition of the original wall as a temporary measure as part of the works to the main house, with conditions attached to ensure that it was rebuilt. The original wall has now been demolished in its entirety between the points X and Y and replaced with a new wall. The Council submits, that for this reason, it is no longer possible to rely on that consent to authorise the formation of the opening.
10. It seems to me that this is a correct interpretation of the situation. The consent that includes the opening did not include the works that have been carried out and the wall to which the consent applied no longer exists in its original form. The demolition has therefore exceeded that which was allowed and there is consequently no current consent the rebuilt section of the wall or for any openings in it. The appeal on ground (c) consequently fails.

Ground (i)

11. It is the case that the requirement to rebuild the whole section of demolished wall in the manner required by the LBEN would be an improvement over the original situation, as it calls for it to all be constructed using lime mortar and flush pointed joints, whereas previously there were sections of cement mortar with some weather-struck joints.
12. That this would be an 'improvement' is noted by the Council in its Statement of Case³ and it would be unreasonable for an LBEN to be used to secure such an improvement to the listed building compared to its state prior to the carrying out of unauthorised works. It is not the intention of the LBCA to allow an LBEN to be quashed because the requirements of the notice would restore the building to a better state of repair than existed formerly.
13. However, in this case, the Council has made it clear that it is the 'design, materials and appearance' of the wall that it wants to be restored to its former state. All that could be required in these circumstances would be the reinstatement of the original as closely as possible and this would be a wall that had part lime mortar and part cement and a mixed pointing style which, in a new wall, to my mind would appear somewhat strange. To this extent the appeal on ground (i) succeeds.

Ground (e)

14. This ground of appeal seeks listed building consent for the wall as built. Sections 16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) require me to have special regard to the desirability of preserving the listed building, or its setting or any features of special architectural or historic interest which it possesses, when considering whether to grant listed building consent for development which affects the listed building or its setting. Section 72 of the LBCA also requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
15. The National Planning Policy Framework (the Framework) requires great weight to be given to the conservation of designated heritage assets when considering the impact of a development on that asset. Any harm to, or loss of, significance of such an asset will require clear and convincing justification. Local planning policy reflects the requirements of the LBCA and the Framework.

³ Figure 2 p21

16. The new wall has replicated most of the unique features found in the original, such as the curved swept down section of brickwork in the central portion. However, the opening that, under ground (c) that I have found now to be unauthorised remains in the canted section, as noted above, and another in section "B" of the LBEN plan. It is also missing a course of bricks on end that were included on the original. However, the appellant suggests that conditions could be attached to any consent to ensure that these differences are rectified and that the wall is treated with a soot wash (as required by the LBEN).
17. Nevertheless, even with such conditions implemented, the replacement wall would still differ from the original in a number of ways. As previously noted, it has been constructed using cement mortar as opposed to the lime mortar required by the LBEN and the pointing style is struck rather than flush. Also, the brick bond used is a uniform Flemish bond whereas the original had a variety of bond styles, depending on how it had been repaired in the past, but was mainly in a garden wall bond.
18. The setting of a listed building can make an important contribution to its significance and, in this part of London, the boundary walls in this conservation area serve to bring a uniformity of style to the street scene and reflect the detail of the houses and the treatment of their original layout. The wall is therefore important in defining the historic boundary of the property and illustrating the use of the materials that would have been traditionally in use at the time the whole area was developed for residential use.
19. However, the original wall was in a poor and even dangerous condition as evidenced by a structural report dated December 2013⁴, a pre-purchase survey from May 2013⁵ and a letter from the Council from May 2016⁶ to the appellant noting that the opening in the wall for the building works had caused it to lean dangerously over the public carriageway and asking him to take steps make it safe. While this last letter does not confer any right to demolish the wall without listed building consent, it is nevertheless an indication of the need to make the structure safe. The wall had also already been repaired in a somewhat *ad hoc* fashion with a series of patches in brick bonds that differed from the original, as noted above.
20. Photographs of the original wall also show different pointing techniques, including weather-struck joints similar to those that the Council now seek to have removed. The photographs also illustrate how the wall was leaning outwards over the pavement along much of the Alma Square frontage. The appellant has explained that it was the continuing structural deterioration of the wall that led to it being taken down and rebuilt rather than undertaking further patch repairs.
21. Whilst the alterations may have given the wall a certain patina of age, to my mind they were so inconsistent with the original, and each other, that they did not appear characterful, as claimed by the Council. In my view, rather than document the historic development of the site, they had caused the wall to become unsightly and to lose much of the historic interest it would have had in its original state. I consider that the significance of the demolished wall, and consequently the wider site, was being compromised by those unsympathetic repairs.

⁴ Appellant's appendices A7

⁵ Appellant's appendices A6

⁶ Appellant's appendices A8

22. As rebuilt, the wall once again presents a uniformity of style that generally reflects how it might originally have appeared at the time of construction whilst retaining the references to the changes that must have taken place to its design over the years such as the 'swept' section. The Flemish bond used is not untypical for a wall constructed in the first half of the 19th century and the new wall is formed from London stock bricks as typically found in the area. According to the appellant, about 90% of the bricks salvaged from the original wall have been re-used.
23. The Council submits photographs that it says demonstrate that the wall was not taken down carefully and disputes the likely percentage of reused bricks, but from them I can see no firm evidence that this was necessarily the case. The bricks have been cleaned and have been supplemented by matching salvaged London stocks but, as previously noted, the original appearance of the wall could be somewhat restored by soot washing.
24. The appellant submits that to demolish the wall to remove the cement pointing would be likely to damage a considerable number of the reclaimed bricks and I consider this to be a valid point. Given my findings on ground (i), that there would be parts of the wall that would have to retain cement mortar and weather-struck pointing in any event, I consider that the likely loss of the historic bricks would not be offset by the use of lime mortar, flush pointing and varied brick bonds in the remainder of the wall if it were to be rebuilt.
25. I note that the appellant has received support from a number of local residents, who confirm the instability of the previous wall, comment on its patchy and unattractive appearance and support the retention of the structure as built, considering it improves the character of the street scene. They submit that the appeal should succeed, provided the openings are closed in. It is also relevant that the St John's Wood Society who, I am told, take a close interest in such conservation matters, made no comment in respect of the appeal or on the retrospective applications to retain the wall.
26. Therefore, I find that the appearance of the wall has undergone some improvement, through the use of a uniform brick bond and the rectification of the structural defects and its appearance could be further enhanced, through the imposition of the suggested conditions requiring soot washing, to tone down the brightness of the new work, and the reinstatement of the missing coursing.
27. Of course, the original wall was itself listed through its inclusion within the curtilage of 11 Hill Road and had an historic importance in its own right, but that wall has now been demolished. The appellant has been fined in the courts for allowing this to take place, and the best that can now be achieved through the LBEN is to produce an as close a replica of the demolished wall as possible.
28. I accept that the wall as built would have been improved by the use of lime mortar and flush joints and the fact that the pointing does not meet this specification is regrettable. However, although the replacement wall has the differences noted above, when compared to what it replaced, and if the suggested conditions are imposed, it would, in my opinion, be perverse to require it to be taken down and rebuilt using the patchwork of brick bonds and pointing that was previously present, which, as noted, is all that could be required by the LBEN.

29. I therefore consider it is preferable to retain it in its present condition, rather than reconstruct it to copy the exact design of what was there previously. Consequently, while it is important that a brick wall of appropriate design is used to define the setting of the listed building, I conclude that, given that the original has gone, the current structure has preserved the significance of the listed building at 11 Hill Road, which still retains a wall of appropriate character to its setting within the St John's Wood Conservation Area.
30. The new wall does not, therefore, conflict with the policies aimed at protecting heritage assets in national or local planning policies or with the relevant requirements of the LBCA.
31. Turning to the conditions suggested by the Council, the appellant asks that the opening in the canted section should be allowed to remain or at least be reduced in size, until the building works to the house are complete. The Council, however, considers that that the works have been completed as they were signed off by Building Control in January 2018 and there is now no reason why the opening should not be closed up straight away.
32. The appellant has listed a number of works that were incomplete as of June 2020, which might not have been covered by Building Regulations, and refers to the liquidity problems encountered by the contractor who was carrying out the works. The need to resolve matters before letting another contract and the difficulties of the current situation brought about by the Covid-19 pandemic are also noted.
33. Nevertheless, I am concerned that the works allowed by any listed building consent granted on appeal should not leave the time scale for completion open-ended and out of the control of the Council. This is a stand-alone consent and I consider that it would not be reasonable to leave the wall in an uncompleted state with nothing other than the assurance of the appellant that they will be completed at a time that would, effectively, be of his own choosing. The house is, apparently, habitable and if other arrangements need to be made to allow any further external works to take place, it would be for the appellant to discuss these with the Council.
34. However, I note the appellant has not appealed the LBEN on ground (h), that the time for compliance is insufficient, and that the notice allows 12 months to complete the requirements. In order to give the him the same time to complete the works as that given in the notice, I will increase the periods suggested by the Council to match that time scale.

Other matters

35. It should be noted that this Decision only grants listed building consent for the wall and I do not have before me an application for any planning permission that may be required for the retention of the development.

Conclusions

36. For the reasons given above I conclude that the appeal should succeed on grounds (i) (in part) and (e) and listed building consent is granted for the new wall.

Katie Peerless

Inspector

Annex A

Conditions to be attached to the Listed Building Consent granted by this Decision

- 1) Within 12 months of the date of this Decision, the canted section (A as shown on the plan attached to DELLBENF 17/63884/P) shall be rebuilt to match the remaining wall.
- 2) Within 12 months of the date of this Decision, the "gap" area shall be rebuilt to match the adjacent brickwork.
- 3) Within 12 months the date of this Decision, the top of the wall shall be finished with a double brick on end coping in brickwork to match that of the former wall.
- 4) Within 2 months of completion of conditions 1), 2) and 3), the whole wall from point X to Y (as shown on the plan attached to DELLBENF 17/63884/P) shall be soot washed to match the general appearance of the former wall.