



Appeal Decision

Site visit made on 21 October 2020

by Simon Hand MA

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

Decision date: 30 October 2020

Appeal Ref: APP/U5360/F/20/3248605

162 Dalston Lane, Hackney, London, E8 1NG

- 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 Ms Yael Asaraf against a listed building enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice, reference 2019/0099/ENF, was issued on 4 February 2020.
 - The contravention of listed building control alleged in the notice is without listed building consent, the installation of boiler flues at basement, ground and roof levels to the front elevation of the property.
 - The requirements of the notice are (1) Remove the boiler flues at basement, ground and roof levels to the front elevation of the property; (2) Make good all damage to the Property resulting from the removal of the boiler flues, restoring the Property to the condition before the unauthorised development was undertaken; (3) 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 2 months.
 - The appeal is made on the grounds set out in section 39(1) (d), (e), (h) and (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The appeal is allowed insofar as it relates to the installation of a boiler flue at basement level on the front elevation of the property and listed building consent is granted for the retention of the basement level boiler flue at 162 Dalston Lane, Hackney, London, E8 1NG subject to the following condition:
 - 1) Within 6 months of the date of this permission the existing boiler flue at basement level shall be replaced with a heritage style flue made from grey cast iron with a maximum 100mm width as detailed in the Specification Sheet ciabCON2-2019 from the 'Cast Iron Brick Company'.
2. It is directed that the listed building enforcement notice be varied by substituting 6 months for 2 months as the period for compliance.
3. The appeal is dismissed and the listed building enforcement notice is upheld as varied, insofar as it relates to the installation of boiler flues at ground and roof levels to the front elevation to the property, and listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Background to the Appeal

4. No 162 is one of a pair of listed buildings. Both have three stories with attic and basement, but otherwise the façades are different. The appeal property has a ground floor finished in white stucco, with a simple flat cornice. The stucco extends down to the basement, giving a very flat, unadorned look to the front. This is continued on the upper floors which are of stock brick with unadorned sash windows and a gambrel roof with a small central dormer.
5. The building is divided into flats which were renovated some years ago. As part of those works new boilers were installed and three of the flats had boilers in rooms on the front of the property and so the flues were positioned on the front façade.

The Appeal on Ground (d)

6. This ground is that the works were urgently necessary for safety, health or preservation of the building. The appellant argues the boilers needed an upgrade for health and safety reasons and it is best practice not to run flues through bedrooms, so they had to go to the front of the building. I have no reason to disbelieve this, but that does not mean the only solution was to provide flues on the front façade. It may be best practice not to run flues through a bedroom, but that does not mean it is impossible to do so, especially where special care needs to be taken because the building is listed. It is clear alternative locations are available, albeit possibly at greater cost. I think the truth is it was most convenient to do this rather than it was 'urgently necessary'. The appeal on ground (d) fails.

The Appeal on Ground (j)

7. This ground is that the steps exceed what is necessary to alleviate the effect of the works. The required steps are to remove the flues and make good the openings. Clearly this would solve the problem identified in the allegation and so is not excessive.

The Appeal on Ground (e)

8. This ground is that consent should be granted for the works alleged. As noted above the front façade is most striking for its unadorned simplicity and the flues stand out, even though they are relatively small. Once noticed they can't be unseen and are clearly an alien intrusion that, from the outside, appear to have been randomly added to the front of the building. They clearly harm the listed building and diminish its special interest. In terms of the NPPF they cause less than substantial harm but there are no public benefits to outweigh that harm.
9. The appellant has suggested replacing them with 'heritage' flues. These are made to look like Victorian cast iron pipe ends. While they would be an improvement on the modern flues, they would still not overcome the essential random appearance of the flues at ground and roof level. It is unlikely a building of this type from the Georgian or Victorian period would have had these insertions, whether modern or 'heritage' and they would still stand out as alien, detracting from the character and quality of the listed building.
10. That at basement level is different. Basements were intended not to be part of the 'show' façade and generally have a more utilitarian appearance. The flue is

not readily visible from the road and replacing it with a 'heritage' covering would be acceptable. To that end the appeal succeeds and I shall issue a split decision to grant consent for the basement flue subject to a condition that it is replaced by the proposed 'heritage' cover. Otherwise the appeal fails and I shall uphold the notice.

The Appeal on Ground (h)

11. The notice gives the appellant 2 months to carry out the works, and I have some sympathy that re-routing the flues, or seeking a completely different solution to heating the flats would take more time than that allowed as might making arrangements with the various leaseholders. The appellant also argues the tenants would have to be evicted to enable the works to go ahead. I am less convinced that this would be necessary. There is no evidence the works would render the flats uninhabitable, or that if they did for a short while, that alternative, temporary, accommodation would not be a solution. Nevertheless, I shall extend the time to 6 months to enable a solution to be found and implemented for the 2 flats affected.

Simon Hand

Inspector