



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/E5900/F/19/3235801
106 Mile End Road, London, E1 4UN

- 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 Arif, Mahmood Shah Bukhari against a listed building enforcement notice issued by the Council of the London Borough of Tower Hamlets.
 - The enforcement notice was issued on 18 July 2019.
 - The contravention of listed building control alleged in the notice is (i) the creation of a first floor rear extension; (ii) the installation of uPVC windows and a door; (iii) the installation of extractor flue and air conditioning units; and (iv) the erection of new walls either side of the extension resulting in the creation of a roof terrace.
 - The requirements of the notice are 1. Demolition of the rear extension from the southern elevation of the premises. 2. Removal of all uPVC windows and doors from southern elevation of the premises including all associated fixtures and fittings. 3. Removal of the extractor flue and air conditioning units from the southern elevation of the premises including all associated fixtures and fittings; 4. Removal of the brick walls either side of the rear terrace and extension. 5. Removal from the premises of all debris associated with the above.
 - The period for compliance with the requirements is 6 months.
 - The appeal is made on the grounds set out in section 39(1) (a) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. It is directed that the listed building enforcement notice be corrected by deleting from the allegation "*(i) the creation of a first floor rear extension; (ii) the installation of uPVC windows and a door*"; and deleting from the requirements "*1. Demolition of the rear extension from the southern elevation of the premises. 2. Removal of all uPVC windows and doors from southern elevation of the premises including all associated fixtures and fittings*". Subject to these corrections, the appeal is dismissed and the listed building enforcement notice is upheld, 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

2. No 106 is part of a terrace of listed buildings and has a restaurant at ground floor level. The appellant maintains the works alleged were all carried out at least by 2014 and provides an aerial photograph to demonstrate this. However, there is no time limit after which works to a listed building become immune and listed building consent is still required for the works identified by the Council in their listed building enforcement notice.

3. The planning history suggests the appellant has made a retrospective application to retain the works and a Lawful Development Certificate application for the uPVC windows, extractor flue, air conditioning units and roof terrace. Both were refused by the Council in May 2019. As far as I am aware no appeals have been made against those refusals. The appellant seems to be under the misapprehension that if works are not visible from the public realm then there is no harm to the listed building. That is not the case, as the whole of the building is protected by the listing, including any private rear area and also its interior.
4. There is also some confusion as to where the 'rear extension' referred to in the allegation is located. The officer's report says "*the unauthorised works that have taken place and which are the subject of this report are for retrospective consent for the installation of uPVC windows, extractor and air conditioning units to the rear elevation together with the construction of a rear roof terrace*". There is no mention of a rear extension. The report goes on to describe the harm caused by the windows, extractor and aircon units and the roof terrace, with no mention of the extension. However, under the heading "amenity" the report refers to the extension as intrusive and visually ugly, thus harming the amenity of neighbours. While these are not reasons to include the structure in a listed building enforcement notice the reasons for issuing the notice refer to the extension as housing a bathroom and that it harms the architectural merit of the host building.
5. The reference to the bathroom identifies the structure that is accessed from the roof terrace. The latter links the lobby of the second floor flat to the new bathroom which is essentially housed in an isolated turret-like structure. The appellant's plans show this to be "pre-existing" and it does seem to be on the aerial photograph from 2014, with the same metal bar on the roof as I saw at my site visit. I was able to see it on my site visit from the ground and it was clearly made of old stock bricks, it looked like it might have been an original part of the building. Given its separation from the main part of the building it would have been a very unusual place to build a modern extension, especially as it is only accessible across the flat roof. I have no evidence to suggest it is new and what evidence there is suggests it is old and likely therefore to pre-date the listing. In my view therefore listed building consent is not required for the construction of this structure and I shall correct the notice accordingly.
6. Finally the appeal is made only on ground (a), that the building does not merit its listing. However, the appellant's statement is clearly a ground (e) argument that consent should be granted. There is nothing in their representations that suggests the listing is inaccurate. I think this must have simply been a mix up with the ground (a) on an enforcement notice appeal. From their representations it seems they are quite confused as to the effect of listed building enforcement notice so this further confusion is not perhaps surprising. The Council have provided reasoned argument as to why they issued the notice and that consent should not be granted so I do not consider there would be any injustice in considering the appeal as one made on ground (e).

Nullity Issue

7. Although not raised by either party I am bound to consider if the notice is a nullity due to failure in any of the requirements to make good the listed building after the removal of the various items listed. I have found above that

the store room should be removed from the notice anyway, and making good after removing the air con units, extractor flue and terrace parapet should all be minor issues. However, there is no requirement to replace the uPVC windows. Any alteration to a listed building requires consent so the replacement windows will also require consent. If I uphold the notice, such consent would not be given and the building would be left with no windows and doors in the rear elevation. This renders the notice a nullity. Although it could be easily remedied by adding in a requirement to replace the windows and doors with wooden framed substitutes, I have no power to do so as a nullity is not correctable. However, the notice as a whole is not affected as the uPVC allegation is only one part of it and easily severable. I shall thus delete any reference to windows and doors from the notice.

The Appeal on Ground (e)

8. Although I was not able to access the premises, I have a detailed photographic record of the changes to the rear of the building, the new extractor flue, air con units and roof terrace. All appear to be intrusive and harmful. The extractor flue is a massive silver construction with a huge pipe that runs up and over the roof. The air con units are hidden from public view and may well simply be moveable additions, but I have no evidence to that effect, nor any evidence as to why so many are needed and of that design.
9. The roof terrace is a new feature that would not have been an original part of the building, although there must have been some way to access the brick storeroom. Nevertheless, the parapet sides are made of modern materials which appear to have been chosen because they were available rather than with any thought to the impact on the listed building.
10. I accept the use of the ground floor as a restaurant requires some form of extractor and air conditioning and the rear of the terrace of shops and other commercial uses that front onto the Mile End Road is heavily altered and commercial in appearance. Nevertheless, the alterations made to the listed building seem to have been carried out without any thought for the listed building itself or recognition that because it is listed it needs to be treated differently, and with greater care and thought than a normal building. I have no doubt that with some effort a scheme to provide adequate extraction and air conditioning facilities and an access to the brick storeroom/bathroom could be found but this is not it.
11. In my view the matters alleged harm the special architectural and historic character of the building. In NPPF terms they cause less than substantial harm but there are no public benefits to outweigh that harm. I shall thus uphold the notice as corrected.

Simon Hand

Inspector