



Appeal Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 21 December 2020

Appeal Ref: APP/X5990/F/19/3240277

10 Westbourne Crescent, London W2 3DB

- 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 Savvas Savvidis against a listed building enforcement notice issued by City of Westminster Council.
 - The listed building enforcement notice is dated 30 September 2019.
 - The contravention of listed building control alleged in the notice is: Without listed building consent and after the date that the building was listed, two flue pipes have been installed at second floor level on the front elevation of the property as shown circled in red on the photograph attached to the enforcement notice.
 - The requirements of the notice are: 1) Remove the two flue pipes from the second floor of the front elevation of the building, circled in red on photograph A attached to the enforcement notice. 2) Repair the cavities created by the carrying out of requirement 1) above using materials and a painted stucco finish to match the immediate surrounding area of the front façade of the building. 3) Remove from site any waste materials, or debris created in association with requirements 1) and 2) above.
 - The period for compliance with the requirements is 18 months.
 - The appeal is made on the grounds set out in section 39(1)(e) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The appeal is dismissed and the listed building enforcement notice is upheld. Listed building consent is refused for the works carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Preliminary Matters

2. The determination of this appeal relates to grounds (e) and (h). As I was able to assess the case from the written evidence alone, it was not necessary for me to carry out a site inspection.
3. The enforcement notice relates to two flue pipes that were installed close together on the front elevation of the listed building. The appellant has stated that he has removed the two flues in question. Nevertheless, he has not formally withdrawn the appeal, and so it still falls to be determined on the grounds stated above.

Background

4. The appellant states that one flue pipe was redundant, and that the other was connected to the gas boiler in his flat. He sought help from a gas engineer who advised that there was no alternative route for the active flue pipe that would

avoid it terminating on the front façade of the building. The only apparent option was to take out the gas boiler and install an electric system instead.

5. In a subsequent email in February 2020, the appellant explained that he had taken further advice from an electrician with regard to the installation of a new electric system. The upshot of this advice was that the electrical supply to the whole building from the National Grid would not be sufficient to support the installation of electric boilers at all the flats that have been subject to enforcement action by the Council. The upgrading of the supply would cost in excess of £30,000 and would be a matter involving over 20 leaseholders within the building. Agreement from the National Grid would also be needed.

The appeal on ground (e)

6. The appeal on ground (e) is that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted.
7. The gist of the appellant's argument under ground (e) was that listed building consent should be granted for the active gas boiler flue only, given the difficulties of switching to electric. This would leave the redundant flue as the subject of the enforcement notice. However, as a ground (e) appeal is to be approached in the same way as an application for listed building consent, the two flues referred to in the notice must be considered here.

Main Issue

8. Therefore, the main issue is the effect of the works on the character or appearance of the grade II listed building.

Reasons

9. The appeal site at No 10 is one of a group of flats known as 'Crescent Court' at 10 Westbourne Crescent. The mid C19 building was listed in Grade II in 1975 as part of a group comprising Nos 9–14 Westbourne Crescent and Nos 28–44 Gloucester Terrace. It stands at four storeys high, with an attic and a basement. The front facade is stucco finished with a projecting Doric porch and a continuous balcony at first floor level.
10. In terms of architectural treatment, the first floor windows are the most decorative, with architraves on console brackets above each opening. Above the first floor, the fenestration becomes progressively smaller and plainer, with the smallest openings in the attic floor. This design approach is typical of mid-Victorian town architecture. All these noted features are repeated along the terrace and add to the significance of No 10 and its neighbours.
11. The gas flues were installed next to a window on the second floor of the building. From the photographic evidence before me, they pierced the stucco finish of the façade, introducing an element that was undoubtedly not part of the original design concept of the building. Where the stucco is unbroken, it provides a smooth, blank backdrop that allows the eye to be drawn to the decorative features noted above. Conversely, the flues added visual clutter and congestion to the façade, detracting attention from the design, and harming the fine appearance of the frontage.

12. Accordingly, overall, the works if reinstated would conflict with the overarching statutory duty as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, which must be given considerable importance and weight, and with the National Planning Policy Framework (NPPF). In addition, the scheme would conflict with Policy S25 (Heritage) of the Westminster City Plan and DES10 of the City of Westminster Unitary Development Plan, which jointly seek to conserve listed buildings, and Policy 7.8 of the London Plan, insofar as it seeks to sustain and enhance the significance of heritage assets.
13. Although serious, the harm to the heritage asset in this case would be less than substantial, within the meaning of the term in paragraph 195 of the NPPF. Paragraph 196 requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal.
14. In terms of justification, I acknowledge the appellant's statement that there was no alternative to flues in this facade. However, there is little evidence of any other options that were discounted, or any detailed technical information showing why the flues needed to be in this location. In any event, any private benefit to the appellant deriving from the flues would not count in favour of the appeal scheme.
15. I therefore find that insufficient public benefits have been identified that would justify or outweigh the harm I have identified to the heritage asset. The scheme therefore conflicts with the NPPF, which directs, at paragraph 193, that great weight should be given to the asset's conservation irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
16. I therefore conclude that listed building consent for the works should not be granted, and the appeal on ground (e) therefore fails.

The appeal on ground (h)

17. The appeal on ground (h) is that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed.
18. The notice gives a compliance period of 18 months. The appellant sought an alternative period of 10 years, until 2030, for the gas boiler to live out its useful life, and for the appellant to avoid the economic hardship of replacing the whole system with an electric boiler.
19. Regarding a similar enforcement case at Flat 3 in the same building, the appellant contends that the owner was granted a longer compliance time to remove the flue on the basis that their boiler was also relatively new. The Council have submitted the enforcement appeal decision relating to the flue at Flat 3 (ref: APP/X5990/F/18/3206213). In that decision, the Inspector increased the compliance period from 6 to 18 months, and that is the basis on which the enforcement period in this case is given.
20. That appeal decision indicated that the boiler at Flat 3 had been installed in 2011. The appeal was decided in February 2019, and with 18 further months allowed, which means that the boiler would be approximately ten years old by the time any replacement was needed. This timescale also allowed for liaison

between the Council and that appellant and the other residents over the other flues on the building.

21. Although I acknowledge the appellant's arguments, a ten year compliance period would be excessive. It would not be appropriate to allow such harm to the listed building to persist for such a length of time, and it would undermine public confidence in the operation of the planning system to rectify such harm. Although the cost of a new electric boiler may be significant, this can have little bearing on my consideration, as the appellant effectively incurred any cost by carrying out the works without listed building consent.
22. Regarding the upgrade of the electricity supply to the appeal site and the rest of the building, there may well be potential difficulties and significant costs involved. Unfortunately, however, there is no documentary evidence to support the appellant's arguments. He has not submitted any written advice from the expert he consulted, any written quotation for the work, or any evidence that the National Grid has been approached for their guidance on the matter.
23. The Council have recently taken enforcement action against two other properties in the same building over the same issue. That being the case, it is surprising that these matters relating to the electricity supply have not been addressed with more urgency.
24. In the absence of compelling evidence to the contrary, I am satisfied that a compliance period of 18 months is reasonable. The appeal on ground (h) therefore fails.

Conclusion

25. For the reasons above, the appeal is dismissed and the enforcement notice is upheld.

Elaine Gray

INSPECTOR