



Appeal Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 January 2021

Appeal Ref: APP/A5840/F/20/3248540
124 Abbey Street, London SE1 3NP

- The 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 Miss Emma Jackson against a listed building enforcement notice issued by the Council of the London Borough of Southwark.
 - The listed building enforcement notice is dated 6 February 2020.
 - The contravention of listed building control alleged in the notice is: Without listed building consent, the removal of the original single glazed, timber framed, sash windows, boxes and shutters on the front elevation at first and second floors and at the rear elevation first and second floors and the subsequent installation of inappropriate double glazed UPVC framed windows in the listed building.
 - The requirements of the notice are: 1. Remove the unauthorised UVPC windows on the front elevation and above ground floor level of the rear elevation of the Listed Building. 2. Install replacement single glazed timber framed sash windows on the front elevation at first and second floors and on the rear elevation at first and second floors of the Listed Building in accordance with the requirements of paragraphs 3 and 4 below. 3. The replacement sash window panes are to be of 6 panes over 6 panes on the front elevation and on the right side of the rear elevation and the small windows on the left side of the rear elevation are to be of a 1 pane pattern to match the original windows which were removed, in all respects including design, material and finishing to match the identical single glazed timber framed sash windows that survive at the adjacent listed building at 122 Abbey Street. 4. The replacement sash windows are to have: i) recessed sash boxes and weighted sash cords; ii) single glazing and true; iii) lambs tongue glazing bars with an individual pane of glass for each division of the window.
 - The period for compliance with the requirements is 12 months.
 - The appeal is made on the grounds set out in section 39(1)(a) and (b) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion of requirement 4. of the requirements paragraph in its entirety, and its replacement with the following text: '4. The replacement sash windows are to have: i) recessed sash boxes and weighted sash cords; ii) single glazing and; iii) true lambs tongue glazing bars with an individual pane of glass for each division of the window.'
2. Subject to this correction, the appeal is dismissed and the listed building enforcement notice is upheld.

Preliminary Matters

3. The determination of this appeal relates to ground (a) and ground (b). In view of the coronavirus restrictions on travel during the course of the appeal, and

the fact that an internal inspection was not needed, I wrote to the main parties to ask if they would be satisfied that I consider ground (a) on the basis of photographic evidence. The parties agreed, and helpfully submitted further photographs of the appeal site for consideration. Ground (b) may be considered from the written evidence alone. In view of these circumstances it was not necessary for me to carry out a site inspection.

The enforcement notice

4. In point 4 of the requirements section, the notice states that the replacement windows will have 'ii) single glazing and true; iii) lambs tongue glazing bars...' It appears to me that the word 'true' should relate to the lambs tongue glazing bars in order to make sense, and so I have directed that the notice be corrected accordingly. I am satisfied that this change will not make the requirements more onerous for the appellant.

The appeal on ground (a)

5. The appeal on ground (a) is that the building is not of special architectural or historic interest. An appeal on this ground implicitly challenges the listing of a building. To be successful, it must either be shown that the building which is the subject of the listed building enforcement notice is either not listed at all, or that it no longer merits its listed status.
6. No 124 is one of a terrace of houses, Nos 122-132, which were listed grade II in 1998. The list description indicates that the terrace dates from the early to mid-19th century, although I note the Council's statement that the buildings date from 1870-1914, and then 1850-1900 later in their statement.
7. It is the appellant's case that No 124 is not of any special architectural interest in terms of its design, decoration or craftsmanship. Later in her submissions, the appellant goes on to argue that the previous windows themselves were not of special interest in these terms. However, the principles of listing apply to whole buildings, and not their constituent parts. It is therefore not open to me to consider the windows in isolation from the rest of the appeal site.
8. The appellant contends that the building has no intrinsic special interest with regard to technology, material innovation or engineering, and it does not illustrate any particular aspects of social or economic history. However, in the 'Principles of Selection for Listed Buildings' (Department for Digital, Culture, Media & Sport, November 2018) document, these words are used with reference to buildings that may have little external visual quality, but can still be of special interest within those categories.
9. In this case, it is clear that the terrace does have external aesthetic merit. No 124 and its neighbours stand at three storeys high with two bay frontages. They are constructed of brick in Flemish bond, with the roofs hidden behind front parapets. No 124 is characterised by decorative detailing including the arched window and door openings on the ground floor. On the first floor are two squarish window openings with brick lintels, and on the second floor are two slightly more narrow window openings, also with brick lintels. The brick arches and lintels are all formed of the same brick as the rest of the façade, giving a simple, understated appearance.
10. At the back, the roof slopes and chimney stacks are visible. The rear elevations are also built of brick, although there is a greater colour variation

- than at the front. At No 124, the historic window openings are still evident, and match those at the neighbouring No 122.
11. From the photographic evidence before me, I consider that No 124 is still distinctly recognisable from its list description. Although the original windows have been lost, it remains an attractive example of a relatively modest town house and is readily identifiable as a 19th century urban domestic style. The Council state that No 124 and the terrace are of interest as examples of working-class dwellings, and this status is in keeping with their restrained architectural treatment. Therefore, they are also of socio-economic interest for their place within the wider hierarchy of London's historic housing stock.
 12. The Council state that very few working-class dwellings of this type survive. The building is therefore of interest for its rarity, the degree of survival of its external fabric, and the coherency of the terrace as a whole. Conversely, the appellant states that there are many examples of this architecture not only in Southwark but also throughout London. She argues that the appeal site and the terrace are not the most representative or most significant examples of this type. Nevertheless, the appellant has not identified any of the other examples she refers to.
 13. In relation to the coherency of the group, my attention has been drawn to replacement uPVC French doors at 130 Abbey Street. The list description refers to the French doors but does not specify their materials. It notes the doors 'of an authentic design' at Nos 128 and 130 at the time of listing. It is clear that the uPVC doors are later additions that do not contribute to the special interest of No 130 or the group. However, it seems to me that the group retains a high level of coherency and architectural unity. The presence of one or even several inconsistent features does not mean that the terrace as a whole should not be listed.
 14. The appellant goes on to argue that conclusions as to why the appeal site was listed must be based solely on the list description and any additional evidence written at the time of the listing. However, earlier list descriptions tend to be brief and are primarily for identification purposes. They are by no means exhaustive records of the significant features of individual assets, or the reasons why they are included on the list. Little weight can therefore be given to the lack of detail in the description in this case. Sometimes survey notes are available from the time of listing but not always, and the lack of such evidence is not determinative.
 15. Drawing these threads together, I am satisfied that the appeal site is relatively unaltered and is still worthy of its listed status. It remains a building of special architectural and historic interest, and I have highlighted the features of significance above. I do not consider that it ought to be removed from the statutory list. It remains a listed building and the appeal on ground (a) must fail.

The appeal on ground (b)

16. The appeal on ground (b) is that the matters alleged to constitute a contravention of section 9(1) or (2) have not occurred.
17. The appellant states that the uPVC replacement windows were installed at some point between June 2012 and May 2014. From this, and the other

evidence before me, there can be little doubt that the alleged matters have occurred. The appeal must therefore fail on ground (b).

18. Nevertheless, I consider that the appellant's submissions relate more clearly to a ground (c) appeal, which is that those matters (if they occurred) do not constitute such a contravention. As the Council have had the opportunity to consider the appellant's evidence and comment on it, I am satisfied that ground (c) can be considered without injustice to either party.
19. The appellant states that the property was purchased in March 2019 on the basis of clear and legally binding written representations from the seller that all necessary consents were obtained for works involving the windows. She notes that no enforcement action against the seller appeared during the conveyancing searches. Unfortunately, the seller is now deceased, so it has not been possible to approach him on the matter. The Council confirm that they have no record of listed building consent for the replacement of the windows at No 124.
20. The gist of the appellant's case is that, if the seller said he applied for and obtained consent for the installation of uPVC windows, then that is what happened. If the Council do not have a record of the consent, then their records are wrong.
21. I have been provided with a copy of the 'Seller Report' (SR), signed 8 February 2019. Section 4 of the SR deals with alterations, planning and building control and states that if the seller had works carried out, the seller should produce the authorising documentation. However, under section 4.1, the seller clearly states that no installation of replacement windows has taken place at the property since 1st April 2002. This directly contradicts the appellant's evidence.
22. Within the instructions, the SR document makes clear that the seller is not expected to have knowledge of matters that occurred prior to their ownership of the property. There is nothing in the evidence to show when this particular owner bought the property, and so it is possible that the windows were installed prior to that purchase.
23. Whatever the case may be, no explanation is given for the discrepancy between the SR and the appellant's statement. Unfortunately, without any corroborative evidence, I am unable to be certain that listed building consent was granted for the uPVC windows. The fact that the Council have no record of such a consent tends to support this position.
24. Having seen photographs of the uPVC windows as installed, I consider that the works carried out have affected the character of No 124 as a building of special architectural and historic interest. I make no judgement on whether or not the effect is positive, negative or neutral, since I am not dealing with the appeal under ground (e). Nonetheless, there has been a physical and visual effect on the listed building. It follows that listed building consent is required for the installation of these windows, and there is no convincing evidence that such a consent exists.
25. The appeal on ground (c) therefore fails.

Conclusion

26. For the reasons above, the appeal is dismissed, and the listed building enforcement notice is upheld, subject to correction.

Elaine Gray

INSPECTOR