



Appeal Decision

Site visit made on 4 January 2021

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 19 January 2021

Appeal Ref: APP/F0114/Y/20/3259846

Basement, 28 Grosvenor Place, Lambridge, Bath BA1 6BA

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) against a refusal to grant listed building consent.
 - The appeal is made by Mr and Mrs P Jeangirard against the decision of Bath and North East Somerset Council.
 - The application Ref 20/01097/LBA, dated 17 March 2020, was refused by notice dated 8 June 2020.
 - The works are described as installation of damp proofing membrane to vaults. Repairs to front courtyard (stone steps / door frame to store / re-painting hand rail).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. An application for costs was made by Mr and Mrs P Jeangirard against the decision of Bath and North East Somerset Council. This application is the subject of a separate Decision.
3. The damp proofing works subject of the appeal have already been undertaken. In this regard the appellant is of the view that listed building consent was not required for installation of a membrane, and that the works simply constituted repairs to an existing failed system. The latter however comprises waterproof tanking, and so the 2 treatments are of different type. Moreover, installation of the membrane has entailed alterations to the shape, dimensions, and the physical and visual characteristics of the vaults. As such I see no reason to question the Council's view that the works would/do fall within the scope of those requiring listed building consent.
4. The Council further indicates that there is no past record of consent for tanking or the related conversion of the vaults as habitable space, and that as such these previous works were unauthorised. As the installed membrane and lining are attached to the tanking below, the effect of allowing the appeal would inevitably also be to regularise these previous works. Consequently, though they do not form a direct subject of the scheme, they must also be taken into account. This was indeed the approach adopted by the Council in assessing the scheme.
5. As set out in the Act, it is an offence to execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised. In this

context, given that the works have already been undertaken, were this appeal to be allowed, any consent granted would be for retention of the works only, and would have no bearing on the legality of their initial execution.

6. The appellants have questioned the extent to which the Council would be capable of successfully undertaking enforcement action in the event that the appeal was dismissed, what such enforcement action could entail, and what the end product of such action might be. However, the appeal has not been made in the context of enforcement action, and the determination of such matters lies outside its scope. That being so, I will consider them no further.
7. The description of works also contains apparently minor items more specifically described as 'repairs'. Appropriate acts of simple repair or maintenance often do not attract a requirement for listed building consent. The Council's officer report however provides no view of the acceptability or status of these works. Likewise, they are not addressed within the appellants' appeal statement. Nor has any detailed specification of what these works actually entailed otherwise been provided. These works are therefore incapable of proper assessment within the overall context of this appeal. It remains the case however, that were it to be subsequently confirmed by the Council that consent was not required for these items, their status would not be altered by my decision. This is a matter that can be separately clarified between the parties.

Main Issue

8. The main issue is whether the damp proofing works have preserved a Grade I listed building, its setting, or any of the features of special architectural or historic interest that it possesses.

Reasons

9. The appeal property occupies the basement of 28 Grosvenor Place. The latter in turn forms part of 1-41 Grosvenor Place, which is the listed building in this case. As the building is listed at Grade I, it is a designated heritage asset of the highest significance. In this regard paragraph 193 of the National Planning Policy Framework (the Framework) states that the great weight should be given to the conservation of designated heritage assets, and the more important the asset, the greater this weight should be.
10. Insofar as it is relevant to this appeal, the significance and special interest of the listed building lies in its late eighteenth to early nineteenth century date, its scale, form and grand design, and its fabric and historic layout. In this context, the provision of vaults as functional spaces beneath the pavement at the front of the terrace, is a distinctive feature of the design and original layout of the building, and typical amongst other buildings of similar type and age in Bath. The vaults provide important insight into the way in which such buildings functioned historically.
11. The vaults and basements were originally separate from one another, divided by the 'area' between. Along many parts of the terrace this remains the case. In some such instances the vaults appear to be open and secured by gates, and presumably serve as storage space. This is a use to which they are well suited, having been originally provided to fulfil functional roles such as the storage of coal. Along other parts of the terrace, as at the appeal property, infilling beneath the arch supporting the path to the front door above has

provided a degree of linkage. Nonetheless, it is clear that the vaults were not intended for formal human habitation. The fact that they are inherently cramped, damp, subterranean, windowless spaces reflects this. These traits cannot therefore be held to represent a particular flaw in their original design, or thus to demand or to justify interventions to make them fit for habitation.

12. Indeed, having regard to the above, the nature of the modifications necessary to enable formal habitation of the vaults at No 28 has substantially altered their character. As outlined above, this has the introduction of linings, together with partitions and fittings, which conceal and alter the dimensions and appearance of the original surfaces and internal space, as too perception of the vaults as a component of the historic layout of the building. This obscures an understanding of their past functional role. Within this context, both their treatment and habitation appear incongruous.
13. Few vaults will still be used for their originally intended purposes. However, there is no reason to believe that uses which are wholly compatible with their functional character cannot be readily found within a modern domestic context. It is not therefore essential for intrusive works to be undertaken to convert such spaces to serve as living accommodation, and nor is it immediately clear why such use should be considered desirable.
14. It is claimed that the tanking previously installed is an irreversible finish, and that this therefore justifies both the further works undertaken, and acceptance that the vaults now form part of the accommodation. Little technical evidence has however been provided to support this view. In a general sense I also see no reason why the permanence of unauthorised works should form a basis to legitimise the irreversible harm they may cause. Nor does it follow that it is acceptable for such harm to be perpetuated in another form by allowing further works which achieve a similarly inappropriate effect. In any case, in the absence of clear evidence, the extent to which the tanking can or cannot be removed is unproven. I therefore attach very little weight to this line of argument.
15. It is of relevance to note that the purpose of tanking is to form a barrier to the passage of moisture, thus sealing it in. This disruption of the pattern of moisture movement through the fabric may potentially give rise to processes of decay. This is highlighted in representations made by the Bath Preservation Trust, and cannot be properly justified on the basis that it prevents leaching. Indeed, the latter can be more sensitively addressed. Whilst the installed membrane allows for the drainage of any moisture which may escape the failed tanking, it does nothing to directly remedy underlying processes of potential decay, and otherwise further seals in the fabric. The installed membrane therefore offers no obvious benefit to the building fabric.
16. My attention has been drawn to other cases in which the Council has allowed the conversion of previously altered vault spaces within listed buildings. In this regard it is apparent that the scheme cited at Walcott Street was deemed to deliver 'improvements', whereas no such improvements have been identified in the current case. Other cases, which are briefly summarised in a report relating to a scheme at New King Street, appear to have been subject of various site-specific considerations, the nature of which are not fully explained. In this regard the evidence is insufficiently detailed for me to draw any clear parallels

with the current case. The New King Street scheme was itself refused. I have therefore considered the appeal scheme on its own merits.

17. Properties listed for sale which feature subterranean accommodation have also been highlighted. Assuming that the latter are lawful, I see no reason why the simple existence of subterranean accommodation elsewhere should be held to justify the appeal scheme.
18. With reference to paragraph 196 of the Framework, I find that, for the reasons outlined above, the damp proofing undertaken has caused less than substantial harm to the significance of the listed building. I attach great weight to the harm caused. In accordance with paragraph 196 it is necessary to balance this harm against any public benefits of the appeal scheme.
19. Insofar as the works enable use of the vaults as part of the living accommodation, this is a private rather than public benefit. This consideration does not therefore attract weight in favour of the scheme. Consequently, the harm caused to the significance of the listed building is not outweighed by public benefits.
20. For the reasons outlined above I conclude that the damp proofing works have not preserved the special architectural or historic interest of the listed building. They thus fail to satisfy the requirements of the Act; heritage policy set out within the Framework; and, insofar as it is relevant, Policy HE1 of the Local Plan which seeks to sustain and enhance the District's historic environment.

Other matters

21. The site is also located within Bath Conservation Area (the Conservation Area). It is therefore necessary for me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
22. Insofar as it relates to this appeal, the special interest and significance of the Conservation Area resides in the planned layout, buildings and spaces related to the Georgian townscape of the city. This includes key architectural set pieces such as Grosvenor Place.
23. No objection has been raised by the Council in relation to the effect of the damp proofing works on the Conservation Area. Indeed, the works are internal. As such the character and appearance of the Conservation Area has not been harmed.

Conclusion

24. For the reasons set out above I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR