



Appeal Decision

Site visit made on 23 June 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 20 July 2021

Appeal Ref: APP/X5990/F/21/3269478

31 Weymouth Street, London W1G 7BP

- 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 Christopher Harniman against a listed building enforcement notice issued by City of Westminster Council.
 - The enforcement notice was issued on 19 January 2021.
 - The contravention of listed building control alleged in the notice is the carrying out of works which affect the character of the property as a building of special architectural or historic interest, comprising the installation of stonework stairs and metal and glass balustrades to the property's principal staircase from the basement to the landing between first and second floor levels.
 - The requirements of the notice are:
 - a) Remove the stone cladding affixed to the treads and risers of the principal staircase of the property, between the basement and the landing between first and second floor levels, shown in Photographs A, B, C and D, attached; and
 - b) Remove the glazed balustrade and metal posts and rails affixed to the staircase, also shown in Photographs A, B, C and D, attached; and
 - c) Repair and, where necessary, replace the treads and risers of the principal staircase to match the material, size, design and profile of the original timber treads and risers, examples of which are retained at second floor level, as shown in Photograph E; and
 - d) Install a timber balustrade and timber balusters to match the material, size, design and profile of the original timber balustrade and balusters, examples of which are retained at second floor level, as shown in Photographs E, F, G and H, attached; and
 - e) Repair any damage to the skirting boards and newel posts, and any other damage to the property caused by the carrying out of the works cited in Parts a), b), c) and d) above.
 - The period for compliance with the requirements is nine months.
 - The appeal is made on the grounds set out in section 39(1) (e), (g), (h) and (i) 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 retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Procedural Matter

2. Since the service of the notice the London Plan 2016 has been replaced with London Plan, The Spatial Strategy for Greater London, March 2021 (the London Plan 2021) which was published on 2 March 2021. Policy 7.8 (Heritage Assets and Archaeology) of the 2016 London Plan has been deleted, but Policy HC1

(Heritage Conservation and Growth) of the London Plan 2021 reaffirms the aims and objectives of the previous heritage related policy and continues to place great importance on the conservation and protection of London's heritage assets.

3. Westminster's City Plan 2016 and the saved Unitary Development Plan 2007 (the 2007 UDP) has also been replaced with Westminster City Plan 2019-2041 (the City Plan 2021) which was adopted on 21 April 2021 and replaces previous development plan documents. Of particular relevance to this appeal is Policy 39 (Heritage) which replaces both Policy S25 (Heritage) of the previous City Plan and Policy DES 10 (Listed Buildings) of the 2007 UDP.
4. Grounds (g) and (i) are mutually exclusive and cannot simultaneously be pleaded in relation to the same requirement of a LBEN. However, I have dealt with these grounds together, below and explained the approach I have taken as a consequence of the arguments advanced by the appellant. A notice issued under section 38(2)(a) of the LBCA seeks restoration of the building to its former state. Ground (g) claims that the requirements of the notice exceed what is necessary to achieve this and can, therefore, only apply when restoration is required. Ground (i) also relates only to restoration.

The appeal on ground (e)

5. The ground of appeal is that listed building consent ought to be granted for the works and therefore the main issue is the effect of the works on the special architectural and historic interest of the Grade II listed building.
6. Section 16(2) of the Act requires the decision-maker, in considering whether to grant listed building consent for any works affecting a listed building or its setting, to have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest it possesses.
7. As outlined above, Policy HC1 of the London Plan 2021 relates to heritage and states that proposals affecting heritage assets should conserve their significance, being sympathetic to the asset's significance and appreciation within their surroundings. Policy 39(c) of the City Plan 2021 states that works to listed buildings will preserve their special interest, relating sensitively to the period and architectural detail of the building and protecting original or significant detail and historic fabric.
8. The Grade II listed appeal building was listed in December 1987 and is a terraced townhouse incorporating a mews entrance. It dates back to 1912-1913 by Belcher and Joass in Portland ashlar facing with a slate roof. It has Neo-Grec details which is relatively unusual for a domestic elevation; three storeys and a dormered mansard with a basement, three windows wide with a central projecting porch with slender columns of the Tower of the Winds order. The building is situated within the Harley Street Conservation Area.
9. The building is currently used for mixed use purposes with the basement to first floors used as a clinic and the second floor and mansard in use for Class C3 residential purposes. The floor plan in the main part of the property that faces Weymouth Street comprises that of a typical London townhouse of its period with principal rooms on the ground floor and first floor which are arranged to the front of the building, a main staircase and a secondary

staircase which serves the upper levels. These elements of the building's plan form are important as they provide evidence of how the building originally functioned and the hierarchy of the rooms and circulation space.

10. The principal staircase is in its original location and makes an important contribution to understanding how the building was originally planned and used. At my site visit I noted that the ground floor is laid with pale stone tiles with pale painted walls and I gained the overall impression that the building is a clean medical environment which is currently maintained to a high standard. The entrance hall walls and landing are decorated with wall mountings and dado rails which are Edwardian in character. This indicates that they may have been original or part of a relatively early decoration scheme of the property's interior. The basement has a different character with few architectural features worthy of note but it retains a similar clinical feel to the ground floor. The basement would have been originally used for domestic services and supporting activities such as cooking and cleaning for the main household. The original decoration of the basement does not remain but is likely to have been simple and minimal to suit its originally intended uses.
11. The significance of the property is in its front façade to Weymouth Street and in some historic interior features that remain at ground and first floor, including the building's plan form which would have included the prominent principal staircase.
12. The appellant has stated that the works to the staircase have been carried out to support the building's continuing lower floor use for medical purposes. Given the protection of the use afforded by Policy 22 (Harley Street Special Policy Area) which seeks to protect the area's role as an international centre of medical excellence, it is unlikely that in the foreseeable future the lower levels will change from medical use.
13. The new stone steps with metal and glazed balustrade would not look out of place in a medical practitioners, but it is likely that the principal staircase would have had a timber balustrade and traditionally designed spindles. The timber newel posts do remain at ground and first floor levels which are clear indications that the original timber handrail and spindles have been lost and replaced by modern alternatives. The current modern scheme that has been installed does not reflect the original Edwardian design of the property's interior and therefore the architectural interest of the building has been harmed, as is acknowledged by the appellant.
14. Paragraph 193 of the Framework advises that when considering the effect of works on the significance of designated heritage assets great weight should be given to their conservation. It goes on to advise that significance can be harmed or lost through the alteration of those assets. The staircase does remain in its original position and I appreciate that it has been implemented as part of a uniform approach to the decoration of the lower floors of the building for medical practice purposes. Nevertheless, it has been harmed and in this case that harm is less than substantial.
15. Under such circumstances, paragraph 196 of the Framework advises that this harm should be weighed against the public benefits of the works, which includes securing the optimal use of the building. The appellant contends that the works to the staircase with the decoration scheme are in accordance with the use of the building as a medical centre and they contribute to the

- perception of a clean and sterile environment which the medical centre needs to convey. Therefore, it is contended that there are a number of public benefits, including being part of a harmonious internal design for the listed building, supporting the attractiveness of the medical centre, supporting and enhancing the role of the Harley Street Special Policy Area as an international centre of medical excellence, supporting the retention of the medical centre achieves the maximum viable use of the lower levels of the building and retaining the medical use will preserve the character of the Harley Street Conservation Area which includes a number of leading medical practices.
16. The appellant does not adequately explain why the original historic staircase was unsuitable for the building's use as a medical centre and there is insufficient evidence before me to show that the public benefits that arise from supporting a medical centre in this location could not have been achieved by leaving the original timber staircase in place or perhaps by renovating or restoring it. I can understand that the appellant wishes to provide a harmonious interior design and create an attractive clinical environment for the medical practice, but I cannot understand how this could not have been achieved by an alternative approach than remove an important historic interior feature and replacing it with a modern stone, metal and glazed feature. Consequently, I can attribute only very limited weight to the public benefits presented by the appellant with respect to supporting the building's role as a medical centre within the Special Policy Area and wider Conservation Area.
17. Given the above, and in the absence of sufficiently clearly defined public benefit, I conclude that the works have a harmful effect on the special architectural and historic interest of the listed building. This would fail to satisfy the requirements of the Act, the Framework and would conflict with Policy HC1 of the London Plan 2021 and Policy 39 of the City Plan 2021.

The appeal on grounds (i) and (g)

18. Ground (i) is that the steps required for the purpose of restoring the character of the building to its former state would not serve that purpose. The appellant argues that meeting the requirements of the LBEN would not restore the special interest of the building as the works would be incongruous with the existing decoration scheme that has been implemented and a contemporary replica would be out of place and contribute little or no architectural or evidential value.
19. The first argument presented by the appellant under ground (i) does not relate to whether the steps required for the purpose of restoring the character of the building to its former state, but rather whether the steps required would result in works that fit with the modern decoration scheme on the lower floors of the building. This argument is misplaced here and ignores the harm that has been caused by the unlawful works that have been carried out and the overall requirement of the LBEN to restore the character of the building to its former state.
20. Furthermore, the Council is not requiring the reinstatement of the staircase that was previously present but rather the restoration of the character of the building to its former state before the replacement stonework stairs and metal and glazed balustrades were installed and to alleviate the effect of such works which were carried out without listed building consent. The steps required by

the LBEN would serve the purpose of restoring the character of the building to its former state and the appeal on ground (i) therefore fails.

21. It is also argued that the balustrade and balusters required to be installed between the basement and ground floor do not accord with the former state of the building. This argument is dealt with below under ground (g). An appeal on ground (g) is that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out. The LBEN requires the reinstatement of a staircase to match the one which, on the balance of probabilities, was in situ prior to the unauthorised works taking place. The evidence before me indicates that neither the Council or the appellant have photographs or other images of the staircase that was there. However, the Council has determined, from the parts of the original staircase that have been retained, what the complete original staircase looked like prior to the unauthorised works taking place.
22. The appellant has stated that the staircase between the basement and ground floor would have served domestic services and therefore the staircase would have been plainer than those on the higher floors. It is also contended that by requiring the design at second floor to be replicated the Council has overlooked the simpler staircase between the third and fourth floors. I agree that the more elaborate balustrade and balusters may not have been fitted throughout the property, but the appellant has not made representations or provided evidence that the staircase in situ prior to the carrying out of the unauthorised works was not the original staircase.
23. Furthermore, in my judgement the requirements of the notice are based on the Council's quite reasonable assessment of the detailing in the retained parts of the staircase in question and site visits which suggest that the original stairs remain in situ, concealed below the stone cladding. The newel post at basement level appears to differ from those on higher floors, being more modest in its design which may indicate that the balusters and balustrade at basement level were also modest. However, as stated above there is insufficient evidence of the precise design of the staircase that has been replaced and in the absence of such evidence the requirements set out in the LBEN represent a suitable approach to restore the building to its former condition. Consequently, the appeal on ground (g) fails.

The appeal on ground (h)

24. The ground of appeal 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. Nine months is a generous period to carry out the requirements set out in the LBEN. The two year compliance period suggested by the appellant would be excessive having regard to the ongoing harm caused by the works. In addition, the appellant has not advanced any sound reasons why the period is too short other than to state that the property is used by many medical practices as well as a home. Even under current ongoing Covid 19 restrictions I consider that the period specified is sufficient. Therefore, the appeal on ground (h) fails.

Formal Decision

25. I dismiss the appeal and uphold the listed building enforcement notice and refuse listed building consent for the retention of the stonework stairs and

metal and glass balustrades carried out in contravention of section 9 of the planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

AA Phillips

INSPECTOR