



Appeal Decision

Site Visit made on 13 July 2021

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 August 2021

Appeal Ref: APP/X5990/Y/20/3261110

Basement and Ground Floor Front, 107 Harley Street, London W1G 6AL

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Andy Tilsiter, Shakib & Co Ltd, against the decision of City of Westminster Council.
 - The application Ref: 20/02069/LBC, dated 23 March 2020, was refused by notice dated 2 September 2020.
 - The works proposed are described as 'Retrospective Listed Building Consent for new opening at the rear of the ground floor to create a fire exit door.'
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Decision

1. The appeal is allowed and listed building consent is granted for new opening at the rear of the ground floor to create a fire exit door, at Basement and Ground Floor Front, 107 Harley Street, London W1G 6AL, in accordance with the terms of the application Ref: 20/02069/LBC, dated 23 March 2020 and the plans submitted with it (Drawing Refs: 1813-ST-XX-GF-DR-A-2202 Rev A01 and 1905-SW-12-13 Rev C).

Preliminary Matters

2. Following the determination of the application and during the course of the appeal, the Westminster City Plan 2019 – 2040 (the WCP) was formally adopted in April 2021; the London Plan (the LP 2021) was formally adopted in March 2021; and a revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. The WCP replaces the Westminster City Plan 2016 and the City of Westminster Unitary Development Plan 2007; the LP 2021 replaces the London Plan 2016; and the revised Framework replaces the 2019 version.
3. The main parties have been given the opportunity to comment on the implications of these changes for the appeal. I have had regard to the responses received in my determination of the appeal and my decision is made in the context of the relevant policies within the WCP and the LP 2021; and the revised Framework. I am satisfied that no parties' interests have been prejudiced by this approach.
4. Notwithstanding the description of works as set out in the banner heading above which is taken from the application form, in the interest of clarity I have omitted words relating to the retrospective nature of the application in the formal decision.

5. On my site visit I observed that an opening has been created and a fire exit door installed. Therefore and for the avoidance of doubt, I have determined the appeal on the basis that the works have already occurred, having regard to the drawings submitted with the application.
6. The Council does not object to the principle of the creation of the opening and the consequent loss of historic fabric. Whilst interested parties contend that these works have resulted in harm to the special interest and significance of the listed building, having regard to the evidence before me, I have no reason to disagree with the Council's conclusions. I have therefore focused my considerations of the appeal on the design and materials of the fire door.
7. The application which is the subject of the appeal was accompanied by an application for a non-material amendment to alter a previously consented scheme¹. I note the comments made by interested parties regarding the wider associated planning matters relating to the proposal. Nevertheless, the only matters of concern pertaining to an application for listed building consent are the statutory duties contained within the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). Therefore, my determination of the appeal has concentrated solely on the requirements of sections 16(2) and 72(1) within the Act.

Main Issues

8. The main issues are: whether the proposal i) preserves the Grade II* listed building, 107 and 109 Harley Street, or any features of special architectural or historic interest which it possesses; and ii) preserves or enhances the character or appearance of the Harley Street Conservation Area.

Reasons

Special interest and significance

9. The appeal site relates to 107 Harley Street (No 107) that forms part of a Grade II* listed building known as 107 and 109 Harley Street (Nos 107 and 109) and which is located within the Harley Street Conservation Area (the HSCA).
10. No 107 dates from circa 1777, with alterations probably circa 1900. It is a three bay, four storey with basement and mansard roof, mid-terraced property. The building is built of brown London stock brick, with a boldly channelled stucco ground floor and a slate roof. It possesses a fine interior, stated to be typical of a speculative 1st rate Georgian property in Harley Street.
11. The wall, into which the fire exit door has been inserted, is part of a circulation space. The space and rooms leading off it are later additions to the main Georgian property, stated in the submitted evidence to date from or last been altered during the Edwardian period. A heavy cornice, glazed roof and cast iron supports are present within the space.
12. From the evidence before me, the special interest and significance of the listed building are principally derived from its historic and architectural interests. Its historic interest relates to its age; illustration of mid-late 18th century domestic

¹ Application Refs: 19/01987/FULL and 19/01988/LBC granted consent on 9 May 2019 for Erection of a single storey extension at first floor level to the rear property, installation of plant within an enclosure at lower ground floor level in the internal courtyard and at fourth floor level and installation of replacement windows.

architecture, being part of the planned Portland Estate development; and probable associations with well-known builder-developers John White and Thomas Collins. The building's architectural interest relates to its superb interior with many features of interest; handsome well-proportioned frontage; and the notable contribution it makes to the wider townscape.

13. Pertinent to the appeal, the later additions to the rear, including the circulation space, are undoubtedly of lesser historic value and aesthetic merit. Nevertheless, they are a tangible record of the building's historic development and their basic form and design reflect their role. In this respect, they contribute, albeit very modestly, to the building's special interest and significance.
14. The site is also located within the HSCA. The significance of the HSCA stems mainly from the planned development of tight-knit terraced houses of different periods and different levels of social status. Although many of the properties, including No 107, are now used wholly or in part for other purposes, overall, the area retains its original residential character. The historic integrity and architectural quality of Nos 107 and 109 contribute positively to the character and appearance of the HSCA as a whole and thereby to its significance as a designated heritage asset.

The appeal proposal

15. The appeal proposal comprises an opening within which a single panel steel fire door with an internal push bar has been inserted for use as a fire exit from No 107 out onto the roof terrace of Nos 103-105 Harley Street (Nos 103-105).

The effect of the appeal proposal

16. Paragraph 199 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be).
17. The fire door as installed is of an overtly plain and functional design, using modern materials which are fit for its purpose. In these respects, the door is an honest insertion which meets the very strict regulatory standards of its use. The minimalist nature of the door combined with its white colour, which matches the internal and external finish of the wall within which it is positioned, allows it to assimilate well into the wall and space. Consequently, it does not detract from internal views along the circulation space or external views of the wall from the outside terrace. Additionally, it does not diminish any appreciation of the special interest or significance of this aspect of the building's development or the listed building as a whole.
18. In this instance, given the door's location within the building combined with its purpose as a fire exit, I am not persuaded that there is a need for it to take its cue in terms of design and materials from the historic and architectural context in which it sits. Indeed, a mock-Edwardian timber door in this location for use as a fire door, would be a contrived and disingenuous insertion which would only serve to confuse an appreciation of the building's development as well as, in all probability, not meet the required specification for a fire exit door.
19. Moreover, the Council's Supplementary Planning Guidance entitled 'Repairs and Alterations to Listed Buildings' adopted 1995 (SPG) provides for some flexibility

in terms of internal alterations, alterations to listed properties and the insertion of new external and/or modern doors². Whilst the door, of itself, does not conform to its historic and architectural context, the simplicity of its design and materials mean that it is not an unduly discordant addition and, in this instance, are necessary because of its function within the building.

20. The significance of a conservation area is dependent upon how it is experienced. Under such circumstances case law³ has established that proposals must be judged according to their effect on a conservation area as a whole and must therefore have a moderate degree of prominence. Bearing in mind the extent, nature and location of the works, which are not visible from the public domain and only have limited prominence from the private domain, the character and appearance and thus the significance of the HSCA as a whole is preserved.
21. I have had regard to the Appeal Decision submitted by the Council⁴. I note the similarity between the proposals in terms of the insertion of modern doors. However, in that appeal the position of the doors was within a much more sensitive and significant location within the building. There also appeared to be no requirement for the doors to meet a specific standard in terms of fire safety. In these regards, the details and circumstances of that appeal proposal are not comparable to the one before me. This limits the weight I can attach to the Decision in my determination of this appeal.
22. Accordingly, I conclude that the proposal preserves the Grade II* listed building, Nos 107 and 109, and any features of special architectural or historic interest which it possesses; and preserves the character and appearance of the HSCA. This satisfies the requirements of sections 16(2) and 72(1) of the Act and paragraphs 197, 199 and 200 of the Framework.
23. Applications for listed building consent are not subject to section 38(6) of the Planning and Compulsory Purchase Act 2004 and therefore development plan policies do not carry the same weight as when considering planning applications. Nevertheless, I find that the works accord with Policies 38 and 39 of the WCP in so far as they seek new development to be of a high quality and positively contribute to Westminster's townscape; and that heritage assets and their settings are conserved and enhanced, in a manner appropriate to their significance. In addition, they do not conflict with the Council's SPG referred to above. The works also comply with Policy HC1 C of the LP 2021 which requires that development proposals affecting heritage assets, and their settings, should conserve their significance.

Other Matters

24. Representations on a variety of matters have been submitted by interested parties objecting to the works. Other matters in addition to those outlined above include, the red line boundary of the application; the notification of interested parties; the undertaking of the works without the appropriate consents; the ownership and control of the land which the door/ fire exit opens out onto and lawful rights of access; the adequacy of the terrace as a fire escape; the condition of the wall of No 107 where it abuts the rear terrace of

² Sections 2.4 Supplementary listed buildings policies, 5.4 Alterations to listed buildings and 6.12 External doors: Supplementary Planning Guidance entitled 'Repairs and Alterations to Listed Buildings', adopted 1995.

³ South Oxfordshire DC v SSE & J Donaldson [1991] CO/1440/89.

⁴ Appeal Ref: APP/X5990/E/14/2219611, 19 Chester Square, London, SW1W 9HS.

Nos 103-105; potential damage to neighbours' property; the security of Nos 103-105; and the effect of the works on the living conditions of occupiers of neighbouring properties, with regard to privacy and light.

25. Nonetheless, the only matters of concern relating to an application for listed building consent are the statutory duties contained within the Act. As such, the other matters raised are not within the remit of what I can consider as part of my determination of the appeal and do not alter my conclusions on the main issues.

Conditions

26. I have had regard to the conditions suggested by the Council and considered them in light of the Act and the advice set out in the Framework and the Planning Practice Guidance. As the works have been carried out, a standard commencement condition is not necessary. I have not imposed a condition for the works to be carried out in accordance with the drawings listed as there is no power to impose such a condition under section 17 of the Act. As the works have been carried out in accordance with the submitted drawings and that a separate application for listed building consent would be required for any other works of demolition, alteration or extension in any manner which would affect the building's character as a building of special architectural or historic interest, condition 2 suggested by the Council is not necessary.

Conclusion

27. The works preserve the listed building and the character and appearance of the HSCA. The proposal therefore satisfies the requirements of the Act, the Framework and the development plan policies in so far as they are relevant. Accordingly, for the reasons given, I conclude that the appeal should be allowed.

F Cullen

INSPECTOR