



Appeal Decision

Site visit made on 26 July 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 24 August 2021

Appeal Ref: APP/U5360/F/20/3262370

115-117 Stoke Newington Church Street, Hackney, London N16 0UD

- 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 Kirit Ved against a listed building enforcement notice issued by the Council of the London Borough of Hackney.
- The enforcement notice was issued on 2 October 2020.
- The contravention of listed building control alleged in the notice is the erection of a two storey rear infill extension; the installation of top hung windows and UPVC piping to the rear of 115 Stoke Newington Church Street; and alterations made to the brickwork of the chimney stack between 115 and 117 Stoke Newington Church Street.
- The requirements of the notice are:
 1. Remove the two storey infill extension as shown in Appendix A 'Rear elevation of 115-117 Stoke Newington Church Street';
 2. Replace red infill bricks in chimney stack as shown in Appendix A 'Rear elevation of 115-117 Stoke Newington Church Street' with stock bricks in Flemish bond matching the existing chimney stack at 115-117 Stoke Newington Church Street. This should be bedded and pointed in lime mortar with slight recessed pointing;
 3. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
- The period for compliance with the requirements is six months.
- The appeal is made on the grounds set out in section 39(1)(d), (e) and (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.

Preliminary Matters

1. The Listed Building Enforcement Notice (LBEN) concerns two mid-terrace properties; Nos 115 and 117, which are both listed grade II. The appellant, who is the owner of No 117, indicates that the LBEN incorrectly describes the two storey rear infill extension to the rear of No 115, when it actually sits to the rear of No 117. My site visit confirmed this. I consider that I can use my powers under Section 41(1)(a) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (LBCA Act 1990) to correct the allegation. This would not go to the substance of the notice and would be limited to the correction of factual matters. As such, the correction would not cause injustice to either party or prejudice to the owners of No 115.
2. The appellant has admitted that there was an unauthorised alteration to the brickwork of the rear chimney stack, although it is stated that this work was carried out 40 to 50 years ago by a previous owner of No.115. The current owners of No 115 have not lodged an appeal against the LBEN.

3. The date of the works to the chimney stack is important since no LBEN can be issued under the LBCA Act 1990 in respect either of works for the demolition, alteration or extension of a listed building if, the works in question were executed before 1 January 1969¹. This would form an appeal on ground (c) in section 39(1) of the LBCA Act 1990, that the alterations made to the brickwork of the chimney stack do not constitute a contravention of Section 9(1). However, the dates given are ambiguous and suggest the works were undertaken in the early 1970s, in which case the limitation would not apply. Moreover, in the absence of any evidence on this matter, I would be unable to make an informed decision on any ground (c) appeal. In any event, it appears that there is agreement to replace the red infill bricks as required.
4. There is a relevant planning history for No 117, which it is necessary to explain. Planning permission and listed building consent were granted for the erection of a mansard roof in association with a loft conversion, and a rear extension at second floor level². The rear extension comprised an additional storey over an existing single storey rear addition, which partially infilled a gap between rear additions either side. The approved drawing specified the new walls to be constructed of "brickwork to match existing" and the windows to be "painted timber sashes"³.
5. During construction works, the lower storey was demolished and rebuilt. The Council considers the resulting two storey extension to be unauthorised. In addition, the windows installed are casements and UPVC external pipework was added. The appellant accepts the windows and pipework could be improved. Applications seeking retrospective approval for the retention of the existing two storey extension, with replacement windows and external pipework have been submitted. The materials were specified as bricks – "to match the original single storey back extension"; windows – painted timber double-hung sashes, rainwater goods – zinc or aluminium; soil pipes – black cast-iron. The relevant plans have been provided⁴. I understand the Council declined to determine the applications. Nonetheless, I have considered these plans as an alternative scheme under ground (e), below, in the event that the revised scheme can overcome the planning difficulties.
6. The Council notes the presence of a satellite dish, which it objects to, although this is not detailed in the LBEN. I saw that the satellite dish had been removed at the time of my site visit.

Ground (d)

7. The ground (d) appeal is that the work of demolishing and rebuilding the first storey of the existing rear extension (which was originally to be retained) was urgently necessary for the preservation of the building. It was not practical to retain and repair it owing to serious dry rot in supporting timber beams and because the brickwork was in very poor condition. It is argued that the work was limited to the minimum necessary and there was no time to stop the work and submit a planning application.

¹ This limitation stems from paragraph 23 in Part V of Schedule 24 to the 1971 Town and Country Planning Act. It provided that section 55(1) of the TCPA 1971 did not apply to any works executed before 1 January 1969.

² Ref 2013/3580 and 2013/3583.

³ Drawing No 1166/6 dated October 2013.

⁴ Drawing Nos 1166/24 (floor plans), 1166/25 (elevations) and 1166/26 (windows).

8. The evidence to support the appellant's arguments is very limited. For example, there are no photographs showing the claimed very poor condition of the building, no structural survey by a suitably qualified person and no details of any options considered short of demolition. It is not explained why it would have been impractical to carry out repairs or to provide temporary support while discussions were held with the Council. The assumption that there was no time to submit a revised application is without merit since no attempts to engage with the Council appear to have been made.
9. I conclude, as a matter of fact and degree, that it has not been shown that the work of demolishing the rear extension was urgently necessary in the interests of safety or health or for the preservation of the building nor that it would have been impractical to carry out inoffensive repairs and provide temporary support nor that the works were limited to the minimum necessary.
10. The appeal on ground (d) fails, therefore.

Ground (e)

Main Issues

11. The ground (e) appeal is that listed building consent ought to be granted for the works. I have two schemes before me; (a) the works comprising the whole of the matters alleged in the LBEN, as built; and (b) the revised proposal which sought retrospective approval for the retention of the existing two storey extension, with replacement windows and external pipework.
12. The main issues are whether the works would preserve the Grade II listed buildings, Nos 115 and 117 Stoke Newington Church Street N16, and any of the features of special architectural or historic interest that they possess and the extent to which the works would preserve or enhance the character or appearance of the Stoke Newington Conservation Area.

Reasons

13. The listing description details No 115 Stoke Newington Church Street as an early 18th Century four storey building. Materials are brown brick with later red brick dressings and segmental 19th Century red brick arches to replaced sash windows. I saw that the front elevation has been extensively rebuilt with a mix of stock bricks, presumably after listing. No 117 Stoke Newington Church Street, is described as an early to mid-18th Century three storey house, severely altered, with most of the parapet front rebuilt in stock brick and original brown brick. It also includes shallow segmental arches to replaced sash windows. Both buildings have been extensively altered at the rear.
14. I find the significance of the listed buildings to be attributable to their age, depicted by their terraced form, the simplicity of the parapet front elevations and their fenestration.
15. The buildings are within the Stoke Newington Conservation Area, which comprises Abney Park Cemetery and extends along Church Street and the, relatively busy, High Street. The Conservation Area is densely developed to the south with more open space to the north and around the entrance to the cemetery. I consider that its significance, insofar as related to the matters before me, is derived from the compatible relationship between the commercial

- and residential development, and the open space, and the development layout, which includes long terraces of historic buildings.
16. There is no dispute that scheme (a) has an adverse impact on the significance of the listed buildings. The windows are incompatible with the age of the buildings and the UPVC pipework is a modern addition which jars with the remaining historic fabric. The red brick alteration to the chimney stack is in stark contrast to the surrounding brickwork. It is highly visible and forms a noticeably uncharacteristic alteration. I agree, on scheme (a), that the works have an adverse impact on the significance of the designated heritage assets. In terms of the National Planning Policy Framework⁵, the harm is less than substantial since it only affects part of the rear of the buildings but is nonetheless of considerable importance and weight. No public benefits have been advanced.
 17. I conclude that the works comprising scheme (a), the whole of the matters alleged in the LBEN, as built, do not preserve the special architectural interest of the Grade II listed buildings nor the character and appearance of the Conservation Area. This is contrary to the requirements of the LBCA Act 1990, paragraph 197 of the Framework and development plan policies insofar as relevant.
 18. Turning to scheme (b), the Council's objection to the two storey rear extension concerns its brick materials, which are considered incongruous to the listed building and the Conservation Area. The appellant argues that the new bricks were chosen to match the pre-existing 19th Century flettons of the lower storey, which were not a match for the original brown brickwork of the historic building in any event.
 19. I saw that the brickwork on the front and rear elevations of both listed buildings has been altered considerably. While some of the historic brown brick remains, there has also been extensive and varied use of stock brick. The two storey rear extension has been constructed from a reddish brown brick in a Flemish bond, with segmental arches over the windows. It is not an exact match, but nor is it wholly incompatible. The extension is seen in the context of an evolving rear elevation. Its scale and form is appropriate to the listed building and the materials are a considered match. I do not find the extension to have a harmful impact on the significance of the listed buildings as their age, form and primary architectural features remain unaffected.
 20. Similarly, the brickwork of the two storey rear extension does not stand out as an uncharacteristic addition within the wider area and the significance of the Conservation Area as a whole is preserved.
 21. The appellant accepts that the casement windows and pipework are unacceptable and has offered an alternative. The proposed timber, double-hung, vertical sliding sash windows are acceptable in principle. This has been agreed by the Council as these matters were specified on the previously approved plans. The window specifications supplied by the appellant, plan reference 1166/26, are incomplete, however. I consider that further plans, with an appropriate level of detail, can be secured through the use of a suitably worded planning condition.

⁵ July 2021.

22. The proposed zinc or aluminium rainwater goods would also be acceptable, in principle, although one or the other would need to be agreed. The cast-iron soil pipes would be compatible with the listed building and the Conservation Area.
23. I conclude, therefore, that subject to conditions controlling the window details, the material of the rainwater goods and soil pipework, the alternative scheme (b) would not harm the significance of the designated heritage assets. The works would, therefore, preserve the special architectural interest of the Grade II listed buildings and the character and appearance of the Conservation Area. This would accord with the requirements of the LBCA Act 1990, paragraph 197 of the Framework and development plan policies insofar as relevant.

Conclusion

24. For the reasons given above, I conclude that listed building consent should be granted for part of the matters alleged "the erection of a two storey rear infill extension" but otherwise the LBEN will be upheld.

Ground (j)

25. The ground (j) appeal is that the steps required to be taken exceed what is necessary to alleviate the effect of the works executed to the building. The appellant is seeking to retain the two storey rear extension, as built, but with replaced windows and external pipework. As I have considered these matters under scheme (b) above, and listed building consent will be granted, it is not necessary to consider the ground (j) appeal.

Conclusion

26. For the reasons given above I conclude that the appeal should succeed in part only. I will grant listed building consent for one part of the matter the subject of the LBEN, but otherwise I will uphold the LBEN with a correction and refuse to grant listed building consent on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the consent which I will grant, by virtue of s44 of the LBCA Act 1990.

Formal Decision

27. It is directed that the listed building enforcement notice be corrected by the replacement of "115" with "117", after the words "the erection of a two storey rear infill extension; the installation of top hung windows and UPVC piping to the rear elevation of" in paragraph 3 of the LBEN.
28. Subject to the correction, the appeal is allowed insofar as it relates to "the erection of a two storey rear infill extension". Listed Building Consent is granted for the retention of the two storey rear infill extension at 115-117 Stoke Newington Church Street, Hackney, London N16 subject to the following conditions:
- 1) The works hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos 1166/24 (floor plans), 1166/25 (elevations).
 - 2) The works hereby permitted shall be demolished to ground level, and the materials resulting from the demolition shall be removed, within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 3 months of the date of this decision, a detailed specification for the replacement windows, which shall be timber painted sliding sash windows, replacement rainwater goods and soil pipework shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme details shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved details specified in this condition, they shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

29. The appeal is dismissed and the LBEN is upheld as corrected, insofar as it relates to "the installation of top hung windows and UPVC piping" and "alterations made to the brickwork of the chimney stack", and 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.

Debbie Moore

Inspector