
Appeal Decision

Site visit made on 10 August 2021

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

an Inspector appointed by the Secretary of State

Decision date: 01 September 2021

Appeal Ref: APP/U5360/F/21/3272257

540 Kingsland Road, Hackney, London E8 4AH

- 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 Jass Johal against a listed building enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 4 March 2021.
 - The contravention of listed building control alleged in the notice is the installation of UPVC windows on the rear elevation of the property.
 - The requirements of the notice are:
 - 1) Remove all UPVC windows from the rear elevation property;
 - 2) Install timber sash windows on the rear elevation of the property to the same size and position as approved and shown in drawing JK43 of application 2009/2684 (attached);
 - 3) Make good all damage to the property resulting from the removal of the unauthorised works as listed above;
 - 4) 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 four months.
 - The appeal is made on the grounds set out in section 39(1)(a), (b), (c) and (k) 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 with a correction. 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.

Preliminary matter

2. There is a typographical error in paragraph 5 of the LBEN where sub-Paragraph (1) reads 'Remove all UPVC windows from the rear elevation property'. This should clearly read 'Remove all UPVC windows from the rear elevation of the property'. This can be corrected without causing prejudice to the main parties.

The appeal on ground (a)

3. The ground of appeal is that the building is not of special architectural or historic interest and implicitly attacks the listing of the building. Effectively, it constitutes an application to the Secretary of State to remove the building from the statutory list by virtue of the power set out in section 41(6)(c) of the PLBCAA. The Act indicates that the time at which this question is to be

considered is the time before the allegation the subject of the LBEN was carried out, rather than the date when the LBEN was issued.

4. The Grade II listed building the subject of the current appeal was first listed in February 1975. It is a three storey mid-terraced property within a mixed commercial and residential area. The property has commercial use at ground floor with residential above. The appeal building is listed along with adjacent properties as late eighteenth or early nineteenth large three storeys with two windows each. They are constructed of stock brick with altered parapet coping, an altered hipped slated roof of a moderate pitch and a central chimney. It has gauged flat brick arches to the replaced sash windows. There is a mid-nineteenth century north wing of two tall storeys with two windows. There are modern shops on the forecourts. Nos 540 to 570 (evens only) Kingsland Road form a group.
5. The appellant contends that the building is not of special interest, suggesting it should no longer be considered to be a listed building of special architectural or historic interest. It is my understanding that in 2009 the building had fallen into disrepair and that in September 2008 under local planning authority reference 2008/1572 conditional permission was granted for the conversion of the building and erection of a part one storey, part two storey rear extension, new roof extension to match 542 Kingsland Road and insertion of rooflights on the front and first floor level to create three self-contained flats. The appellant appears to be arguing that it would be difficult to list an old house which has been granted permission for such development. There is little evidence to back up this assertion.
6. The general principles for deciding whether or not a building is of special architectural or historic interest are set out in 'Principles of Selection for Listed Buildings'. Among other considerations, to be of architectural interest a building is to be of importance in its design, decoration or craftsmanship. Special interest may also apply to particularly significant examples of building types or techniques. For historic interest a building must illustrate important aspects of the nation's history and / or have closely substantiated associations with nationally important individuals, groups or events.
7. The Council considers that the building meets the listed building criteria and the LBEN was served in order to uphold the quality of the building. There is insufficient evidence before me to conclude that the building no longer meets the criteria for listed buildings and, furthermore, I am not aware that there was an application to de-list the building before the LBEN was served. The building is listed alongside adjacent properties and forms a pair with its immediate neighbour and therefore, it has significant group value, as well as being of individual merit, which weakens any case advanced to de-list it.
8. The arguments made on behalf of the appellant with respect to historic buildings experience, time and treasure taken to restore the property and comments regarding the Council employing an independent historic buildings consultant are of little consequence under ground (a). As such, I am unconvinced that the building is not of special interest or that the building should be de-listed. On that basis the appeal on ground (a) fails.

The appeal on ground (b)

9. An appeal on this ground should be made only on the basis that the matters alleged to constitute a contravention of section 9(1) or (2) of the PLBCAA have not occurred as a matter of fact. The appellant clearly states that UPVC windows were installed and therefore it does not make sense that an appeal on ground (b) has been advanced. Indeed, it is quite clear to me that UPVC windows have been installed at roof level, ground and first floors on the rear elevation.
10. Therefore, irrespective of the arguments advanced on behalf of the appellant with respect to compliance or otherwise with the approved permission, the appeal on ground (b) fails.

The appeal on ground (c)

11. The ground of appeal is that those matters (if they occurred) do not constitute such a contravention. I have noted that the appellant has not presented evidence to support his appeal on ground (c). An appeal on ground (c) can only succeed if either listed building consent has already been granted for the works or if they do not affect the special architectural or historic character of the building. The ground is not concerned with the merits of the case which would be argued under ground (e). If the character or appearance of the listed building has been affected (either positively or negatively) then, in this case, there has been a contravention of section 9 of the LBCAA and the appeal on ground (c) must fail.
12. Planning permission was granted in 2008 for development described as 'the conversion of the building and erection of a part one storey, part two storey rear extension, new roof extension to match 542 Kingsland Road and insertion of rooflights on the front and first floor level to create three self-contained flats'. The key question in this case is whether or not the UPVC windows on the rear elevation have affected the character or appearance of the listed building, as one of special architectural or historic interest.
13. I have seen the rear elevation of the property and consider that the UPVC windows have affected the character and appearance of the building. The significance of a heritage asset is the sum total of its heritage values and historic windows will usually be of such significance that every effort should be made to conserve them, as most historic windows will illustrate to varying degrees the materials, technology, craftsmanship and architectural style of the period in which the building was built.
14. The appellant argues that the windows are mainly obstructed from the public realm with the exception of some views from the rear elevation and that the UPVC windows are appropriate. Standard UPVC windows have been used and this approach is rather careless and undoubtedly affects the character and appearance of the listed building in terms of the windows themselves and the method of installation.
15. Therefore, in my judgement the new windows have significantly affected the character of the building. There is no listed building consent in place for the works and therefore, it follows that a contravention of the PLBCAA has occurred. Consequently, the appeal on ground (c) fails.

The appeal on ground (k)

16. The ground of appeal is that the steps required to be taken exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with. This ground can only be pleaded when the LBEN requires steps to comply with the terms and conditions of a prior listed building consent.
17. Firstly, the LBEN does not actually refer to the requirement to comply with the terms and conditions of a listed building consent, but rather a planning permission; and secondly, the evidence before me includes planning permission 2008/1572 and details submitted under reference 2009/2684 pursuant to conditions attached thereto. There are no details of listed building consent associated with the development approved by 2008/1572. Consequently, although I am not aware of any dispute between the main parties about whether or not listed building consent was granted, there is insufficient evidence before me to determine the appeal on ground (k).
18. Nonetheless, even if I assume that listed building consent was granted along the terms of the planning permission, the evidence before me including approved drawings, application details and the terms of the permission, it is clear that the development was approved on the basis of there being painted timber windows, rather than modern UPVC windows. Consequently, the appeal on ground (k) would fail in any case.

Formal Decision

19. I dismiss the appeal and uphold the listed building enforcement notice.

A A Phillips

INSPECTOR