



Appeal Decision

Site Visit made on 14 July 2021

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 September 2021

Appeal Ref: APP/X5990/Y/20/3261046

Flat 2, 92 Mount Street, London W1K 2SX

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to vary or discharge conditions of a listed building consent.
 - The appeal is made by Mr Lukas Rufin against the decision of City of Westminster Council.
 - The application Ref: 20/04664/LBC, dated 23 July 2020, sought to vary conditions Nos 1 and 4 of a listed building consent Ref: 17/10854/LBC granted on 1 February 2018.
 - The works proposed are, *Installation of replacement windows on the front and rear elevations at second floor level and internal alterations to Flat 2 at second floor level.*
 - The conditions in dispute are Nos 1 and 4 which state that: Condition 1- *The works hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter;* and Condition 4- *You must apply to us for approval of detailed drawings of the following parts of the development: 1. Chimneypieces (1:20) 2. New windows (1:20 and 1:5) You must not start any work on these parts of the development until we have approved what you have sent us. You must then carry out the work according to these detailed drawings. (C26DB).*
 - The reasons for the conditions are: Condition 1- *For the avoidance of doubt and in the interests of proper planning;* and Condition 4- *To protect the special architectural or historic interest of this building and to make sure the development contributes to the character and appearance of the Mayfair Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan (November 2016) and DES 1 and paras 10.108 to 10.146 of our Unitary Development Plan that we adopted in January 2007. (R27AC).*
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Decision

1. The appeal is dismissed.

Preliminary Matters, Background and Main Issue

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 2021 (the LP 2021) was formally adopted in March 2021; and a revised version of the National Planning Policy Framework (the revised 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 any responses received in my determination of the appeal and my decision is made in the context of the relevant policies and guidance within the WCP, the

LP 2021 and the revised Framework. I am satisfied that no parties' interests have been prejudiced by this approach.

4. The applicant is stated as Mr Lukas Ruflin but the appellant is stated as Mr Richard Pierce. Mr Pierce has confirmed that he had agreement to submit the appeal on Mr Ruflin's behalf and that the appeal should proceed in the name of Mr Ruflin.
5. The architectural features which are the subject of the appeal are referred to interchangeably in the evidence as chimneypieces and fireplaces. For consistency I have used the term chimneypieces throughout my reasoning.
6. On my site visit I observed that the chimneypieces at locations FP02 and FP03 indicated on drawing ref: 92MS/P561A to be restored, have been removed and replaced with new chimneypieces. The appellant confirmed that the removed features are currently stored in the building's basement and, as this area was not accessible at the time of my site visit, has submitted additional images to illustrate their condition and appearance. On site I noted that the new chimneypieces installed differ slightly in design to those illustrated in the submitted drawing ref: 92MS/P560. Specifically, there are differences between the position of the marble hearth in relation to the surrounding floor level and the design of the marble returns and shelf of the surround. For the avoidance of doubt, I have determined the appeal on the basis that the works have, in part, already occurred, having regard to the drawings submitted with the application.
7. An application for listed building consent was granted for works to the appeal property, subject to conditions¹. These included condition 1, which required the works permitted to be carried out in accordance with the approved drawings; and condition 4 (part 1) which required the submission of detailed drawings of the chimneypieces (1:20). Detailed drawings of the chimneypieces were subsequently approved by the Council on 19 June 2018². The approved drawings, refs: 92MS/P560 and 92MS/P561A, illustrate the retention and restoration of existing chimneypieces at locations FP02 and FP03; and the installation of new chimneypieces at locations FP01, FP04, FP05 and FP06.
8. The appeal proposal seeks to vary conditions 1 and 4. Namely to change the approved drawing ref: 92MS/P561A to ref: 92MS/P561B and for the existing chimneypieces at locations FP02 and FP03 to be removed and 'renewed' with new chimneypieces as shown on drawing ref: 92MS/P560.
9. The ability to attach a condition to seek adherence to approved plans applies to planning casework only through the Town and Country Planning Act 1990 and the ability to make a section 73 application for minor material amendments. There is no equivalent in the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), wherein consent is granted for specific works such that a fresh application should be sought for variations to the listed building consent.
10. Given the above, the parties have been given the opportunity to comment on the validity of the application and appeal in relation to the variation of

¹ Listed Building Consent Application Ref: 17/10854/LBC. Installation of replacement windows on the front and rear elevations at second floor level and internal alterations to Flat 2 at second floor level.

² Application Ref: 18/03354/ADLBC. Detailed drawings of chimneypieces pursuant to condition 4 (Part 1) of listed building consent dated 1 February 2018 (RN: 17/10854/LBC). Dwg Refs: Nos: 92MS/P560 and 92MS/P561A.

condition 1. The Council submits that it is allowable under the provisions of sections 16 and 17 of the Act to impose a drawing numbers condition on a listed building consent. The wording of sections 16 and 17 of the Act does not exclude the imposition of a plans condition. However, it still remains the case that the condition is not necessary as the requirement for the works to be carried out in accordance with the plans submitted is part of the formal decision.

11. Therefore, in determining the appeal, I have focused my considerations on the proposed variation of condition 4, having regard to the original consent, the approved detailed drawings and the proposed revised drawing. I am satisfied that no parties' interests have been prejudiced by this approach.
12. In the context of the above, the main issue is whether the consequences of varying condition No 4 in the way sought would preserve the Grade II listed building and any features of special architectural or historic interest that it possesses.

Reasons

Special interest and significance

13. The appeal site relates to Flat 2, 92 Mount Street (Flat 2), which is situated on the second floor of the Grade II listed building known as 87-102 Mount Street and 26-33 South Audley Street and is located within the Mayfair Conservation Area (the MCA). Dating from 1889-1895 by Albert J Bolton, the building is a grand terrace with a return to South Audley Street. It comprises three storeys with ornamented gables at fourth floor level and prominent terracotta chimney stacks. It is constructed of fine quality red brick and moulded terracotta with slate roofs, in an ornate Franco-Flemish Renaissance style.
14. From the evidence available to me, the special interest and significance of the listed building are largely derived from its historic and architectural interests. Its historic interest relates to its age; fine illustration of late-19th century purpose-built retail and residential architecture within the Grosvenor Estate redevelopment; and associations with architect Albert J Bolton. The building's architectural interest relates to its high-quality grandeur and pleasing aesthetic as well as the notable contribution it makes to the wider townscape.
15. Pertinent to the appeal, whilst the submitted information confirms that the interior of the building has undergone considerable change in the past, the legibility of the surviving elements of the building's original plan-form combined with the extant historic fabric and features of interest, make positive contributions to its special interest and significance.

The effects of the appeal proposal

16. Paragraph 199 of the revised Framework advises that when considering the impact of a proposed development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have clear and convincing justification.
17. There is no dispute between the parties that the chimneypieces to be 'renewed' at locations FP02 and FP03 are not original to the flat or the building and are

later replacements. From the evidence before me, I have no reason to reach a different conclusion. Nevertheless, no detailed explanation or evidence has been presented by the appellant which conclusively verifies that they are 'modern' replacements 'of around circa mid 1900s'³.

18. The submitted images confirm that the chimneypieces to be renewed are substantial features of a size and form befitting of their location within the main reception space in Flat 2. In addition, their material of white marble with grey veins and style in a broadly classical design with a deep mantelpiece, heavy scrolled console supports and a large hearth are in keeping with the building's late-19th century date.
19. For these reasons, I am not persuaded that the chimneypieces to be renewed are of no heritage merit and/or are inappropriate to the period and architectural detail of the building. Whilst their contribution to the special interest and significance of the listed building overall may be modest, their permanent loss rather than their retention and restoration would harmfully weaken the building's value as a designated heritage asset.
20. In coming to my decision I have given consideration to the appellant's comments and submitted images regarding the quality and condition of the chimneypieces to be renewed. Particularly the letter from the marble specialists which declares that 'the marble is of poor quality and there is cosmetic damage to both units. Significant cleaning and careful matching repair will be required to restore the finish'⁴.
21. Nonetheless, the evidence provided in these regards is limited. I am not satisfied that it adequately and robustly demonstrates that the chimneypieces to be renewed are beyond restoration. Furthermore, even though their poor condition may be attributed, in part, to their removal which was required as part of the installation of underfloor heating that was approved by the Council⁵, it does not justify their permanent loss.
22. Even if I were to accept the principle of the permanent removal and loss of the chimneypieces to be renewed, I am not convinced that the new chimneypieces are of an appropriate size and form to reflect the status of the room within which they are located. The new chimneypieces are modest in size relative to the reception space and minimalist in design relative to the architectural splendour of the building. As a result, whilst they are of a high quality material, they do not have the appropriate prominence and presence within this principal space and do not enable an appreciation of the hierarchy of rooms within the flat.
23. Moreover, notwithstanding the appellant's assertion that there is minimal information for the details of interior finishes or decorative treatments within No 92 (and also Nos 91 and 93), this approach is not in line with the Council's Supplementary Planning Guidance entitled 'Repairs and Alterations to Listed Buildings' adopted 1995 (SPG). The SPG states at paragraph 6.24 'If historic chimneypieces are removed or stolen from listed buildings the City Council will insist on their replacement with facsimile reproductions or suitable historic replacements of proven legitimate provenance.'

³ Letter from Urs Schmitt of Schmitt Natursteinwerk AG. Marble Specialists. Letter dated 18 November 2019.

⁴ Letter from Urs Schmitt of Schmitt Natursteinwerk AG. Marble Specialists. Letter dated 18 November 2019.

⁵ Application Ref: 18/05648/LBC.

24. I am aware that the new chimneypieces are of the same material, form and design as those approved by the Council at positions FP01, FP04, FP05 and FP06⁶. Nevertheless, the rooms / spaces within which those fireplaces are located are generally less significant in relation to the architectural hierarchy of rooms within the flat. As such, that decision is not directly comparable to the proposal before me and carries little weight in my determination of the appeal.
25. I acknowledge the appellant's desire for the appeal property to reflect their design tastes. Even though the flat's refurbishment, including the renewal of the chimneypieces, may be considered to be part of the continuation of the building's residential use, the appeal proposal would not conserve the heritage asset in a manner appropriate to its significance.
26. Drawing all of the above together, I find that the consequences of varying condition No 4 in the way sought would fail to preserve the Grade II listed building and any features of special architectural or historic interest that it possesses. In doing so, it would harm the significance of this designated heritage asset with no clear and convincing justification.

Public benefits and heritage balance

27. With reference to Paragraphs 201 and 202 of the revised Framework, in finding harm to the significance of designated heritage assets, the magnitude of that harm should be assessed. Given the limited extent and localised nature of the works, I find the harm to the listed building to be 'less than substantial' in this instance but, nevertheless, of considerable importance and weight. Under such circumstances, Paragraph 202 advises that this harm should be weighed against the public benefits of the proposal, which includes securing the optimum viable use of the building.
28. The appellant asserts that the works would not harm the significance of the listed building overall, and no public benefits have been cited that the identified harm could be weighed against.
29. Given the nature and scale of the works, it would be reasonable to say that any public benefit flowing to the general public at large from the renewal of the chimneypieces would be negligible. The works would principally be of private benefit to existing and future occupiers of the flat in providing a specific interior design aesthetic throughout the rooms.
30. Consequently, in attributing considerable importance and weight to the identified harm to the significance of the listed building, I find that there are no substantiated public benefits arising from the proposal which would outweigh that harm.
31. Given the above I conclude that, on balance, the consequences of varying condition No 4 in the way sought would fail to preserve the Grade II listed building and any features of special architectural or historic interest that it possesses. In doing so it would not satisfy the requirements of section 16(2) of the Act and paragraphs 197, 199 and 200 of the revised Framework.
32. 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

⁶ Application Ref: 18/03354/ADLBC.

applications. Nevertheless, I find that the proposal would not accord with Policy 39 of the WCP in so far as it requires works to listed buildings to preserve their special interest, relating sensitively to the period and architectural detail of the building and protecting or, where appropriate, restoring original or significant detail and historic fabric. In addition, it would not comply with the Council's SPG as referred to above. It would also conflict 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

33. The appeal property is located within the MCA. I have had regard to section 72(1) of the Act, which requires that special attention be given to the desirability of preserving or enhancing the character or appearance of the conservation area. The historic integrity, distinctive architectural opulence and well-preserved quality of the listed building, 87-102 Mount Street and 26-33 South Audley Street, contribute positively to the character and appearance of the MCA as a whole and thereby to its significance as a designated heritage asset.
34. Given the location, nature and limited extent of the works, the character and appearance of the MCA as a whole would be preserved and its significance as a designated heritage asset would not be harmed. I note that the Council raised no objection in this regard either. Nevertheless, an absence of harm in this respect weighs neutrally and does not amount to a consideration in support of the appeal or alter my conclusion on the main issue.
35. I note that the application which is the subject of this appeal included additional information to address the reason for refusal of a previous application for a similar proposal⁷. Nonetheless, I find that the submitted evidence is still lacking and does not clearly and convincingly justify the identified harm.
36. My attention has been drawn to works to Flat 1 and Flat 3, within 92 Mount Street that are stated to have been granted listed building consent and included non-original chimneypieces⁸. The appellant submits that these represent an inconsistent approach by the Council. However, I have not been provided with the full details of the works or the particular circumstances that led to them being accepted. As such, I am unable to draw any meaningful comparisons with the appeal before me in respect of the works or the approach of the Council. Consequently, they carry little weight in favour of the appeal. In any event, I have considered the appeal proposal on its own merits and found that it would cause harm as outlined above.
37. I note the appellant's comments regarding the alleged failure of the Council to carry out a site visit to inspect the remaining chimneypieces. However, of itself, this is not a matter for me to consider in the context of an appeal under section 20 of the Act.

Conclusion

38. For the reasons given above, I conclude that the works would fail to preserve the listed building and would harm its special interest and significance. There

⁷ Application Ref: 20/00676/LBC.

⁸ Application Refs: 11/09768/LBC and 10/03521/LBC.

are no other considerations or substantiated public benefits that would outweigh this harm. It would therefore fail to satisfy the requirements of the Act, the revised Framework and development plan policies in so far as they are relevant. Accordingly, the appeal is dismissed.

F Cullen

INSPECTOR