



Appeal Decision

Hearing held on 6 July 2021

Site visit made on 7 July 2021

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04th October 2021

Appeal Ref: APP/N5090/F/20/3265178

Land at 13 Golders Way, London, NW11 8JY

- 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 Act").
- The appeal is made by Mr J Hayeem against a listed building enforcement notice issued by the Council of the London Borough of Barnet.
- The listed building enforcement notice was issued on 12 November 2020.
- The contravention of listed building control alleged in Schedule 2 of the notice is: The carrying out of the internal and external operations/building works not in accordance with the terms of listed building consent, reference F/01483/11. The principal variations from the approved plan being:
 1. On the first-floor rear flat:
 - A) Installation of additional bathrooms and kitchens. (The approximate position as marked 1 in the attached plan)
 - B) The removal of extensive portions of the original wall between the consented living room and bedroom (the approximate position as marked '2' in the attached plan)
 2. On the second-floor rear flat:
 - A) Installation of additional bathrooms and kitchens (the approximate position as marked '3' in the attached plan)
 - B) The removal of extensive portions of the original wall between the consented living room and bedroom (the approximate position as marked '4' in the attached plan)
 3. Flats in Loft: The establishment of 2no flats as a result of:
 - A) The relocation of the consented bathroom within the front portion of the building (the approximate position as marked '5' in the attached plan)
 - B) The Installation of a new kitchen and bathroom to the rear of the building (the approximate position as marked '6' in the attached plan)
 4. The installation of UPVC windows at first, second and third floors (the approximate position as marked '7' in the attached plan)
 5. The installation of a fire alarm system and associated wiring throughout the internal building with exposed red coloured wiring tacked to walls and ceilings.
- The requirements in Schedule 3 of the notice are:
 1. Reinstate the building to the state that it was prior to the breach, in line with drawing numbers: SK.01, SV.01A, SV.02, SV.03, SV.04, SV.05, SV.06, GA.01 A, GA.02 A, GA.03 A, GA.04 A, GA.05 A, GA.06 A of the Listed Building Consent approved for this building in application reference F/01483/11, dated 20th May 2011. Included, but not limited to the following:
 - A) The removal of any kitchen units, work surfaces, splashbacks sinks and fitted cookers from rooms other than shown as kitchens on the approved plans
 - B) The removal of all toilets, baths, showers and shower cubicles and handwash basins other than from rooms marked as 'bathroom' on the approved plans
 - C) The making good of any damage to walls and ceilings resulting from the installation or removal of the bathroom and kitchen fittings and fixtures.

2. Reinstate the lost walls(marked in the approximate locations '2' and '4' in the attached plans) to meet the original specifications, replace lost cornicing and skirting boards and make good.
 3. Replace all UPVC windows with single glazed timber mullioned casement windows to match the original glazing, as present at 18 Golders Way.
 4. Remove all fire alarm boxes and associated wiring. All original features affected by its installation; to be rendered back to its original state prior to the breach of the above approved plans
- The period for compliance with the requirements is 8 months.
 - The appeal was made on the grounds set out in section 39(1)(e) and (h) of the LBCAA.

Summary of Decision: The listed building enforcement notice is found to be invalid and is quashed.

Applications for Costs

1. At the Hearing applications for costs were made by the appellant against the Council of the London Borough of Barnet, and by the Council against the appellant. The parties agreed to make their costs submissions in writing within a set timetable after the Hearing closed. These costs applications are the subject of separate Decisions.

Background

2. The Grade II listed building Cheapside, Golders Way, including No. 13 Golders Way, lies within the Golders Green Town Centre Conservation Area. It was constructed around 1911 as a three storey parade of commercial properties at ground floor (10 to 90) facing onto Golders Green Road, with residential flats occupying the upper floors accessed from Golders Way.
3. Listed building consent (F/01483/11) was granted in 2011 for the conversion of the then existing 2 flats into 4 flats. These comprised a duplex flat to the front first/second floor, a flat to first floor rear, a flat to the second floor rear, and a flat within the roof space (loft). Attached to the consent were a series of approved drawings showing the existing 2 flats layout (the SK plans) and the consented layout for 4 flats (the GA plans).
4. The appellant's undisputed evidence is that rather than the consented 4 flat scheme he instead converted the interior of the building into 8 flats, comprising 3 flats (front, middle and rear) on each of the first and second floors, and 2 flats (one to the front, one to the rear) in the loft. This is the layout I saw during my visit to the appeal site and that existed when the listed building enforcement notice was issued.

The Listed Building Enforcement Notice

5. Section 38(2) of the Act requires a notice to: *"specify the alleged contravention and require such steps as may be specified in the notice to be taken (a) for restoring the building to its former state; or (b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent; or (c) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with".*

6. It is important that a notice should be clear in its purpose with regard to s38(2), not least because some of the grounds of appeal are dependent upon whether the notice was issued pursuant to (a), (b), or (c) within s38(2). Hence, grounds (g) and (i) relate only to when restoration is required under s38(2)(a), ground (j) relates only to alleviation requirements under s38(2)(b), and ground (k) relates only to requirements for non-compliance with the terms and conditions of a listed building consent. Consequently, the relevant grounds of appeal and supporting arguments that may be available to an appellant will be unclear if a notice is unclear in specifying the contravention and the steps to be taken with regard to s38(2)(a) to (c).
7. Where a notice is unclear in specifying the alleged contravention, and/or the steps to be taken for the purposes of s38(2)(a) to (c) I can correct the notice using powers transferred to me provided that such corrections would not result in injustice to the parties.
8. The notice does not specify whether the purpose of the steps to be taken are pursuant to (a), (b) or (c) within s38(2). The notice allegation, together with its attached annotated plans (GA01, GA02 and GA03) showing the consented 4 flat layout, indicate a contravention of the terms and plans of listed building consent F/01483/11, indicative of s38(2)(c). However, somewhat ambiguously, the steps to be taken in Schedule 3 of the notice refer to reinstating the - building to its former state; indicative of s38(2)(a). Further confusion arises in that "reinstatement" works in the notice¹ refer not only to the consented layout for 4 flats (the annotated GA drawings attached to the notice) but also to the former layout of 2 flats (the SK drawings, not attached to the notice).
9. Additionally, the annotated numbers (1) to (7) on the notice plans are intended to identify the locations of various elements of the allegation and of some of the steps to be taken in Schedules 2 and 3 of the notice respectively. However, there are some significant contradictions between the wording of the notice and the annotated plans. The allegation at 1A and 1B of the notice refers to unauthorised works in the "first-floor **rear** flat". This is contradicted by the notice plans, annotated Nos. (1) and (2), which indicate that some of the works, are located in the first floor **front** flat. Similarly, the works alleged at 2A of the notice are specified as having occurred in the "second-floor **rear** flat" but are shown as located in the second floor **front** flat on the notice plan. Ambiguity between front and rear also exists with regard to works in the loft (annotated Nos. 5 and 6). More confusion in understanding the notice arises in respect of the alleged installation of UPVC windows at first, second and third floors in positions shown marked (7) on the notice plans. However, none are shown marked at third floor on the notice plans². Also, although the annotated plans and the requirements in Schedule 3 of the notice related to unauthorised works and requirements throughout the whole of the building, the alleged contraventions in Schedule 2 of the notice refer specifically only to *rear flats*, or *flats in the loft*.
10. As such, I expressed my concerns at the start of the Hearing that occupiers of the front flats on first and second floors would not have understood the notice requirements to affect their interests, and who might otherwise have appealed against the notice. Furthermore, as evident at the site visit, the three flats on first and second floors are in a front to rear linear layout. Hence, those

¹ Third Schedule, section 1.

² It became clear at the site visit that no UPVC windows have been installed in the building.

occupiers in the middle flats are also equally likely to have been unaware or confused given the singular reference to *rear flats*. All of these contradictions and ambiguities taken together result in the notice being imprecise, confused, and highly ambiguous.

11. I wrote to the parties shortly before the Hearing outlining some of my concerns over the validity of the notice and that I would seek their views. In response to my concerns the Council accepted that the notice as drafted was invalid, but that it could be corrected.
12. The Council suggested that the notice could be left to refer to "rear flats" only, and corrected by either: deleting reference to the GA plans (4 flats scheme) or alternatively; by substituting "either/or" requirements such that compliance would be required with either the 2 flat original layout, or with the consented 4 flat layout. However, it is unclear to me how the proposed revisions to the requirements, if limited solely to within the currently existing rear flats, would achieve anything similar to the building's original 2 flat layout or the 2011 4 flat layout. Conversely, any remedial works beyond the existing rear flats, would be prejudicial to the interests of occupiers of those other flats for the reasons I have set out previously.
13. It was argued on behalf of the appellant that such a substantially revised notice would require a detailed re-evaluation of the submitted grounds of appeal in the context of particular works and the purpose of the notice requirements. Having regard to everything I have seen and heard I accept that would be the case. As such, there could potentially arise new arguments under appeal grounds (c) and (g), (j) or (k). Also, or alternatively, the limited scope of the proposed revised requirements, to currently existing rear flats only, would raise the issue of whether such requirements would serve the purpose of restoring the *character* of the building to its former state and hence potentially a ground (i) appeal. In this regard the Council's proposed revisions could potentially prejudice their own case. The appellant's consultants at the Hearing stated they were unprepared to effectively argue their case on the basis of the proposed revisions and I concur with that view.
14. Having regard to all of the parties' written and verbal submissions I come to the overall conclusion that the appellant would be unacceptably disadvantaged by the Council's proposed revisions to the notice. As such, the notice is incapable of being corrected without injustice.

Formal Decision

15. The listed building enforcement notice is found to be invalid and is quashed.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Grant Leggett	Director, Head of Boyer Planning
Sean Breslin	Senior Planner, Boyer Planning
Dr Jonathan Edis	Director of Heritage Collective UK
Mr Hayeem	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jim Tottle-Nugent	Planning Compliance Enforcement Officer
James Evans	Senior Planning Officer
James Gould	Senior Planning Enforcement Officer