



Appeal Decision

Site visit made on 19 October 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2021

Appeal Ref: APP/N5660/F/21/3270215

Land at 209 Clapham Road, London SW9 0QH

- 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 Mushtaq Ahmed Spaul on behalf of A & M Property Construction Services Ltd against a listed building enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice was issued on 18 December 2020.
 - The contravention of listed building control alleged in the notice is: Without Listed Building Consent:
 - a) The erection of a single storey timber clad infill extension at the rear of the premises ('the unauthorised rear extension'); and
 - b) The removal of the front boundary brick wall and railings and the erection of timber posts/gates across the front boundary of the forecourt ('the unauthorised wooden posts/gates'); and
 - c) The attachment of wooden panels to either side of the front entrance porch ('the unauthorised wooden porch panels'); and
 - d) The attachment of wooden posts with opaque plastic panels to the front/side (southern) existing brick boundary wall ('the unauthorised boundary fence').
 - The requirements of the notice are:
 - a) Remove the unauthorised rear extension from the premises and reinstate the rear elevation as existed prior to the breach of planning control; and
 - b) Remove the unauthorised post/gates from the premises and reinstate the front boundary brick wall with metal gate/railings as existed prior to the breach of planning control; and
 - c) Remove the unauthorised wooden porch panels from the premises; and
 - d) Remove the unauthorised boundary fence from the premises; and
 - e) Make good any damage (with materials to match existing) to the building as a result of compliance with the above requirements, and remove any resultant waste, rubble or debris from the premises.
 - The period for compliance with the requirements is six months
 - The appeal is made on the grounds set out in section 39(1) (c) and (d) 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.

Procedural Matter

2. It was clear from observations on my site visit that the unauthorised rear extension has been cement rendered and painted white since the notice was issued. In addition, the unauthorised wooden posts/gates across the front

boundary have been removed and a front boundary wall with metal gates and railings have been erected. However, these recent works are not for my consideration in this appeal. I have therefore confined my considerations to the works alleged in the notice which are clearly evidenced in photographs included in Appendix 1 of the Council's Statement of Case.

Appeal on ground (c)

3. To be successful on this ground of appeal it must be successfully argued that the works carried out, as alleged in paragraph 3 of the notice, do not constitute a contravention of sections 7 and 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the Act). Section 7 of the Act states that '*Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest unless the works are authorised*'. Section 8 sets out when works to a listed building are authorised.
4. The appellant claims that the rear extension was in place before he purchased the property in 2017 and at that time there was no front brick wall to secure the property. However, there does not appear to be any dispute that a wall previously existed or that the works the subject of the notice were carried out without any application being made for listed building consent (LBC). There is no time limit on listed building contraventions and the current owner of a property is responsible for its state at the time it was purchased. The question is therefore whether the works have affected the character of the listed building, as one of special architectural or historic interest. This is irrespective of whether the works are considered to be harmful to the building.

Rear extension

5. The extension is single storey, at the rear of the property and has infilled the space between a two-storey rear outrigger and the wall of the neighbouring property, No 207. This addition changes the footprint of the building and alters the way in which the rear elevation of the building was originally designed. Irrespective of its materials of construction, the extension has affected the character of the building.

Front boundary wall, wooden posts/gates, post and plastic panels

6. The appeal property and adjoining property No 207, are included on the list of buildings of special architectural merit for their group value. Prior to the removal of the brick boundary wall there was a visually cohesive treatment to the means of enclosure of these two properties. From the evidence before me, including my observations on my site visit, the alterations to the boundary treatment at No 209, including the wooden posts and Perspex panels that have been affixed to the side wall significantly changed the appearance of the front of the property and affected the character of the building as a building of special architectural and historic interest.

Wooden panels to front door surround

7. Plywood has been affixed to the front door surround and obscures the doorway's original panelled pilasters which are an important component of its original design. The pilasters are detailed in the list description of the property,

and they contribute to the special interest of the building. Consequently, the plywood installation significantly alters the character of the building.

8. For the reasons given above, the unauthorised works affect the character of the building. There is no LBC in place for these works, and it follows, therefore, that a contravention of the Act has occurred. The appeal on ground (c) fails.

Appeal on ground (d)

9. The ground of appeal addresses situations where essential and urgent works were needed to preserve the listed building. The emphasis is on the words 'essential' and 'urgent' and the 'need to preserve'. This ground of appeal comprises three tests. The first test is whether the works were urgently necessary in the interests of safety or health; the second test is that it was not practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support and the third test is that the works carried out were the minimum measures immediately necessary to achieve the aims of safety, health or preservation. For an appeal to succeed on ground (d), all three tests must be met, and the onus is on an appellant to conclusively show that this is the case.
10. Under this ground it is stated that the wooden gates were temporary fixtures to secure the property and to facilitate drainage works undertaken by Thames Water. However, third party evidence suggests that the boundary wall was removed in 2004 and I have not been provided with any evidence that would demonstrate that its removal was necessary in the interests of health and safety. Furthermore, whilst works to repair a drain are a relevant health and safety issue, the Council's photographs show that the wooden gates were in place in September 2020. From the evidence before me it was October 2020 when Thames Water gave the appellant notice of their intention to carryout works¹. Moreover, the removal of the boundary wall and installation of wooden gates have not preserved the building.
11. The appellant also states that the wood on either side of the entrance door was rotten and expired its service life. There was therefore no alternative than to fix the wooden panels on either side. However, although it may be that the pilasters required some element of repair, no evidence has been put forward to indicate that the works were so urgently required to be carried out in the manner undertaken, which has not preserved the building.
12. For the reasons given above, the works undertaken to demolish the front boundary wall, the erection of wooden posts/gates and installation of plywood panels to the front entrance doorway, fail all of the three tests and must also fail on ground (d).

Overall Conclusion

13. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the listed building enforcement notice.

Elizabeth Pleasant

INSPECTOR

¹ Exhibit AM7, Appellant's Grounds of Appeal.