



Appeal Decisions

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: 26 November 2021

Appeal A Ref: APP/K5600/W/19/3244009

56 Egerton Crescent, London SW3 2ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr J Ratcliffe against the decision of the Royal Borough of Kensington and Chelsea.
 - The application Ref: PP/19/05529, dated 6 August 2019, was refused by notice dated 3 December 2019.
 - The development proposed is reconstruction of rear mansard and insertion of dormer window; elevational alterations including replacement windows and internal alterations.
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Appeal B Ref: APP/K5600/Y/19/3244010

56 Egerton Crescent, London SW3 2ED

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr J Ratcliffe against the decision of the Royal Borough of Kensington and Chelsea.
 - The application Ref: LB/19/05530, dated 6 August 2019, was refused by notice dated 3 December 2019.
 - The works proposed are reconstruction of rear mansard and insertion of dormer window; elevational alterations including replacement windows and internal alterations.
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Decisions

1. **Appeal A** is dismissed.
2. **Appeal B** is dismissed.

Preliminary Matters

3. The two appeals concern the same scheme under different, complementary legislation. I have dealt with both appeals together in my reasoning.
4. Following the determination of the applications and during the course of the appeals, the London Plan was formally adopted in March 2021 and a revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. The LP 2021 replaces the London Plan 2016 and the revised Framework replaces the 2019 version. The main parties have been given the opportunity to comment on the implications of these changes for the appeals. I have had regard to any responses received in my determination of the appeals and my decisions are made in the context of the LP 2021 and the revised Framework.
5. During the determination of the applications, the appellant submitted revised plans with the aim of addressing some of the Council's concerns regarding the proposal. Interested parties were not consulted on the revised plans and they

were not taken into account by the Council in the determination of the applications. However, the revised plans have been submitted as part of the appeals.

6. The changes to the scheme include the omission of the dormer window, the insertion of a rooflight above the stairwell and amendments to the detail of internal features to be reinstated within the property. The Council has commented on the revised plans in its statement of case. I have had regard to the Wheatcroft Principles¹, the fairly limited extent and nature of the amendments and that the Council and interested parties have had an opportunity to comment on the revised plans as part of the appeals. In these regards, I am satisfied that accepting the revised plans would not deprive those who should have been consulted on the changed development and works of the opportunity of such consultation. I have therefore taken the revised plans into account in my determination of the appeals.
7. The description of development and works set out above is taken from the application form. However, the description used in the Council's decision notices and the appellant's appeal forms is 'reconstruction of rear mansard; removal of top section of closet wing and insertion of dormer window; replacement of windows and doors at front and rear elevations; internal alterations including the installation of lift in closet wing from lower ground floor to second floor level. With the exception of the 'insertion of dormer window' this description is a more accurate representation of the proposal and I have considered the appeals on this basis. I am satisfied that no parties' interests have been prejudiced by this approach.
8. The appeals relate to a Grade II listed building which is located within the Thurloe Estate and Smith's Charity Conservation Area (the CA). The Council considers that the proposal is largely acceptable, subject to the submission of additional detail. The disputed elements of the scheme are the installation of a lift in the closet wing and the removal of the top section of the closet wing, which is reflected in the Council's decision notices and reason for refusal for both applications.
9. I have had regard to the statutory duties under sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). From the evidence before me and my observations on site, I find no reason to disagree with the Council's view that, excluding the disputed elements and subject to the submission of further details which could be secured by appropriately worded conditions, the proposal would preserve the special interest of the Grade II listed building. In addition, given the extent and nature of the proposed development and works, the proposal overall would preserve the character and appearance of the CA as a whole. I have therefore focused my considerations of the appeals on the effects of the installation of a lift in the closet wing and the removal of the top section of the closet wing on the special interest of the Grade II listed building.

Main Issue

10. In the context of the above, the main issue is whether the proposal would preserve the special architectural and historic interest of the Grade II listed building, Nos 55-59 Egerton Crescent.

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37].

Reasons

Special interest and significance

11. Nos 26-59 (consecutive) Egerton Crescent consists of a curved centre and two detached wings which is located in the CA. The appeals property, No 56 Egerton Crescent (No 56), is a mid-terraced dwelling within the east wing comprising Nos 55-59 Egerton Crescent (consecutive) (Nos 55-59) which is Grade II listed.
12. Dating from circa 1830 and probably by George Basevi, Nos 55-59 form a classical terrace of five, two windows wide, three-storey with basement dwellings which possess generous front gardens. The terrace is constructed of brick with a white stuccoed front, exposed brick rear and a slate roof.
13. The front of Nos 55-59 have largely maintained an aesthetically pleasing grandeur. However, it is evident that the building's rear elevation has changed over time. Furthermore, No 56 as a component of the terrace has been greatly altered internally with little historic fabric remaining. At present, the building is vacant and uninhabitable, stated to be the result of the commencement of a previous planning permission and listed building consent which was subsequently abandoned, as well as the undertaking of unlawful development and works.
14. From the evidence before me, the special interest and significance of the listed building are largely derived from its historic and architectural interests. Its historic interest primarily results from its age and illustration of mid-19th century domestic architecture. While its architectural interest mainly stems from the attractive form and design of its classical frontage, as well as the contribution it makes to the harmonious composition of the wider townscape, emphasising its value as an integral element of a group of listed buildings.
15. Whilst the building has undergone alterations in the past, its special interest and significance in so far as it relates to the appeals, is largely associated with its historic and architectural integrity, to which its surviving historic fabric, legibility of its historic plan form and the formal hierarchy between its floors, rooms and spaces all contribute.

Effects of the appeals proposal

16. The existing closet wing extends the full height of the rear elevation of the building, terminating with a mono-pitch roof which abuts the main mansard roof. Internally, the closet wing possesses no historic floor joists, floors or finishes and there are no partitions between it and the principal staircase. However, I am mindful that this may be due, in part, to previous unlawful development and works.
17. The proposed passenger lift within the closet wing would serve the lower ground floor, the ground floor and the half landings to the first and second floors. With the exception of the second floor, four panel timber doors with a timber architrave to match those proposed elsewhere in the property would be installed within the reveal of the partition between the staircase and the closet wing. Additionally, obscure glazing would be installed in the closet wing's windows.

18. The insertion of a lift in this location would be a significant intervention into and overtly modern use of an important historic element and architectural feature of the building. It would adversely disrupt the relationship between the primacy of the host building, including its staircase as the principal route of vertical circulation, and the secondary closet wing. In doing so, it would diminish the legibility of the building's historic plan form and weaken its identified heritage interests.
19. Due to the use of obscure glazing, this change would not be excessively conspicuous when viewed from adjacent properties or the public route of Egerton Terrace. However, it would be readily perceived when inside the building, particularly at second floor level where the lift shaft doors would be exposed. In any event, listed buildings are safeguarded for their inherent architectural and historic interest irrespective of whether changes to them are externally apparent.
20. Notwithstanding that the proposal has been carefully considered and sensitively designed to minimise any harmful effects on the building's significance, the appellant's justification for this element of the proposal does not robustly substantiate the 'fundamental need' for a lift within the property, particularly as proposed.
21. I acknowledge that the lift would go some way to improving accessibility within the property. However, given that it would open out onto half landing levels at first and second floor, it would not provide for a 'life-time home'. In addition, the exit direct onto stair winders at second floor level would not be ideal. These factors severely weaken the justification for development and works which would be harmful to the historic and architectural integrity of the building.
22. The submitted evidence confirms that the lift's insertion would have no structural implications for No 56 or any neighbouring properties; would not require the adaptation of the principal staircase; and would not involve the loss of historic fabric. However, these are not sufficient to overcome the central objection to the principle of a lift as proposed within the building.
23. The proposal, as shown on the revised plans, includes the removal of the top section of the closet wing; the termination of what remains of the closet wing with a flat roof; the incorporation of a new slated sloping roof to match the adjacent on the main roof; the insertion of a new window; and the addition of a new rooflight above the stairwell.
24. The parties disagree as to the age and significance of the upper part of the closet wing. A drawing submitted by the appellant obtained from the Council's archives indicates that it dates from post 1984. In contrast, an aerial photograph submitted by the Council dating from 1946 illustrates what appears to be a full height closet wing with a sloping roof. Having regard to the submitted evidence and my observations on site, whilst the roof material and rooflight of the monopitch may be contemporary, I am not persuaded that this section of the closet wing is as recent as the appellant contends. Although it may not be original it would appear to be of some age and of merit in evidencing the development of the building.
25. Rather than improve the visual appearance of the building, the removal of the upper section of the closet wing and associated changes to the position and appearance of the window opening at this level, would result in an irreversible

loss of historic fabric and an uncomfortable juxtaposition of the fenestration within the closet wing. This would detrimentally change the building's narrative and harmfully erode its special interest.

26. Furthermore, internally, the development and works would adversely alter the link between the main house and the closet wing at this level, further undermining the legibility of the building's historic plan form. In addition, even though the proposed rooflight would be modest in size and not unduly prominent on the building or in the townscape, its position in such an untraditional location would further change how this principal route and space in the house is experienced and understood.
27. I recognise that houses are for living in and that the needs of occupiers will change. I am also aware of the Framework's support for the adaptation of homes to meet these changing requirements. Nonetheless, as designated heritage assets, listed buildings are an irreplaceable resource and the Framework is clear that they should be conserved in a manner appropriate to their significance, which I have found not to be the case with the appeals before me.
28. Drawing all of the above together, the installation of a lift in the closet wing and the removal of the top section of the closet wing would fail to preserve the special architectural and historic interest of the Grade II listed building, Nos 55-59 Egerton Crescent and would harm its significance as a designated heritage asset.

Public benefits and balance

29. Paragraph 199 of the 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 the alteration or destruction of the heritage asset or development within its setting and that this should have clear and convincing justification.
30. With reference to Paragraphs 201 and 202 of the Framework, in finding harm to the significance of designated heritage assets, the magnitude of that harm should be assessed. Given the fairly localised nature of the development and works relative to the building as a whole, I find the harm to the heritage asset to be 'less than substantial'. However, this should not be equated with a less than substantial planning objection and is of considerable importance and weight. Under such circumstances, Paragraph 202 advises that this harm should be weighed against the public benefits of the proposal.
31. In undertaking this balance, I have had regard to the Kay Judgement² cited by the appellant which concluded that improvements to the architectural and historic interest of a building as a result of some of the elements of a proposal should be recognised as public benefits and placed in the overall planning balance.
32. Mindful of what is stated to constitute a public benefit within the Planning Practice Guidance³, there are aspects of the scheme that would undoubtedly be positive and of public benefit. Heritage benefits would accrue from the removal

² Kay v Secretary of State for Communities and Local Government. Case no. CO/16/2020.

³ Planning Practice Guidance Paragraph: 020 Reference ID: 18a-020-20190723.

of harmful features; the reinstatement of lost partitions and period features; the general repair and restoration of the building; and the property's long-term use as a single family dwelling. These would, of themselves, sustain and enhance the listed building and preserve the character and appearance of the CA in which it sits and contribute to their long-term conservation. There would be some economic benefits brought about through the investment into the property and the construction phase. Also, social benefits would be gained through improvements to the local housing stock.

33. Together these outcomes would facilitate the delivery of the main objectives of the planning system as outlined in the Framework and, whilst much of the improvements would not be accessible to the general public, they would represent benefits to the public at large.
34. Nevertheless, it is apparent that some of the development and works which have caused the building to be in, what is described by the appellant to be a derelict state, are unlawful. The Framework is clear that where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision⁴. This considerably reduces the weight I can attach to these public benefits and combined with the limited scale of the proposal, results in them carrying moderate weight in favour of the appeals.
35. Furthermore, a lack of harm arising from the proposal in respect of the character and appearance of the CA weighs neutrally and does not amount to a consideration in support of the appeals.
36. In weighing the identified harm against the public benefits I am also cognisant that the provision of a lift would be exclusively of private benefit to any future occupiers and whilst the intension is to create a life-time home, this would not be fully achieved with the lift as proposed.
37. From the evidence before me, I am not persuaded that the installation of a lift in the closet wing and the removal of the top section of the closet wing, are fundamentally necessary to facilitate the building's use as a single family home in line with contemporary living standards. Nor am I convinced that the only way of securing the benefits outlined above to ensure the building's long term conservation would be via the particular development and works proposed.
38. The proposal would provide for the long-term use of a currently vacant and dilapidated heritage asset. However, no substantive evidence has been presented which verifies that the optimum viable use of the property as a single family dwelling would be jeopardised or would cease, or that its conservation as a designated heritage asset would be at risk, if the appeals were to fail and the proposal as submitted, particularly the incorporation of the contested elements, was not implemented.
39. As such, clear and convincing justification has not been provided for the development and works which would compromise the building's conservation to an unacceptable degree and would not conserve it in a manner appropriate to its significance.

⁴ Paragraph 196 of the Framework.

40. Whilst I give moderate weight to the recognised public benefits, these are not sufficient to outweigh the considerable importance and weight I attach to the identified harm to the significance of the designated heritage asset.
41. Accordingly, I conclude that the proposal would fail to preserve the special architectural and historic interest of the Grade II listed building, Nos 55-59 Egerton Crescent. As such, the proposal would be contrary to the requirements of sections 16(2) and 66(1) of the Act and paragraphs 197, 199 and 200 of the Framework.
42. The proposal would also not accord with Policy CL4 of the Royal Borough of Kensington and Chelsea Local Plan, 2019 which seeks to protect the heritage significance of listed buildings. As a result, the proposal would not be in accordance with the development plan.

Other Matter

43. The appellant cites contradictions within the Council's comments; the failure of the Council to have full regard to the public benefits associated with the development and works; and the failure of the Council to carry out an appropriate balancing exercise to consider these benefits against any identified harm. However, these matters, of themselves, are not ones for me to consider in the context of the appeals before me.

Conclusions

44. The proposed development would conflict with the development plan. There are no material considerations which indicate that the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that **Appeal A** should be dismissed.
45. For the reasons given, I conclude that **Appeal B** should be dismissed.

F Cullen

INSPECTOR