



Appeal Decision

Site visit made on 1 February 2022

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 15 February 2022

Appeal Ref: APP/N4720/F/21/3281968

22 High Street, Wetherby LS22 6LT

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Mark Ward of Halliwell Ward Developments Ltd against a listed building enforcement notice issued by Leeds City Council.
- The enforcement notice was issued on 2 August 2021.
- The contravention of listed building control alleged in the notice is without listed building consent, the carrying out of works resulting in alterations to the external appearance and internal layout of the building which do not accord with and are materially different to the alterations granted consent under application reference 19/03106/LI for listed building consent for conversion of ground floor into retail space (Class A1) and first and second floor into apartments (Class C3), dated 20 September 2019.
- The requirements of the notice are:
 - 1.1 Cease the use of the first and second floor apartments.
 - External
 - 2.1 Remove the balcony area formed with unauthorised orange stained timber balustrading, which is larger than approved and highly visible from High Street and Victoria Street AND reinstate to what existed prior to the unauthorised development taking place.
 - 2.2 Remove the unauthorised stone cladding, fascia and rainwater goods to the bin store/wc area.
 - 2.3 Remove the unauthorised decking area including decked steps and seating to raised terrace area.
 - 2.4 Courtyard stair lobby area – alteration/demolition of original walling and window openings, including loss of original stone voussoir heads and stone cills that have been replaced with unauthorised new walling and harmful new window heads created by scoring lines into cement, wider than the window openings. All unauthorised works should be carefully removed and reinstatement repairs to walls and window openings to match that which existed prior to be conducted by a suitably qualified stonemason used to working with historic stonework.
 - 2.5 The repointing and stone repairs to all elevations in unacceptable, these require careful removal and reinstatement repairs to be conducted by a suitably qualified stonemason used to working with historic stonework.
 - 2.6 Remove all unauthorised new external doors and replace with that which existed prior, which includes entrance door to courtyard, cycle store door, bin store/wc doors/s, and door to raised terrace area.
 - 2.7 Carefully remove all unauthorised new cement features to all elevations including voussoir window heads, lintels, jambs and cills and reinstatement repairs to that which existed prior, to be conducted by a suitably qualified stonemason used to working with historic stonework.
 - 2.8 Reinstate the chimney to that which existed prior.
 - 2.9 Reinstate roof area to that which existed prior, which includes the removal of unauthorised stonework and cement work scored to appear as stone, including cement heads and cills to windows.
 - 2.10 Remove all unauthorised plastic rainwater goods.

2.11 Remove all unauthorised new courtyard surfaces.

2.12 Remove the unauthorised signage to High Street and Victoria Street elevations.

2.13 Reinstate the historic iron sheep/pig pen hooks relating to the historic Cattle Market.

2.14 Remove the various new unauthorised lighting features to elevations, including removing the large lantern feature that was formerly above the High Street front door and has been installed to the courtyard stair lobby entrance.

2.15 Remove the unauthorised window to Apartment 4.

Internal

2.16 Reinstate the floor layout including staircases, fireplaces and cornicing to that which existed previously – the apartments as built floor layouts do not match approved layouts and raise significant concerns regarding what existing special historical architectural features have been lost.

2.17 Remove all the suspended ceilings installed contrary to the approved plans.

2.18 Reinstate all the historic stairs between all floors, including the original significant Georgian balustrade and balusters that existed between the first and second floors.

2.19 Reinstate the identified existing historic door and replace all the unauthorised internal doors to that existed prior.

- The period for compliance with the requirements is Step 1-28 days, Step 2-six months.
- The appeal is made on the grounds set out in section 39(1)(b), (d), (e), (h) and (k) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the listed building enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

The ground (b) appeal

1. The listed building enforcement notice (LBEN) details the matters alleged as “the carrying out of works resulting in alterations to the external appearance and internal layout of the building which do not accord with and are materially different to the alterations granted consent under application reference 19/03106/LI for listed building consent for conversion of ground floor into retail space (Class A1) and first and second floor into apartments (Class C3)”. In order to succeed on the ground (b) appeal, the appellant must show on the balance of probability that these matters, as alleged, have not occurred as a matter of fact.
2. The appellant accepts that there are deviations from the approved plans but says some of the matters listed in the requirements have not taken place. This includes the external doors, most of which have been retained and painted. It is also argued that no historic stairs have been removed. However, it is the allegation that it critical in this ground of appeal, not the requirements. It is clear from the appellant’s own evidence, and from what I saw on site, that the matters alleged in the allegation have occurred as a matter of fact. Therefore, the appeal on ground (b) must fail.

The ground (d) appeal

3. The ground (d) appeal is that the removal of the chimney stack was urgently necessary in the interests of safety and for the preservation of the building. It is explained that the chimney was not in an operable state as the corresponding chimney breast had been removed. Consequently, the stack was unsupported, there was evidence of movement and an immediate risk. Temporary works or supports would not have been effective as the problem had to be dealt with on a permanent basis. No method of repair was available due to the scale of the works required.

4. The evidence to support the appellant's arguments is limited. For example, there are no photographs showing evidence of movement and damage, no structural survey by a suitably qualified person and no details of any options considered short of demolition and removal. It is not explained fully why it would have been impractical to carry out repairs or to provide temporary support while discussions were held with the Council. This would have been the best course of action since there had already been dialogue with the Council over the planning and listed building consent applications.
5. I conclude, as a matter of fact and degree, that it has not been shown that the work of demolishing the chimney stack was urgently necessary in the interests of safety or health or for the preservation of the building nor that it would have been impractical to carry out inoffensive repairs or provide temporary support nor that the works were limited to the minimum necessary. The appeal on ground (d) fails, therefore.

The ground (e) appeal

Main Issue

6. The ground (e) appeal is that listed building consent ought to be granted for the works alleged in the notice. The main issue is whether the works preserve a Grade II listed building, No 22 'The Brunswick', Wetherby High Street, or its setting or any features of special architectural or historic interest that it possesses.

Reasons

7. The listed building is a three-storey, former public house, dating from the early 19th Century. It is constructed from ashlar magnesian limestone and has a Welsh slate roof. The proportions of the fenestration and associated stone detailing, such as the cornices, sills and arches, are consistent with the age of the building and the prevailing architectural style of the period. I find the significance of the designated heritage asset to be attributable to its age and form, and its historic architectural features.
8. The appellant accepts that there has been a departure from the approved scheme, and certain conditions have not been discharged, although there is disagreement over the extent of the resulting impact. I saw that the layout does not accord with the approved plans across the first and second floors. This in itself may be not harmful but it is clear that internal historic features, around which the approved floor layouts were designed, have also been removed. I understand that this includes cornicing to the first floor, the original balustrade and balusters to the staircase between the first and second floors, four fireplaces including surrounds and a historic panelled door to the second floor. In addition, suspending ceilings have been installed and fitted tight to the window heads, which is contrary to the approved plans. Modern doors have been installed internally, without prior approval, contrary to condition 5.
9. The loss of internal historic features is regrettable and their removal has had a harmful impact. The lower ceilings heights on the upper floors impact the internal appreciation of the sash windows to the extent that they now appear out-of-place within the rooms. The windows would previously have been a positive historic feature that brought light to the rooms, alongside a sense of balance and proportion. The sash windows would have been seen in context

with the historic cornicing and, in some rooms, the fireplaces. These features would enable users of the building to appreciate its historic and architectural quality. This has now been lost from the upper floors with the result that the apartments, while being of a high standard of finish, are modern and commonplace. The architectural features which have been removed internally would have contributed positively to the significance of the listed building and would have assisted its interpretation.

10. Externally, there are some significant differences between the approved plans and the scheme as built. The rear roof form is altered, in particular, the chimney stack and parts of the roof structure to be retained have been removed. Where the rear wall has been built up, contrasting stone and concrete has been used, which does not reflect the historic stonework and stands out as an unsympathetic alteration. Moreover, some of the historic stonework detailing around the windows has been replaced with concrete, which is wholly unacceptable. I also saw evidence of poor quality pointing with the use of hard, cement-based mortar. Other differences or unauthorised additions include the upper decking area, which is larger than approved and the materials are not as agreed, an unauthorised upper floor window, the removal of a historic ground floor window and the addition of stone cladding, plastic fascias and rainwater goods.
11. I find there has been considerable harm to the listed building caused by the unauthorised works. Historic fabric has been removed both internally and externally, alterations and repairs have taken place using inappropriate materials and, in the respect of the pointing, poor techniques are evident.
12. It is argued that the scheme as built has the benefit of exposing original roof trusses within the second floor apartments. I consider this to be of limited weight since the trusses would have remained as an evidential record if the approved plans had been followed. It is also suggested that I grant listed building consent subject to conditions requiring the reinstatement of lost historic features. This would be impractical since the layouts, as built, do not necessarily allow the simple reinstatement of balusters, cornicing and fireplaces in their previous locations. I disagree that the use of different materials externally improves the aesthetic quality of the building. It is clear that the approved palette of materials had been agreed through careful consideration and discussion with the Council. The works as carried out have resulted in a mismatch of materials, and the use of concrete is ill-conceived and harmful.
13. I appreciate that the building needed repair. There was evidence of substandard pointing and inappropriate materials previously, such as plastic rainwater goods. However, this does not justify a series of departures from the approved listed building consent. I have also considered whether I could grant listed building consent for parts of the works. Even if I considered some elements to be acceptable, I am not satisfied that I could vary the notice with sufficient precision.
14. Overall, I find that the totality of the unauthorised works have had an adverse effect on the listed building. The difference between the scheme as built and that approved are extensive. The resulting works fail to complement the age, form and architectural detailing of the listed building and there is harm to the significance of the designated heritage asset.

15. The National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. It goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets. Given the localised effect of the works, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight. Under such circumstances, the Framework advises that this harm should be weighed against the public benefits of the proposal. The appellant says that the scheme has reinvigorated a vacant listed building. However, this cannot be considered a public benefit if those works are harmful.

Other Matters

16. I note from the representation signed by the ward Councillors that the appeal premises is within the Wetherby Conservation Area. I saw that many of the unauthorised works are visible from the wider Conservation Area. They impact on this prominent historic building, which makes a positive contribution to the significance of Wetherby as a historic market town. I, therefore, conclude that the works do not preserve or enhance the character and appearance of the Wetherby Conservation Area. There are no public benefits that would outweigh this harm.

Conclusion

17. Given the above, and in the absence of any substantiated public benefits, I conclude that the proposal would fail to preserve the special architectural and historic interest of the Grade II listed building, No 22 'The Brunswick', Wetherby High Street and the character and appearance of the Wetherby Conservation Area. This would fail to satisfy the requirements of Sections 16 and 72 of the LBCA Act, paragraph 197 of the Framework and development plan policies insofar as relevant.

The ground (k) appeal

18. The ground (k) appeal is that the steps required to be taken exceed what is necessary to achieve the statutory purpose behind the LBEN. The LBEN alleges a departure from the listed building consent as the breach. As such, it has been served under Section 38(2)(c) of the LBCA Act. It follows, therefore, that the steps required should simply be 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. The requirements, as drafted, go further than that.
19. Step 1 requires the cessation of the use of the first and second floor flats. This is excessive since the use of flats does not form part of the breach. In addition, the effect of some of the requirements would be to reinstate that which existed prior to the works, not the scheme as approved. This is also excessive and would not serve any valid purpose. Further, one of the requirements concerns the replacement of external doors with that which existed prior. It has been shown that a number of doors have been retained, and so the requirement exceeds what is necessary. The same applies to the first floor staircase.
20. There are also some requirements that relate to separate breaches of control, for example, the addition of signage and lighting. These matters should have been set out as separate breaches of listed building consent within the

allegation. As it stands, their removal is excessive to remedy the breach identified.

21. I find 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. I shall vary the requirements accordingly. The ground (k) appeal succeeds, therefore.

The ground (h) appeal

22. The ground (h) appeal is that the period specified falls short of what should reasonably be allowed. The appellant is seeking 18 months to allow for engagement with the Council and for the works to be carried out during the summer months.

23. I agree that discussions with the Council are necessary and that it would be undesirable to undertake the works required during the winter. However, the timing of the appeal is such that nine months would allow for the works to be undertaken during the summer and autumn. Therefore, I find this to be reasonable and proportionate in this instance. I shall vary the time period accordingly. The ground (h) appeal succeeds to this limited extent.

Conclusion

24. For the reasons given above I conclude that the appeal succeeds on grounds (k) and (h) only. I shall uphold the listed building enforcement notice with variations and refuse to grant listed building consent.

Formal Decision

25. It is directed that the Listed Building Enforcement Notice is varied by:

- (i) The deletion of the requirements listed in the third schedule and their replacement with the following requirement – “carry out such works in order to bring the building to the state in which it would have been if the terms and conditions of the listed building consent Ref 19/03106/LI dated 20 September 2019 had been complied with.
- (ii) The deletion of 28 days / 6 months and the substitution of 9 months as the period for compliance.

26. Subject to the variations, the appeal is dismissed and the listed building enforcement notice is upheld. 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.

Debbie Moore

Inspector