
Appeal Decisions

Site visit made on 12 May 2022

by D M Young JP BSc (Hons) MPlan MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 17 June 2022

Appeal A Ref: APP/X5990/W/21/3287981

71b Randolph Avenue, London W9 1DW

- 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 Sergio Trigo Paz against the decision of City of Westminster Council.
 - The application Ref 21/04812/FULL, dated 14 July 2021, was refused by notice dated 29 October 2021.
 - The development proposed is the replacement of existing chimney cowl (retrospective application).
-

Appeal B Ref: APP/X5990/W/21/3287982

71b Randolph Avenue, London W9 1DW

- 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 Sergio Trigo Paz against the decision of City of Westminster Council.
 - The application Ref 21/04813/LBC, dated 14 July 2021, was refused by notice dated 29 October 2021.
 - The works proposed are the replacement of existing chimney cowl (retrospective application).
-

Decisions

1. Appeal A is dismissed.
2. Appeal B is allowed and listed building consent is granted for the replacement of existing chimney cowl (retrospective application) at 71b Randolph Avenue, London W9 1DW in accordance with the terms of the application 21/04813/LBC, dated 14 July 2021.

Preliminary Matters

3. The development has already been carried out and I have determined the appeal accordingly.
4. As the proposal is in a conservation area and relates to a listed building, I have had special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issues

5. The main issues are the effect of the development on, firstly, the living conditions of neighbouring occupiers and, secondly, the character and appearance of the host building and the Maida Vale Conservation Area.

Reasons

Living Conditions

6. The noise assessment submitted with the application makes clear that the sound level of the cowl at the nearest residential window exceeds the criteria in Policies 7, 33 and 38C of the City Plan 2019 - 2040 (April 2021 ("the City Plan")) and the draft Environmental Supplementary Planning Document (May 2021 ("the SPD")). To that extent there is conflict with the development plan.
7. The current chimney cowl replaced a previous version of the same design and manufacture. From the information available, it appears the cowls have collectively been in situ for several decades. Despite that, the Council have not drawn my attention to any noise complaints in relation to either the existing or previous system nor residential chimney cowls more generally.
8. The cowl's function is twofold; first, to remove carbon monoxide fumes from the gas fireplace and second, the removal of cold air. Based on the foregoing, it could reasonably be argued that there would be an unacceptable impact on the current occupiers of No 71b if the property was to be left without a cowl. It is not clear to me that the Council has properly considered the effect that removing the cowl would have on the living conditions of the occupiers of 71b.
9. I have noted comments from an objector concerning the potential risk to neighbouring occupiers from carbon-monoxide fumes. However, no substantial evidence has been submitted to support these concerns. Even in the alternative, this is a matter for the Council's Environmental Health team with the National Planning Policy Framework making clear that planning decisions should focus on the use of land and buildings rather than the control of emissions (where these are subject to separate pollution control regimes)¹.
10. In light of the circumstances of this case, I have considerable sympathy with the Appellant particularly given that attempts to discuss and resolve the matter at the pre-application stage were unproductive. It also appears that the Appellant was advised verbally by the Council that a like-for-like replacement would be acceptable. Nonetheless, at this stage I am not persuaded that all potential alternatives have been fully explored by the appellant. For example, would it be possible to install a different system that would comply with the Council's noise criteria?
11. In the absence of such information, and notwithstanding the letters of support from neighbouring occupiers, I am not persuaded there is sufficient justification, at this stage, to take a decision otherwise in accordance with the development plan. I therefore conclude that the development conflicts with Policies 7, 33 and 38C of the City Plan and the SPD.

The effect of the proposal on the listed building and conservation area

¹ See paragraph 188

12. The duty under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be paid to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.
13. No 71b is a ground floor flat with an attractive outlook over Crescent Garden to the rear. No 71 is an impressive 3/4 storey, Victorian, mid-terrace property located on the western side of Randolph Avenue. Like many others in the area, it has been subdivided into flats. The listing description provided by the Council refers almost exclusively to features on the façade rather than the rear elevation of the building which as I saw on my site visit has been subject to various changes/additions.
14. I find it more likely than not that chimney cowl would have been installed to the property upon removal of the original chimney flues which in turn is likely to have occurred before the building was formally listed². The Appellant's Grounds of Appeal explains that the make and model of the replacement cowl is unchanged from its predecessor. Although there is some small change in appearance between the models³, the differences are *de minimus* and in my view, not perceptible to the average person.
15. The cowl is integrated into a low wall on the flat roof at first floor level. Given its location to the rear of the building, there is no impact on the street scene. Even from the open space to the rear of the building, there is little or no intervisibility due to the cowl's recessed location. Trellis fencing has also been installed which reduces the visual impact further. The level of concealment is in contrast to other cowls in the area, a number of which are visible in public views from Crescent Garden⁴.
16. As the Council points out the works are only really visible from neighbouring flats. Even then, one needs to know exactly where to look. Accordingly, and notwithstanding its '*somewhat industrial appearance*', I do not agree that the cowl is '*quite prominent*' nor is it for the most part, seen against the context of the building's historical fabric. I note that no alternative location for the cowl has been suggested by the Council.
17. I am therefore satisfied that the replacement cowl preserves the host building's features of special architectural or historic interest and does not undermine the public's enjoyment or the significance of the heritage asset. Accordingly, there is no conflict with Policies 38, 39 and 40 of the City Plan nor Section 66 or 72 of the 1990 Act.

Conclusion

18. For the reasons given above Appeal A is dismissed and Appeal B is allowed.
19. As the works have already been carried out and given that any additional screening would require listed building consent in its own right, I have not imposed the conditions suggested by the Council.

D. M. Young

² 5 February 1970

³ The existing and previous cowls are shown in Appendix 1 of the Appellant's Grounds of Appeal

⁴ See Appendix 1.2 to the Appellant's Grounds of Appeal

Inspector