



Appeal Decision

Site visit made on 30 May 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2022

Appeal Ref: APP/W4705/F/21/3289787

Land at 165-167 New Line, Greengates, Bradford BD10 0BN

- 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 Abdullah Balti Ltd against a listed building enforcement notice issued by City of Bradford Metropolitan District Council.
 - The enforcement notice was issued on 23 November 2021.
 - The contravention of listed building control alleged in the notice is: Without Listed Building Consent, the installation of an external extractor flue to the north-east facing (rear) elevation of the building, as shown in the attached photograph.
 - The requirements of the notice are: Remove the unauthorised external extractor flue and all means of fixing from the north-east facing (rear) elevation of the building and make good any damage caused to the building as a result of compliance with the requirements of this Notice.
 - The period for compliance with the requirements is one calendar month.
 - The appeal is made on the grounds set out in section 39(1) (a), (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. 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.

Procedural Matter

2. The appeal has been made on grounds (a), (c) and (d). However, a number of the appellant's representations are more suited to a ground (e) appeal, which is that listed building consent ought to be granted for the works. The Council's observations on the appellant's grounds of appeal have dealt with his ground (e) representations, and therefore there is no prejudice in my dealing with this appeal as though it had been made on grounds (a), (c) (d) and (e).

Appeal on ground (a)

3. This ground of appeal is that the building is not of special architectural or historic interest.
4. The two-storey appeal property is at the end of a short terrace of properties which front New Line. The terrace comprises the appeal property and two dwellings which are Grade II listed for their group value. Although I have not been provided with any specific evidence of the building's history, it is likely

that the appeal property and those other nearby listed buildings on the street were listed for their industrial and group interest as workers cottages associated with the nearby mills.

5. I appreciate that the appeal property has been altered/extended in more recent years, and since it was originally listed in 1983. However, those alterations have benefitted from listed building consent and the terrace retains its vernacular form, mullion windows and stone slate roof. The appeal building, in my view, has evidential historic and architectural value. It is worthy of its Grade II listing as a building of special architectural and historic interest and is worthy of preservation. The appeal on ground (a) thus fails.

Appeal on ground (c)

6. To be successful on this ground of appeal it must be successfully argued that the works carried out, as alleged in the second schedule to the enforcement 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 the Act, no person shall execute or cause to be executed any works for the demolition 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.
7. The appeal property forms part of a short terrace of cottages constructed circa 1840-50. It is constructed from traditional materials, including a stone slate roof and mullion windows. Based on the evidence before me, including the list description and observations on my site visit, the significance of the listed building as a heritage asset is mainly attributable to its historic use and architectural details, including use of traditional materials and its simple vernacular form, with mullion windows.
8. There does not appear to be any dispute that the works the subject of the notice were carried out without listed building consent (LBC). The question is therefore whether the works have affected the character of the listed building as one of special architectural and historic interest. This is irrespective of whether the works are considered to be harmful to the building.
9. The external extractor flue is substantial in size and has a modern and industrial appearance. It has been fixed to the rear elevation of the building and altered the appearance of its rear façade. Having seen the flue in situ there is no doubt that the installation of this large piece of plant has affected the character of the building as a building of special architectural and historic interest. 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)

10. This 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 interest 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 the appellant to conclusively show that this is the case.

11. The appellant states that he had been issued with a notice alleging noise nuisance from the operation of the air extraction plant at his property. Therefore, he actively sought to correct the reasons for the complaint via the installation of the new, improved flue unit to avoid the risk of enforcement action.
12. I appreciate the appellant's desire to rectify a problem and avoid possible enforcement action. I also accept that without efficient extraction equipment the production of fumes or excessive noise can be injurious to health. However, I am not persuaded that the works undertaken were the minimum measures immediately necessary to achieve the aims of safety, health or preservation. The Council were open to engagement with their Environmental Health Team and were monitoring the issue. It seems to me that continual engagement with the Council's Environmental Health and Planning Officers, and the submission and determination of an application for planning permission and listed building consent prior to installing a new flue would have avoided the need for the Council to issue an enforcement notice. The minimum necessary would have been to stop using the equipment.
13. Taking account of these factors, I conclude that the installation of the external extractor flue, subject of the notice, was not so urgently necessary for health and safety, or for the preservation of the building, that an application for LBC could not have been made beforehand. Consequently, the tests I have set out above have not all been satisfied, and the appeal on ground (d) fails.

Appeal on ground (e)

14. The appeal on ground (e) is that LBC ought to be granted for the works the subject of the notice.

Main Issue

15. The main issue is whether the works preserve the special architectural and historic interest of the listed building.

Reasons

16. Sections 16(2) and 66(1) of the Act require special regard to be had to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.
17. The flue is a substantial piece of plant, constructed in metal and finished in a cream colour. It has been installed on the rear elevation of the single storey lean-to which runs along the rear of the property and is positioned just below eaves height. I appreciate that the building is in a commercial use, and as such, there are other pieces of plant already installed on the roof area of the single storey rear lean-to. However, none of those pieces of equipment/plant are as prominent as the extractor flue the subject of this appeal. The extractor flue by reason of its size, bulk and projection, appears as a stark and obtrusive feature on an otherwise unadorned stone wall and it has a harmful effect on the overall simple design characteristics and special interest of the building.

18. The overall impact of the works are, in the context of the significance of the heritage asset and in the language of the National Planning Policy Framework (the Framework), less than substantial. In those circumstances, paragraph 202 of the Framework says that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
19. From the evidence before me the property has been in a commercial use for many years. The Council has supported this use and where they deemed acceptable, granted listed building consent for alterations and extensions to the property to ensure that use can be maintained. In the absence of any substantive evidence that would lead me to a different conclusion, the continued use of the premises as a restaurant would appear to be its optimum viable use at this time.
20. There would be a public benefit in maintaining the effective operation of the restaurant use and thus a viable use of this listed building. There are also economic benefits from employment opportunities in the business and local spend. However, from the evidence before me, including the Acoustic Reports¹, I am not convinced that there would not be a more sympathetic way to secure an extract and inlet ventilation system which does not result in noise nuisance to neighbouring residents, and do so in a way which would be less harmful to the special character and interest of the listed building. Indeed, the mitigation recommendations in the Acoustic Report, dated 30 September 2020, proposed in-line attenuation to the existing fans. The appellant refers to alternatives which involved more extensive internal alterations; however, no specific evidence of alternative schemes has been provided that would demonstrate that those alternatives would be more harmful, nor that in-line attenuation of the original fans was not possible. I appreciate that the appellant has sought to upgrade his plant and resolve noise complaints. However, the works that have been undertaken have resulted in demonstrable harm to the significance of the heritage asset.
21. Even though I have found that the harm to the designated heritage asset is less than substantial, it is not to be treated as a less than substantial objection. The modest public benefits attributable to the works, as set out above, would not outweigh the considerable importance and weight to be given to the harm to the heritage asset. As such, the works do not comply with paragraph 202 of the Framework and conflict with the heritage aims of Policy EN3 of Bradford's Local Plan, adopted Core Strategy Development Plan Document, 2017. The appeal on ground (e) thus fails and listed building consent is refused.

Overall Conclusion

22. For the reasons set out above, and taking into account all other matters raised, I conclude that the appeal should not succeed. I shall uphold the listed building enforcement notice.

Elizabeth Pleasant

INSPECTOR

¹ Acoustic Reports, prepared by Paul Horsley Acoustic Ltd, dated 30 September 2020 and 2 March 2022.