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# Appeal Decision

Site visit made on 3 November 2022

**by P N Jarratt BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 November 2022**

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**Appeal Ref: APP/U5360/C/21/3288194**

**89 Lordship Park, Hackney, LONDON, N16 5UP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by TT Bais Yosef Limited against an enforcement notice issued by London Borough of Hackney.
  - The notice, numbered 2021/0130/ENF, was issued on 1 November 2021.
  - The breach of planning control as alleged in the notice is without planning permission;
    - 1 The installation of uPVC windows to the front elevation, flank wall and rear elevation;
    - 2 The installation of uPVC French door to the rear elevation;
    - 3 The erection of 3 air conditioning units; two on the rear elevation and one of the flank wall; and
    - 4 The erection of a sukkah located on the terrace at roof level.
  - The requirements of the notice are:
    - 1 Remove the uPVC framed windows from the front elevation, flank wall and rear elevation at basement level
    - 2 Replace with windows as shown in drawing Ex-E001 and ExE-002 with timber sash windows with single glazing of a maximum of 4mm. The glazing bars should be structural and no wider than 20mm and putty finish on the outside to replicate the pattern of design previously present and is in keeping with the special historic and architectural character of the listed building.
    - 3 Remove the uPVC windows and french door from the ground floor rear elevation.
    - 4 Replace with windows as shown in drawing EX-E001 with timber sash windows with single glazing of a maximum of 4mm. The glazing bars should be structural and no wider than 20mm and putty finish on the outside to replicate the pattern of design previously present and is in keeping with the special historic and architectural character of the listed building.
    - 5 Replace the french patio door to the rear elevation shown in drawing number EX-E001 with a timber door and single glazing.
    - 6 Remove all the air conditioning units located on the flank wall and rear elevation.
    - 7 Remove the sukkah from roof level.
    - 8 Remove all materials, debris, waste and equipment resulting from compliance with the requirements that notice from the property and its premises.
  - The period for compliance with the requirement is 4 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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## Decision

1. It is directed that the enforcement notice is corrected by the deletion of the words "listed building" and the substitution of the words "locally listed building" in the second requirement. Subject to the correction the appeal is dismissed and the enforcement notice is upheld.

## **The Notice**

2. The second requirement of the notice refers to the appeal property being a listed building. The Council accept that this is an error as the notice should have referred to 'a locally listed building'. I have the power to correct the notice and I am satisfied that this can be done without injustice to the parties.

## **Preliminary Matters**

3. The local authority representative and I attended the pre-arranged site inspection on 2<sup>nd</sup> November. As there was no response from any person in the house, it was not possible to carry out the usual accompanied site visit. However, I was able to view the unauthorised uPVC windows on the front elevation and also the uPVC windows, doors, sukkah and AC units on the side and rear elevations. I was able to observe these when trying to establish whether anyone was in occupation.
4. I am satisfied that there is sufficient information within the submissions, from the photographs submitted by the Council and from my observations of the appeal building and the area for the appeal to be determined without a further site visit.

## **The site and relevant planning history**

5. The appeal property is a distinctive Gothic Revival, three storey building with raised basement which has been converted into three flats. It is semi-detached property located within the Lordship Park Conservation Area designated in 2004. The building and its neighbours contribute positively to the character and appearance of the area.
6. Upvc basement windows on the front elevation have been installed and all windows at basement level at the side and rear have been changed to upvc. The windows and the french patio door at ground floor level on the rear elevation have also been changed to upvc.
7. There are two unauthorised A/C units on the rear elevation, one at ground floor level and the other at the second floor level. A third A/C unit has been installed on the flank wall at basement level.
8. A sukkah has been erected on the rear second floor terrace.
9. Enforcement action was taken against the change of use of the of the dwelling to a school and this was complied with in February 2021.

## **The appeal on ground (a)**

10. An appeal on this ground is that planning permission should be granted for what is alleged.
11. The main issue is whether the alterations to the appeal building affect the character or appearance of the Conservation Area.
12. Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 requires that special attention must be paid to the desirability of preserving the character or appearance of a conservation area.
13. The appellant contends that the replacement windows do not have a major impact on the character of the building; that they use existing apertures and

- improve thermal performance; some are set behind security bars; and the contribution of the building to the Conservation Area is unaffected as it is the form of the building and not the detailing of the windows or doors that are important.
14. However, from my inspection I note that the bulkier upvc windows and French door are of distinguishably different materials and fenestration pattern to the original windows that remain in situ. They are unsympathetic in form and detailing to the original window style. I was unable to identify upvc windows or security bars on nearby similar properties in the Conservation Area.
  15. The appellant refers to the Council not having promoted an Article 4 Direction to control permitted development rights but this is irrelevant as flats do not share the same PD rights as dwellings. Reference is also made to the important views shown on the Conservation Area map most of which are along the street and are not direct views of frontages. The appellant points out that there is no suggestion on the map that the flank or rear elevations are important.
  16. The Conservation Area is linear in form and views along the street are important to an appreciation of its merits and an understanding of its significance. However, the street is composed of individual buildings which contribute positively to the street scene and the architectural details and materials employed in those buildings are key to the overall significance of the Conservation Area. Inappropriate changes to small details, such as window design and the materials employed diminishes the overall quality of the Conservation Area. Whilst the appearance of flank walls are not so important as the principal elevation, changes to them nevertheless can alter the appearance of the host dwelling adversely, particularly where prominent external equipment is installed that is visible from the street or other property and consequently such equipment has a harmful effect on the character and appearance of the Conservation Area.
  17. The rear elevation of the adjacent buildings does not exhibit any external clutter and appears to be little altered since built. The appeal property, with its projecting A/C units, sukkah and upvc windows and french door all contribute to a diminution in the architectural quality of the rear elevation and consequently are harmful to the character and appearance of the Conservation Area.
  18. I consider the degree of harm of the unauthorised works to be less substantial. The National Planning Policy Framework at paragraph 202 indicates that where development leads to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits. In this case, the benefits appear to be private benefits other than a degree of energy saving through the use of upvc windows. However, such a benefit does not outweigh the harm caused.
  19. I conclude therefore that the unauthorised works fail to preserve or enhance the character or appearance of the Conservation Area. Accordingly, the unauthorised development does not accord with Policies D4 (regarding design quality) and HC1 (heritage conservation and growth) of the New London Plan 2021 and LP1 (design quality and local character) and LP3 (designated heritage assets) of the Hackney London Plan 2033. The development also fails to accord with the Framework.

20. The appeal on this ground fails.

**The appeal on ground (f)**

21. An appeal on this ground is that the steps required by the notice are excessive and the appellant contends that the notice leaves no opportunity for retaining those elements of the work that are minor in their impact. The appellant reiterates his case set out in the ground (a) appeal but I have considered the impact of all the unauthorised works referred to in the notice and have concluded that they all cause harm to the designated heritage asset.
22. Other than a suggestion by the appellant to relocate the A/C unit at the rear to a lower level, no substantive alternative scheme has been put forward.
23. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.
24. The appeal on this ground fails.

**Conclusion**

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*P N Jarratt*

INSPECTOR