



Appeal Decision

Site visit made on 1 November 2022

by D Boffin BSc (Hons), DipTP, MRTPI, Dip Bldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 18th November 2022

Appeal Ref: APP/X5990/F/22/3304632

The building(s) and associated land at 43 Vauxhall Bridge Road, London, SW1V 2TA

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the Act).
- The appeal is made by Moo Pimlico Limited against a listed building enforcement notice (LBEN) issued by City of Westminster Council.
- The enforcement notice was issued on 6 July 2022.
- The contravention of listed building control alleged in the notice is:
Without the benefit of listed building consent and after the date the building was listed the installation of a duct at basement level on the rear elevation of the Property.
- The requirements of the notice are:
 1. Remove the unauthorised duct, and associated fixtures and fittings installed at ground floor level on the rear elevation of the Property, shown outlined red in Photograph A attached to the LBEN; and
 2. Repair any damage to the Property caused by the installation or removal of the duct, and associated fixtures; and
 3. Remove from the Property all debris resulting from compliance with requirements 1 and 2, cited above.
- The period for compliance with the requirements is 6 months.
- The appeal is made on the grounds set out in section 39(1)(b), (c), (e) and (h) of the Act.

Summary Decision: The appeal succeeds. The enforcement notice is quashed and listed building consent is granted in the terms set out in the Formal Decision.

Background and relevant policies

1. Section 16(2) of the Act requires 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 when considering whether to grant listed building consent. Section 72(1) of the Act states that *'in the exercise, with respect to any buildings or other land in a conservation area, of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.'* The provisions mentioned in subsection (2) include the Planning Acts. Therefore, as this appeal is determined under the Act, which is part of the Planning Acts, I am required to comply with section 72(1).
2. The appeal property was formerly known as Lord High Admiral Public House, it was listed in Grade II* on 22 December 1998 and the list description is as follows:

'Public house, attached to Charlwood House (q.v.). Design won in competition in 1961 by John Darbourne; structure built 1964-67, interior

fitted out 1968-9; architects Darbourne and Darke, Geoffrey Darke the partner in charge, with W D Shepherd, Chief Architect to Ind Coope Ltd., associated architect. Loadbearing brickwork with concrete floors, hand-made red and purple multi-coloured facings used outside and in. Pub entered via private patio. Large timber windows with timber door to right; above fascia a planting box part of the composition fronting first-floor publican's flat. Public house on three half-levels. Entrance on raised ground floor, whence steps lead down to main bar on half-landing, with steps at rear to basement games room (originally intended for dining). Bar with original timber counter and back bar. Timber ceiling with some areas of cork. The combination of exposed brick, some painted, and timber boarding is characteristic of the late 1960s architect-designed public house, blending modern planning with traditional materials. This was an exceptional example when it was built, and was extensively reviewed; it remains little altered and is a remarkable survival. It is also an important and integral element of Darbourne and Darke's award-winning and epoch-making Lillington Gardens scheme. It replaced a public house of the same name which was demolished. It was admired for 'its consistency of approach' (Architects' Journal, 15 April 1970).'

3. The significance, architectural and historic interest of the listed building derives mainly from its high-quality architecture and association with distinguished architects, its use of materials and its interior design and use as a public house. The red and purple multi-coloured bricks in combination with concrete are a significant feature of the character and architectural interest of the building. The building's form and internal layout provide aesthetic and evidential value attributable to its design and use that contribute to its character as a building of special interest.
4. The appeal property is attached to Charlwood House which is also listed in Grade II* and both listed buildings form part of the Lillington Gardens scheme cited within the list description above. The evidence before me indicates that a number of other nearby buildings are also listed, including St James the Less Church. The colouring of the materials used within the Lillington Gardens scheme was inspired by the walling materials of that church. These buildings and the mature landscaped communal gardens to the rear of the appeal property together form an attractive designed ensemble. This ensemble through its group aesthetic value makes a significant contribution to the special interest/significance of the listed building.
5. The appeal property is experienced in views from Vauxhall Bridge Road, Thorndike Street and the communal gardens that are to the rear of the appeal property. Whilst Vauxhall Bridge Road appears to be a very busy thoroughfare through this part of London the landscape and group value cited above provide an attractive setting to the listed building when that building is viewed from Thorndike Street and the communal gardens. Furthermore, the composition of the rear and side elevations can be seen from them. In these respects, the setting provided by the gardens also makes a positive contribution to the significance of the listed building.
6. The appeal property lies within the Lillington and Longmoore Gardens Conservation Area (the LLGCA). Based on the evidence before me and my observations the character, appearance and significance of the LLGCA appears to be derived from the quality of the architecture of a pioneering example of high-density housing, of different housing types, within medium rise blocks.

This is combined with the overall integrated design incorporating other uses such as shops, church, school, community centre and public houses and generous communal gardens. The limited palette of materials and the relationship of the buildings to each other and the areas between them also contribute to the significance, character and appearance of the LLGCA.

7. The development plan policies cited within the LBEN are Policy HC1 of The London Plan 2021 (TLP) and Policies 38, 39 and 40 of the Westminster City Plan 2019-2040 (WCP). These policies are consistent with the National Planning Policy Framework (the Framework). The Supplementary Planning Guidance (SPG) - Repairs and Alterations to Listed Buildings is also cited within the LBEN. I have also been provided with the Supplementary Planning Document (SPD) - Conservation Area Audit - Lillington and Longmoore Gardens. They are material considerations which I have taken into account in reaching my decision.

The ground (b) appeal

8. In order to succeed on a ground (b) appeal, the appellant must show on the balance of probability that the matters alleged have not occurred as a matter of fact. The appellant has stated that this ground of appeal proceeds only if I determine that the relevant listed building to be considered in the appeal is Charlwood House (45 Vauxhall Bridge Road) and not the Property (43 Vauxhall Bridge Road), and that the LBEN is deployed in respect of the impact of the changes on the rear elevation of 45 Vauxhall Bridge Road.
9. Based on my observations and the evidence before me it is clear that the duct, the works alleged in the LBEN, has been installed at the basement level on the rear elevation of 43 Vauxhall Road. The matters alleged have therefore occurred as a matter of fact and the appeal on ground (b) must fail.

The ground (c) appeal

10. An appeal on ground (c) is that those matters (if they occurred) do not constitute a contravention of sections 9(1) or (2) of the Act. Section 9(1) states that if a person contravenes section 7 he shall be guilty of an offence. Section 7 of the Act states, amongst other things that '*... no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special or architectural or historic interest unless the works are authorised*'.
11. There is no dispute that the works 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 or architectural or historic interest. This is irrespective of whether the works are considered to be harmful or not to that character.
12. The appellant considers that the listing particulars, with regard to the exterior of the property, only relate to the brickwork and concrete floors and the duct has no impact on those features. It is also stated that the listing clearly relates to the features of the public house and the characteristic features of it are restricted to the features visible from Vauxhall Bridge and not the rear of the property.

13. There is very little detail within the list description specifically relating to the rear of the building. In my experience, this is not unusual taking into account that the description appears to date from 1998 and was principally designed to aid identification of the building. Whereas more modern list descriptions will set out a summary of the assessment of special interest in the building at the time of designation. In addition, from 26 June 2013 some new list descriptions or those amended after that date may provide that part of, or a feature of, the building is not of special architectural or historic interest. However, in this case there is in no evidence before me to indicate that the list description has ever been amended.
14. List descriptions, those designed to identify a building, are not a comprehensive record of the special interest of a listed building and an omission of a feature does not indicate that it is not of interest. As stated previously the appeal building's architectural and historic interest is largely derived from its high-quality architecture and association with distinguished architects, its use of materials and its interior design and use as a public house. The architectural quality of all its elevations and the walling materials within those elevations make a significant contribution to its character as a building of special or architectural or historic interest.
15. The duct is at basement level on the rear elevation and there is no evidence before me to indicate that any brickwork or a concrete floor have been altered or removed to facilitate the installation of the duct. The appeal building's elevations are formed from complex interlocking angular shapes and volumes, creating a variety of heights and spaces within them. The duct has been inserted within a recess in the rear elevation. Nevertheless, the duct is visible together with the side/rear elevations of the appeal property from Thorndike Street and the communal gardens. The duct has therefore had an impact on the aesthetic value of those elevations and the contribution that that value makes to the character of the building and its architectural interest.
16. Consequently, as a matter of fact and degree, I consider that the works enforced against have affected the character of the building as one of special or architectural interest. These works have not been authorised, and a contravention of section 9(1) of the Act has thus occurred. The appeal on ground (c) therefore fails.

The ground (e) appeal

17. This ground is that listed building consent ought to be granted for the works.

Main Issue

18. Based on my observations and the evidence before me I consider that the main issue is whether the unauthorised works preserve the special architectural or historic interest or setting of the listed building, known as 43 Vauxhall Bridge Road, whether they preserve or enhance the character or appearance of LLGCA and whether the significance of the heritage assets is harmed.

Reasons

19. The appeal property is in use as a public house/restaurant. The appellant has stated that the duct was in place when the property was purchased in 2013 but the engine unit of the duct was replaced as it had stopped working. Ownership/tenancy of a listed building is onerous and it is the current

owner/tenant of a listed building who is responsible for the consequences of any works carried out to the building even if the works are carried out by a previous tenant or owner of the building.

20. The duct has been installed within a recess on the rear of the property and appears to have been installed through the glazed area of a window/door opening. It serves as a flue for the restaurant's kitchen. As stated above, the brickwork and concrete floors cited within the list description do not appear to have been altered by the installation. The location of the duct within the recess means that only part of it is visible when viewed from Thorndike Street. When viewed from the communal gardens opposite the rear elevation the duct is readily apparent. Moreover, the duct is relatively large in size and it protrudes from the recess it is sited within.
21. Nevertheless, the duct which had a shiny silver metal finish when first installed has been painted black. The door/window frames, balustrades, gates and railings on and near the listed building are all finished in a similar dark colour. Whilst the application of the paint has been rudimentary on parts of the duct the repainting of the duct in black could be achieved by the imposition of a condition if I was minded to allow the appeal. In addition, as stated previously the elevations are formed from complex interlocking angular shapes and volumes, creating a variety of heights and spaces within them. The angular design of the duct does not therefore appear incongruous or alien when viewed against these elevations. Furthermore, given the scale of those elevations the visual impact of the duct when seen in this context is minimised. As a result, even though the duct has had an impact on the aesthetic value of these elevations that impact is minimised by these factors. Also, those factors ensure that the duct does not visually compete with or distract from the architectural quality of those elevations.
22. The motor within the duct does result in noise being generated from it. However, it is experienced as low level background noise. Odour from cooking the food in the restaurant kitchen is also produced by the duct. However, this is an urban environment and a high-density housing area where odour from cooking meals is part of the character of the area. If the odour results in a statutory nuisance to nearby residents this is covered by other legislation. In my judgement, neither the noise or odour draw attention to the installation of the duct.
23. Additionally the works are reversible and ducts/flues are highly likely to be required in association with a restaurant use whether they are part of a public house or not. I acknowledge that originally the appeal building and the Lillington Garden scheme were designed with all plumbing and wiring in internal ducting. However, the use and function of a public house has evolved and significantly altered since the appeal building was designed/built. In my experience, the availability of food and drink within a public house is necessary to ensure viability of the majority of those establishments nowadays. The installation of the duct therefore beneficially supports the viable use of this heritage asset.
24. Overall, I consider that subject to a condition in respect of repainting in black the installation of the duct does not harm the special interest/significance of the listed building, 43 Vauxhall Bridge Road. Consequently, it also preserves the contribution that; setting makes to the special interest/significance of the

listed building; and the contribution the appeal building makes to the aesthetic value and significance of the LLGCA. It accords with the requirements of the Act and section 16 of the Framework. It complies with LP Policy HC1 and WCP Policies 38, 39 and 40 which, amongst other things, state that development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings; development will incorporate exemplary standards of high quality, sustainable and inclusive urban design and architecture; development will ensure heritage assets and their settings are conserved and enhanced, in a manner appropriate to their significance; alterations will respect the character of the existing buildings and will not obscure important architectural features.

25. It also complies with the guidance within the SPG which states, amongst other things, that external services or fittings will require listed building consent where they affect the character of a listed building. These include flues. The City Council will need to be satisfied that such additions are necessary and have been designed and located to minimise their impact.

Conditions

26. The Council suggested the following condition to be attached to the permission if I was minded to allow the appeal:

- The duct approved must be painted black and be maintained black for as long as it remain in place.

27. However, as stated above, the duct has been painted black but the application of the paint is rather rudimentary with some of the original metal surface still showing. Moreover, the condition does not specify when the duct is to be painted given that it is already installed. I therefore intend to alter the condition to read:

- The duct hereby approved shall be repainted black within 6 months of the date of this decision and shall thereafter be maintained as long as it remains in place.

28. The amended wording will ensure that if the duct is not repainted by the date specified that the condition can be enforced. The condition is required to ensure that the special interest of the listed building is preserved.

Conclusion

29. For the reasons given above I conclude that the appeal should succeed.

Other Matters

30. In reaching my conclusions on all of the grounds of appeal I have taken into account all of the other matters raised by the appellant, the interested parties and the Council. However, none of these alters any of my conclusions on the various grounds of appeal and nor is any other factor of such significance so as to change my decision.

Overall Conclusion

31. For the reasons given above, I conclude that whilst the appeals on ground (b) and (c) fail, the appeal on ground (e) succeeds. The appeal on ground (h) does not therefore fall to be considered.

Formal Decision

32. The appeal is allowed and the listed building enforcement notice is quashed. Listed building consent is granted for the retention of the duct installed at basement level on the rear elevation at 43 Vauxhall Bridge Road, London, SW1V 2TA subject to the following condition: The duct hereby approved shall be repainted black within 6 months of the date of this decision and shall thereafter be maintained as long as it remains in place.

D Boffin

INSPECTOR