



Appeal Decision

Site visit made on 12 December 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 April 2023

Appeal Ref: APP/X5990/Y/22/3294037

1, Brunswick Place, London NW1 4PN

- 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 and Mrs Olivier Gourdet against the decision of City of Westminster Council.
 - The application Ref 21/04879/LBC, dated 16 July 2021, was refused by notice dated 2 September 2021.
 - The works proposed are described as the retention of two flue pipes on the rear elevation.
-

Decision: the appeal is dismissed

Background and Procedural Matters

1. The application to which this appeal relates was made regularise works that had already taken place, the works (two flue pipes) having been installed in or around January 2021. The appellants explain that the replacement of the previous flue pipes was necessary on health and safety grounds because the previous flue pipes were dangerously situated, potentially discharging carbon monoxide fumes into a bedroom above. The appellants have provided photographs of the previous flue pipes, from which I note that they are essentially in the same position as the existing flue pipes but are lower in height, emitting at approximately the level of the bedroom window.
2. As part of this appeal, and without prejudice to their primary position that the works as installed are acceptable in all respects, the appellants have submitted an alternative scheme for consideration (Option B). I am invited to consider this alternative scheme having regard to the principles set out in *Bernard Wheatcroft Limited v SSE & Another* [1982] 43 P&CR 233, including that the judgement to be exercised is whether the development is so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation.
3. No representations were made in respect of the application, and the response from the St Marylebone Association was to defer the judgment of the Conservation Officer. The Council has commented on the alternative scheme. The alternative scheme proposed is essentially of the same description as the existing works, differing principally in the design and route of the upper sections of the flue pipes. No new issues are raised. I am therefore satisfied that the alternative proposal is not so changed that it would deprive those who should have been consulted the opportunity of such making representations. I will therefore consider the alternative scheme below.

Main Issues

4. The main issues are whether the proposal would preserve a Grade II listed building, and any of the features of special architectural or historic interest that it possesses and whether it would preserve or enhance the character or appearance of the Regent's Park Conservation Area.

Reasons

5. The proposal relates to a listed building that is within a conservation area. I have therefore had special regard to sections 16(2) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Special interest and significance: the listed building

6. The appeal property is a substantial Regency house with an attached mews building to the rear, designed by John Nash and dating to 1824 as part of his Regent's Park Crown Estate development. The appeal property was constructed as part of linked pair of town houses (Nos 1 to 4 Brunswick Place/1-4 Upper Harley Street) and is listed as part of that pair. The listing description refers to the building having 4 storeys (including attic storey) on basement with single storey links, finished in a cream stucco and as having a balanced composition, dressed with Ionic pilaster order¹.
7. The special interest and significance of the listed building, insofar as relevant to this proposal, are largely derived from its considerable architectural and historic interest as a largely unaltered example of a design by a renowned architect. In relation to the architectural interest, the building has a grand, classical design with a satisfying balanced composition, dressed with Ionic pilaster order, as well as an architectural aesthetic based on Classical proportions, materials and detailing that strongly reflect the architecture of the early 19th century. The special interest and significance of the listed building also derives, in part, because the pair of linked pair of houses form an integral part of the planned development of Regent's Park and its surroundings.

Special interest and significance: the conservation area

8. The special interest and significance of the Regent's Park Conservation Area as a whole derives largely from the extensive area of open parkland surrounded by high-quality terraced buildings designed by John Nash. As I noted on my site visit, although differing slightly in some respects, the terraced buildings typically have a uniformity of design and a commonality of architectural features that unifies the character and appearance of the conservation area. Insofar as relevant to this appeal, the listed building is a prime example of residential architecture designed by John Nash from which the character and appearance of the conservation area largely derives, and as such makes a positive contribution to its significance as a designated heritage asset.

Effects of the works: listed building

9. Paragraph 199 of the National Planning Policy Framework (Framework) advises that when considering the impact of a proposed development on the significance of designated heritage assets, great weight should be given to their conservation. The paragraph goes on to explain that this is irrespective of

¹ Statutory Address: 1-4 Brunswick Place; List Entry Number: 1066193.

whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of the heritage asset or development within its setting and that this should have clear and convincing justification.

10. In the description of the works on the application form, the appellants describe the two flue pipes as being on the rear elevation of the appeal property (1 Brunswick Place). In my view, that is not an accurate description. The two flue pipes are attached to the elevation of the building that contains the main entrance. This elevation does not face directly onto the public highway, but rather is perpendicular to it. Given that this elevation contains the main entrance to the house, it would in my view be more accurate to describe this elevation as the front elevation. However, in the interests of clarity and in recognition of the wealth of architectural features that this elevation contains, I will refer to it as the principal elevation (of 1 Brunswick Place).
11. The ground floor of the principal elevation incorporates a defined plinth with pilasters to each end and a classical central porch. The first and second floors incorporate Ionic columns to each end rising from the ground floor pilasters, with a cornice and then attic storey above. The overall effect, with the decorative and high-quality classical order, is of an attractive and architecturally important building.
12. The two flues are set directly in front of the pilaster rising up the east side of the principal elevation, and also the plinth block below. In this position, the addition of the flues unacceptably detracts from the elegant, uncluttered and well-proportioned principal elevation and do not conserve the building in a manner appropriate to its significance. The majority of the principal elevation is clearly visible from the public highway on Brunswick Place, with the tops of the two flues being apparent in views from positions to the south of Park Square Mews.
13. Notwithstanding that the flue pipes are purported to be painted to match the colour of the principal elevation, in practice the top sections of the flue pipes (including the splayed projecting exhausts) are plainly visible and stand out in these views as discordant features against the elegant and well-proportioned host building. Consequently, the flue pipes detract from the special interest of this listed building.
14. The tops of the two flues are also visible from Brunswick Place directly opposite the appeal property, where they are viewed above garden vegetation and against the west elevation of the attached mews building. In this view, the splayed projecting exhausts are viewed in association with the arched opening in the west elevation to the mews building and appear as visually jarring against the simple form of the arched opening.
15. The flues are described on the application form as being of a painted finish. No further information is provided but from my inspection on site it appears that the flues are constructed of a plastic-like material. The use of this material detracts from the authenticity of this listed building and for that reason is inappropriate. Furthermore, the design of the two flues, with the splayed projecting exhausts, has an industrial quality which is wholly inappropriate in the context of a residential building of this period and status, notwithstanding that they are in the corner next to rainwater goods/ downpipe.

16. The documentation provided with the appeal includes a Technical Note produced by a firm of consulting engineers. The Technical Note explains that the existing flues are concentric flues, which bring fresh air into the boiler through the outer pipe and exhaust fume through the inner pipe. The Technical Note goes on to explain that metallic concentric flues are not available for the *installed boilers* (emphasis added). The Technical Note advises that to achieve a metallic flue installation at the appeal property, each boiler flue would need to be split into an air inlet flue and an air outlet flue at the top of the boiler. This would require a total of four flues to route from the plantroom to the outside, in relation to which the same specified separation distances as for the existing flues must be adhered to. The installation of metallic flues would therefore require additional holes through the fabric of the listed building, and more flues on the external elevation of the listed building.
17. The consequences of using metallic are a material consideration that weighs in favour of allowing the appeal. However, on my reading, the Technical Note falls short of constituting an exhaustive evaluation of all the options open to the appellants. In particular, the Technical Note focuses on the boilers that are currently installed at the property. There is no evidence before me to demonstrate that there are no alternative solutions that could be employed to avoid the use of plastic-like flue pipes on this listed building: for example, it has not been shown that a different type of boiler could be installed. Neither has it been demonstrated that other methods of fume extraction could be employed, including whether the flues could be routed internally, or whether alternative means of heating/servicing the building could be achieved.
18. Overarching all the above is that the installation of two additional flue pipes would itself require Listed Building Consent. In the scenario advanced in the Technical Note, the existing flue pipes would also need to be replaced with metallic flue pipes. In view of the Council's response to the installation of the existing flue pipes, there can be no guarantee that Listed Building Consent for two additional flue pipes (four flue pipes in total) would be forthcoming. For all these reasons, I attach only limited weight to the scenario advanced in the Technical Note as a material consideration.
19. The appellant also points out that the listed building (Nos 1-4 Brunswick Place) is occupied residentially, and has been subject to interventions and installations to provide adequate facilities for contemporary residential occupation. By way of examples, the appellant cites television aerials, modern entry systems and safety cameras. I noted the examples referred to, and others, during my site visit. However, the examples cited by the appellant are relatively modest, low-key installations that do not undermine the elegant form or architectural features of the listed building. By contrast, the existing two flues are more substantial in form and do directly affect the architectural features of the listed building from which its special interest and significance are in part derived. The examples cited by the appellant are therefore not a direct comparison, and I attach only limited weight to them.
20. As noted above, the appellants explain that the replacement of the previous flue pipes was necessary on health and safety grounds. However, there is no technical evidence before me to support that explanation, including whether the works now proposed were the only option to overcome that issue. In any event, the presence of the previous flues does not justify new flues in the same location.

Effects of the works: conservation area

21. For the reasons set out above, the works diminish the identified special interest and significance of a listed building which makes an important positive contribution to the historic townscape within the Regent's Park Conservation Area. Their harmful effects are obvious when viewed from Brunswick Place. The installed flue pipes incrementally undermine the character and appearance of the conservation area as a whole and in turn its significance as a designated heritage asset.

The alternative scheme (Option B)

22. The alternative scheme differs from the existing works primarily in that one of the two flue pipes is diverted horizontally through 90° to provide a separation between it and the other, before returning to the vertical parallel to the other flue pipe. That diversion of the flue pipe occurs at approximately two-thirds of its total height. There is a note on the drawing (Drawing No 2107-URA-04101 Rev 01) which states that the existing ventilation pipes will be reduced in height to below the current pipework bend. However, that meaning of that note is not clear to me: there is no bend in the current pipework above ground level, and my assessment on site was that the overall height of the flue pipes is broadly the same as the existing flue pipes.
23. The appellants provide no explanation or justification why the flue pipes are arranged in this way in the alternative scheme. In any event, the proposed arrangement of flue pipes would only serve to make them more conspicuous. Furthermore, the proposed flue pipes would extend across a greater part of the principal elevation, including across the pilaster at ground floor level. For that reason, the alternative scheme would be more harmful to the special interest and significance of the listed building than are the existing flue pipes. It follows that the alternative proposal would also fail to preserve or enhance the character or appearance of the Regent's Park Conservation Area.

Conclusion on the effect on the heritage assets

24. The conclusions set out here apply equally to the existing flue pipes and the alternative scheme (Option B).
25. In view of the above, I find that the works/alternative scheme fail to preserve a Grade II listed building and any of the features of special architectural or historic interest that it possesses, and would not preserve or enhance the character or appearance of the Regent's Park Conservation Area. The works/alternative scheme therefore harm/would harm the significance of these designated heritage assets, and on that basis would fail to meet the requirements of sections 16(2) and 72(1) of the Act. I give this harm considerable importance and weight in the planning balance. That harm is intrinsic within the works/alternative scheme themselves and could not be overcome or mitigated through the imposition of conditions.
26. I have found that the works/alternative scheme cause/would cause harm to the special architectural or historic interest and the significance of the appeal building. This harm does not result in a total loss of the significance of the building, and is limited to the principal elevation of 1 Brunswick Place as well as the west elevation of the attached mews building. As such, this harm would be less than substantial in terms of the Framework.

27. The degree of harm to the character and appearance of the Regent's Park Conservation Area, and, consequently, its significance, is primarily to diminish the identified special interest and significance of a listed building which makes an important positive contribution to the historic townscape within the conservation area. Other buildings that make a positive contribution to that historic townscape, of which there are many, are not in any way affected by the works/alternative scheme. Consequently, the harm would also be less than substantial in terms of the Framework.
28. I have found that the harm to the designated heritage assets would be less than substantial in this instance but, nevertheless, of considerable importance and weight. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal including, where appropriate, securing the asset's optimum viable use.
29. The appellants maintain that the residential occupation of the building holds inherent heritage benefit, as the use for which the building was originally designed and constructed. I acknowledge that facilitating the continued residential use of the building would secure the optimal viable use of this listed building, and is therefore a public benefit that arises from the works/alternative scheme.
30. However, there is no evidence before me that dismissing this appeal would necessitate the cessation of the residential use of the property. There is no evidence to demonstrate that other means of heating/servicing the building have been explored and found not be practicable. In the absence of that evidence, I have no reason to believe that the default response to this appeal being dismissed would be to cease the residential use of the building.
31. The appellant refers to the guidance produced by Historic England in its publication 'A guide for Owners of Listed buildings', and in particular the guidance relating to a 'whole house' approach. In relation to improving the efficiency of equipment such as boilers, the guidance indicates that replacing a boiler can save money in the longer term and reduce carbon emissions.
32. I acknowledge that reducing carbon emissions would be a public benefit. However, any benefits arising from the works/alternative proposal in this respect have not been quantified. Moreover, the stated reason for replacing the original flue pipes was on health and safety grounds. There is no indication that the motive behind replacing the original flues was to reduce carbon emissions or, for that matter, to save money. In any event, any benefits that may arise in the latter respect would be private benefits as opposed to public benefits.
33. Consequently, when considered in the round, the public benefits that would accrue from the proposal do not outweigh the considerable importance and weight I attach to the harm that would result from them.
34. I conclude that, on balance, the works/alternative scheme would fail to preserve the special historic interest of the Grade II listed building and the character or appearance of the Regent's Park Conservation Area. This would fail to satisfy the requirements of the Act as well as conflicting with the provisions within the Framework.

35. In addition, the works/alternative scheme would not meet Policies 38, 39 and 40 of the City of the Westminster City Plan 2019 – 2040. Amongst other things, these policies seek to optimise the positive role of the historic environment in Westminster’s townscape and to incorporate exemplary standards of high-quality design.
36. Similarly, the works/alternative scheme would not accord with Council’s Supplementary Planning Guidance (SPG), including the SPG document ‘Repairs and Alterations to Listed Buildings’. The latter makes it clear that external services should be located discretely with visibility avoided wherever possible, and that exceptions to this would only be made if proven to be necessary. There is no evidence before me to suggest that an exception to the approach adopted in this SPG is necessary and should be made in this case.

Conclusion

37. For the above reasons, I conclude that the appeal should be dismissed.

Paul Freer
INSPECTOR