



Appeal Decisions

Site visit made on 29 June 2023

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 September 2023

Appeal Ref: APP/X5990/C/23/3314073 (Appeal A) 36 Southwick Street, London W2 1JQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mountstar Investments Ltd against an enforcement notice issued by City of Westminster Council.
 - The enforcement notice was issued on 25 November 2022.
 - The breach of planning control as alleged in the notice is: Breach of conditions no 1, 4 and 5 of planning permission granted on 11/1/19 ref 18/08999.
 - The requirements of the notice are: 1) Alter the ground floor shopfront, so that it accords with the approved plans submitted in the approval of details application (Ref: 19/03369/ADFULL), which sought to discharge Conditions 4, 5, 11 and 12 of the planning permission dated 11 January 2019 (Ref: 18/08999/FULL) (see Plan A [Plan No. 1099/82A] and Plan B [Plan No. 1099/81A] attached to the notice), by undertaking the following:-
 - a) Install a stone fascia panel to ground floor shopfront as approved;
 - b) Install windows on the front elevation which extend to the pilasters as approved;
 - c) Install stone pilaster heads on the ground floor shopfront as approved; and
 - d) Install the ground floor fenestration and detailing to the fenestration as approved.2) Install the railings around the basement lightwell opening on the right hand side of the Property, when facing the front of the Property (as shown within the red dotted lines in Photograph A attached to the notice) to accord with the approved plan submitted in the approval of details application (Ref: 19/03369/ADFULL), which sought to discharge Conditions 4, 5, 11 and 12 of the planning permission dated 11 January 2019 (Ref: 18/08999/FULL) (see Plan C [Plan No. 1099/83A] attached to the notice).
 - 3) Install the window in the front basement lightwell (as shown within the red dotted line in Photograph B attached to the notice) to accord with the approved plan submitted in the approval of details application (Ref: 19/03369/ADFULL), which sought to discharge Conditions 4, 5, 11 and 12 of the planning permission dated 11 January 2019 (Ref: 18/08999/FULL) (see Plan B [Plan No. 1099/81A] attached to the notice).
 - 4) Reinstate the lettering on the front elevation at third floor level, bearing the legend 'Marquis of Clanricarde', to accord with the plan approved by planning permission dated 11 January 2019 (Ref: 18/08999/FULL) (Plan D [Plan No. 1099/55A] attached to the notice).
 - 5) Bring the rear elevation of the Property, including the fenestration, into accordance with the plan approved by planning permission dated 11 January 2019 (Ref: 18/08999/FULL) (see Plan E [Plan No. 1099/80] attached to the notice).
- The period for compliance with the requirements is: Six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (e), (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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Appeal Ref: APP/X5990/F/23/3314074 (Appeal B)
36 Southwick Street, London W2 1JQ

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
 - The appeal is made by Mountstar Investments Ltd against a listed building enforcement notice issued by City of Westminster Council.
 - The enforcement notice was issued on 25 November 2022.
 - The contravention of listed building control alleged in the notice is: The failure to adhere to conditions 1, 3 and 5 attached to listed building consent dated 11 January 2019.
 - The requirements of the notice are: 1) Alter the ground floor shopfront, so that it accords with the approved plans submitted in the approval of details application (Ref: 19/03369/ADFULL), which sought to discharge Conditions 4, 5, 11 and 12 of the planning permission dated 11 January 2019 (Ref: 18/08999/FULL) (see Plan A [Plan No. 1099/82A] and Plan B [Plan No. 1099/81A] attached to the notice), by undertaking the following:-
 - a) Install a stone fascia panel to ground floor shopfront as approved;
 - b) Install windows on the front elevation which extend to the pilasters as approved;
 - c) Install stone pilaster heads on the ground floor shopfront as approved; and
 - d) Install the ground floor fenestration and detailing to the fenestration as approved.2) Install the railings around the basement lightwell opening on the right hand side of the Property, when facing the front of the Property (as shown within the red dotted lines in Photograph A attached to the notice) to accord with the approved plan submitted in the approval of details application (Ref: 19/03369/ADFULL), which sought to discharge Conditions 4, 5, 11 and 12 of the planning permission dated 11 January 2019 (Ref: 18/08999/FULL) (see Plan C [Plan No. 1099/83A] attached to the notice).
 - 3) Install the window in the front basement lightwell (as shown within the red dotted line in attached Photograph B) to accord with the approved plan submitted in the approval of details application (Ref: 19/03369/ADFULL), which sought to discharge Conditions 4, 5, 11 and 12 of the planning permission dated 11 January 2019 (Ref: 18/08999/FULL) (see Plan B [Plan No. 1099/81A] attached to the notice).
 - 4) Reinstate the lettering on the front elevation at third floor level, bearing the legend 'Marquis of Clanricarde', to accord with the plan approved by planning permission dated 11 January 2019 (Ref: 18/08999/FULL) (Plan D [Plan No. 1099/55A] attached to the notice).
 - 5) Bring the rear elevation of the Property, including the fenestration, into accordance with the plan approved by planning permission dated 11 January 2019 (Ref: 18/08999/FULL) (see Plan E [Plan No. 1099/80] attached to the notice).
 - The period for compliance with the requirements is: Six months.
 - The appeal is made on the grounds set out in section 39(1)(e) and (k) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision - Appeal A

1. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Decision - Appeal B

2. The appeal is dismissed, listed building consent is refused, and the listed building enforcement notice is upheld.

Preliminary Matters

3. With regard to Appeal A, the appellant confirms that they no longer wish to proceed with ground (e), which is that the enforcement notice was not properly served on everyone with an interest in the land. I shall therefore consider Appeal A on grounds (a) and (f) only.

4. I note that the reinstatement of the lettering to the front of the building has been carried out. However, because planning permission and listed building consent are sought for the scheme that is the subject of the enforcement notices, I have considered it below.

Appeal A on ground (a) and Appeal B on ground (e)

5. Ground (a) is that planning permission should be granted for what is alleged in the enforcement notice. Ground (e) is that listed building consent ought to be granted for the works alleged in the listed building enforcement notice. Because the issues are similar, I have dealt with both grounds together to avoid unnecessary duplication.

Main Issue

6. The main issue is the effect of the works and development on the significance of 36 Southwick Street, a grade II listed building, and whether they preserve or enhance the character or appearance of the Bayswater Conservation Area.

Significance

7. Initially developed as a fashionable residential suburb, the Bayswater Conservation Area (CA) is a sizeable area taking in development to the north of Kensington Gardens and Hyde Park. Its layout comprises an inter-related pattern of wide streets, crescents and squares planned on either sides of the main boulevards, Westbourne Terrace and Sussex Gardens.
8. It is largely characterised by uniform terraces of 19th century housing, interspersed with other land uses, for example, shops, pubs and restaurants. Much of the area consists of stuccoed townhouses, attractive streets and mews of a smaller scale, as well as a variety of later buildings of interest. A series of open spaces with many fine mature trees and formal squares relieve the dense grain of development, making a valuable contribution to the character of the area.
9. The appeal site at 36 Southwick Street is the former Marquis of Clanricarde Public House. Listed at grade II, it sits within a row of early-mid 19th century houses which are comprised in a single list entry. No 36 and the wider terrace appear to be typical of the architecture found in the CA.
10. No 36 rises to four storeys in height, with a basement level, and a coach entrance on the right hand side of the ground floor. Its four bay frontage is notably wider than its neighbours, and its architectural treatment is more pronounced. The heavy cornicing and decorative parapet are distinctive elements of this main elevation. The façade reflects the historic approach of locating the principal rooms on the first floor, with the tallest windows and their pediments at this level. On the floors above are smaller windows, indicating that these rooms are more private, or of lesser status.
11. Previously, the whole facade of No 36 was stuccoed, in contrast to the adjacent houses which are stuccoed on the ground floor and finished in brown brick above. The list description notes that a 20th century ground floor was present at the site. The Council confirm that a number of restaurants have occupied the premises, with the result that much of the historic fabric and detailing at this level has been lost. The list description also records the presence of spearhead basement railings.

12. The building has been extended to the rear, most likely in the late 19th century. At the lower ground floor and ground floor, a large two storey extension occupies most of the plot. A smaller extension has been formed at first floor level. The stock brick finish at the back is common with the remainder of the terrace.
13. Although it has undergone some changes, No 36 is an attractive example of a former city pub. Its relatively unaltered external appearance contributes to its significance, and in turn, the building makes a positive contribution to the character and appearance of the CA.

The ground floor front elevation

14. The Council provide a photograph of the ground floor front prior to the works being carried out. Dating from April 2012, the image shows a commercial frontage comprising four bays divided by pale coloured plain columns rising to the fascia level. The two bays on the left side appear to contain doorways, and the two on the right are fully glazed. The overall impression is of a modern frontage, the only recognisably historic element being the framing of the opening by the side pillars and the fascia above. In the photograph, the area in front is paved over without any railings, and no visible sign of the basement level below
15. The Council's document entitled 'Supplementary Planning Guidance – Repairs and Alterations to Listed Buildings' (SPG) states that alterations must relate sensitively to the original building, and that materials should generally match the original. The use of non-traditional materials will not normally be acceptable.
16. In this case, it is clear that very little historic fabric survived on the ground floor. The appellant points to variations in ground floor front elevation treatments along the street. In this light, I accept that there is some leeway for change in terms of the treatment of the frontage at No 36. However, this does not negate the need for schemes to remain in keeping with the character of the heritage assets in question.
17. Planning permission, ref: 18/08999/FULL, and listed building consent, ref: 18/09000/LBC, were granted for the conversion of the lower floors of the building to three flats, with associated alterations to the fabric of the building. Subsequent applications were made for the discharge of conditions attached to those permissions.
18. The 'Elevation as Proposed' drawing shows that the design intention was to retain the structural framework of the four openings and infill them with new fenestration. The main double door entrance was to be formed in the second bay from the left, with multi-paned glazing in the doors and the lights above. The other bays were to receive similar multi-paned windows and overlights, with their dimensions adjusted to the size of each aperture. The stone pilaster heads in the consented scheme would have further enhanced the appearance of the building, and contributed to the traditional appearance of its front façade.
19. Although there appears to be little evidence of the appearance of any previous historic frontages at the appeal site, the Council were satisfied that the

approved scheme would go some way towards re-establishing the former character of the 19th century pub front.

20. As built, the four bays previously formed by the columns have been removed. The door and window openings have been reduced in size, and the areas around them have been faced in red/brown brick. Around five courses of the same brick are continued above the carriage opening. The windows are still multi-paned, but the panes are notably larger than originally proposed. The frames are stained brown. The front door remains double leafed but has a narrow panel to one side which did not appear in the proposed scheme.
21. Although the columns and bays were modern additions to the building, they had a commercial appearance that reflected the historic use of the ground floor. The approved design features of the tall, small paned windows and doors were reminiscent of a traditional pub frontage style, even if not historically accurate to this particular building.
22. In contrast, the installed doors, side panel, and windows are overtly domestic in style, departing still further from the original commercial character of the ground floor. The brown stained finish of the new framing is at odds with the historic character of the building, as 19th century window frames would almost always have had a traditional paint finish.
23. From a comparison of the approved and built schemes, I agree that the top of the double doors and the tops of the main windows are comparable in height. The appellant argues that the scheme as built attempts to pick up the character of the upper windows by use of the glazing bars to create small panes of glass, and that the proportions of the frames and glazing bars keep in with the existing windows above.
24. However, the asymmetrical grouping of the windows and the bland, modern design and detailing of the frontage as a whole jars with the fine Classical style of the building. I accept that none of the design iterations on the ground floor follow the layout of the fenestration above, but there is no reason that they should do so, given that the ground floor was previously a pub. As built, the appearance of the new ground level windows and door is harmfully at odds with that of the listed building and the remainder of the terrace.
25. Although brick is a traditional material, its use here is not acceptable. Firstly, it is a modern type of brick whose colour and finish does not satisfactorily replicate the 19th century stock brick in the vicinity. Even if a more historically accurate brick had been used, there is little evidence of the presence of brick used in this particular way at ground floor level in the surroundings.
26. Elsewhere in the street, the townhouses are brick above with stucco on the ground floor. In the other nearby buildings with commercial units on the ground floor, the frontages are predominantly taken up with the shopfronts and entrance doors. These examples predominantly appear to have timber fascias above, and I saw no examples where fascias have been replaced with courses of brick, as has been done at No 36.
27. Instead, the evidence points to a brick front on the ground floor being exceptional and wholly out of character in a street where uniformity is a key characteristic. The fact that the ground floor is separated from the upper floors

by the detailing on the frontage of the building does little to make its appearance more sympathetic.

The railings

28. The enforcement notices refer specifically to the railings on the right-hand side of the main entrance way. Plan no. 1099/83A shows the railings as proposed, which are described as 'Cast iron railings to match design and style of the adjoining properties'. The railings at 34 Southwick Street are pictured, presumably as an indication of how the new railings at No 36 should appear.
29. The new railings enclose the stairwell to the basement, with a gate to access the stairs. Some of the rails have been set into a black-painted plinth, as proposed, and most have spearheads apart from a couple which seem to have broken off. However, the corner posts, as built, appear substantially thicker and heavier than those proposed. They also omit the finials shown on the proposed plan, and so lack the traditionally elegant appearance of the proposed scheme.
30. The enforcement notice photograph shows some of the railings set on a horizontal bar rather than into a plinth. The appellant points to the examples of railings in the vicinity that also rise from bars. On my visit, I took the opportunity to look at the railings in the surrounding streets. I saw that the majority did not rise from bars, but were set into a solid base. The examples I did see appeared to be relatively modern in age. I found little to show that the style of railing rising from a bar was a typical or historically accurate detail in the vicinity of the appeal site.
31. I accept that setting a bar on the ground, as opposed to in an elevated position, and painting the components black, goes some way to diminishing their appearance. However, fine details of this kind are important in preserving or seeking to reinstate the character of heritage assets. The poor detailing of the railings as built does not satisfactorily reflect the fine architectural quality of the listed building, and there is no evidence of any overwhelming need that would justify the departure from the approved scheme.

The basement

32. At basement level, it was proposed to install another set of double doors directly underneath the ground floor doors. One twelve-paned sash window was to be inserted on either side of the new doors. As built, two paired plain sash windows have been inserted to the right-hand side of the door, behind the stair.
33. The appellant argues that the new paired windows represent a minimal change, and given their obscured position in the lightwell, do not adversely affect the character and appearance of the listed building. However, it is a well established principle that buildings are listed for their intrinsic historic and architectural qualities, regardless of accessibility or wider visibility from outside the property.
34. The windows as proposed reflected the character and appearance particularly of the windows on the second floor of the main façade. As noted above, this style of window was chosen to denote the lesser status of the second floor rooms. Similarly, the basement level would have lower in status within the overall hierarchy of the building, possibly providing a domestic area for

servants or other staff. On that basis, the proposed basement façade kept in with the character of the building, and the coherency of the frontage as a whole.

35. The pair of windows as built do not appear to have any design cues within the listed building. On the contrary, due to their squat appearance and strong horizontal emphasis, they have a modern appearance that is out of keeping with the established design intent of the main public face of No 36.

The rear elevation

36. The Council are concerned that the works and development carried out at the rear of the building are not in accordance with the approved plans. With reference to Plan No. 1099/80, the rear elevation as proposed shows three windows in the mansard roof, two larger multi-paned windows below, and a door with an adjacent window each side on the lower level.
37. In the elevation as built, the mansard windows are the same size, but comprise two panes each. On the next level down, one larger window has two panes instead of the proposed small panes. A door has been inserted in place of the other proposed multi-paned window. At the lower level is a fully glazed door with a narrow window offset on either side.
38. I accept that the scale and size of the rear extension as built is comparable to the approved scheme. However, although the differences in the fenestration may be relatively minor, they still cumulatively change the design of the rear elevation. As proposed, the multi-paned design of the door and windows, and their placement within the elevation, better reflected the appearance of the main rear elevation of the building. As a result, the proposed scheme allowed a continuity of design throughout the rear elements of No 36, retaining the integrity of the building as a whole.
39. The as built scheme steps away from the coherency and unity of the established design of No 36, harming its overall character. The fact that this part of the building is less readily visible does not negate the need for good design, which underpins the approach taken in the National Planning Policy Framework (NPPF).

The lettering to the front

40. As shown in Plan No 1099/55A, the words 'Marquis of Clanricarde' were proposed to be reinstated on the front façade of No 36, between the second and third floor. As the name of the former pub, this lettering is important to the significance of the listed building and the CA. It has historic, evidential and communal value, not only giving factual information as to the name of the premises, but also referencing the historic use of the building and its function in the surrounding community. Its removal would therefore harm the heritage assets in question.

Summation

41. Drawing these strands together, I conclude that the works and development discussed above have harmed the significance and special interest of the listed building, and in turn, the significance of the CA. Accordingly, therefore, the works and development conflict with the overarching statutory duty as set out

- in the Planning (Listed Buildings and Conservation Areas) Act 1990, which must be given considerable importance and weight, and with the NPPF.
42. In addition, the appeal scheme conflicts with Policy 39 of the City of Westminster City Plan 2019-2040 (CP), insofar as it seeks to ensure that heritage assets are conserved and enhanced in a manner appropriate to their significance, and with CP Policy 40, insofar as it requires that development will be sensitively designed, having regard to the prevailing scale, heights, character, building lines and plot widths, materials, architectural quality and degree of uniformity in the surrounding townscape.
43. Although serious, the harm to the heritage assets in this case is less than substantial, within the meaning of the term in paragraph 195 of the NPPF. Paragraph 196 requires that, where there is less than substantial harm, the harm should be weighed against the public benefits of the works.
44. Taken as a whole, the scheme for the conversion of the building has added a small number of residential units to the local housing supply, which is to be given some moderate weight. The works and development have had some limited economic benefit during the construction phase.
45. The appellant argues that, in allowing the conversion of the commercial floor, there should be an understanding that to facilitate such a change to residential use, there will be design changes that may not reflect the previous commercial frontage. Whilst I agree that changes will be needed, it is not inevitable that the listed building should be harmed by a scheme of conversion. I have not been provided with any circumstance that would mitigate the need for good design that keeps in with the character of the building. Moreover, there is no evidence to show that the scheme as implemented was necessary or justified. On the contrary, the same benefits noted above would have accrued from the approved scheme.
46. I therefore find that insufficient public benefits have been identified that would justify or outweigh the harm I have identified to the heritage assets. The scheme therefore conflicts with the NPPF, which directs, at paragraph 193, that great weight should be given to the assets' conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to their significance.

Appeal A on ground (f) and appeal B on ground (k)

47. Ground (f) is that the steps required to comply with the requirements of the notice are excessive. Ground (k) is that steps required to be taken by virtue of section 38(2)(c) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with. Again, as the issues are similar, I have dealt with these grounds together.
48. Firstly, whilst I note the appellant's willingness to reinstate the fascia panel, the pilasters and stone pilaster heads, these measures form part of the requirements of the notices, and so cannot be considered as 'lesser' requirements under this ground.
49. The appellant suggests the existing brickwork could be rendered with a high quality cement render and painted white to match the existing upper floors to the front elevation. He also suggests that the stained timber frames could be

painted white to match the existing windows to the upper floors. However, whilst these steps might bring about marginal improvements to the scheme, I have found that the overall design of the ground floor façade is unacceptably harmful to the character and appearance of the listed building, and in turn harms the significance of the CA. That being the case, these measures would fall considerably short of making the appeal scheme acceptable, and so would not achieve the aims of the notices, which is to remedy the identified breaches of planning and listed building control.

50. I note the suggestion that Georgian-style glazing bars could be installed to the windows and doors in a style to match the existing windows to the upper floors, and the approved design. However, applied glazing bars rarely achieve a satisfactory appearance in comparison to traditional glazing bars. Furthermore, because they have no structural function, they depart from the historic construction method found in traditional timber windows. In this case, they would cause further harm to the significance of the listed building due to these unsympathetic characteristics.
51. I therefore find the requirements of the notices to be reasonable and commensurate with their aims, and so the appeals on ground (f) and ground (k) fail.

Conclusion

52. Appeal A is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.
53. Appeal B is dismissed, listed building consent is refused, and the listed building enforcement notice is upheld.

Elaine Gray

INSPECTOR