



Appeal Decisions

Site visit made on 5 March 2024

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 May 2024

Appeal A Ref: APP/K5600/Y/23/3325769

39 Egerton Crescent, London SW3 2EB

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
 - The appeal is made by Ms Shalomova against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref is LB/23/02818.
 - The works proposed are to form double doors into the ground floor dining room.
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Appeal B Ref: APP/K5600/Y/23/3326208

39 Egerton Crescent, London SW3 2EB

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
 - The appeal is made by Ms Shalomova against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref is LB/23/02817.
 - The works proposed are amendment to lower ground floor stair, by form a curved tread to bottom step and replace the existing glass wall/balustrade with a traditional timber balustrade and handrail.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

3. The two appeals in the banner headings above concern different proposed works within the same property under the same legislation. For the sake of expediency, I have dealt with both appeals together in this decision letter.
4. An amended plan¹ of the proposed staircase was submitted with Appeal B. The Procedural Guide: Planning appeals – England² sets out that the appeal process should not be used to evolve a scheme. It is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Local Planning Authority and by interested parties at the application stage.
5. In deciding whether to exceptionally accept proposed amendments, as per the judgement in *Holborn Studios Ltd v The Council of the London Borough of Hackney* (2018), which refined the 'Wheatcroft principles' set out in *Bernard Wheatcroft v Secretary of State for the Environment* (1982), consideration

¹ Drawing No. 150-3 Rev A

² Dated 11 January 2024. Section 16, Paragraph 16.1.

must be given to the following two tests which must be assessed separately:
1) a substantive test; and 2) a procedural test.

6. The substantive test is whether the proposed amendment(s) involves a 'substantial difference' or a 'fundamental change' to the application that would ultimately result in a 'different application.' A 'substantial difference' or a 'fundamental change' could also be as a result of a series of small, incremental changes to a scheme. If it is concluded that the amendment(s) would result in a 'different application', then it is unlikely that it or they could be considered as part of the appeal.
7. The change detailed in the amended plan was limited to the removal of the boarding over the spindles, which were evidently approved through a previous grant of consent. Moreover, the nature of the amendment is limited and directly addresses a concern raised by the Council in their officer report. It could reasonably be concluded that the proposed amendment does not involve a 'substantial difference' or a 'fundamental change' to the proposed development and works. Consequently, this would pass the substantive test.
8. The procedural test is whether, if accepted, the proposed amendment(s) would cause unlawful procedural unfairness to anyone involved in the appeal and, if so, whether such unfairness could be rectified, for example by re-consultation.
9. In this case, given the change involves a suggested change by the Council and that there were no third-party representations at application stage, it would not be procedurally unfair to accept the proposed amendment set out in the revised plan, and I am satisfied that they pass the procedural test. Taken together, I accept the proposed amendment to Appeal B as an exception as shown on the revised plan, and I have determined the appeal on this basis.
10. On 19 December 2023, the Government released an updated version of the National Planning Policy Framework (the Framework). As the changes do not affect the consideration of the main issue of these appeals, I have not sought comments on the revisions.

Main Issues

11. The main issues for both appeals are whether the proposals would preserve the listed building or any features of special architectural or historic interest which it possesses.

Reasons

Significance of Heritage Asset

12. The appeal site is a mid-terrace dwelling forming part of the Grade II Listed '31-54, Egerton Crescent SW3'. The terrace evidently dates from around 1830 and the list entry³ speculates that it was likely designed by George Basevi. No.39 is part of the crescent section of Egerton Crescent and there are two wing additions to either side which are listed separately.
13. From all I have seen and read, the special interest and significance of the listed building is derived in part from its historic and architectural interests. The historic interest is predominantly taken from its age and illustration of mid-19th century domestic architecture during which time the population of London

³ List Entry Number: 1190582

expanded greatly caused by changing demographics. The architectural interest is mainly drawn from the pleasing crescent form, use of traditional materials and intricate detailing of its classical frontage. There is further significance drawn from its group value and the substantial positive contribution the terrace makes to the character and appearance of the wider streetscape.

14. Internally, and of specific relevance to the appeals, there is further special interest and significance derived from the hierarchy of floors relative to their historic functions, remaining historic fabric and evidence of original and historic plan form.

Effect of the Proposal – Appeal A

15. The proposal seeks to create a new opening and insert double doors in the wall dividing the entrance hall and dining room on the ground floor. In the appellants statement of case, it is advised that the existing doorway of single width on the same wall is modern and would be closed off and boarded over with its original architrave retained.
16. However, in their final comments it is confirmed that the architrave is not original and would be removed as well as the door being boarded. Given the inconsistencies, I have taken the proposed plan, which shows no architrave retained on the wall, and the clarity in the final comments into consideration and assessed Appeal A on the basis that the door would be retained but boarded over with the architrave removed. I observed on the site visit that the door and architrave had already been removed.
17. The proposal would cause the irrevocable loss of historic fabric by removing a large section of wall. That it would not reach as high as the historic cornicing above does not negate this loss. Guidance from Historic England⁴ states in this regard that historic fabric will always be an important part of an asset's significance while also adding that it is not appropriate to sacrifice old work simply to accommodate the new. Moreover, the creation of a new opening between the dining room and entrance hall would dilute the legibility of the remaining historic plan form of the property.
18. I note that the appellant agrees that part of the building's significance and interest stems from its plan form and layout. As such, I fail to understand how the loss of part of the remaining plan form of the ground floor would not lead to a partial loss of this understanding. Nor would I agree that blocking the existing door in this wall would mitigate the harm that the loss of historic fabric would cause.
19. As such, the proposed works of Appeal A would fail to preserve the listed building, or any features of special architectural or historic interest which it possesses. Consequently, they would not sustain or enhance, but rather cause harm to, the significance of a designated heritage asset.

Effect of the Proposal – Appeal B

20. The staircase between the ground floor and lower ground floor is of relatively simple design which is emblematic of its historic utilitarian function and location on the lower ground floor. This area of the house would historically have been used by service staff and for the preparation of food.

⁴ Making Changes to Heritage Assets - Historic England Advice Note 2 (February 2016)

21. The addition of the more ornate and drum shaped tread to the lowermost step and the more intricate newel post would add overly ornate features to the purposely simple design of the staircase. This would diminish the understanding of the hierarchical arrangement of the floors of the property and more closely resemble the finish of the staircase on the ground floor, which would historically have been articulated as a statement of grandeur upon entering the property.
22. With regards to the replacement of the consented glass balustrade, as per the amended plan submitted with this appeal this feature has now been removed. This has revealed the spindles, which the Council considers are historically appropriate. Given the spindles were approved under a previous grant of listed building consent and the boxing-in to which the Council objected has been removed, this element of the scheme would not be harmful.
23. With regards to Appeal B, the change to the lowermost step and the newel post would dilute the hierarchical understanding of the property. Consequently, the works would not sustain or enhance, but rather cause harm to, the significance of a designated heritage asset.
24. For both appeals, I acknowledge that change to a heritage asset does not automatically result in harm to its significance and change can also be positive or neutral and it only becomes harmful if the identified special interest is eroded. I also agree that conservation is an active process of managing change to heritage assets in ways that sustain, reveal or reinforce their heritage interests. However, as outlined above, the proposal would weaken the heritage interests of the listed building and erode its identified special interest and significance.

Heritage Balance

25. Paragraph 205 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. I have found in both instances that the proposals would harm the significance of the listed building. I agree that the magnitude of harm would be less than substantial due to the nature and scope of the works.
26. The appellant accepts this conclusion insofar as it would be less than substantial but suggests that the harm would be at the lower end in a spectrum of harm. Planning Practice Guidance⁵ advises that within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated.
27. Be that as it may, the courts have held⁶ that the only requirement is to differentiate between substantial and less than substantial harm for the purposes of undertaking the weighted balancing exercise. In any event, the requirement in the Framework to give great weight to an asset's conservation is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. In this respect a less than substantial harm does not equate to a less than substantial planning objection. I give this harm considerable importance and weight.

⁵ Paragraph: 018 Reference ID: 18a-018-20190723

⁶ R on behalf of Simon Shimbles v City of Bradford MBC [2018] EWHC 195 (Admin)

28. Paragraph 208 advises that in the case of less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
29. I have no reason to doubt that the ongoing work at the property has necessitated a considerable financial investment on behalf of the building owners. However, this would already have been factored into previous grants of consent during the previous applications. In terms of the proposals before me, the investments required to facilitate the works are likely to be minimal and therefore worthy of little weight.
30. There would be a minor improvement in natural light and ventilation in the entrance hall as a result of the double doors, although given they are solid timber this would only occur when the doors are open. This would contribute to a very minor improvement to the area's existing housing stock, and any benefit would be very minimal and worthy of equally minimal weight in favour of the scheme.
31. I recognise that modern living trends are much changed from those of people that would have occupied the appeal property in the 19th Century. It is evidently the intention of the occupiers to use the lower ground floor as family space, while they consider the change would make this storey of the property more welcoming. However, it is not clear as to why the lowermost step must be altered to achieve this change of living arrangement. As such this carries little weight in favour of the proposal. The amended proposal to remove the glass balustrade and reveal the simple spindles would lead to a minor improvement in the design of the staircase and is worthy of some positive weight, albeit limited.
32. Moreover, there is no substantive evidence that the insertion of double doors on the ground floor and the alterations to the staircase at lower ground floor are required to secure the optimum viable use of the building as there seems no risk of its use being lost based on all that I have seen and read. Regardless of whether the works are reversible in this respect, this offers very little weight in favour of the scheme.
33. Accordingly, the proposed works would not preserve the listed building, or any features of special architectural or historic interest which it possesses. As such, they would not satisfy the requirements of section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) and the provisions within the Framework which seek to conserve and enhance the historic environment.
34. Although listed building consent applications are not subject to section 38(6) of the Planning and Compulsory Purchase Act 2004, and therefore do not require to be determined in accordance with the development plan, relevant provisions of the development plan can be material considerations.
35. Policy CL4 of the Royal Borough of Kensington and Chelsea Local Plan (LP) (adopted September 2019) seeks to require all development and any works for alterations or extensions related to listed buildings, scheduled ancient monuments and Archaeological Priority Areas, to preserve the heritage significance of the building, monument or site or their setting or any features of special architectural or historic interest. Based on my findings in this decision letter, the proposed works of both appeals would be contrary to this policy.

Other Matters

36. The appeal site is located within the Thurloe Estate and Smith's Charity Conservation Area (CA). As such, I have had regard to section 72(1) of the Act, which requires that special attention be given to the desirability of preserving or enhancing the character or appearance of the conservation area. Given the location and nature of the proposed works, the character and appearance of the CA as a whole would be preserved. I note the Council raised no concerns in this respect either.

Conclusion

37. For the reasons given above, the appeals should be dismissed.

C McDonagh

INSPECTOR