



Appeal Decisions

Site visit made on 19 December 2023

by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st February 2024

Appeal A Ref: APP/X5210/W/23/3322805

Flat A, 40 Earlham Street, Camden, London WC2H 9LH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Martin Vander Weyer against the decision of the Council of the London Borough of Camden.
 - The application Ref 2022/0560/P, dated 11 February 2022, was refused by notice dated 1 December 2022.
 - The development proposed is described as 'The works comprise a balcony to the rear of Flat A with the following details:
 - Measuring the length and depth of the [late 20th Century] parapet projection in front of the bedroom of flat A
 - With fixings to the parapet copings and brickwork of no. 40 Earlham Street
 - To be built with a grill front to match the balconies on the above floors and a matching grill floor to allow passage of light to the obscured glass skylights beneath, which give limited daylight to the rear of the commercial space at No 36.
 - The floor to be in hinged sections which can be raised flexibly to allow access to the skylights.
 - The existing window to be replaced with French doors to match those of the 2nd and 3rd floor flats above
 - Removable steel or wooden steps to be provided as access from inside.'
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Appeal B Ref: APP/X5210/Y/23/3322808

Flat A, 40 Earlham Street, Camden, London WC2H 9LH

- 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 Martin Vander Weyer against the decision of the Council of the London Borough of Camden.
 - The application Ref 2022/2098/L, dated 11 February 2022, was refused by notice dated 1 December 2022.
 - The works proposed are described as 'The works comprise a balcony to the rear of Flat A with the following details:
 - Measuring the length and depth of the [late 20th Century] parapet projection in front of the bedroom of flat A
 - With fixings to the parapet copings and brickwork of no. 40 Earlham Street
 - To be built with a grill front to match the balconies on the above floors and a matching grill floor to allow passage of light to the obscured glass skylights beneath, which give limited daylight to the rear of the commercial space at No 36.
 - The floor to be in hinged sections which can be raised flexibly to allow access to the skylights.
 - The existing window to be replaced with French doors to match those of the 2nd and 3rd floor flats above
 - Removable steel or wooden steps to be provided as access from inside.'
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Decisions

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

Preliminary Matters

3. These decisions address both planning and listed building consent appeals for the same site and the same scheme. To reduce repetition and for the avoidance of doubt, I have dealt with both appeals together within a single decision letter.
4. During the course of the appeals I sought the advice of the Appellant and the Council in terms of the accuracy of the submitted drawings. The comments received have been taken into account in my consideration of these appeals.
5. On 19 December 2023 the revised National Planning Policy Framework (Framework) was published. The parties' views were sought on whether the revised Framework altered their case and I have taken the comments received into account in these decisions.

Reasons

6. The appeal property forms part of the Grade II listed building known as 36, 38 and 40, Earlham Street (List Entry Number: 1342095) which is an early 19th century altered, four storey terrace with basement, located within the Seven Dials (Covent Garden) Conservation Area and close to other Grade II listed buildings, notably Cambridge Theatre, Seven Dials Warehouse and The Crafts Centre. In respect of these matters, I am mindful of my statutory duties under Sections 16 (2) and 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act) in respect of listed buildings and their settings and Section 72 (1) of the Act in relation to the conservation area.
7. In undertaking my site visit and considering the proposal I have noted that the submitted drawings contain a number of inaccuracies and omissions when compared with the building on site. These include details of the window headers and a projecting brick pier on the rear elevation the terrace of which the appeal site forms part. The balconies above flat A have also been raised as a discrepancy, as has the red line of the appeal site.
8. The Appellant and the Council consider that a condition ensuring that the brick window headers were retained along with the projecting brick pier would be suitable to control the proposed works and development. In terms of the red line of the appeal site whilst this is drawn around No 40 Earlham Street on the site location plan, the building to which the works and development relate appears to be the rear elevation of No 36 Earlham Street.
9. It is imperative that drawings are accurate and unambiguous to avoid doubt about what is proposed and to allow a robust assessment of any consequent effects. The Framework makes it clear at paragraph 140 that local planning authorities should ensure that relevant planning conditions refer to clear and accurate plans and drawings which provide visual clarity about the design of the development.
10. Notwithstanding my views on the merits of the cases, the numerous and substantial discrepancies and uncertainties outlined above give rise to

considerable concern regarding the detail of the proposal. Furthermore, they generate serious concern over whether the proposal could be implemented. Such matters are undesirable in general terms, but even more so given the building's Grade II listed status and its relationship to other listed buildings, which are designated heritage assets of national importance, and its location within a conservation area.

11. Given this, the use of planning conditions as suggested would be unlikely to meet the tests set out within the Framework relating to conditions, notably that they would be unlikely to be enforceable, given the level of detail provided on the submitted drawings.
12. Taking the above into account I am unable to properly assess whether the proposal would preserve the Grade II listed building known as 36, 38 and 40, Earlham Street, its setting or any features of special architectural or historic interest which it possesses. I am also unable to properly assess the proposal's effect on nearby listed buildings or its effect upon the character or appearance of the Seven Dials (Covent Garden) Conservation Area. Consequently, I cannot reasonably determine whether the proposal would meet the requirements of Section 16(2), 66(1) or 72(1) of the Act. Nor can I draw conclusions against the relevant policies of the London Borough of Camden Local Plan 2017.
13. It is clearly open to the Appellant to submit revised applications to the Council in the first instance with accurate drawings. However, the submission of additional drawings as suggested by the Appellant as part of the appeal would be unlikely to be fair. The appeal process is not designed to evolve a scheme as set out in paragraph 16.1 of the Procedural Guide: Planning appeals – England (January 2024).

Conclusion

14. For the above reasons, I conclude that both Appeal A and Appeal B should be dismissed.

RC Kirby

INSPECTOR