



# Appeal Decisions

Hearing held on 23 January 2008

Site visits made on 22 & 23 January 2008

**by Graham Dudley BA (Hons) Arch Dip**  
Cons AA RIBA FRICS

**an Inspector appointed by the Secretary of State**  
for Communities and Local Government

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**Decision date:**  
**25 February 2008**

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## **Appeal A: APP/X5210/F/07/2051293**

### **29 Hampstead High Street, London NW3 1QA**

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Grainway Limited against a listed building enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN07/0338.
- The notice was issued on 14 June 2007 with a variation issued on the 14 August 2007.
- The contravention of listed building control alleged in the notice is set out in Annex A.
- The requirements of the notice are set out in Annex B.
- The period for compliance with the requirements is nine months.
- The appeal is made on the grounds set out in section 39(1) (e) and (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

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## **Appeal B: APP/X5210/A/07/2052691**

### **29 Hampstead High Street, London NW3 1QA**

- 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 Grainway Limited against the decision of the Council of the London Borough of Camden.
- The application Ref 2006/5726/P, dated 27 November 2006, was refused by notice dated 13 March 2007.
- The development proposed is provision of metal balustrading to the third floor flat roof in connection with the use of the roof terrace for the maisonette at second and third floor levels.

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## **Appeal C: APP/X5210/E/07/2052692**

### **29 Hampstead High Street, London NW3 1QA**

- 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 Grainway Limited against the decision of the Council of the London Borough of Camden.
  - The application Ref 2006/5729/L, dated 27 November 2006, was refused by notice dated 13 March 2007.
  - The works proposed are the retention of works previously carried out and the carrying out of restoration works all as listed on the attached schedule (see annex C).
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## Decisions

### Appeal A

1. I direct that the listed building enforcement notice be corrected by deleting the word 'dropped' from Paragraph 5 Step 11 and I allow the appeal insofar as it relates to the down-lighters in the kitchen, bathrooms and shower rooms, the ceilings at second floor level and the lowered ceiling in the first floor bathroom and grant listed building consent for the retention of the down-lighters in the kitchen, bathrooms and shower rooms, the ceilings at second floor level and the lowered ceiling in the first floor bathroom at 29 Hampstead High Street, London NW3 1QA.
2. I direct that the listed building enforcement notice be varied by:
  - Deleting from Paragraph 5 Step 11 *'Remove unauthorised dropped ceilings and'*.
  - Deleting from Paragraph 5 Step 2 *'dropped ceiling'* from the second sentence.
3. I dismiss the appeal, and uphold the listed building enforcement notice as corrected and varied, insofar as it relates to all the other works and refuse to grant listed building consent for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

### Appeal B.

4. I allow the appeal, and grant planning permission for provision of metal balustrading to the third floor flat roof in connection with the use of the roof terrace for the maisonette at second and third floor levels at 29 Hampstead High Street, London NW3 1QA in accordance with the terms of the application, Ref 2006/5726/P, dated 27 November 2006 and the relevant part of the plans submitted with it, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The windows shall be single glazed.
  - 3) No development shall take place until details of the joinery sections for the windows have been submitted to and approved in writing by the local planning authority. The development shall be completed in accordance with the approved details.

### Appeal C

5. I dismiss the appeal.

## **Main issues**

6. The main issues are:

- The effect of the various works on the special architectural and historic interest of the listed building.
- Whether the steps are reasonable.

## **Reasons**

### ***Ground (e), Listed building consent and planning appeal***

7. The matters raised in the ground (e), listed building and planning appeals relate to similar matters, with similar issues and considerations. Therefore, for reporting purposes, I have grouped them together in this decision.
8. The London Borough of Camden Replacement Unitary Development Plan (2006) [UDP] Policy B1 provides General Design principles. Policy B3 relates to alterations and extensions and policies B6 and B7 reflect the duties imposed by Sections 16(2) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 with regard to conservation areas and listed buildings and their setting.

### ***Special Architectural and Historic interest***

9. 29 Hampstead High Street was constructed around 1870 with yellow brick walls and stucco dressings and a slated mansard roof with lunette dormers. Circular 01/2007, *Revisions to Principles of Selection for Listed Buildings* identifies criteria for listing buildings, with main headings of architectural and/or historic interest. When listing, the Secretary of State may take account of the extent to which the exterior contributes to the special architectural or historic interest of any group of buildings. Factors to be considered include age and rarity value and it is noted for buildings after 1840, because of the greatly increased numbers of buildings erected and the much larger numbers of surviving buildings, that progressively greater selection is required. Circular 01/2007 notes that if a building is designated because of its group value, protection applies to the whole of the property, not just the exterior.
10. At the time this building was added to the list, criteria set out in Planning Policy Guidance Note 15 – Planning and the Historic Environment (PPG 15) would have been relevant. The main criteria were identified under headings of architectural interest, historic interest, close historical association and group value. PPG 15 notes that where a building qualifies for listing primarily on the strength of its intrinsic architectural quality or its group value, the fact that there are other buildings of similar quality elsewhere is not likely to be a major consideration. It also notes that where there are a large number of buildings of a similar type or quality the Secretary of State's aim will be to list the best examples of the type which are of special architectural interest.
11. I acknowledge that a building of this age falls into the category where a relatively large number of buildings from the same era will have survived and that some standardisation of detailing will have occurred. I also accept that its contribution to group value is important, including in relation to the Hampstead

Conservation Area. However, it is quite clear that when considering listing, even for group value, it will be the most interesting buildings that have been identified for listing and that the interior forms part of the listed building.

12. It is not reasonable to consider the exterior of a building as being a separate entity to its interior. These parts of the building are intrinsically linked, each have a bearing on the form and function of the other. There is a hierarchy of windows up the front elevation and this is a reflection of the original internal layout and plan form. I accept that internal fittings and joinery are likely to have come from pattern books and that there would be a degree of standardisation between properties of this age. However, this standardised detail associated with the period and building type is a historically intrinsic and important aspect of the building. While I note that the list description refers to exterior features, PPG 15 notes that list descriptions are principally to aid identification and that the absence from the list description of any reference to a feature (whether external or internal) does not indicate that it is not of interest or that it can be removed or altered without consent. The building has been selected for listing and I consider the internal layout and features make an important contribution to its special architectural and historic interest.

#### *Ground Floor Hallway*

13. The modern timber stair, formed in a straight flight, has been slotted into the stairwell with no apparent consideration for the shape or character of the hallway. It does not fit comfortably within the space and does not reasonably relate to the surrounding space and plan form and has an unsatisfactory appearance. The original flight, without the balustrading, has been retained below the new staircase. PPG 15 notes that the removal or alteration of any historic staircase is not normally acceptable. In this case the impact of removal of the balustrading and insertion of the new staircase is substantial, causing unacceptable harm to the special interest on the listed building.
14. I accept that the stair layout relates to plans shown for the conversion of the store area at the rear of the first floor, but the parties agreed at the hearing that the planning permission and listed building consent for that conversion only related to the rear 'extension' and did not include the staircase. While it will be necessary to agree a revised access to the rear first floor store area, I consider that the harm caused by the new stair arrangement is substantial, and far outweighs any difficulties or inconvenience related to rearranging the access or implementation of the planning permission.

#### *Plan Form, First, Second and Third Floors*

15. The external elevation has a hierarchy of features, with larger windows at the lower levels reflecting the room arrangement behind. The large first floor windows reflect the importance and size of the rooms served. Reducing the size of this room by subdivision for the bedroom and adjacent corridor and by the kitchen partition cause significant harm to the historic plan form and proportions of the room, and that would still be the case if the kitchen wall were reduced to 1200mm high. This wall also has a poor relationship to the chimney breast and adjacent fireplace.
16. PPG 15 notes that the plan form is one of the most important characteristics and should be left unaltered as far as possible. It is clear that in undertaking

the refurbishment and alterations the main factor was maximisation of the use of space for the proposed accommodation and there was very little thought given to conservation of the internal layout or features. Consequently the modern interior reflects little of the historic interior or its character. Sub-division and alteration of the plan form and spaces has had a considerable and unacceptable impact on the internal spaces and the building's character.

17. I appreciate that the reason for the substantial amount of internal alterations that have been undertaken is that the appellant did not realise that internal aspects of the building are subject to listed building control. The appellant has endeavoured to rectify the situation through consultations with, and applications to the local planning authority. However, while I have some sympathy for this and acknowledge that the space should be used as efficiently as possible, this does not lessen or justify the substantial impact of the works.

*Chimney Breasts and Fireplaces at First, Second and Third Floor Levels*

18. Chimney breasts and associated fireplaces are important features within rooms. PPG 15 indicates that good chimneypieces are part of the decorative history of a building and often central to the design of a room and there is no excuse for their removal because of redundancy. While there is some difference on drawings of the position of the chimney breast in the first floor rear bedroom, it is clear that the breast has been 'lost' through the works. The layout adopted does not appear to preclude the integration of the chimney breast in the room and covering it up does not preserve the special interest of the listed building.
19. The metal fire surrounds provided to the front rooms at second and third floor levels are of a modern style and not characteristic of the period of this building and appear as incongruous features, harming the special interest of the building. The removal of the register grate and chimneypiece in the rear room is a significant loss of historic fabric.

*Joinery, Doors and Cornices throughout the Upper Floors*

20. The replaced features, including panelled doors, skirtings, window spandrels, architraves and floor boarding (in the second floor hallway) appear to be generally standard modern joinery items with little evidence to show how these relate to items that have been removed. As identified above, the original internal features and fittings in the building are of historic interest, and their removal and inappropriate replacement has caused significant harm to the special architectural and historic interest of the listed building. The doors at first floor level are of a modern flush design and are particularly incongruous features.
21. The quality and detail of the fittings in a building of this era would also be designed to be appropriate to the location and it is pertinent that originally the third floor rooms should not have a cornice, indicating a lesser importance than the lower rooms and the loss of these small details by the provision of a cornice where it would not originally have been does not preserve the special architectural and historic interest.

### *Windows and Door to Flat Roof Area and Railings*

22. The windows are an important feature of the listed building internally in relation to the character of the rooms and externally in relation to the character of the building, and to its contribution to the character and appearance of the Conservation Area. The 'machine made' look of plastic double glazed windows and subtle differences in the frames, together with the different reflective qualities of double glazing, means that the double glazed plastic windows have a significant impact on the special interest of the listed building and Conservation Area as a whole. I accept that a number of other buildings nearby have some replacement windows, but the fact that there are a few other inappropriate windows does not lessen the impact that these windows have on the special interest of the building and the Conservation Area.
23. I have considered the railings for the proposed roof terrace and find that this work would preserve the special interest of the listed building and conservation area and accord with identified UDP policies. I consider that double glazing, because of the different reflective qualities and effect on joinery sections, would be inappropriate, but that the single glazed timber windows proposed would be acceptable in principle. I also consider that the change from double to single glazing would not be such that interested parties would be likely to want to comment upon it and therefore accept that in principle this is a matter that could be considered for adjustment by condition. I acknowledge that there are associated matters to be considered in relation to listed building consent, such as window architraves, but that is a separate application from the planning application and I see no reason why the planning application should not be allowed subject to conditions.
24. In relation to the listed building consent, I have also considered whether it would be reasonable to consider a split decision. In order to issue a split decision the matters to be split should be reasonably separate and divisible. The listed building application relates to the overall alterations to the residential accommodation and much of it is interrelated. Replacement of windows will have to be considered in relation to spandrels and removal of unacceptable partitions will inevitably have a knock-on effect on the overall layout and other matters. Therefore, I do not consider that these matters are readily separable or divisible and it would not be appropriate to issue a split decision in relation to some of the acceptable aspects of the listed building application.

### *Down-lighting*

25. A significant number of recessed down-lighters have been constructed in a number of rooms, including principle rooms. Recessed down-lighters give a very modern appearance and have a considerable impact on the character of the rooms in which they are located, especially so with the large number provided. While I accept those in the less important rooms such as the kitchen and bathrooms do not affect the special architectural and historic interest, I consider that the large number provided in the other main rooms have an unacceptable impact. The ground (e) appeal in relation to the downlighters in the bathrooms and kitchen succeeds and I shall grant listed building consent for the down-lighters in the kitchen, bathrooms and shower rooms.

### *Dropped Ceilings*

26. I have looked at the ceilings at second floor level at the site visit and compared the room ceilings with ceiling and third floor thickness visible in the stairwell. While I am satisfied that the ceilings are new, I am not satisfied that the ceiling height has been materially altered and I therefore consider that requirement 5 Step 11 to remove the 'dropped' ceilings is incorrect, and that there would be no benefit to the special architectural and historic interest of the listed building to remove the ceilings constructed. I shall therefore correct the notice by removing the reference to 'dropped' ceilings in paragraph 5, requirements, step 11, The ground (e) appeal in relation to this succeeds and I shall vary the notice by removing this aspect of the requirement and grant listed building consent for the second floor ceilings as constructed (Note this does not include cornices and down-lighters).
27. The first floor bathroom ceiling has been dropped to allow for extract equipment to serve the bathroom to be installed. This is a small room and, in my view, the lowered ceiling here does not result in any material impact on the room proportions or layout and I consider that the special architectural and historic interest is preserved. The ground (e) appeal in relation to this succeeds and I shall vary the notice by removing this aspect of paragraph 5, requirements, step 2 and grant listed building consent for the lowered first floor bathroom ceiling. (Note this does not include cornices).

### *Shower room at second floor level*

28. A previous bathroom at second floor level has been subdivided and a new door opening formed to the rear bedroom. While this has an effect on the plan form of the building, this is a small room and I consider that the impact on the special architectural and historic interest of the listed building is limited and justified by improved use. The council has not required any action to be taken in relation to this change. The ground (e) appeal succeeds in relation to this and I grant listed building consent for the formation of the two shower rooms at second floor level.

### ***Ground (j)***

29. I have not accepted the appellant's argument that the internal features of the listed building do not form part of its special interest or that the works do not cause harm to the special architectural and historic interest. I have concluded that the special architectural and historic interest has not been preserved by the works. I find that the steps required to be undertaken by the council are reasonable. The appeal on ground (j) fails.

*Graham Dudley*

INSPECTOR

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Miss V Fowlis  
Mr J Nicholls

London Borough of Camden - Conservation  
London Borough of Camden - Enforcement

### **FOR THE APPELLANT:**

Dr C Miele PhD MRTPI IHBC  
Ms E Howe BA MA  
Mr M Rahamin  
Mr S Rahamin  
Mr S Shenkin

Montagu Evans  
Montagu Evans  
Director of Grainway Limited  
Director of Grainway Limited  
Grainway Limited

## **DOCUMENTS SUBMITTED AT THE HEARING**

Document 1 Notification letter

## **PLANS**

- Plan A Listed building consent and planning permission drawings relating to conversion of first floor store  
B Plans 1 and 2 of the enforcement notice



## **Annex A**

### **The Contravention Alleged (Section 3 of notice)**

Without listed building consent

- 1) Removal of the lowermost stair flight and associated balustrade/handrail, and insertion of a new stair in a different position (**action taken**).

#### ***First Floor***

- 2) Complete reconfiguration of the layout at this level, including the formation of a kitchen and bathroom within the front and back room, boxing out adjacent to the chimney breast within the back room, the installation of dropped ceilings and new cornicing, the installation of flush doors, and the insertion of new partitions within the front room creating 2 rooms and a lobby (**action taken**).

#### ***Second Floor***

- 3) Formation of a partition between the 2 front rooms (**no action**).
- 4) Formation of opening between front and rear rooms with double door (**no action**).
- 5) Replacement of fireplace and chimney piece within the front room (**action taken**).
- 6) Complete replacement of joinery throughout including doors, architraves, skirting boards, window architraves/spandrels (**action taken**).
- 7) Replacement of historic cornicing with new (**action taken**).
- 8) Removal of floorboards within the hallway (**action taken**).
- 9) Installation of new shower room/w.c. within the rear wing (**no action**).
- 10) Installation of uPVC windows (**action taken**).
- 11) Installation of new ceilings and down-lighters (**action taken**).

#### ***Third floor***

- 12) Removal of register grate and chimneypiece in rear room (**action taken**).
- 13) Removal of partitioning within front room (**no action taken**).
- 14) Removal of chimneypiece within front room (**action taken**).
- 15) Installation of new cornicing (**action taken**).
- 16) Installation of down-lighters (**action taken**).

- 17) Replacement of doors, architraves, widow architraves, spandrels and skirting boards throughout (**action taken**).
- 18) Installation of uPVC windows and door on to flat roof area (**action taken**).

## **Annex B**

### **What you are required to do (Section 5 of notice)**

- 1) Remove unauthorised stair from the ground to first floor, and reconfigure to match original layout as shown in attached existing Plan Number 2.

#### ***First Floor***

- 2) Remove unauthorised partitions in front rooms at first floor level which create kitchen area, and separates the front bedroom from the living area, in order to create one large room, with any resultant damage made good (as shown highlighted in the attached Plan Number 1). Remove the dropped ceiling, unauthorised cornicing and flush doors from the back room and replace the cornicing with one that matches the front rooms. Insert recessed 4 panelled doors which match those at second floor level (as shown in attached Photo E18), and make good where dropped ceilings removed.

#### ***Second Floor***

- 3) No action taken.
- 4) No action taken.
- 5) Remove the unauthorised fireplace at second floor level in the front room, and replace with appropriate register grate and chimneypiece, as shown in attached photograph E19.
- 6) Remove unauthorised joinery throughout, including doors, architraves, skirting boards, window architraves/spandrels and replace with joinery to match the original.
- 7) Remove the unauthorised cornicing at this level and replace with appropriate moulding as shown in attached photos E17 – E22
- 8) Remove the plywood from the floor around the stair compartment and replace with timber floorboards, the dimensions shall match the original floorboards.
- 9) No action taken.
- 10) The uPVC windows shall be removed from the property and replaced with timber sliding sashes with any resultant damage made good.

- 11) Remove unauthorised dropped ceilings and remove 6 down-lighters in the main rear room and all down-lighters completely from the rear bedroom in the rear extension.

***Third floor***

- 12) Reinstall the chimneybreast, fireplace at third floor level in the rear main room, now a bathroom and the resultant damage made good as shown in Photo E3. Remove unauthorised fireplace at third floor level in the front room, and replace with appropriate register grate and chimneypiece, as shown in attached Photo E9.
- 13) No action taken.
- 14) Remove unauthorised fireplace at third floor level in the front room, and replace with appropriate register grate and chimneypiece, as shown in the attached Photo E9.
- 15) Remove unauthorised cornicing throughout this entire level, and the resultant damage made good.
- 16) Removal of down-lighters in the front main room and the resultant damage made good.
- 17) Remove unauthorised joinery throughout, including doors, architraves, skirting boards, window architraves/spandrels, and replace them with joinery to match the original.
- 18) The uPVC windows shall be removed from the property and replaced with timber sliding sashes with any resultant damage made good, with the uPVC door on to the roof terrace on the second floor half landing being replaced with a timber casement window.

***Variation to requirements (dated 14 August 2007)***

- 2) Remove unauthorised partitions in front rooms at first floor level which create kitchen area, and separates the front bedroom from the living area, in order to create one large room, with any resultant damage made good (as shown highlighted in the attached Plan Number1). Remove the dropped ceiling from the bathroom between the kitchen and the rear room, replacing unauthorised cornicing and flush doors from both rooms from the back room and replace the cornicing with one that matches the front rooms. Insert recessed 4 panelled doors which match those at second floor level (as shown in attached Photo E18), and make good where dropped ceilings removed.

