

APPEAL 1 - DISMISSED - NOTICE UPHELD

APPEAL 2 - DISMISSED - NOTICE UPHELD

The Planning Inspectorate
Tollgate House,
Houlton Street
Bristol BS2 9DJ
☎ 0117 987 8927



Appeal Decision

hearing held on Tuesday 13 June 2000

by D Roger Dyer BA Dip Arch RIBA FCI Arb FASI
Barrister
an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

28 JUN 2000

J10/15/6

Appeal 1: T/APP/X5210/F/00/1036941

- 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 against a listed building enforcement notice.
- The appeal is brought by Dr Ali Taefii against London Borough of Camden Council.
- The site is located at 4 St Mark's Square, London NW1.
- The Council's reference is EN990778.
- The notice was issued on 21 December 1999.
- The contravention of listed building control alleged in the notice is "without the grant of listed building consent in accordance with Part 1 of the Act: the erection of a lower and upper ground floor rear extension at the rear of the premises not in accordance with approved drawings".
- The requirements of the notice are "EITHER (a) the removal of the unauthorised extension and making good of any damage which might arise from these works; OR (b) the erection of the two storey extension in accordance with the approved scheme granted planning permission and conditional listed building consent on 3.7.98 (reference PE9800156R3 and LE 9800157R3, drawing numbers 9082 16C; 17B and 18C)".
- The period for compliance with the requirements is three months.
- The appeal is made on the grounds set out in Section 39(1) (e), (g), (h) and (k) of the 1990 Act as amended.

Decision: I direct that the listed building enforcement notice be varied by the substitution of the words "nine months" for "three months" in paragraph 5 of the notice. Subject thereto the appeal is dismissed, the notice is upheld, and listed building consent will not be granted for the extension as built.

Appeal 2: T/APP/X5210/C/00/1036947

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice.
- The appeal is brought by Dr Ali Taefii against London Borough of Camden Council.
- The site is located at 4 St Mark's Square, London NW1.
- The Council's reference is EN981140.
- The notice was issued on 21 December 1999.
- The breach of planning control as alleged in the notice is "without planning permission: the erection of a lower and upper ground floor rear extension at the rear of 4 St Marks Square which does not accord with the approved drawings".
- The requirements of the notice are "EITHER: (i) the removal of the unauthorised erection and making good; OR (ii) the erection of the two storey rear extension in accordance with the approved scheme granted conditional planning permission and conditional listed building consent on the 3 July 1998 [reference PE9800156R3 and LE9800157R3, drawing numbers 9082 16C; 17B and 18C]".
- The period for compliance with the requirements is 3 months.

- The appeal was made on the ground set out in section 174(2)(a), (f) and (g) of the 1990 Act.

Decision: I direct that the enforcement notice be varied by the substitution of the words "nine months" for "three months" in paragraph 5 of the notice. Subject thereto, the appeal is dismissed and the notice is upheld as varied.

Procedural matters

1. In respect of Appeal 2 the prescribed fees under the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989-93 have not been paid to the Secretary of State and the Local Planning Authority within the period prescribed. Accordingly the appeal is proceeding on grounds (f) and (g) only. The deemed application for planning permission under section 177(5) likewise does not fall to be considered.
2. 4 St Mark's Square is listed together with the adjoining 36 Regent's Park Road as two semi-detached villas. No 4 is formed by the return and rear of No 36 and lies on the corner of Regent's Park Road and Princess Road. It is a mid 19th century 3 storey building (together with basement and attics) in stucco with a rusticated ground floor and quoins under a slated hipped roof with dormers and bracketed eaves. A 1.5m brick boundary wall lies along the frontages to both roads. Attached to the northern elevation to Princess Road is a flat roofed single garage.
3. In 1998 planning permission and listed building consent were granted for conversion of the property from flats to a single house together with the rebuilding of the garage and the erection of a rear extension behind the garage. Condition 3 of the planning permission required the first floor window on the western elevation of the extension to be glazed with obscured glass. Similarly, condition 4 of the listed building consent required the extension to be no more than 1.5m above the existing ground floor level in the main house and to be entirely concealed from the street by the garage.
4. The development plan for the area is the London Borough of Camden Unitary Development Plan (UDP) which was adopted in March 2000 in place of the Borough Plan 1987 that was the relevant plan at the time of the planning and listed building applications. In the Borough Plan policy UD3 sought a good standard of design while policy UD11 aimed to retain, conserve and enhance areas and individual buildings of architectural quality or character. Specifically policy UD18 addressed the need to achieve a high level of design in conservation areas and policy UD20 sought to ensure the protection of buildings of historic, architectural or townscape importance. Similar objectives are set out in UDP policies EN16, EN33 and EN43. UDP policy EN27 requires the assessment of the impact of development on its neighbours with particular reference to the implications for daylight and sunlight into and between properties and the extent of any loss of privacy. Supplementary planning guidance relates to side and rear extensions and sets out relevant criteria.
5. Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. Equally Section 72 (1) of the same Act obliges me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. In reaching my decision I have also taken account of Government advice in Planning Policy Guidance Note 15 (PPG15).

THE LISTED BUILDING ENFORCEMENT APPEAL

THE APPEAL ON GROUND (e)

6. On behalf of the appellant it is said that the extension as built has no undue detrimental impact on the listed building's architectural and historic interest. No harm is caused to the special features mentioned in the listing description, which refers to the central portico on the front elevation, with its arched entrance flanked by Ionic three-quarter columns and brackets carrying a dentil cornice around the house at first floor level. The description also refers to the canted bay windows with cast iron balcony and round arched recessed first floor casements with patterned heads. The appellant submits that the extension fully preserves these features.
7. While the appellant says the extension is 0.9m higher than the approved scheme, this is because the height restriction was unworkable due to the alignment of the windows and floor levels with the existing building. Besides, the works were urgent because of the state of the building after a fire. Whereas the Council is concerned about the reduction of the gap between the appeal property and 1 Princess Road, there is no difference in width from the scheme approved. This gap also ensures an acceptable relationship to No 1. Accordingly it is said for the appellant that no unacceptable harm results to the setting of the listed building, nor to the character or appearance of the conservation area.
8. It is also submitted on behalf of the appellant that when viewed from Princess Road, the extension appears only marginally above the garage. Besides, he says the extension is no higher than the roof of the adjoining porch on No 1. The mature deciduous tree on the frontage of No 1 gives an attractive backdrop in the street-scene ensuring that any visual impact of the extension is minimised. Furthermore, in the appellant's view the additional height of the extension is viewed from the road against the much greater bulk of the flank elevation of No 1 Princess Road.
9. However the Council says that the reason for the condition restricting the height of the extension was to safeguard the special architectural and historic interest of the building while the obscured glass condition was intended to protect the amenity of adjacent properties. It submits that the design and appearance of the extension as built is unacceptable in terms of its impact on the listed building. While a new garage would not be acceptable today, a slightly wider garage than the existing garage was not felt to constitute a significant aggravation of the previous situation. The new extension was permitted on the basis that it would be entirely concealed by the new garage. While the Council's officers considered the floor to ceiling heights were very low, that feature was not a planning consideration. In the Council's view though, the extension, as built, projects above the garage creating an over bulky building that encroaches into the gap between the appeal building and 1 Princess Road.
10. For my part, the listed building and its surroundings are sensitive to the effects of a new extension around the garage. The new extension, sited as it is on the corner of the two roads is prominent in the street scene. The neighbouring building has an original side porch that is similarly sensitive to the new works. The additional height of the extension above the level of the garage roof tends to dominate the gap between the two buildings. Equally, in my judgement its profile sits uneasily with the more elegant and embellished elevations of the listed building.

11. I appreciate that there are difficulties in linking the floor and ceiling levels of the new extension to those of the existing building. Nevertheless, successful extensions require the application of an intimate knowledge of the building type that is being extended together with a sensitive handling of scale and detail. Modern extensions should not dominate the existing building in either scale, material or situation. In this case it must have been apparent to the appellant that these obstacles would be encountered, yet the floor levels, including the lowest part of the new extension, have not been built in accordance with the approved plans. This base level seems to have hindered any accommodation with other levels in the existing building.
12. Accordingly these features of the extension have a serious visual effect on the appearance of the listed building and upon the street scene. I am aware that the level of the windows has been adopted to ensure alignment with those on the main building but the more important aspects of the extension have been allowed to harm the juxtaposition of the new works with the listed building and its neighbour. In consequence I conclude that the extension harms the setting of the listed building and detracts from the character and appearance of the Primrose Hill Conservation Area. The appeal on ground (e) fails.

THE APPEAL ON GROUND (g)

13. The appellant says that the Council has accepted the principle of an extension to the property by granting listed building consent. Thus the option to return the building to its original state is excessive.
14. However the Council says that there are two alternatives to the requirements. The Council has no objection to the erection of an extension provided its height is reduced and it is screened from Princess Road by the garage.
15. For my part, while it is right that here the existing planning permission and listed building consent allow the erection of a new extension, its location decrees the limits of its extent. It is, in my view, essential to preserve the scale of the existing buildings and their surroundings. It must either be constructed in accordance with the approved plans or it must be removed. Accordingly I find that the requirements of the listed building enforcement notice do not exceed what is necessary for restoring the building to its condition before the works were carried out. The appeal on ground (g) fails.

THE APPEAL ON GROUND (h)

16. The appellant seeks a period of one year to allow for works at this time of year. In particular the approved scheme is difficult to implement because of the alignment of the doors, windows and floor levels with the existing building. Additional time would be needed to re-negotiate the scheme with the Council.
17. The Council, though, says that three months is ample time to remove the extension or to re-construct it. Although it says the appellant wants time to re-negotiate, the Council would not accept any other variation. Accordingly a compliance period of one year would be excessive.
18. It is clear to me that any adjustment to the works already carried out must be undertaken with a good deal of care. Even demolition of the extension as built could harm the existing fabric. Although I do not consider that a compromise should be an aim in making any necessary alterations, the appellant will need time to reflect on the most suitable way in

which to meet the parameters of the approved plans. Accordingly I shall vary the period within which compliance with the requirements is to be effected to nine months. To this limited extent the appeal on ground (h) succeeds.

THE APPEAL ON GROUND (k)

19. The appellant says that the requirement to erect the extension as granted is excessive because of the unworkability of the scheme. Paragraph 5.20 of PPG15 suggests a flexible and imaginative approach. This would allow amendments that would preserve and enhance the building. Such amendments could include a glazed (or solid) cat-slide roof sloping from the existing parapet onto the garage roof.
20. If, though, the scheme as permitted is unworkable, the Council says it would seek its removal in its entirety. The scheme would not have been permitted without the assurances of the appellant that the extension would be concealed behind the garage. The condition reflected this point.
21. In my view the question of the practicability of the scheme should not be allowed to cause harm to the listed building. The conditions of the listed building consent were clear and unequivocal. In my judgement the steps required to be taken do not exceed what is necessary to bring the building to the state in which it would have been if the conditions of the listed building consent had been complied with. It does not seem to me that a cat-slide roof would ameliorate the defective appearance of the extension that has been built and may exacerbate the effect. The appeal on ground (k) fails.

THE PLANNING ENFORCEMENT APPEAL

THE APPEAL ON GROUND (f)

22. The appellant says the option of returning the building to its original state is excessive because of the planning permission that was granted in 1998. The only harm alleged is overlooking and associated loss of privacy to the rear garden of No 36 and that could be overcome by the insertion of obscured glass to the bottom half of the upper study window. In view of its height no views would be obtained from the upper half of that window. Accordingly, the appellant says that the building of the approved version of the extension would not be necessary to overcome the Council's objections. Furthermore, no harm in terms of overbearing impact or loss of sunlight or daylight is alleged by the Council.
23. For my part I am not convinced by these arguments. It appears to me from my site inspection that failure to construct the extension as approved has a serious effect on the amenities of the adjoining property. The courtyard at the rear of 36A Regent's Park Road is limited in size and appears to provide the only outside amenity space for its occupants. It is just possible to see windows of the adjoining property through the upper pane. In part the question of privacy is a matter of perception. The additional height of the extension enhances that perception and limits light levels in the courtyard. Accordingly I have come to the conclusion that only obscured glazing in both panes would protect the privacy of adjoining residents. The appeal on ground (f) fails.

GROUND (g)

24. The appellant repeats his arguments applicable to the equivalent ground on the listed building enforcement notice appeal.

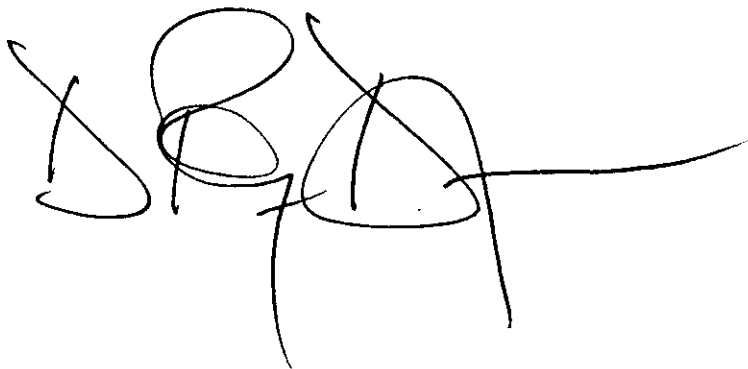
25. The same considerations apply as with the listed building enforcement appeal as far as the period for compliance is concerned. I shall vary the notice to the same extent by extending the period of compliance to nine months. To that extent the appeal on ground (g) succeeds.

Conclusions

26. This is a case in which I consider that the preservation of the listed building, its setting and its features of special architectural and historic interest is important. Accordingly I shall uphold the enforcement notices, save for the period of compliance, and I shall not grant listed building consent for the works as built. In reaching my decisions I have taken account of all other matters addressed to me at the hearing and in writing but I have found nothing that outweighs the main planning considerations in this case.

Rights of appeal against decision

27. This notice is issued as the determination of the appeal before me. Particulars of the rights of appeal against my decision to the High Court are enclosed for those concerned.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

APPEAL DECISION

APPEARANCES

FOR THE APPELLANT:

David Lane BSc (Hons) DipTP MRTPI

David Lane Associates.

Dr T S Lotay BSc (Hons) CEng PhD

FOR THE LOCAL PLANNING AUTHORITY:

Julie Ward BA (Hons) DipTP.

Development control officer, London Borough of Camden.

Sadhbh Leonard

BA BArch DiplBldgCons(AA) RIBA IOHBC.

Conservation Officer, London Borough of Camden.

DOCUMENTS

- Document 1 List of persons present at the inquiry.
Document 2 Notification of hearing and distribution list.

PLANS

- Plan A Set of approved plans.

PHOTOGRAPHS

- Photo 1 Set of photographs put in by the appellant.
Photo 2 Set of photographs put in by the Council.