



Appeal Decision

Site visit made on 18 May 2012

by **Andrew Dale BA (Hons) MA MRTPI**

Date 29 May 2012

Appeal ref: APP/X5210/C/11/2167316
5 Compayne Gardens, London NW6 3DG

- 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 issued by the Council of the London Borough of Camden.
- The appeal is made by Mr James Pelham-Burn.
- The Council's reference is EN11/0998.
- The notice was issued on 21 November 2011.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised installation of new stairs, entrance door and window to the front basement.
- The requirements of the notice are to completely remove the unauthorised front stairwell, door and window and reinstate the original stairs, door and window as previously existed.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174 (2) (a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177 (5) of the Act as amended also falls to be considered.

Decision

1. The enforcement notice is corrected by:
 - (i) Deleting the text in section 3 – under the subheading THE BREACH OF PLANNING CONTROL ALLEGED – and replacing it with the text “Without planning permission, the unauthorised installation of new stairs and entrance door to the front basement.”;
 - (ii) The inclusion of the notation “a)” before the first sentence in section 4 under the subheading REASONS FOR ISSUING THIS NOTICE; and
 - (iii) Deleting the text in the first half of section 5 – under the subheading WHAT YOU ARE REQUIRED TO DO – and replacing it with the text “Completely remove the unauthorised stairs and entrance door to the front basement and reinstate the stairs and entrance door as previously existed.”
2. Subject to these corrections the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177 (5) of the 1990 Act as amended for the development already carried out, namely the installation of new stairs and entrance door to the front basement at 5 Compayne Gardens, London NW6 3DG referred to in the notice, subject to the following condition:

- 1) If any existing trees are removed, uprooted, destroyed or die within a period of five years from the date of this decision, in the case of each tree that may be so affected another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.

The enforcement notice

3. The parties agree that there is no new window to the front basement. The requirements of the notice seek to "... reinstate the original stairs, door and window as previously existed." Studying the photographs, plans and written representations, there is no evidence that a window was actually taken out. There is also some doubt as to whether the former stairs and door were original. In any event, it is sufficient for the requirements of the notice to seek to reinstate the stairs and entrance door as previously existed. Lastly, the notation "a)" is missing from before the first sentence in section 4 of the notice concerning the reasons for issuing the notice.
4. The enforcement notice should be corrected along the lines indicated above and I shall do so as no injustice would be caused to the parties.

The appeal on ground (a) and the deemed planning application

5. An appeal on ground (a) is that planning permission should be granted for what is alleged in the notice. Reading the reasons for issuing the notice and the written representations before me, I consider the main issue to be the effect of the front stairway and basement entrance door on the character and appearance of the host building and the South Hampstead Conservation Area.
6. My decision is firmly based on the most relevant policies of the development plan which includes the Camden Core Strategy 2010-2025 and the Camden Development Policies 2010-2025; Policy CS14 from the former and Policies DP24 and DP25 from the latter, between them, seek to promote high quality places, secure high quality design and conserve Camden's heritage.
7. I have also noted the South Hampstead Conservation Area Appraisal and Management Strategy (CAAMS) and the Camden Planning Guidance on design, CPG1. Another material consideration is the National Planning Policy Framework (NPPF); the policies in the NPPF have been considered but in the light of the facts in this case the NPPF clearly does not override the local planning policy context.
8. The Council is concerned that the development "... unbalances the historic front elevation of the building" The appeal property is a large three-storey over basement, double-fronted house, dating from the late 19th century and situated on the southern side of Compayne Gardens.
9. Nos 1-23 (odd) Compayne Gardens are identified as positive contributors to the character and appearance of the conservation area in the CAAMS. However, only a handful of those properties have front basements and there is a range of forecourt treatments. This added to the different designs and layouts of the basements and stairways that are present does not lend the street any sense of continuity at basement level.

10. In the immediate vicinity of the appeal property, No. 3 has no front basement. At nos 7 and 9 there are stairways leading to basements but the entry doors at basement level are found directly under the main ground floor entrance. Whilst the former basement stairway at No. 5 may have been similarly placed to the stairway on the western side of No. 7, the entry door at basement level was found in the narrow, angled side of the bay. To my mind, this door layout would have been visually awkward and probably not original. Having regard to the local context and notwithstanding the Article 4 Direction, I consider there is scope for what the appellant has constructed at the front of No. 5.
11. The basement door is not visible from the street. The new stairway is marginally wider and longer than the one it replaced, but it is nonetheless suitably unobtrusive. The top sections of the walls surrounding the stairway are visible from the street. Given that these walls are low, limited in extent and constructed of matching materials, they have only a negligible impact on the host building, front garden area and street scene. With the new stairway being positioned centrally on the western bay and only slightly further away from the main entrance door than the previous stairs, the front elevation remains well balanced and arguably better balanced than previously given the odd location of the former basement door. The development certainly does not challenge the dominance of the ground floor entrance doorway; that remains the focal point in the centre of the property. Overall, I am satisfied that the historic front elevation of the building has not been adversely affected.
12. The Council is also concerned that the development is likely to result in the loss of lime trees protected by a Tree Preservation Order. Mature trees are an integral component of this part of the conservation area. There are three protected lime trees in the front garden of the property very close to the ornate red brick wall along the road frontage. I have assessed this aspect of the development taking into account my own site observations and the evidence submitted from both parties, including the Site Specific Arboricultural Survey and Impact Assessment provided by Richard Wassell on behalf of the appellant.
13. Only the two westernmost semi-mature lime trees, which are set in a retained planting pit, can be said to be affected by the new stairway construction. It is often the case that a tree's root system is not even distributed around its base. I noticed that the paving slabs in the pavement close to both affected lime trees are slightly raised and cracked. If the ornate red brick boundary wall did not have substantial foundations, it is possible that a significant area of root growth could be under the pavement. However, it would appear that both parties have worked on the assumption of an evenly distributed root system and I shall do the same.
14. The Council does not dispute the root protection areas for the two lime trees as calculated by Richard Wassell. The stairway encroaches into the root protection areas of both trees. It would have had the potential to cause damage to a proportion of the rooting systems of both trees, as a result of root severance by excavations. However, the encroachment in respect of both trees amounts to only a minor proportion (roughly 5%) of the trees' notional root protection areas. A fully mature tree may die if it loses 10% of its roots. A young healthy vigorous tree might be able to sustain the loss of about 30% of its roots without showing any ill effects. These two semi-mature, well maintained lime trees are likely to fall somewhere in between those tolerances.

If root loss did occur in this case it is therefore likely to have been well within tolerable limits.

15. Thus, even allowing for the fact that the stairway walls are about 1.8m away from the centre of the trunks of each tree at the closest points, I consider that the development will not have a significantly adverse long-term impact on the health and life expectancy of the two protected lime trees.
16. Drawing together my findings on the visual impact of the development and its likely effects on the two lime trees, I conclude on the main issue that the front stairway and basement entrance door preserve and enhance the character and appearance of the host building and the South Hampstead Conservation Area. The development does not therefore conflict with the relevant development plan policies.
17. The Council has suggested two conditions in the event of the appeal being allowed. A condition regarding materials does not appear to be necessary as the work appears to have been carried out in a satisfactory manner. In the interests of visual amenity, I have attached a condition requiring replacement trees if any existing trees are removed, uprooted, destroyed or die within a period of five years from the date of this decision.
18. For the reasons given above I conclude that the appeal on ground (a) should succeed and planning permission will be granted for the deemed application.

Andrew Dale

INSPECTOR