



Appeals Decisions

Site visit made on 2 October 2012

by Colin A Thompson DiplArch DipTP RegArch RIBA MRTPI IHBC

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

Decision date: 31 October 2012

Appeal (A) Ref: APP/X5210/F/12/2173799

Flat 1, 51 Frognal, LONDON NW3 6YA

- The appeal is under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991 (The PLB+CA Act).
- The appeal is by Mr I Hudaly against a listed building enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN11/1111.
- The notice was issued on 23 February 2012.
- The contraventions of listed building control alleged in the notice are:
 1. Removal of arch, doors, windows and wall nibs to the elevation adjacent to the dining room on the ground floor overlooking the garden;
 2. Removal of bay window to master bedroom (ground floor rear);
 3. Removal of interior cornices from the ground floor hallway area adjacent to the dining room and from the section adjacent to the ceiling of the original stairway to the location of the original stairway to the basement;
 4. Removal of ceiling beams to main living room and part of dining room removed or concealed on the ground floor;
 5. Room layout altered by the removal of the partition and door separating the hallway from the dining room;
 6. Removal of internal stairs to basement and replacement with spiral staircase in a different location, and;
 7. Increase in size of the basement and its linkage to the existing garage.
- The requirements of the notice are
 1. The arch, door, windows and nibs originally to the elevation to the dining room shall be reconstructed and replaced in the original form as shown in drawing 2008-2004-200.201 and attached photograph E1A;
 2. Reconstruct and replace the bay window to the master bedroom in its original form as shown in drawing 2008-204-200.204;
 3. Replace and or expose the interior cornices to the ground floor hallway adjacent to the dining room and from the section of ceiling adjacent to the original stairway to the basement;
 4. The ceiling beams on the ground floor living room (lower level) shall be exposed and retained in their original form as shown in the applicant's Design and Access Statement (Interior photos of existing house dated 17/11/2008), photograph marked living room;
 5. The removed walls and door to the ground floor shall be replaced in the original form as shown in drawing 2008-204-100.109 Rev A;
 6. The spiral staircase providing access to the basement shall be removed, the void filled in and the area made good with the original form of staircase re-installed in the original location, and;
 7. Reduce the size of the basement and remove its linkage to the garage to the original or approved size and infill the space linking the basement to the garage.
- The period for compliance with the requirements is 6 months from the date of the notice taking effect.
- The appeal is made on the grounds set out in section 39(1)(e), (h)+(j) of the PLB+CA Act.

Appeals (B) Refs: APP/X5210/F/12/2173606, 2173611+12, 2173545+46 and 2173616

Flat 1, 51 Frognal, LONDON NW3 6YA

- The appeals are under section 39 of the PLB+CA Act.
 - The appeals are by: Ms S Jagger (Flat 3); Mr A Brophy & Ms J Hildebrand (Flat 4); Mr J Costello & Ms A Waters (Flat 2), and; Mr A Brophy again (acting as Secretary to 51 Frognal Ltd) against a listed building enforcement notice issued by the Council of the London Borough of Camden.
 - Except for the grounds of appeals, all other matters are as noted above in the main appeals proforma, completed for the lead appeal above (reference 2173799), and will not be repeated here.
 - The appeals are made on the grounds set out in section 39(1) (f)+(k) of the PLB+CA Act.
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Decisions

1. The listed building enforcement notice is corrected under **5. WHAT YOU ARE REQUIRED TO DO** in paragraph 1 by the deletion of the drawing reference number and replacement with the following one ...2008-204-200.201...
2. The listed building enforcement notice is varied under **Compliance due date** by the deletion of ..6 months... and the substitution of ...12 months...
3. The listed building enforcement notice is also varied by the deletion of sub-paragraphs 3-7 under both, **3. THE CONTRAVENTION ALLEGED** and **5. WHAT YOU ARE REQUIRED TO DO**, in their entirety; these works being granted listed building consent.
4. The listed building enforcement notice is further varied under **5. WHAT YOU ARE REQUIRED TO DO** by the addition of the following sentence to sub paragraph 1 ...*But the new arched doorway shall be repositioned so that its outer front is inset, just 150mm, from the outer face of the external rear wall...*
5. Subject to these corrections, and variations, the appeals are dismissed and the listed building enforcement notice is upheld as corrected and varied, insofar as it relates to sub-paragraphs 1 and 2 of paragraph **3. THE CONTRAVENTION ALLEGED** and paragraph **5. WHAT YOU ARE REQUIRED TO DO**, and listed building consent is refused for the retention of the works (namely the removed arch, door, windows and nibs, and the new ground floor bay window to the master bedroom), carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Application for costs

6. An application for costs was made by Ms S Jagger (Flat 3), Mr A Brophy & Ms J Hildebrand (Flat 4), Mr J Costello & Ms A Waters (Flat 2) and Mr A Brophy again (acting as Secretary to 51 Frognal Ltd) against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

Procedural Matters

7. N° 51 is a grade II listed building located in the Hampstead Conservation Area.

8. There is only one point at issue in these appeals. That is the works undertaken in regard to Flat N° 1.
9. In addition to the appeals' flat there are 3 other flats in the building. I was told at the accompanied site visit, as matters of fact, that all 4 flats are leasehold with the individual leaseholders being responsible for the works they undertake to their own private accommodation. Frognal Ltd is the freeholder and is a company which is owned jointly by the leaseholders who each have a single share. It is because of this interconnection that the notice was also served on Flats 2, 3+4, as well as 51 Frognal Ltd.
10. From what is set out in the representations it is clear to me that the Council is seeking to bring the building to the state it would have been if the terms and conditions of listed building consent (2008/5735/L) had been complied with under section 38(2)(c) of the PLB+CA Act. I have dealt with these appeals on this basis. This means that Appeal (A), ground (j), should be ground (k). This is a procedural matter and does not have any material effect on the content or outcome of this appeal.
11. There is an error in the notice, under 5.1, the relevant plan number should be 2008-204-200.201 not as stated on the notice. I have a duty to get the notice right if I can. So should I uphold the notice, even if just in part, I will need to correct this mistake. It is a minor typographical error which will not prejudice anyone's interests.

Appeals (B), Ground (f)

12. This ground is that the notice was not served as required by section 38(4) of the PLB+CA Act.
13. The notice was correctly served on the owners (51 Frognal Ltd) and those other persons who had an interest in the building as leaseholders (flats 1-4). Any private agreements, between the company and the leaseholders (for example the responsibilities of the individual leaseholders) is not a significant matter under the PLB+CA Act. The appeals under this ground must fail.

Appeal (A), Ground (e)

14. This ground is that listed building consent ought to be given.

Policy

15. National policy indicates that account should be taken of the desirability of sustaining and enhancing heritage assets like listed buildings. Also, when considering the impact of development on such assets, which are irreplaceable, weight should be given to their conservation. Even where development has caused less than substantial harm (the case here as, for example, the listed building would not be lost) any injury needs to be weighed against public benefits (paragraphs 131, 132 and 134, of the National Planning Policy Framework (the Framework)).
16. The Planning (Listed buildings and Conservation Areas) Act requires both the Council, and the Secretary of State, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses (section 16(2) of the PLB+CA Act). Special attention has also to be paid to the desirability of preserving or enhancing the

character or appearance of conservation areas (Section 72(1) of the PLB+CA Act).

17. The development plan also has policies to protect heritage assets. Although there is no presumption in favour of its policies, in regard to applications and appeals under the PLB+CA Act, relevant policies are material considerations. DP25 of the Borough's 2010 Local Development Framework and CS14 of the Core Strategy 2010-2025 are both relevant.

My Assessment

18. The *allegations and requirements* are numbered 1-7. I shall deal with each in turn under the heading *items*.

Generally

19. None of the works can be seen from any public and few private vantage points. There is little or no impact on the character or appearance of the conservation area which as a result is preserved.

Item 1

20. The arch, door, windows and nibs, are a common and important feature of this kind of late 19th Century Arts and Crafts building. Despite the presence of the permitted modern conservatory it would still have been possible to read this former feature, through the glazing, had it not been removed. This part of the unauthorised works has damaged the special architectural character of the listed building.
21. I accept that putting back this feature would result in some loss of natural daylight to the living space. However, in buildings of this type and date, it is normal to have more constrained window sizes than would be usual today.

Item 2

22. The bay window which has been replaced was not part of the original house but appears to have been added in the 1950s when the house was first converted to flats. But the works appeared to have been carried out in character with the Arts and Crafts style. They complemented the surrounding original features and were in place at the time of listing in 1974.
23. The simple glass detailing of the replacement bay window is modern. This may be compatible with the new conservatory but I do not find that such alterations are appropriate. To my mind the former bay window, as shown on Crawford Partnership's drawing 2008-204-200.204 (titled Proposed Left Side Elevation), would be more appropriate in conjunction with the rest of the rear facade. My comments made about any loss of light to the living space, set out above, also apply here.

Interim Conclusion of Items 1+2

24. The works have damaged the special character of the listed building. As a result they would not accord with relevant policy or statute.

Items 3, 4+5

25. The internal layout plan of the house was changed quite drastically when it was converted into flats (in the 40s and 50s) removing most of its historic

significance. And a fire, in what is now part of an open plan living area, apparently destroyed some original details.

26. There are cornices, in locations which appear to me to be most relevant (although they seem to be to a modern, rather than a late 19th Century, profile). Also the ceiling beams are retained to the raised section of the living area.
27. Bearing in mind the destructive impact on the building's historic layout caused by the flat conversions referred to above, which appear to have been executed lawfully before listing, to add further cornicing, or reintroduce the removed walls and door, would not help preserve any significant special features of the building.
28. I see no material advantage in the re-introduction of ceiling beams in the lowered part of the living area either. The beams in the raised section are retained and, to my mind, provide adequate continuity of this attractive feature. Also the alterations envisaged by my paragraph 36 below would mean that there would be a gap in the continuity of any re-exposed beams (because of the allowed re-positioning of any replaced arched doorway). In any event the flush finish, of the ceiling over the lower section of floor, provides a pleasing visual contrast to the retained exposed beams.

Items 6+7

29. The spiral staircase to the basement is not dissimilar to the spiral stairs already existing in another altered part of the listed building's interior. It is to an intrinsically attractive, if modern, design, but does not look out of place in the context of the overall flat conversion works. The original staircase was to be removed and repositioned in any event.
30. The larger basement has the advantages of providing extra usable floor space, making the flat more workable as a living unit and having the practical, and safety, advantages of providing an alternative access and fire escape through the now internally linked garage.
31. In the light of the permitted changes already made to the internal layout to this building I find no significant harm would be caused by the retention of either, or both, items.

Interim Conclusions on Items 3-7

32. These changes have caused no material harm to the special character of the listed building. So allowing the appeal in these regards would not be at variance with extant policy or statute. Indeed, the works will be likely to improve the use of flat N^o 1, as living accommodation, thereby making it more likely that it will continue to have a viable future use.

Overall Conclusions on Ground (e)

33. I make a split decision. The appeal is allowed as regards items 3-7, set out in the notice allegations, which are granted listed building consent for the reasons given. But the appeal is dismissed, in regard to items 1+2, with the upheld notice being varied, to omit the approved items 3-7 works and record the changes to the position of the replaced arched doorway.

Appeal (A) and Appeals B, Ground (k)

34. This ground is that the steps required by the notice exceed what is needed to bring the building to the state it would have been if the terms and conditions of listed building consent (2008/5735/L) had been complied with. This ground applies only to Items 1+2 (items 3-7 no longer falling to be considered).
35. Regarding item 1, I have considered the appellant's concerns about the very narrow width, to the lower portion of the living area, which would result should the feature be replaced on its original position.
36. I see no good reason to retain the full depth of the original arched doorway set-back from the main façade. The doorway would not now be to the open air so it has no need to provide shelter. And it is the shape and appearance of this feature which is significant when viewing the rear of the house rather than the presence of any deep shadow lines. It follows that any replacement, required by the notice, could be repositioned so that its front would be inset just some 150mm from the outer face of the rear wall. This would allow a more usable space to be created in the lower part of the living area in what is presently used as a dining space. The replaced arch, door, windows and nibs, should accord with Crawford Partnership's drawing 2008-204-200.201 (titled Existing Rear Elevation) and attached photograph E1A but repositioned so that it has just a 150mm recess from the outer face of the external rear wall.
37. The appeals under this ground succeed to this limited extent. I will vary the upheld part of the notice accordingly and to require the repositioning of the replaced item 1 on the new alignment.
38. But, turning to item 2, the modern design of this bay window is not appropriate in the context of the rest of the rear façade. Its replacement with the 1955 version is both necessary and proportionate. Lesser measure would not eliminate the harm caused to the special character of the listed building. The appeals under this ground, for item 2, must fail.

Appeal (A) Ground (h)

39. This ground is that there is not enough time to comply with the notice.
40. The re-building of the arched doorway and bay needs to be done with care and skill. Although it is clear, within the 4 corners of the notice, what these 2 items need to look like it will be necessary to detail the works and employ specialist contractors. Twelve months is a more reasonable time in order for this work to be carried out properly. In this limited regard the appeal also succeeds.

Colin A Thompson

PHOTOGRAPH E1A

