
Appeal Decision

Site visit made on 30 October 2013

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 12 November 2013

Appeal Ref: APP/X5210/F/13/2191227
22C Mornington Crescent, London NW1 7RG

- 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 Daniel Edward Walker against a listed building enforcement notice issued by the London Borough of Camden.
 - The Council's reference is EN12/0127
 - The notice was issued on 10 December 2012.
 - The contravention of listed building control alleged in the notice is: without listed building consent, internal alterations removing partitions and replacement of the roof.
 - The requirements of the notice are:
 - a) Completely remove the synthetic slates and reinstate traditional roof slates to match the original scale and design.
 - b) Completely reinstate the dividing wall and door opening at second floor level in the original position between the front and rear room in materials to match the original as shown on the attached plan (ref 839-02A).
 - The period for compliance with the requirements is 6 months.
 - The appeal is made on grounds (c), (e), (h) and (i) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The appeal is dismissed and the listed building enforcement notice is upheld as corrected (see formal decision below).

Matters of clarification

2. The appeal site is a mid-terrace property in Mornington Crescent which is a Grade II listed building (listed in 1974) constructed around 1821-32 and built by I Bryant for the Southampton Estate. It comprises a basement, ground floor, first floor and attic floor, from which there is access to the roof. It is also located within the Camden Town Conservation Area.

3. The notice incorrectly refers to the removal of partitions from the second floor. However, the partitions have clearly been removed from the first floor. I have dealt with the notice on this basis and will correct the notice accordingly. I am satisfied that this correction will not cause any injustice to either the appellant or the Council. The drawing referred to in the notice 839-02A also refers to the second and third floors. But the room which is open and without partitions and which I inspected is definitely at first floor level.

4. In considering whether to grant listed building consent, and in accordance with section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, special regard must be had to the desirability of preserving the building or its setting or any features or special architectural or historic interest. Section 72 of the same Act

requires that special attention must also be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

5. I taken into account the Council's Core Strategy Policy CS14 (High quality places and conserving heritage); Development Policies DP24 (High quality design), DP25 (Conserving Camden's Heritage); Camden Planning Guidance 1 and the Camden Town Conservation Area Appraisal and Management Strategy. I have also considered relevant policies of the National Planning Policy Guidance (NPPF) and in particular those relating to Conserving and enhancing the historic environment.

The appeal on ground (c)

6. For an appeal under ground (c) to be successful it must be shown that listed building consent for the works carried out to the building is not needed. All of the works referred to in the notice have been carried out. The partitions have been removed from the first floor and the roof has been covered with synthetic tiles. Each, in its own way, affects the character of the listed building. None of the works benefits from listed building consent.

7. In support of this ground the appellant indicates that the Council has no way of knowing when in the past 16 years or so these works were carried out and also refers to the previous application for alterations. However, unlike in a planning enforcement case, there is no time limit relating to when an authority can take listed building enforcement action and it is not a defence for an appellant to claim that they did not carry out the unauthorised works.

8. In this case, therefore, irrespective of who carried out the works and when they were carried out, the fact remains that there is no listed building consent in place and a contravention has occurred. The appeal must fail on ground (c).

The appeal on ground (e)

9. I note that the appellant is willing to carrying out the requirement relating to the replacement of synthetic slates with natural slates. I also note that it is not considered necessary to replace the partitions. On the first matter I agree with the Council that the use of synthetic tiles has harmed the listed building. Having seen part of the roof from the rear garden and the rest of it from the top of the building opposite, I consider that the roof covering detracts markedly from the character and appearance of the listed building.

10. The slates not only affect the appearance of the building, they also detract from its setting and its features of architectural and historic importance. The synthetic slates are totally unacceptable for a listed building and indeed, the works as carried out have resulted in water damage being caused to other parts of the listed building. I do not consider, therefore that listed building consent should be granted for these works as carried out.

11. On the first floor all partitions have been removed, although I note that the notice only appears to require the replacement of the central partition and door. Irrespective of this I find that the works have been crudely carried out and I agree with the Council that the supporting beam has resulted in a completely lost plan-form at this level. Again I consider that this has resulted in a detrimental effect on the architectural and historical features of the listed building and do not consider that listed building consent should be granted for the works as carried out. The appeal fails, on ground (e).

The appeal on ground (i)

12. An appeal on this ground is made on the basis that the requirements of the notice for the purposes of restoring the character of the building to its former state would not

serve that purpose. However, I consider that if the synthetic roof slates are replaced with natural slate and the first floor central partition and door are replaced the character and architectural and historical integrity of the building would be restored. Despite the appellant's arguments, therefore, the requirements would serve the purpose of restoring the character of the building.

13. The appellant's submissions also include the contention that the requirements are excessive in that lots of other properties in the Crescent have had internal partitions removed. This is an argument under ground (j). In an appeal under this ground it is claimed that the steps required exceed what is necessary to alleviate the effect of the works; in this case the roofing works and the partition removal.

14. Having considered the appellant's arguments I do not consider that the steps required are excessive. The works required are necessary in my view to alleviate the harm caused to the listed building. The appellant has not suggested that any lesser steps would be appropriate and, in any case I do not consider that any lesser steps would be sufficient to overcome the harm caused to the character of the building, to its setting or to its features of architectural and historic interest. The appeal fails on ground (i), therefore as well as on any implied ground (j).

The appeal on ground (h)

15. I note that the appellant considers that a 12 month period is required in order to liaise with the Council in relation to the carrying out of the works. However, whilst appreciating that the appellant's work takes him out of the country and that a reputable builder needs to be found, I do not consider that the period of compliance should be extended. Because of the defective and inappropriate roofing works water damage has been caused to the building. In any case I consider that 6 months is adequate time to arrange for the works. There is only one partition and door to be replaced and the roofing works, although complex, do not involve a large area. The appeal also fails, therefore, on this ground of appeal.

Other matters

16. In reaching my conclusions on all of the grounds of appeal I have taken into account all of the other matters raised by the appellant, the Council and other third parties. These include the planning history; all of the matters set out in the parties' statements; their final comments; the submitted appendices and the initial grounds of appeal. However none of these carries sufficient weight to alter any of my conclusions on the grounds of appeal and nor is any other factor of such significance so to change my decision that the appeal should fail on all grounds pleaded.

Formal Decision

17. I direct that the notice be corrected by deleting the word '*second*' in part 5 (b) of the notice (WHAT YOU ARE REQUIRED TO DO) and by substituting therefor the word '*first*'.

18. Subject to this correction the appeal is dismissed, the notice is upheld and Listed Building Consent is refused 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.

Anthony J Wharton

Inspector