
Appeal Decision

Site visit made on 23 September 2014

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 2 October 2014

Appeal Ref: APP/X5210/F/13/2206824

Flats 2, 3 & 4, 36 Tavistock Place, London WC1H 9RE

- 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 Ms Rebecca Louise Spark against a listed building enforcement notice issued by the London Borough of Camden.
 - The Council's reference is EN/11/0834.
 - The notice was issued on 28 August 2013.
 - The contravention of listed building control alleged in the notice is the insertion of boiler flues at first, second and third floor levels in the front elevation.
 - The requirements of the notice are;
 - (a) The unauthorised flues and associated fixtures at first, second and third floor level on the front elevation of the premises shall be removed.
 - (b) Any damage caused by the installation and removal of the unauthorised flues shall be repaired using materials to match those of the original building.
 - (c) All debris as a result of the above requirement shall be removed from the premises.
 - The period for compliance with the requirements is six months.
 - The appeal was made on ground (b) only as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
-

Decision

1. The appeal is dismissed.

Matters of clarification

2. The appeal was made on ground (b) only. On this ground of appeal the essential question is whether the alleged works, as a matter of fact, have taken place at all. In this case it is evident that the boiler flues are in position so technically a ground (b) argument would fail. However, the arguments put forward in support of the appeal are made on the basis that the flues have been in place since before the building was listed. This is therefore an argument under ground (c): *that those matters (if they occurred) do not constitute such a contravention*, because listed building consent was not required for the works. It is on this basis that I have, therefore, dealt with this appeal. There is no appeal under ground (e) and I am not empowered to consider the merits of the case and whether or not listed building consent should be granted for the works as carried out.

Reasons

3. The building, which lies within the Bloomsbury Conservation Area, was listed in Grade II in 1974 and at the time of listing there is no dispute that kitchens were located at the front of the building. There is also no dispute that the flues to the then existing boilers were also in place at that time and that there were holes through the external walls. Since listing the boilers have been replaced and the

dispute centres on whether or not listed building consent was required at the time of replacement.

4. In legal grounds of appeal (in this case ground (c)), the onus is on an appellant to show that any works carried out to a listed building do not constitute a contravention of listed building control. In this case, therefore, the appellant must show that the existing flues have been in place since 1974. If at any time between 1974 and the date the notice was issued the original flues had been replaced by new flues then this could constitute works to the listed building. If these works were considered to affect the building's character or special architectural interest (whether negatively or positively) then listed building consent would be required.

5. Having seen the existing flues in-situ I note that the one to the third floor flat is the least obtrusive and is coloured black. The one to the second floor is a mid-grey plastic outlet with cover plate and the first floor flue is the most noticeable with both flue and cover plate coloured light grey. The brickwork around this first floor flue has clearly been altered over the last few years. A quarter sized red brick has been inserted into the surrounding darker red brickwork and the pointing around it is relatively new. From my inspection I can only conclude that this flue cannot possibly have been in place for forty years. With regard to the other two flues the protrusions through the brickwork are not so noticeable but the materials used and their present condition do not suggest to me that they are the original flues. On the balance of probability, therefore, I do not consider that the flues which I noted were the original 1974 flues.

6. I viewed the flues from the opposite side of Tavistock Place and whilst accepting that they are no more obtrusive than some alarm boxes on nearby buildings, I do consider that they affect the character of the listed building and that listed building consent would have been required. As indicated above I have not considered the merits of the works carried out but this does not alter the fact that if listed building consent was required and that there is none in place, a contravention of listed building control has occurred. It follows that the appeal must, therefore fail.

Other matters

7. I have noted that the appellant and others requested that the Council inspected the premises prior to the enforcement notice being issued. The Council did not respond to this initial request. A Council planning officer did visit the premises on 23 September 2013 and is said to have informed the owners of the flats that the issue could be resolved if certain works were carried out. I understand that quotes have been sought for these works and I was able to inspect a flue installation which had been carried out at another listed building in Camden (Parnell House). This installation was much less intrusive than the works carried out at the appeal property and I have no reason to disagree with the Council that similar works would be acceptable in this situation.

8. However, these are matters to be resolved between the owners and the Council and I am only empowered to deal with the enforcement notice as issued and the relevant appeal submissions.

9. In reaching my decision I have taken into account all other matters raised. These include the planning history and the negotiations and correspondence with the Council. However, none of these carry sufficient weight to alter my conclusion that a contravention of listed building control has occurred at the appeal premises and that the appeal must fail.

Anthony J Wharton

Inspector