

Grounds for Application for Certificate of Lawfulness (the “Application”)

1. Introduction

- 1.1 The Application is for confirmation, by way of grant of a Certificate of Lawfulness, that the proposed works to the interior of one room at 8 Bedford Row, London, WC1R 4BX (the “Property”) are lawful without the need for listed building consent.
- 1.2 The proposed works forming this Application, comprise the addition of a new cupboard only. It is considered that the installation of the new cupboard would not be a fixture and therefore its introduction would not be an “alteration” of any part of the Listed Building (because the Listed Building itself would remain wholly unchanged) and so would not require Listed Building Consent (“LBC”).

2. Proposed Works

- 2.1 The reception room is broadly square shaped with 2 doors on one wall, 2 windows on another wall, and a fire place and adjacent alcoves on the wall opposite the doors (on the “Back Wall”). The remaining wall has no specific features. All of the walls are lined with painted wooden panelling. The proposed works involve the installation of a new cupboard (the “New Cupboard”). This would occupy the full width of the reception room on the Back Wall, and stand from floor to just below the ceiling and be approximately 4.8m wide and over 2m tall. The New Cupboard would stand on the reception floor, resting under its own weight and not be attached in any way to the walls.

3. Relevant statutory provisions and case law

- 3.1 Consideration needs to be give to the Listed Buildings Act 1990 (“the LBA 1990”). A listed building is defined in section 1(5) LBA 1990 as:
 - “(a) any object or structure fixed to the building*
 - (b) any object or structure within the curtilage of the building, which although not fixed, forms part of the land and has done so since before 1 July 1948.*
- 3.2 s.7 LBA provides:
 - “(1) Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised under section 8.”*

3.3 Section 1(5) (a) has been held by the Courts to be equated with items that are “fixtures”¹. Thus a listed building will include as part of the building any object or structure within it which is a “fixture”. The test for whether an object in a building is a fixture is set out in *Ex parte Kennedy* (99) as:

“(a) the degree to which the article in question could properly be said to be annexed to the building, and (b) the purpose for which it was put there”

3.3 The general rule is that a free-standing item is not likely to be a fixture². In *Berkley v Poulett* [1976] EGLR, Scarman LJ said (at 88-89) “If an object cannot be removed without serious damage to, or destruction of, some part of the realty, the case for its having become a fixture is a strong one....however, an object resting on the ground by its own weight alone is not a fixture”. Therefore under the general rule the New Cupboard would not be a fixture.

3.4 It is accepted though that it is not the case that all free-standing structures are for that reason always incapable of being fixtures. In *Monti v Barnes* [1901] 1 QB 205 the Court of Appeal had to consider whether “dog grates” (free standing fire grates) which had been installed by the owner into the fireplaces of a dwelling in place of “ordinary fixed grates” were fixtures or not; it concluded they were fixtures. The purpose of the provision of the dog grates was important to the Court of Appeal’s decision. At the time the case was decided it was not in contemplation that a house would have fire places but no means to have an open fire. Thus the Court of Appeal was satisfied that the dog grates were provided to improve the property and were intended to be retained in it on a long term basis.

3.5 Unlike the dog grates considered in *Monti v Barnes*, it is possible to envisage that the New Cupboard would not be a permanent addition to the Property, in that an occupier who did not wish to use the reception room as a reception room or who had different aesthetic tastes may well want to remove it and would not feel compelled to provide another cupboard. Indeed, even the applicant may wish to replace it within a few years if fashions or aesthetic tastes of those charged with furnishing changes. In addition, the New Cupboard supported by its own weight has more in common with a “free standing piece of furniture” than it would a “major structure”. Whilst the New Cupboard will be large, taking up all of one wall, a large bank of filing cabinets would probably be as wide and as deep (if not quite so tall).

3.6 Therefore the New Cupboard will not be a fixture and its introduction would not therefore be an “alteration” of any part of the listed building because the listed building itself would remain wholly unchanged and so would not require listed building consent.

3.7 The fact that a free-standing cupboard of the dimensions proposed would hinder the ability to see or experience the panelling and fire place on the Back Wall does not alter this conclusion. If a free-standing bookcase were introduced into the reception room it would obscure whatever is behind it. Similarly, if a panelled room was used for the storage of boxes of documents (e.g. as an office archive) this would prevent the appreciation of the panelling. However, the listed building would not be altered by the introduction of such a furniture or office material because they would not form part of the building but would simply be part of its contents and so “its character as a building” of special interest would not be affected. S7 (1) LBA 1990 is concerned with

¹ *Debenhams plc v Westminster City Council* [1987] AC 396 at 408; *R v SSW ex parte Kennedy* [1996] 1 PLR 97 at 98.

² *Holland v Hodgson* (1872) LR 7 CP 329

the character of the listed building as a building rather than with the character of spaces within a listed building.

4. Conclusion

- 4.1 On the grounds set out above, an application for a Certificate of Lawfulness of proposed works to a listed building should be granted. The New Cupboard would be free-standing and supported simply by its own weight and therefore should not be considered a fitting and therefore cannot be an alteration to the Property that affects its character.

