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## Appeal Decision

Site visit made on 7 May 2019

**by P N Jarratt BA DipTP MRTPI**

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

**Decision date: 10 May 2019**

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**Appeal Ref: APP/X5210/F/18/3204207**

**38 Lambs Conduit Street, London, WC1N 3LJ**

- 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 J Crew UK Ltd against a listed building enforcement notice issued by the Council of the London Borough of Camden.
  - The enforcement notice, numbered EN16/0610, was issued on 24 April 2018.
  - The contravention of listed building control alleged in the notice is the installation of two air conditioning units within acoustic enclosure, and installation of new flue to rear lower ground lightwell.
  - The requirements of the notice are to remove the unauthorised air conditioning units, associated enclosure and extract flue, and restore the lightwell to its previous state.
  - The period for compliance with the requirements is 3 months.
  - The appeal is made on the grounds set out in section 39(1) (e), (g), (h), and (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
  - **Summary of decision: Appeal dismissed and consent refused.**
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### The site and relevant planning history

1. The appeal property is a four-storey, mid-terraced, grade II listed building used as a shop at basement and ground floor levels with flats above. The terrace of 5 houses (Nos 28-38) were built in the late 1600s but No 38 was rebuilt in the C20 above ground floor level and is included in the list for its group value. It is located within the Bloomsbury Conservation Area.
2. Retrospective planning and listed building applications for a new shop front, projecting sign, two air conditioning units within an acoustic enclosure and the installation of a new flue to the rear lower ground lightwell were submitted in 2013. The planning application was withdrawn as the development was immune from enforcement action due to the passage of time. However, the listed building application (2013/4489/L) was refused and the current enforcement appeal follows on from this.

### Planning policy

3. Section 16 of the LBCA requires special regard to be paid to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses, before granting listed building consent. In addition to the duties under the Act referred to above, the Development Plan policies for the London Borough of Camden are also material considerations in these cases.

4. Policy D1 (Securing High Quality Design) and Policy D2 (Heritage) of the London Borough of Camden Local Plan 2017 seek to promote quality design and conserve the historic environment.
5. These policies are also broadly in accordance with the aims of the National Planning Policy Framework (the Framework) which is also a material consideration in these cases. Paragraphs 193 - 196 of the Framework note that great weight should be given to conserving the significance of heritage assets and that any harm must be outweighed by public benefits of the proposal, including securing the optimum viable use of the building, before listed building consent is granted.
6. The Council's Camden Planning Guidance – Design (CPG1), has been subject to public consultation and was updated in 2019. This is also a material consideration to which I attach significant weight.

### **Appeal on ground (e)**

7. An appeal on this ground is that listed building consent ought to be granted for the work. I consider that the main issue is the effect of the work on the special architectural or historic character of the listed building and its setting.
8. The works involved the installation of two air conditioning units in a stainless-steel enclosure located in the small basement lightwell. The enclosure is of substantial size and occupies a significant part of the lightwell. In addition, there is a stainless-steel duct of considerable diameter. This duct extends horizontally in the lightwell, and then extends vertically upwards to the ground floor with a large curved section at its uppermost end. The duct is clearly visible from windows at that level and also from the terraced garden area of an upper floor flat. Although the air conditioning units are at a lower level and less visible from the ground floor and the terraced garden area, the acoustic enclosure is of significant size and affects the character and appearance of the building. The ducting is bulky and very prominent and of a scale that appears excessive. I consider that the ducting and acoustic enclosure are conspicuous and harmful to the special interest and character of the rear elevation of the listed building.
9. I consider this harm to be less than substantial in the context of paragraph 196 of the Framework but this level of harm is not outweighed by any public benefits arising.
10. The appellant considers the overall significance of the rear elevation of the building to be neutral due to the rebuilding works that have been carried out which is considered to be of very limited architectural quality, with which I do not disagree. The appellant further considers that the surviving historic fabric at basement level is limited and not of any special architectural interest. Notwithstanding the appellant's opinion, there is nevertheless surviving historic fabric evidenced by the arched brickwork clearly visible in the lightwell and in close proximity to the ducting and acoustic enclosure. This is compromised by the presence of the unauthorised works.
11. I therefore conclude that the works are contrary to the Framework, to Policy D2 of the Local Plan and fail to have regard to the Planning Guidance on Design in respect of the design and materials used for plant, machinery and ducting. The works are harmful to the special architectural or historic character of the

listed building and its setting. However, due to the position of the works at the rear of the building, the effect on the character and appearance of the Conservation Area is neutral.

12. The appellant has suggested that if the principle of development is acceptable and that minor changes could make it comply with policy then an appropriate condition could be imposed. The appellant also states that it is hoped that forthcoming listed building and planning applications will show a revision to the scheme to mitigate any harm the plant causes. However, no such applications have been made despite the stated intentions of the appellant and the Council having provided the appellant sufficient time during the enforcement process to prepare an alternative scheme and to submit an application. In the absence of detailed proposals regarding the scale, type and nature of alternative plant and equipment that would be functionally appropriate, I cannot be confident that such a condition would lead to a scheme that would cause less harm to the listed building.

13. The appeal on this ground fails.

#### **Appeal on ground (g)**

14. An appeal on this ground is that the requirements exceed what is necessary for restoring the building to its condition before the works were carried out.

15. The appellant states that the lightwell was full of rubbish and rubble before the plant was installed, which has improved its overall appearance. Whilst this may be the case, the argument is totally unconvincing.

16. The appeal on this ground fails.

#### **Appeal on ground (j)**

17. An appeal on this ground is that the steps required exceed what is necessary to alleviate the effect of the works executed to the building.

18. The appellant considers that a revised scheme, with plant at reduced scale and bulk but still appropriately attenuated could be accepted in the basement lightwell. I do not disagree that an alternative scheme could overcome the harm that the unauthorised plant causes but in the absence of any details showing how this could be achieved, the steps required by the notice are the minimum necessary to reduce the harm caused.

19. The appeal on this ground fails.

#### **Appeal on ground (h)**

20. An appeal on this ground is that the compliance period is too short. The appellant considers that a period of 6 months is necessary to agree an alternative scheme as part of a new listed building consent and planning application.

21. On the basis that a new scheme is being prepared at present, as stated by the appellant, there is no over-riding justification to extend the compliance period. No doubt if applications are submitted to the Council prior to the expiry of the compliance period, then the Council would have regard to their submission in considering any further action against the appellant to comply with the notice.

22. The appeal on this ground fails.

**Conclusion**

23. For the reasons given above I conclude that the appeal should fail.

**Decision**

24. The appeal is dismissed and listed building consent is refused for the installation of two air conditioning units within acoustic enclosure, and installation of new flue to rear lower ground lightwell.

*P N Jarratt*

**Inspector**