
Appeal Decision

Site visit made on 24 March 2014

by Katie Peerless Dip Arch RIBA

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

Decision date: 8 April 2014

Appeal Ref: APP/Q1445/F/13/2198062
Flat 10, 18 Brunswick Place, Hove BN3 1NA

- 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 Mr Paul and Mr David Maggs against a listed building enforcement notice issued by Brighton & Hove City Council.
 - The Council's reference is 2010/0303.
 - The notice was issued on 2 April 2013.
 - The contravention of listed building control alleged in the notice is the removal of a number of internal walls and the construction of new internal walls creating a new layout to the flat.
 - The requirements of the notice are (i). Return the layout of the flat to that shown as existing on drawing number 8734/1, date stamped 23 August 2011, that was submitted as part of application number BH2011/02519 (attached to the listed building enforcement notice) (ii). All new internal walls will be stud walls with timber laths and 3 coat lime plaster based plaster finish and no corncicing. (iii). All external drainage and ventilation that is made redundant by the removal of the rear en-suite bathroom will be removed and the area made good to match the existing surrounding area. (iv). All new doors fitted will be painted, solid timber 4 panel doors with square rebates (no mouldings). (v). The skirtings for all new walls will have a simple, square edged profile. (vi). Remove all resultant debris from the site.
 - The period for compliance with the requirements is 12 months
 - The appeal is made on the grounds set out in section 39(1)(g) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The listed building enforcement notice is varied by the omission of requirements (ii) (iv) and (v) and the inclusion of the words '*All new materials and details of the reinstated features are to match in all respects those that were taken out.*' at the end of requirement i. Subject to these variations, the appeal is dismissed and the listed building enforcement notice is upheld.

Main Issue

2. I consider that the main issue in this case is whether the requirements of the listed building enforcement notice exceed what would be necessary to restore the building to the condition it was in before the unauthorised works were carried out.

Planning history

3. The appellants applied for listed building consent for the works that are the subject of the listed building enforcement notice in 2011¹. This was refused and an appeal² against that decision was dismissed in 2012.

Appeal site

4. The appeal property forms the top floor of a former house in a Grade II listed Regency terrace. The house has been converted into flats and No. 10 now contains a living room with a kitchen leading off it and 2 bedrooms, each with an en-suite bathroom.
5. The works that have been carried out consist of an internal re-arrangement of the layout. The main alterations consist of the removal of a dividing wall between the former kitchen and living room at the front of the building and the extension of an existing partition to meet one end of the chimney breast to form the enlarged living space. At the rear of the flat, one internal partition has been removed and another inserted, again on the line of an existing chimney breast. This has formed a bedroom and bathroom.

Reasons

6. The only ground of appeal cited by the appellants is ground (g), which claims that the requirements of the listed building enforcement notice exceed what is necessary for restoring the building to its condition before the works were carried out. Under this ground of appeal the appellants have stated that the building was converted into flats in 1998 and, at that time, all the doors and walls, including skirtings and mouldings, were substituted for modern materials.
7. I have been given no evidence by either party to confirm details of the doors and skirtings that have been replaced and now need to be reinstated. However, the appellants state that the walls that were taken out were modern stud partitions with plasterboard and skim. It is normally the case that the owners of the building who carried out the work, in this case the appellants, are in the best position to know what was taken out and how to replace it when required to do so. I shall therefore vary the notice to omit the references to specific details and materials, leaving only the requirements to return the building to reinstate the former layout of the flat and remove the additional external drainage and ventilation. I shall, however, vary the wording to make clear that the new work is to be carried out in the same materials and details as were previously used, so that if any historic fabric was taken out, it can be required to be replaced like for like. The appeal on ground (g) succeeds to this extent.

Other matters

8. The appellants' statement appears to address matters that relate to the planning merits of the alterations and gives examples of other schemes where, they say, similar proposals have been granted permission. However, I do not have the full details of these and cannot therefore judge whether they would be comparable to the work carried out at the appeal site. In any event, an application for the retention of the alterations has already been dismissed at appeal and there is no appeal on ground (e), (that listed building consent should be granted for the works covered by the notice). The planning merits of the proposal are therefore not before me for consideration.

¹ Ref: BH2011/02519

² Ref: APP/Q1445/E/12/2173445

9. There are also suggestions made about an alternative layout that would require fewer alterations and which the appellants consider might overcome the Council's concerns. However, the Council is seeking to restore the building to its former state, not to alleviate the effect of the unauthorised works, which is what the changes suggested by the appellants would, in effect, be aiming to do.
10. Whilst the alternative layout put forward by the appellants might be acceptable in principle, it does not give enough detail to allow me to make a full assessment of its impact on the listed building. Additional information would need to be submitted and this cannot be called for through variations to the listed building enforcement notice. It would be for the appellants to submit an application for listed building consent to the Council, who could then make an informed assessment of its merits and attach suitable conditions if required.
11. If listed building consent for a revised scheme were to be granted, it would then provide an alternative to complying with the listed building enforcement notice. The appellants have 12 months to comply with the notice and this would, I consider be sufficient time to agree and implement any acceptable, alternative proposal.

Conclusions

12. I shall vary the listed building enforcement notice as noted above but, for the reasons given above, I conclude that the appeal should otherwise fail.

Katie Peerless

Inspector