
Appeal Decision

Site visit made on 17 April 2015

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 24 April 2015

Appeal Ref: APP/E5900/F/14/2219802

103 Bow Road, London E3 2AN

- 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 Samuel Jenjo against a listed building enforcement notice issued by the London Borough of Tower Hamlets.
 - The Council's reference is ENF/12/00439.
 - The notice was issued on 12 April 2014.
 - The contraventions of listed building control alleged in the notice are:
 - 1) Erection of a three storey rear extension and
 - 2) Installation of a UPVC window at 2nd floor level to the rear of the building.
 - The requirements of the notice are as follows:
 - 1) Remove the three storey extension to the rear of the building and make good the rear wall (as shown in Appendix B).
 - 2) Remove the plastic windows to the 2nd floor at the rear of the property (as shown on Appendix B)
 - The period for compliance with the requirements is Three (3) months.
 - The appeal is made on the ground (b) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (PLBCAA).
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Decision

1. The appeal is dismissed and the Listed Building Enforcement Notice is upheld.

Background information and matters of clarification

2. The listed appeal building is one of a row of 21 listed buildings on the north side of this part of Bow Road. The C19 residential buildings are of three storeys with basement and were listed in Grade II (including for their Group Value) on 27 September 1973. The houses are built of yellow stock brick with stucco cornice and blocking courses. Generally the windows are sash windows and some fanlights remain to the front doors. Some houses in the terrace have been altered and I noted alterations including the fitting of inappropriate windows and doors.

3. The notice is a Listed Building Enforcement Notice (LBEN), issued under Section 38 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA). Initially the appeal was made on the basis that the notice was issued under section 172 of The Town and Country Planning Act 1990 (The Act). The form submitted (PINS PF03) was the wrong form and grounds (b) and (d) were pleaded. The correct form (PINS PF05) for a Listed Building /Conservation Area Enforcement Notice was then submitted and ground (b) only has been pleaded. In a LBEN appeal, (S39 of the Planning (Listed Building and Conservation Areas) Act 1990 (PLBCAA), there is no equivalent to the ground (d) appeal under S174 of the Act.

4. This is because, with regard to any unauthorised works to a listed building, there is no time limit in relation to when a Local Planning Authority (LPA) can issue a notice. Unlike a planning appeal under Section 174 of the Act, where the 4 year period for operational development and the 10 year period for any change of use are applicable, there is no equivalent ground of appeal under Section 39 of the PLBCAA. Thus, a LPA can issue a LBEN at any time after the works are carried out. This could be after 10 years; 20 years or even more.

5. In this case the LPA refer to the extension being built between 1998 and 2006. However, on behalf of the appellant, it is confirmed that it was built at some point between 1998 and 2004, but prior to when the property was purchased in 2004. It is clear, therefore, that the appellant was not responsible for building the extension. However, with regard to the UPVC window and from my inspection of the site it would appear that this is a much later addition to the property.

6. When the property was purchased it would appear, therefore, that there was no Listed Building Consent (LBC) in place for the extension. Unfortunately this contravention of the PLBCAA became the responsibility of the appellant, as the new owner and so too is the unauthorised insertion of the 2nd floor UPVC window. It cannot be a defence under the PLBCAA that the owner of a listed building was unaware that the extension was not authorised. This is a matter which would, or should, normally have been established during the conveyance of the property.

7. I note from the submissions that there is a reference by the Council to the possibility of a LBC application being submitted by the appellant. However, for whatever reason, this did not materialise and the appellant has not submitted a LBC application to retain the unauthorised works.

The appeal on ground (b)

8. This is the only ground pleaded and the references to S171 (B) (3) and S171 (B) (1) in the initial grounds of appeal cannot be valid for the reasons set out above. A ground (b) appeal can only succeed if the matters alleged to constitute a contravention of Section 9(1) or (2) of the PLBCAA have not occurred. In other words what is alleged in the LBEN has not taken place, as a matter of fact.

9. In this case the appeal on ground (b) is bound to fail. There is no dispute between the appellant and the Council that the three storey rear extension has been built and that a UPVC window has been installed at the 2nd floor level to the rear of the listed building. I saw both of these during the course of my site visit and so clearly, as a matter of fact, what is alleged in the notice has taken place.

10. The fact that a previous owner and not the appellant carried out the works is not relevant. Unauthorised works have been carried out; there has been a contravention of listed building control; the Council considered it expedient to issue the LBEN and I must deal with the appeal on the basis of the written submissions by the parties.

11. I agree with the appellant that this may seem to be unfair, as he did not carry out the works and I sympathise with his current predicament. However, I have set out above what the situation is in relation to listed building appeals and, in particular, that there are no time limits as to when a LPA can take action.

12. I have given consideration as to whether or not I could deal with the appeal on the basis of ground (e) – whether or not LBC should be granted. However, this ground has not been pleaded and there are no reasons put forward on behalf of the appellant that LBC should be granted. I consider that, in these particular circumstances, to deal with this case under ground (e) would not be appropriate

and could cause injustice. Any application relating to whether or not LBC should be granted would need to go out to consultation and the Council would need to be given an opportunity to respond to any reasons put forward either in favour of, or against, any granting of LBC. However, despite the submissions by the Council relating to the effects of the unauthorised works carried out, the appellant is not precluded even at this stage from applying for LBC.

13. With regard to the appellant's human rights (and even though I am not empowered to consider the merits of the case), I agree with the Council that their actions in issuing the LBEN represent an appropriate balance between the interests and rights of the appellant (to enjoy his land subject only to reasonable and proportionate controls by a public authority as is necessary in a democratic society) and the interests and rights of the wider public interest.

Other Matters

14. In reaching my decision I have taken into account all other matters raised on behalf of the appellant and by the Council. These include the initial grounds of appeal; the extracts from the Land Registry and the title number; the detailed statement by the Council and the final comments submitted by letter on 11 August 2014 on behalf of the appellant.

15. However, none of these matters carries sufficient weight to alter my conclusion and nor is any other factor of such significance so as to change my decision that the appeal should fail.

Anthony J Wharton

Inspector

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