
Appeal Decision

Site visit made on 8 June 2015

by **Jonathan Hockley BA(Hons) DipTP MRTPI**

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

Decision date: 28 July 2015

Appeal Ref: APP/L5810/W/15/3005672

Part of the ground, first and second floor of the building to the rear of Willoughby House, 439 Richmond Road, Twickenham, Middlesex TW1 2AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Willoughby House Limited against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 14/3897/P3JPA, dated 29 August 2014, was refused by notice dated 30 October 2014.
 - The development proposed is the conversion of part of the ground, first and second floor of the modern building to the rear of Willoughby House into eight residential apartments comprising 5 x 1bed and 3 x 2 bed flats.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application that constitutes the appeal was made under the provisions of the Town and Country Planning (General Permitted Development) Order (as amended) 1995. This Order has now been superseded by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Class J of Part 3 of Schedule 2 of the previous GPDO has been replaced by Class O of Part 3 of Schedule 2 of the new GPDO. The only material difference in the paragraphs for the purpose of this appeal is that the 1995 GPDO refers to, in Class J1(f) '*the building is a listed building...*', whereas Class O1(f) in the new GPDO states '*the building is a listed building or is within the curtilage of a listed building*'. Both parties have acknowledged this change and have dealt with in their appeal statements. I have therefore dealt with the appeal on this basis.
3. At the same time that the application that is the subject of this appeal was submitted, an application was also made for a certificate of lawfulness of proposed works to a listed building to erect an internal partition. At the date of the appeal, this application was undetermined and consequently an appeal was also made against that application. Subsequent to this the Council determined in March 2015 that no listed building consent was required in respect of these works. This element of the appeal has now been withdrawn.

Preliminary Matters

4. The Council describe Willoughby House as having 3 elements; with a 19th century Italianate villa, including a campanile tower, a more contemporary 3 storey block with undercroft parking, and a contemporary 2 storey link between the previous 2 elements. The appeal site as a whole forms a 'U' shape, with the two prongs of the U fronting Willoughby Road. Willoughby House was originally Grade II listed in 1952, with the list being updated in 1973. It is common ground between the parties that both the link building and the 3 storey office block were built in the 1980s, subsequent to both the listing and its revision.
5. Class O of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a)(offices) of the Schedule to the Use Classes Order, to a use falling within Class C3(dwellinghouses) of that Schedule. Paragraph O1(f) states that development is not permitted if the building is a listed building or is within the curtilage of a listed building.
6. Paragraph 2 of the Preamble to the GPDO confirms that 'listed building' has the same meaning as in section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). The Act states that a "listed building" means a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and any structure fixed to the building shall, subject to subsection (5A), be treated as part of the building. Subsection (5A) concerns structures specifically excluded by the listing and is not relevant in this case.
7. There is no dispute amongst the parties that Willoughby House is listed, and nor is there any dispute that the 1980s building are attached to Willoughby House. The walls are interconnected and three doorways pass through the buildings. The Council are of the opinion therefore that under the terms of the Act, the 1980s extensions are also listed by virtue of being a structure fixed to the listed building.
8. The case of *Debenhams v Westminster City Council* made it clear that a 'structure' could include a building. However, this case confirmed that there are limits to what can be fixed, to avoid a situation where, for example, the listing of one property in a terrace did not result in the whole terrace being listed. Lord Keith of Kinkel held in the leading speech that "the word 'structure' is intended to convey a limitation to such structures as are ancillary to the listed building itself, for example the stable block of a mansion house or the steading of a farmhouse, either fixed to the main building or within its curtilage. In my opinion the concept envisaged is that of principal and accessory".
9. Willoughby House and the 1980s extension are interdependent to a certain degree – they are largely occupied by a single commercial tenant. The main 'public' access to Willoughby House is via Richmond Road, and access is then gained through to the 1980s extensions via this area. However, the main staff entrance is via the car park to the rear of the 1980s extensions. From my site visit the part of Willoughby House described in the listing appeared to largely host storage and conference facilities, with the office 'back of house' part of the business carried out within the 1980s extensions. The 1980s extensions are also significantly larger in floor space than Willoughby House – approximately

78% of the total floorspace of the overall building is constituted by these extensions according to the appellant's figures.

10. I do not consider therefore that the 1980s extensions are ancillary to Willoughby House and they do not therefore fall within the remit of the Act. I also note in this context that the Council themselves have concluded on the issue of the certificate of lawfulness that listed building consent was not required for internal alterations within the 1980s buildings.
11. However, the GPDO also states that development is not permitted if the building is within the curtilage of a listed building. Although the term 'curtilage' is not defined specifically within the GPDO with reference to Class O, curtilage is often taken to cover land and buildings that are part and parcel of the land comprised with a building. The appellant notes that *AG v Calderdale BC* [1983] JPL 310 established that relevant matters in determining the extent of a curtilage will be the physical layout of the listed building and any other buildings that might or might not be within its curtilage; and their ownership and function, past and present. As described above, the physical layout of the buildings are interconnected and interrelated. The buildings also share a communal garden, accessed directly from the listed building but presumably used by the users of the 1980s building. The same business and use occupies both buildings and the buildings function with each other.
12. Whilst I have no doubt that each building could operate independently, they do not at present and nor do they appear to have done so since the construction of the 1980s buildings, which were designed as an extension to the listed building. In this respect I consider that the construction of the extensions did not reduce the extent of the curtilage of the listed building; by virtue of the physical layout of the extension and the listed building, their ownership and their use and function, they fall within the curtilage of the listed building.
13. Whilst I have concluded therefore that the appeal site is not listed as it is not ancillary to the listed building, I consider that the appeal site lies within the curtilage of a listed building as described in Paragraph O.1(f) of the GPDO. Consequently the proposal does not meet the requirements of Class O and the appeal is dismissed.

Jon Hockley

INSPECTOR

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