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## Appeal Decision

Site visit made on 29 January 2019

**by Anthony J Wharton BArch RIBA RIAS MRTPI**

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

**Decision date: 6 February 2019**

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### **Appeal Ref: APP/Q1445/F/18/3209476**

### **29a Montpelier Crescent (Basement Flat), Brighton BN1 3JJ**

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Ali Bilal against a listed building enforcement notice (LBEN) issued by Brighton and Hove Council (the LPA).
- The enforcement notice, numbered ENF 2018/0004/12/66/18 was issued on 12 June 2018.
- The contraventions of listed building control alleged in the notice is as follows:
  - (a) Removal of skirting boards, cupboards and interior walls/doors to stairs and forming the access to the former scullery.
  - (b) Installation and enlargement of an open-plan kitchen/lounge.
  - (c) Removal of windows and doors facing the courtyard.
  - (d) Construction of timber decking and seating in the courtyard.
  - (e) Removal of an outbuilding (no ability to mitigate loss).
  - (f) Removal of a fireplace and mantel in the former lounge and former bedroom.
- The requirements of the notice are as follows:
  - (a) Reinstate the partition wall of the former hallway and access to the former scullery (in current kitchen) as identified on the existing plan Drawing 754-11 Rev A dated Dec 2017 submitted with listed building consent application BN2017/04233.
  - (b) Remove all skirtings and replace with painted 5 inch pencil-round skirtings.
  - (c) Remove and replace the internal door between the lobby and the hall with a painted soft-wood single upper glass pane and two solid fielded panels below to match the detailing and dimensions of the surrounding door frame as shown in the pre-existing photograph, Appendix B with bolection mouldings to the panels.
  - (d) Reinstate the wooden door in the outrigger (former courtyard door for the kitchen) as referred to as D08 on the pre-existing plan titled: Elevation and Section Plan Drawing 754-11 Rev A dated Dec 2017 submitted with listed building application BH2017/04233 and as shown in Appendix 1 and as per pre-existing photograph in Appendix 2. The door is to be painted a neutral colour.
  - (e) Remove all remaining existing internal doors and surrounds - not specified in (c) or (d) above - and replace with softwood painted fielded four panel doors and surrounds as shown in pre-existing photograph Appendix 2.
  - (f) Reinstate the historic joinery cupboards in the former bedroom to match pre-existing photograph in Appendix 2.
  - (g) Reinstate fireplace and mantels surrounds in the former lounge to match pre-existing photograph Appendix 2. Note: the firebox is excluded from the requirements of this notice.
  - (h) Reinstate the fireplace surround and mantel in the former bedroom to match pre-existing photograph Appendix 2.
  - (i) Reinstate the timber windows of former bedroom (referenced as W03 on the pre-existing Drawing 754-11 Rev A dated Dec 2017 submitted with listed building application BH2017/04233 and as shown in Appendix 1 and as per

pre-existing photograph in Appendix 2.

(j) Reinstate the timber outrigger window (located above the former kitchen sink) to match the pre-existing interior and exterior photographs (referenced as W03 in pre-existing Drawing 754-11 Rev A dated Dec 2017 submitted with listed building application BH2017/04233 and as shown in Appendix 1 and photograph Appendix 2.

(k) Remove the timber decking , pergola and seating in the courtyard and make good brick pavements underneath as shown in pre-existing photograph Appendix 2

- The period for compliance with the requirements is 24 weeks.
  - The appeal is made on ground (e) only, as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) as amended.
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## **Decision**

1. The appeal is allowed in relation to allegation (a) and requirement (a). Otherwise the listed building enforcement notice is upheld. See formal decision below.

## **Matters of clarification**

2. The full requirements of the LBEN are set out above as (a) to (k). However, on behalf of the appellant it is confirmed that it is the intention to comply with requirements (b) to (k) inclusive with regard to the alleged breaches of listed building control. It is also confirmed that the appeal on ground (e) solely relates to requirement (a) of the LBEN.

3. This has been acknowledged by the Council and thus it is agreed by the parties that the appeal be dealt with in relation to allegation (a) and requirement (a) only on ground (e) only. It is on this basis that I have dealt with the appeal and have only considered whether or not listed building consent ought to be granted for the works as set out in allegation (a). However, irrespective of my conclusions relating to allegation (a) and requirement (a), the LBEN will need to be upheld in relation to requirements (b) to (k). When these requirements have been fully completed, the LBEN will cease to have effect.

## **Background information**

4. The appeal property (No 29a) comprises the lower ground floor flat which forms part of the Grade II\* listed building at No 29 Montpelier Crescent. The building was listed in 1952 as part of the group of buildings comprising the terrace numbered 7 to 31 which is a fine example of Regency architecture. The building was converted to flats in 1951 prior to listing. The terrace of houses was designed by Amon Henry White and was built between 1843 and 1847. The cream painted and stucco rendered houses curve around an informal park fronting Vernon Terrace.

5. In March 2018 Listed Building Consent (BH2017/04233) and Planning Permission (BH2018/00165) were refused for various external and fenestration works. Listed Building Consent was approved in July 2018 for internal alterations to the layout; replacement of doors and other associated works and external alterations incorporating revised fenestration (part retrospective).

6. The most relevant policies are policy CP15 (Heritage) of the Brighton and Hove City Plan Part One (BHCP) and retained policies HE1 (Listed Buildings) and HE4 (Reinstatement of original features on listed buildings) of the Brighton and Hove Local Plan 2005 (BHLF). Policies within the National Planning Policy Framework 2018 (NPPF) are also relevant and in particular those set out in Section 16 (Conserving and enhancing the historic environment). The Council's supplementary guidance SPD09 (Architectural Features) and SPGHH11 (Listed Building Interiors) are also relevant.

7. Because the building is listed in Grade II\* and also lies within the Montpelier and Clifton Conservation Area (MCCA), I have also had special regard and paid special attention to the requirements of sections 16(2) and 72 of the PLBCAA.

### **The appeal on ground (e) and main issues**

8. As indicated above the only ground of appeal is ground (e) which is made on the basis that Listed Building Consent ought to be granted for all of the works as set out in allegation (a) to the notice.

9. The main issues are as follows:

- the effect on the integrity and character of the listed building; and,
- the effect on its features of special architectural and historic interest.

10. Because the works are internal I do not consider that they have affected the setting of the listed building or the character or appearance of the MCCA.

### **The case for the Appellant**

11. It is contended that whilst acknowledging that the interior of the listed building is important and that respectful treatment is necessary, the main significance of the listing derives from its contribution to the historic street scene. In that light it is considered that the works associated with the removal of the former partition does not harm the significance of the building. Reference is made to part of Drawing 754-11 Rev A which is referred to in the LBEN.

12. It is considered that the wall was unlikely to have been an original wall and that it is reasonable to suggest that it was installed when the building was converted to flats prior to the listing in 1952. It is stressed that in not requiring the adjacent partition to be reinstated, the LPA has acknowledged that the removal of this partition has not caused any harm to the significance of the building and in particular its original layout. This is despite the fact that this partition is more likely to have been an original part of the basement layout.

13. It is further contended that the proportions of the original Regency rooms are retained despite the removal of the former partition wall. It is also indicated that the principal plan form of the flat has been retained and the proportions of the rooms maintained. In conjunction with the restorative works being carried out it is considered that the character of the heritage asset will be preserved and will be readily apparent. It is stressed that reinstatement of the partition would involve re-location of the current kitchen and that such works would not be beneficial to the fabric or appearance of the basement flat within listed building.

### **The case for the Council**

14. The Council stresses that the significance of the listed buildings within the Crescent lies not only in their grand crescent façade but also in the retention of their original fabric and planforms. It is contended that prior to the unauthorised works being carried out the basement had retained its historic plan forms and features. This had included the stairs connecting the basement to the ground floor. Emphasis is placed upon the SPGBH11 guidance referring to the importance that is placed on basements remaining in anything like their original layout.

15. In response to the appellant's contention that the partition wall is unlikely to have been an original wall, the Council refers to a 2002 plan which shows the ground floor stairs aligning with the location of the stairs and partition in the basement. It is stressed that SPGBH11 expects alterations to respect the original plan so that overall the former layout remains 'readable'. It is also indicated that the document goes on to say that the complete or substantial removal of original walls will not normally be

acceptable. The Council also refers to the pre-existing plan 754-11 Revision A which is clearly annotated '*Low Height (Disused Stair Over)*'.

16. It is also indicated that the stairs and the partition wall would have been the only link between ground and basement levels. Despite the fact that they were unused it is contended that they remained an important historic element of the building and that the loss of the partition wall has caused harm to the overall significance of No 29a Montpelier Crescent. With regard to the other adjacent wall, the Council is of the view that this was likely to have been a modern wall introduced when the building was altered and converted to flats in the 1950s in order to create a separate room from the hallway. Whilst accepting that the kitchen would have to be altered it is considered that the lost features should be reinstated in order to restore the historic platform of the listed building.

### **Assessment**

17. Having inspected the basement flat and having noted the former positions of the partition walls (and low height staircase) in question, I do not consider that their removal has significantly affected the character or integrity of the building as one of architectural and historic significance.

18. I acknowledge that the former layout, including the scullery and former under stair area would have been typical of the basement area of the house as a whole. It is likely that part of the partition removed would have been in the location of the former wall to the staircase which linked the ground floor to the basement of the house. However, this was radically changed in 1951, prior to listing, when the basement flat was created as a separate entity from the original ground floor of the house.

19. There is some evidence to indicate that when the conversion was carried out the ground to basement part of the staircase was left in place. But only part of a partition wall was seemingly left as part of the earlier fabric. However, it was the conversion to flats that affected the historic layout of the listed building and these works were granted consent and or approval prior to the listing in 1952. Thus, when the latest works were carried out, following listed building consent in July 2018, the historic layout, in my view, had already been significantly altered.

20. I agree with the Council that the significance of the listed buildings within the Crescent lies not only in their grand crescent façade but also in the retention of their original fabric and planforms. But I am not convinced by the representations that the basement had retained its complete historic plan form and features including the full staircase connecting the basement to the ground floor.

21. I acknowledge that the 2002 plan (referred to by the Council) shows the ground floor stairs aligning with the location of the stairs and partition in the basement and that the former layout may still have been 'readable'. However, I do not consider that the removal of the partition in question has significantly affected the integrity of this part of the listed building.

22. I also accept that SPGBH11 expects alterations to respect the original plan so that, overall, the former layout remains 'readable' and that the complete or substantial removal of original walls will not normally be acceptable. However, the pre-existing plan 754-11 Revision A is annotated '*Low Height (Disused Stair Over)*'. This would not have been the full staircase since it had been necessary in 1951 to sever the staircase which connected the ground floor to the basement. Again, therefore, on balance, I do not consider that the latest alterations have rendered the remaining planform 'unreadable'.

23. Having seen the extract from the pre-existing and existing plans, I share the appellant's view that the partition wall is unlikely to have been an original wall. The angle of the partition and door on the pre-existing drawing looks far from being original and was most likely constructed during the conversion to flats in 1951. To reinstate it would not, in my view, assist in appreciating the true original basement plan layout. The fact that the Council now accepts that the removal of the long adjacent wall is acceptable, reinforces my view that the 'reading' of the original basement planform has not been significantly affected by the works as carried out.

24. In summary, therefore, I consider that the works are not contrary to the local and national policies (referred to above) relating to the conservation and enhancement of this heritage asset. I do not consider that the integrity or character of the listed building has been harmed and nor do I consider that that the works have been detrimental in any way to any of the building's features of special architectural and historic interest.

25. It follows that I consider listed building consent should be granted for the works carried out as set out in allegation (a). The appeal succeeds on ground (e) in relation to these works and I shall vary the LBEN to delete requirement (a).

### **Other Matters**

26. In reaching my conclusions I have taken into account all of the submissions made on behalf of the appellant and by the Council. These include the full planning history; the initial grounds of appeal; the detailed statements and the drawn and photographic submissions. However, none of these carries sufficient weight to alter my conclusions and nor is any other factor of such significance so as to change my decision.

### **Formal decision**

27. The appeal is allowed in relation to the works set out in allegation (a) to the notice. Listed building consent is granted for '*Removal of skirting boards, cupboards and interior walls/doors to stairs and forming the access to the former scullery*' in the basement flat at No 29a Montpelier Crescent, Brighton BN1 3JJ.

28. I direct that the LBEN be varied by deleting in full Requirement (a) as set out in section 4 (WHAT YOU ARE REQUIRED TO DO).

29. Otherwise the LBEN is upheld as varied.

*Anthony J Wharton*

Inspector

