



## Appeal Decisions

Hearing held on 24 June 2014

Site visit made on 24 June 2014

**by Katie Peerless Dip Arch RIBA**

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

**Decision date: 2 July 2014**

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### **2 Appeals at 6 Palmeria Square, Hove, East Sussex BN3 2JA**

**Appeal A: APP/Q1445/F/13/2205869**

**Appeal B: APP/Q1445/F/13/2206353**

- The appeals are made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeals is made by Ms Justina Grigiate (Appeal A) and Mrs Sufiah Schweda (Appeal B) against a listed building enforcement notice issued by Brighton & Hove City Council.
  - The Council's reference is 2012/0207.
  - The notice was issued on 9 August 2013.
  - The contravention of listed building control alleged in the notice is the partitioning of the fourth floor level to form an additional residential unit, installation of 2 no. rooflights, installation of 32-38mm pipework to the western (rear) elevation, installation of new shower room in the south eastern corner of unit 5A including fixtures and fittings, installation of new fitted kitchen in the south western corner of unit 5A including associated fixtures and fittings, installation of new door on the northern side of the fourth floor landing, installation of new entrance door to unit 5A, installation of 4 no. spotlights and security cameras to the forth (sic) floor hallway, and removal of structural timbers from the loft space and fitting out as residential accommodation.
  - The requirements of the notice are: 1. Remove the 2 no. roof-lights from the southern roof slope and reinstate the roof with tiles to match existing. 2. Remove the 32-38mm pipe-work from the western (rear) elevation at fourth floor level and make good the wall with paintwork to match existing. 3. Remove the new shower room in its entirety from the south eastern corner of Unit 5A on the fourth floor including all fixtures, pipe-work, tiling, glazing and partitions. Make good the floor, walls and ceiling with paintwork, skirting and cornicing to match. Remove the kitchen unit from the south western corner of Unit 5A including all work surfaces, the sink, pipe-work, cooking hobs, extractor fan and associated service pipes, plumbing and drainage. Make good the floor, walls and ceiling with paintwork, skirting and cornicing to match. 4. (sic) Remove the partition and door from the northern side of the fourth floor landing facilitating the subdivision of the 2 units. Make good the floor, walls and ceiling with paintwork, skirting and cornicing to match. 5. Remove the entrance door to flat 5A with stained glass rose motif. 6. Remove 4 no. spotlights and security camera installed into the hallway at fourth floor level. Make good ceiling with paintwork to match.
  - The period for compliance with the requirements is 9 months
  - The appeal is made on the grounds set out in section 39(1)(c) (Appeal A only), (e) (g) (h) (Appeal B only) and (j) (Appeal B only) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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## Decisions

### Appeal A: APP/Q1445/F/13/2205869

### Appeal B: APP/Q1445/F/13/2206353

1. The listed building enforcement notice is corrected by the renumbering of the individual requirements from 1 – 6 to 1 – 7 and by the deletion of the words '*32-38mm pipework*' and the substitution of '*small bore horizontal plastic pipework*' in requirement 2. The appeal is allowed and listed building consent is granted for the retention of the shower room and related partitions in Unit 5A.
2. The listed building enforcement notice is varied by the deletion of newly numbered requirements 3 and 4 and the deletion of the words '*and removal of structural timbers from the loft space and fitting out as residential accommodation*' from the allegations. The time for compliance is varied from 9 months to 15 months.
3. The appeal is dismissed and the listed building enforcement notice is upheld as corrected and varied, insofar as it relates to the 2 No. rooflights, the external pipework on the rear elevation, the partition to the fourth floor hallway, the entrance door to Unit 5A and the 4 No. spotlights and the security camera in the fourth floor hallway and listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

## Preliminary matters

4. Since the issue of the listed building enforcement notice, various works have been carried out to the fourth floor and the roof. The 2 rooflights have been removed, but from photographs of the re-instated areas of slate it can be seen that these works have been carried out to a poor standard. The appellant stated at the Hearing that the roof is leaking and it was accepted that further remedial works are needed to rectify this. Also, the new glazed door to Unit 5A has been replaced by a solid 6 panel door.
5. There is also an unresolved issue relating to the ownership of Unit 5A which, I am told, is currently the subject of court proceedings. At present, therefore, it is unclear who would bear the responsibility for ensuring that any outstanding requirements of the listed building enforcement notice were carried out. This matter had not been identified at the time the notice was issued and the Council accepted that, in these circumstances, there would need to be flexibility over the time for compliance.

## The appeal site

6. The listed building enforcement notice relates to the upper floor and roof of the property at 6 Palmeira Square, a grade II listed building within a terrace of similar properties within the Brunswick Town Conservation Area dating, according to the listing description, from 1850 - 60 . There are currently 2 residential units on the fourth floor of the building: flat 5 which has 2 bedrooms, a living room, kitchen and bathroom and unit 5A which is single room containing kitchen fittings and with a shower room at one end.

7. The works enforced against relate to the formation of the 2 separate units on the fourth floor. Each unit has a separate entrance from the stairwell, formed by the removal of a door and the angled partition in which it was set and the construction of another partition and door at roughly 45° to the original. Within the studio flat, the shower room and kitchen units are later additions to the original layout.

### **Procedural matters**

8. Appeal B has been submitted by the owner of flat 5, who has no jurisdiction or access over Unit 5A. This appeal is proceeding under the written representation procedure and the appellant and her agent did not attend the Hearing, although I carried out the site inspection of her flat at the same time as visiting the rest of the property. The appellant for Appeal B notes that it is only the second of the 2 requirements originally numbered 4 on the listed building enforcement notice over which she personally could have any control and she therefore asks that this part of the unauthorised development be granted listed building consent, under a split decision if other parts of the development are found to be unacceptable under the appeal on ground (e).

### **Applications for costs**

9. The appellant for Appeal A indicated at the Hearing that she wished to make an application for costs in respect of appeal reference APP/Q1445/C/13/220586, formerly linked to Appeal A, relating to a planning enforcement notice that was withdrawn before the Hearing, meaning that the appeal did not proceed. A costs application against the withdrawal of the same enforcement notice has also been made in respect of another appeal, previously linked to Appeal B, reference APP/Q1445/F/13/2206368. The latter application is being dealt with in-house by the Planning Inspectorate's Costs branch and I therefore suggested that the appellant should follow the same procedure and submit her application in writing to the Inspectorate, as I do not have the withdrawn appeal before me for consideration. Both these applications will therefore be the subject of separate Decisions.

### **The listed building enforcement notice**

10. There is a typographical error in the requirements of the notice, in that there are 2 paragraphs numbered 4. For clarity, I will therefore correct the numbering of the requirements from 1 – 6 to 1 – 7.
11. At the Hearing, the Council accepted that there are no requirements relating to the allegations in respect of the removal of structural timbers and the fitting out of the loft space as residential accommodation. This appears to be an error and the Council asked that I delete these allegations from the listed building enforcement notice, as it would not be equitable to increase the scope of the requirements to cover them at this stage in the proceedings. The appellant raised no objection to this course of action and I shall therefore amend the notice accordingly.
12. At the site visit, there was a suggestion made that the plastic pipework on the rear elevation and which serves Unit 5A is not 32-38mm as described in the enforcement notice, but nearer to 22mm. As the precise diameter was not measured, I will remove the reference to it and identify the relevant pipework in a different manner, for the avoidance of doubt.

## **Main Issue**

13. I consider that the main issue in respect of the appeals against the listed building enforcement notice on ground (e) is the effect of the works on the special architectural and historic character of the listed building.

## **Reasons**

### *Appeal A - ground (c)*

14. The appellant challenges the need for listed building consent for some of the works that have been carried out, believing that they do not affect the architectural or historic interest of the listed building. In particular she cites the installation of the kitchen units and the shower room, together with the pipework relating to these, both inside the building and where it appears on the rear elevation. She also considers that the inset ceiling spotlights and security camera would not normally require an application for listed building consent.
15. The pipework runs above floor level from the kitchen sink and shower room and are boxed in within the unit; they have consequently not resulted in a need to cut into structural timbers. However, it goes through walls and emerges externally, where it can be seen from public viewpoints, albeit at a distance, and has an impact on the rear elevation. I therefore conclude that this part of the installation requires the grant of listed building consent to authorise it.
16. Within the unit, an original partition has been moved further into the room, contrary to the original submission of the appellant, and this extends the depth of a former recess between the lift shaft and the original fourth floor hallway. This alteration has created space to accommodate the fittings in the shower room, and has changed the shape of the original room; it consequently also requires listed building consent to authorise the change.
17. On its own, the installation of the kitchen in the existing room would not, in my opinion require listed building consent provided there was no loss of original fabric or damage to the structure and the floor plan remained unchanged. It appears that there has been no such damage in respect of the installation of the units and I will therefore vary the listed building enforcement notice by deleting the requirement to remove them. However, this addition has been combined with an alteration to the shape and configuration of the former bedroom as well as to the entrance hallway to the fourth floor. The removal of the door and angled partition in the hallway and their replacement by a new wall and doorway running east /west, which now separates Units 5 and 5A, have changed the plan form and together with the other changes noted above, have had an impact on the architectural character of the building. They therefore need listed building consent.
18. Although the installation of the lights and security camera may appear to be a minor change, they have also resulted in a loss of fabric and, for this reason, I conclude that a grant of listed building consent is needed to authorise them.
19. It was agreed that the installation of the rooflights would normally need listed building consent, although the Council confirmed that it was its usual policy to grant permission the addition of a single 'conservation' type rooflight. Consequently, I conclude that, apart from the installation of the kitchen units, the remainder of the works would not be authorised unless listed building consent was granted for them and the appeal on ground (c) succeeds only in respect of the kitchen units and internal pipework.

*Appeals A and B - ground (e)*

20. Under this ground of appeal, the appellants seek listed building consent for those parts of the works that have been carried out without it and which need such a consent to authorise them. I have taken into account that the original house has already been sub-divided into flats and has consequently lost some of its original features and plan form. However, each floor had previously been treated as a spacious individual unit and the unauthorised works to the partition in the hallway have now, in my view, unacceptably reduced the size of the internal entrance hall to flat 5 and facilitated an atypical sub-division of the fourth floor living space as a whole, which is harming the architectural composition of the building.
21. I note that the appellant for appeal B considers that the current arrangement is preferable to the former layout, in that the new partition is parallel to the party walls and not at an angle to them. However, the previous layout was the same as that found on the 3<sup>rd</sup> floor and therefore reflects the character of the building as found on that floor level. Also the partition and door are of a quality that fails to reflect that of the original fabric, as found elsewhere in the building.
22. Although I consider that the alterations to the partition in Unit 5A and the installation of the shower room as an 'en-suite' to the bedroom that was originally part of flat 5 would be acceptable in the context of the larger unit, for the reasons set out above I find that the hallway alterations are harmful to the character of the building and the listed building enforcement notice will be upheld for this part of the work and listed building consent refused.
23. In respect of the pipework to the kitchen units and shower room, the installation on the external rear wall is somewhat clumsy and could be better configured. The pipes are at high level and visible from the public realm within the Conservation Area and from the windows of nearby buildings. For this reason I shall refuse listed building consent for the external installation as it presently exists, which will allow the possibility of a more acceptable solution to be investigated.
24. Similarly, although the rooflights enforced against have now been removed, the standard of reinstatement of the roof covering appears to be poor. The original profile of the windows also projected above the roof plane in a design detail that was unsuitable for a listed building of this age. Whilst a single rooflight of another design might be acceptable and meet Council's policies on alterations to listed buildings, I consider that those originally installed did not and I shall uphold the enforcement notice in respect of them.
25. The recessed spotlights and security camera in the stairwell would have no logical purpose in the context of the reinstated angled partition and there is consequently no justification for the removal of parts of the ceiling to allow for their installation. Once again, listed building consent will be refused for these parts of the works. The notice has been complied with in respect of the door to Unit 5A but I was shown a photograph of the original and I conclude that, even if it had not been removed, the design was an inappropriate modern insertion that did not respect the character of the listed building.

26. In conclusion, listed building consent will be granted for the alterations to form the shower room but not for any of the other works which have harmed the architectural and historic interest of the listed building, thereby conflicting with the requirements of s.16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (the Act), policy H1 of the Brighton and Hove Local Plan and the requirements of Chapter 12 of the National Planning Policy Framework (the Framework). The Framework notes that, where any harm to the significance of a heritage asset is identified, even if less than substantial, this harm should be weighed against the public benefits of the proposal and no such benefits have been identified in this case. The appeal on ground (e) therefore succeeds only to the limited extent outlined above.

*Appeals A and B - ground (g)*

27. This ground of appeal claims that the requirements of the listed building enforcement notice exceed what is necessary to restore the building to its condition before the works were carried out. The appellant for Appeal A draws attention to other rooflights in the terrace and states that a single rooflight would not be excessive. This may be so, but as previously noted, I have concluded that the inserted rooflights were of an unacceptable design and the requirement to remove them does not exceed what would be necessary to return the building to its previous state. Other matters raised by this appellant have been covered in my conclusions as set out in previous paragraphs.

28. The appellant for Appeal B claims that the requirement to remove the partition to the corridor is excessive, however, her reasons for this do no more than reiterate the grounds that she has put forward for the appeal on ground (e). They do not show that the requirement calls for more than would be needed to restore the building in the event that listed building consent is refused. The appeal on ground (g) consequently fails.

*Appeal B - ground (j)*

29. The appellant claims that the listed building enforcement notice does not state whether it is seeking to restore the building to its former state or alleviate the effect of the works. Therefore, under ground (j) she claims once again that the removal of the partition to the corridor is excessive, for the reasons previously set out. However, I consider that it is clear from the wording of the requirements that the Council is seeking to ensure that the building is returned to the condition it was in before the unauthorised works were carried out. To this end, the notice calls for the removal of the unauthorised elements that have been inserted and for making good when this has been done. There is nothing included in the notice that could be considered as alleviation rather than restoration. The appeal on ground (j) consequently fails.

*Appeal B - ground (h)*

30. The appellant seeks 18 months rather than 9 months as the time for compliance, due to the ongoing legal complications about the ownership of Unit 5A. As previously noted the Council has now accepted that flexibility will be needed in respect of the time for compliance, because of this problem. It is anticipated that the court case may take 6 – 9 months and whoever then proves to be responsible for carrying out the remedial work will need some time after its conclusion to organise the works. I consider that 15 months would be a reasonable time span, bearing in mind that the Council also has the power under s.38(5)(b) of the Act to extend the time for compliance, whether or not the notice has come into effect.

### *Other matters*

31. The appellant for appeal A queries whether the Council has acted inconsistently in taking enforcement action against the works carried out to flat 5 and Unit 5A and points to other instances where internal alterations appear to have been tolerated or ignored. However, I have no details of the planning history of other properties and have considered this case on its own merits. It is also the case that, even if unauthorised or unsuitable works have previously been carried out, this does not necessarily justify the retention of other such works, where they have been found to be harmful.
32. This appellant also considers that the notice is unclear in that it does not give any details of the type of door that should be reinstated to unit 5A and also that there is no requirement to restore the angled partition and door that have been removed, which would leave no secure access to the rest of the living accommodation on the fourth floor. However, listed building consent would not be required to reinstate the partition and doors provided they matched those that were taken out. There is consequently no ambiguity about what can now be carried out and these works to secure the flat could be undertaken without the need to obtain any further consents. Similarly, the door to the bedroom which now comprises Unit 5A has been replaced with a door to which the Council has raised no objection.

### **Conditions**

33. The Council has not suggested any conditions that it would wish to see imposed if listed building consent were to be granted for the works that have been carried out.

### **Conclusions**

34. I have found that the installation of the kitchen and the internal pipework does not require listed building consent and I will remove the requirement to remove this element of the works from the listed building enforcement notice. However, the remainder of the works need to be authorised by the grant of listed building consent and the only elements that I consider should be permitted are the installation of the shower room and the consequent alterations to the partition within Unit 5A.
35. The remainder of the works are refused listed building consent and the listed building enforcement notice will be upheld in respect of them, subject to the corrections and variations noted in previous paragraphs.

*Katie Peerless*

**Inspector**

## **APPEARANCES**

### FOR THE APPELLANT:

Philip Rowe BA (Hons) BTP  
Justina Grigate

Planning Consultant  
Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Aidan Thatcher MRTPI

Brighton and Hove City Council  
Planning Enforcement Manager

Lesley Johnston BSc (Hons) Dip  
Historic Building Conservation IHBC

Brighton and Hove City Council  
Conservation Officer

### INTERESTED PERSONS:

Cllr. Phelim Maccaffery

Brighton and Hove City Council  
Ward Councillor

Guity Saadat

Local resident

Betty Ringer

Local resident

Michael Ringer

Local resident

Joel Yang

Local resident

## **DOCUMENTS**

- 1 Letter of notification and circulation list