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## Appeal Decision

Site visit made on 27 September 2016

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

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

**Decision date: 28 September 2016**

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**Appeal Ref: APP/P1045/F/16/3143022**

**'Rita's Fish Bar', 182 South Parade, Matlock Bath, Derbyshire DE4 3NR**

- 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 Ms Rita Clark against a listed building enforcement notice issued by Derbyshire Dales District Council.
- The enforcement notice was issued on 21 December 2015.
- The contraventions of listed building control alleged in the notice are:
  - i) The re-painting of the render, eaves cornice, first floor window cills and stall riser.
  - ii) The installation of electrical conduit running beneath the eaves of the property and above the shop fascia.
  - iii) Installation of 3 No flood/spot lights beneath the eaves to the property.
  - iv) Installation of oval advertisement sign between the first floor windows.
- The requirements of the notice are:
  - 1. Re-paint the render, eaves cornice, first floor window cills and stall riser paint colour British Standard 4800 Range: 10 B 15 (Cream).
  - 2. Remove the electrical conduit running beneath the eaves of the property and above the shop fascia and make good any fixing holes.
  - 3. Remove the 3 No flood/spot lights and any associated wiring/cabling beneath the eaves to the property and make good any fixing holes.
  - 4. Remove the oval advertisement sign between the first floor windows to the property.
- The period for compliance with the requirements is 28 days.
- The appeal is made on grounds (b), (c), (e), (g) and (h) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

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### Decision

1. The appeal is allowed to the limited degree on ground (h) only. Otherwise the appeal dismissed and the listed building enforcement notice is upheld as varied (see formal decision below).

### Background information and matters of clarification

2. The Grade II listed appeal building is located within a row of other Grade II listed buildings which form part of South Parade in Matlock Bath within the Matlock Bath Conservation Area (MBCA). The buildings were listed for their group value. The buildings also lie within the Matlock Bath Area of Special Control of Advertisements (MBASCA) and the Derwent Valley Mills World Heritage Site Buffer Zone (WHSBZ). The two storey building is still recognisable from its 1950s listing, being early C19 with stuccoed walls and moulded eaves; sash windows and with a slated roof.

3. The unauthorised alterations/works to the building were noted by the Local Planning Authority (LPA) in July 2015. A letter to the appellant set out the works and apart from a hanging sign, a fascia sign and the painting of the shopfront,

these appear to accord with the allegations set out in the notice. The letter indicated that a listed building consent application would not be supported for the works which are now the subject of the notice. Eventually, following further letters to the appellant her agent wrote to the Council in response to each of the itemised works and set out a proposed course of action and various applications for listed building consent (LBC) were submitted.

4. An application for the re-painting of the shopfront (15/00661/LBALT) was granted consent on 30 October 2015. On 16 October 2015 consent was granted for the hanging and fascia signage (15/00750/LBALT). However, on 10 December 2015 consent was refused for the installation of the electrical conduit (15/00749/LBALT). The notice was then issued on 21 December 2015.

5. The Council refers to its Supplementary Planning Document (SPD) '*Shopfronts and Commercial Properties Design Guidance*', which was adopted in 2006 and modified in June 2012. The National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) are also major material considerations in this case and I have had regard to the relevant policies and guidance. These include those set out in the NPPF at section 7 (Requiring good design) and section 12 (Conserving and enhancing the historic environment).

6. The SPD accords with the aims of the policies within the NPPF in relation to the above sections. Because the building is listed and lies within the MBCA I have had special regard and paid special attention to the requirements of sections 16(2) and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA).

### **The appeal on ground (b)**

7. The appeal on this ground relates only to item 2(iv) of the notice; the oval advertisement sign. To be successful on this ground it must be shown that the matters alleged to constitute a contravention of section 9(1) or (2) of the PLBCAA have not occurred as a matter of fact. In support of this ground it is stated that the sign in question is painted on to the wall. However it is also considered that this point is a technicality and that the ground was pleaded in the '*interests of accuracy*' and that this point has little bearing on the acceptability of the sign.

8. I deal with the acceptability of the sign in the ground (e) appeal below. But as a matter of fact the oval advertisement whether fixed or painted onto the wall the sign is in place. From my own inspection it would appear that it is not a simple painted sign. There appear to be fixings visible and the sign clearly has a thickness albeit minimal. It is not painted on to the white wall. I can only conclude, therefore that the appeal must fail on ground (b).

### **The appeal on ground (c)**

9. It is stated that the appeal on this ground only relates to item 2(ii) set out in the allegation to the notice. This refers to the electrical conduit. To be successful on this ground it must be conclusively shown that the works carried out do not constitute a contravention of section 9 of the PLBCAA. This might be because there is consent in place or that the conduit was in place at the time of listing. Clearly neither is the case. Consent was refused and there is nothing to indicate that the electrical conduit was in place at the time of listing.

10. If any works to a listed building affect its character as a building of special architectural or historic interest, then listed building consent is required. Having seen the electrical conduit it is my view that, irrespective of whether the impact is found to be negative or positive, the works have affected the architectural and historic character of this Grade II listed building. I note that the appellant considers

the opposite to be the case but I agree with the LPA that these works have definitely affected the listed building as one of architectural and historic interest. The appeal also fails, therefore, on ground (c).

### **The appeal on ground (e)**

11. The main issues are the effects of the various works/signs on the integrity and character of the listed building; on its setting; on its the architectural and historic features and on the character and appearance of this part of the MBCA.

12. Although the appellant has indicated that this ground of appeal only relates to allegations 2(ii) and 2(iii) I need to address all aspects of the works carried out in considering whether or not to grant LBC for their retention.

#### *The re-painting of the render, eaves cornice, first floor window cills and stall riser*

13. The appellant accepts the need to re-paint those areas painted white and in the letter of 4 September 2015 indicates that the elements will be painted off-white. At the time of my visit I noted that the walls were brilliant white and contrasted markedly with the walls on either side. With regard to the colour I agree with the LPA (set out in their letter of 21 July 2015) that brilliant white is contrary to the guidelines within the MBCA. I consider that the brilliant white has/resulted in a stark and obtrusive finish which is out of character and harmful to the integrity of the building and the character and appearance of the MBCA. I do not consider that LBC ought to be granted for the retention of this colour.

#### *The electrical conduit beneath the eaves of the property and above the shop fascia*

14. Having noted this part of the works I share the LPA's concern about its effect on the building and the MBCA. In my view this installation appears as an obtrusive, clumsy and inappropriately modern visual intrusion on the frontage of this fine listed building. Like the LPA I disagree with the appellant that the cabling, junction boxes, material and routing of the works '*do not detract from the character of the building*'. I find the opposite to be the case.

15. In my view the works detract markedly from the integrity and character of the building, from its setting and from its features of special architectural and historic interest. In particular the works are harmful to the appearance of the eaves and the windows. I also consider that this discordant and crude fixing of cabling and other elements to this building neither preserves nor enhances the MBCA and LBC will not be granted for the works.

#### *The 3 No flood/spot lights and any associated wiring/cabling*

16. Although having previously stated that the floodlights would be removed the appellant now contends that '*the conduit and floodlighting under the eaves are in keeping with the character of the building and the conservation area*'. Again I disagree. I have already concluded that the conduit is harmful and I take the same view of the floodlights. These inappropriate modern fittings stand out as obtrusive appendages to the façade of the building. As well as being detrimental to the character of the building they also jar with the traditional architectural and historic detailing of the rest of the frontage including the fascia, eaves and the windows.

17. They also affect the settings of the other buildings within the group and would set a most unfortunate precedent if allowed to remain in place. It follows that these fittings also neither preserve nor enhance the character or appearance of the MBCA and listed building consent will not be granted for their retention.

*Installation of oval advertisement sign between the first floor windows*

18. The Oval sign is definitely fixed to the wall. It is out of scale and its position at high level adversely affects the host building as well as the adjoining listed buildings. The sign is detrimental to the character of the listed buildings; to their setting and to the features of architectural and historic interest: namely the windows and the rest of the shopfront. Like the other works the sign neither preserves nor enhances the character or appearance of the MBCA. Again, therefore I consider that consent for its retention should be withheld. The appeal fails on ground (e) in relation to all of the unauthorised works carried out.

**The appeal on ground (g)**

19. An appeal on this ground is made on the basis that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out. Again it is argued that technically the requirement to remove the oval advertisement sign between the first floor windows to the property cannot be complied with because it is a painted sign. It is suggested that the requirement should be re-phrased to state that the sign be painted over.

20. I find the argument for this ground to be unnecessarily pedantic and frankly a waste of time. It would appear that whoever prepared the appeal on this ground failed to note that the sign was not painted directly on to the white painted wall. In any case it should be evident to all that what is required is to rid the façade of a harmful sign. The appellant is quite clear about what is required and it would not have made any difference whether the sign was affixed to the building or painted onto its façade. Even if it had have been painted on to the wall the requirement to 'remove it' would be achieved by painting over it with the required wall finish colour BS 4800, 10 B 15. The appeal fails on ground (g) and neither this, nor any of the other requirements exceed what is necessary to restore the building to its condition before the works were carried out.

**The appeal on ground (h)**

21. I acknowledge that some works have already been carried out and that consents have been granted for some signage. It is also clear that the Council is agreeable to an extended compliance period of 3 months. Given the history of the unauthorised works and the correspondence between the parties, I find it difficult to understand the appellant's stance regarding the re-painting and why it has not been carried out already.

22. Nevertheless in the overall circumstances of this case I consider it appropriate to increase the compliance period to 3 months. The appeal succeeds to this limited degree on ground (h) only and I will vary the LBEN accordingly.

**Other Matters**

23. In reaching my conclusions on the grounds of appeal I have taken into account all other matters raised by the Council and by and on behalf of the appellant. These include the full planning history referred to; the initial grounds of appeal; the pre-issue (of the notice) correspondence and the submitted photographs. However, none of these carries sufficient weight to alter my conclusions on each ground and neither is any other factor of such significance so as to change my decision.

**Formal Decision**

24. The appeal succeeds to a limited degree on ground (h) only. I direct that the notice be varied by deleting the words and figures 'twenty-eight (28) days' in part 3

(the paragraph commencing '*NOTICE IS HEREBY GIVEN*') and by substituting therefor the words and figure '*three (3) months*'.

25. Otherwise the appeal is dismissed and the listed building enforcement notice is upheld as varied. Listed building consent is refused for the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) act 1990 as amended.

*Anthony J Wharton*

Inspector