
Appeal Decision

Site visit made on 16 May 2017

by **P N Jarratt BA DipTP MRTPI**

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

Decision date: 19 May 2017

Appeal Ref: APP/U1105/F/16/3162989

Spoken, 43 The Strand, Exmouth, Devon, EX8 1AL

- 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 George Nightingale against a listed building enforcement notice issued by East Devon District Council.
 - The enforcement notice, numbered 15/FO675, was issued on 31 October 2016.
 - The contravention of listed building control alleged in the notice is, without listed building consent:
 1. The removal of plaster from the interior pillars as shown indicatively circled in red on plan 2 attached to the notice and the sandblasting of the underlying brickwork to create a 'distressed' appearance;
 2. Installation of three new aluminium fascia signage to the exterior frontage of the building coloured a garish yellow with brown plastic lettering proud of the fascia;
 3. Installation of one projecting sign to the left-hand side of the exterior corner entrance coloured brown and garish yellow.
 - The requirements of the notice are:
 1. The distressed look on the internal pillars as shown indicatively circled in red on plan 2 attached to the notice shall be removed by plastering the internal pillars to their previous state of smooth finished plaster;
 2. The three new aluminium fascia signs to the frontage of the building shall be removed and the original shop front signage returned to its original wood finish with no garish yellow colouring;
 3. The new projecting sign to the left-hand side of the exterior corner entrance shall be removed.
 - The period for compliance with the requirements is 6 months.
 - The appeal is made on the grounds set out in section 39(1) (a), (c), (e) and (g) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
 - **Summary of decision: Notice corrected and varied, listed building consent granted in part and the notice upheld in part.**
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Appeal Site

1. The appeal site is a three storey Grade II listed building situated in a prominent corner location within the town centre shopping area and within the Exmouth Conservation Area. The appeal relates to the ground floor of the premises which is in commercial use as a restaurant and bar.

Planning History

2. Planning permission and listed building consent were granted in 2008 for alterations to the building with a new shop front between the pillars.
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3. Following unauthorised works being carried out in respect of signage and internal alterations, applications for advertisement consent and listed building consent were refused due to harm caused to the listed building and the conservation area. Formal enforcement action was subsequently taken.

Reasons

Appeal on ground (a)

4. An appeal on this ground is that the building is not of special architectural or historic interest.
5. The building was listed in 1978 and was described as a late C18/early C19 corner building. The Council consider the significance of the building arises from its age, design and location. This includes the original form of the building and its pillars and the space for signage that is the key to the appearance of the building and the separation of the ground floor use and design from the upper floors.
6. The appellant does not consider any features of the property are of historic interest; that it was bombed in the war and a timber framed replacement to the upper floors was carried out; there is no historic fabric internally and the front façade was totally renewed in 2008. The Council on the other hand states that the building would not have been listed in 1978 had it not been original fabric or character.
7. According to the freehold owners of the premises¹, in the 1960s the previous owner removed the old shop front and set back the new shop front some five feet behind the original shop front line. This required the rebuilding of the pillars which became external. Subsequently the 2008 consent was implemented with a new shop front constructed between the pillars, with the inside surfaces being internal to the shop. Neither the pillars nor the render were original. However the Council considers that two of the pillars represent part of the original fabric of the building.
8. It is evident that considerable changes have occurred to the building either through war-time damage or through subsequent alterations. However, the listing of the building in 1978 and the 2008 consent would have had regard to the heritage features of the structure at those times. I am satisfied that the Council's assessment of the significance of the building is appropriate.
9. The appellant has indicated that he has been in contact with Historic England with a view to its potential de-listing. This would be a more appropriate mechanism as I do not have sufficient evidence before me to conclude that the building is of such little heritage merit to justify its de-listing.
10. The appeal on this ground fails.

Appeal on ground (c)

11. An appeal on this ground is that the matters if they occurred do not constitute a contravention. The appellant considers the building to be of no heritage value and with no historic or traditional features present. He considers that the signage is not harmful to the character and appearance of the conservation area. There is no wooden signage in the conservation area other than in the

¹ Letter of 1 November 2016 attached as Appendix 2 of the appellant's appeal statement

former 'Thomas Tucker' building. Signage in the town centre is made up from plastic and metal with some being illuminated and some being in strident colours. The appellant draws attention to the many projecting signs evident in the area.

12. At my site inspection I observed that the works alleged had taken place and that they have affected the character of the building as one of special architectural or special interest which in turn affects the character and appearance of the conservation area.

13. The appeal on ground (c) fails.

Appeal on ground (e)

14. An appeal on this ground is that listed building consent ought to be granted for the works. The main issue in the ground (e) appeal is whether the works subject to the notice preserve the listed building or its setting or any features of special architectural or historic interest it possesses and the effect that the development has on the character and appearance of the conservation area.

Plaster Removal

15. The notice refers to the distressing of the pillars through sandblasting the exposed brickwork and the removal of plaster from these pillars. The officer's report makes reference to the removal of what might have been historic lime plaster but from my observation of the pillars where brickwork had been partially exposed, the brickwork had a modern cement render with a plaster coating on the outside. The appearance of the pillars is more characteristic of a decaying industrial building rather than that of the internal space of well-maintained retail or restaurant premises.

16. In my view the partial removal of plaster is harmful to the integrity of a late C18 building where there is no tradition of exposed brickwork in the style presented. I note that the Council considers the harm caused to the heritage asset to be substantial but at one stage were minded to overlook the unauthorised removal of the plaster if the signage was removed, which suggests that the actual harm was not perceived to be so substantial in order to warrant enforcement action. I also note that the officers had endeavoured to find a solution to the unauthorised work without the need for formal action although this proved to be unsuccessful.

17. There is no evidence of the historic fabric of the building being lost through the removal of the plaster although sand blasting is damaging to the face of brickwork. However the age of the brickwork is disputed and the extent of any original brickwork is likely to be limited to one or two pillars. The appearance of the pillars is easily reversible by being plastered in the future when fashions in interior décor change. In my view the harm caused is limited and should be read in the context of the ambiance that the appellant has sought to create in his bar/restaurant. In terms of paragraph 134 of the National Planning Policy Framework (the Framework) the harm is less than substantial and public benefits arise from the development through the continuing commercial use of the building. I therefore propose to grant consent for this aspect of the works.

Signage

18. The fascia sign wraps around both frontages of the building and the chamfered corner. It is a vibrant yellow, described by the appellant as 'buttercup yellow' and by the Council as 'garish'. The business name 'Spoken' in dark coloured raised lettering has been applied to the three aspects of the fascia with smaller lettered 'Eat together drink together' lettering as a strap line. The fascia is of a depth appropriate to the design of the building although the application of raised letters to the fascia is inappropriate as this does not reflect the traditional painted two dimensional lettering associated with listed buildings in commercial use.
19. The projecting sign sits below the bottom of the fascia on the Strand frontage and is of similar colours to the fascia sign. Its size and position is appropriate to the scale of the shopfront.
20. Notwithstanding the proliferation of other signs visible in the vicinity of the appeal property, many of which are outside the conservation area and some in strident colours, my statutory obligation is to consider whether the works subject to the notice preserve the listed building or its setting or any features of special architectural or historic interest it possesses. The yellow colour of the fascia and of the projecting sign is particularly vibrant and is prominent from some distance across the Strand. It draws unnecessary attention to part of the building to the detriment of the listed building as a whole and is harmful to the special interest of the building and to the character and appearance of the conservation area by unnecessarily adding to the other visually harmful signage present in the vicinity of the building.
21. The signage is contrary to paragraph 133 of the Framework as it causes substantial harm and there are no substantial public benefits that outweigh the harm caused. It is contrary to Policies EN8 and EN9 of the East Devon Local Plan 2013-2031 relating to design and significance of designated heritage assets. The fact that the Local Plan was adopted after the completion of the works is not significant as in the appeal on this ground I have regard to the Development Plan so far as it stands at the time of making his decision.
22. The appeal on ground (e) succeeds in respect of the internal work but fails in respect of the signage.

Appeal on ground (g)

23. An appeal on this ground is that the requirements exceed what is necessary for restoring the building to its condition before the works were carried out.
24. The steps include a requirement that 'the three new aluminium fascia signs to the frontage of the building shall be removed and the original shop front signage returned to its original wood finish with no garish yellow colouring'.
25. The appellant states that the fascia has been there for many years and that the reinstatement to an original wooden finish would pre-date the listing of the property. It is understood that the fascia panels are aluminium that have been re-skinned in a different colour. Attached as Appendix 8 to his statement is a copy invoice dated 30/11/2015 from Staylite Signs which shows that the existing fascia panels were removed for the application of 116c gold pod vinyl to all the fascia panels and lettering and then re-fitted to the building.

26. The notice can only require the restoration of the building to its condition before the works were carried out. It would be unreasonable to require works that would bring it to a state that may have existed many years prior to the breach. Whilst the objective behind the Council's wording of the breach may be highly desirable in order to achieve a fascia of more traditional appearance, it does not relate to the condition that existed before the fascia and signage was introduced by the appellant. The appellant is likely to have more detailed knowledge of the previous fascia than the Council although no doubt local photographs may be available to assist in resolving the matter.
27. I therefore intend to vary the requirements of the notice to delete reference to the plaster in step 1 in view of my decision on ground (e) and to amend the wording in step 2 as follows "Reinstate the fascia signs to the condition and appearance that existed prior to their replacement with those currently attached to the frontages of the building." Step 3 is not varied.
28. I also intend to correct allegation 2 in the notice to reflect the nature of the signage to "Without listed building consent replacement of existing fascia signage to the exterior frontages of the building".
29. I am satisfied that these corrections and variations can be made without injustice to the parties.
30. The appeal on ground (g) succeeds.

Other Matters

31. The appellant is particularly scathing about the manner in which the Council has responded to the alterations to the listed building. However, none of these criticisms is relevant to the determination of this appeal under the various grounds.

Conclusion

32. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant listed building consent for one part of the matter the subject of the notice, but otherwise I will uphold the listed building enforcement notice with variations.

Decision

33. I direct that the Second Schedule of the listed building enforcement notice be corrected by:

the deletion of the words "Without listed building consent the removal of plaster from the interior pillars as shown indicatively circled in red on plan 2 attached to the notice and the sandblasting of the underlying brickwork to create a 'distressed' appearance;"

and

the deletion of the words "Without listed building consent installation of three new aluminium fascia signage to the exterior frontage of the building coloured a garish yellow with brown plastic lettering proud of the aluminium fascia".

and

the insertion of the words " Without listed building consent the replacement of existing fascia signage to the exterior frontages of the building"

and the appeal is allowed insofar as it relates to the removal of plaster from the interior pillars and listed building consent is granted for the retention of the exposed brickwork on the interior pillars at Spoken, 43 The Strand, Exmouth, Devon, EX8 1AL.

34. I direct that the Third Schedule of the listed building enforcement notice be varied by the deletion of the words:

"The distressed look on the internal pillars as shown indicatively circled in red on plan 2 attached to the notice shall be removed by plastering the internal pillars to their previous state of smooth finished plaster;"

and

the deletion of the words:

"The three new aluminium fascia signs to the frontage of the building shall be removed and the original shop front signage returned to its original wood finish with no garish yellow colouring;"

and

the insertion of the words:

"Reinstate the fascia signs to the condition and appearance that existed prior to their replacement with those currently attached to the frontages of the building."

35. The appeal is dismissed and the listed building enforcement notice is upheld as varied, insofar as it relates to the fascia signage and projecting sign 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.

P N Jarratt

Inspector