



Appeal Decision

Site visit made on 1 May 2018

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 30 May 2018

Appeal Ref: APP/T3725/F/17/3179347

Land at 30 Regent Street, Leamington CV32 5EH

- 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 by Amir Rashidi (of Tartine Leamington) against a listed building enforcement notice issued by Warwick District Council.
 - The enforcement notice, ref. ACT/248/15, was issued on 10 July 2017.
 - The contraventions of listed building control alleged in the notice are:
 - a. The painting of ground floor windows, sills, reveals grey.
 - b. The painting of the ground floor front and side elevation.
 - c. The installation of artificial hedge foliage around the front and side elevations.
 - d. The painting of iron works at the first floor and arch at front entrance, gold.
 - The requirements of the notice are to:
 - I. Paint the two ground floor SASH windows, reveals and sills currently grey WHITE (shown outlined in red in Photograph 1 attached to the Notice).
 - II. Paint the ground floor front and side elevations (shown in Photographs 2 and 2A attached to this Notice) with colour to match the rest of the existing building (as shown in Photograph 2B attached to the Notice).
 - III. Permanently remove the artificial hedge foliage (shown outlined in red in Photographs 3 and 3B attached to the Notice) and its fixtures and fittings.
 - IV. Permanently paint the gold iron works black (shown outlined in red in Photograph 4 attached to the Notice).
 - V. Paint the door arch to match the colour of the upper floors of the building (as shown in Photograph 5 attached to the Notice).
 - VI. Make good any damage caused as a result of compliance with the requirements I to V above.
 - The period for compliance with the requirements is two months.
 - The appeal is made on the ground set out in section 39(1)(c) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The appeal is dismissed and the listed building enforcement notice is upheld. 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

2. The appeal property is a Grade II listed building standing within the Royal Leamington Spa Conservation Area. I have therefore paid special regard to the desirability of preserving the building, its setting, and any features of special architectural or historic interest which it possesses, and to the desirability of preserving or enhancing the character or appearance of the Conservation Area, as required under sections 16(2) and 72(1) of the Planning (Listed buildings and Conservation Areas) Act 1990 as amended (the Act).
3. The Council refer to development plan policy relating to the protection of listed buildings, both in the notice and in their statement. However, the courts have found that the development plan is not determinative in listed building cases. Nevertheless, I shall take such policy as indicative of the Council's stance on listed building matters, and as a material consideration in my determination.

Background matters

4. The appeal property is a Grade II listed building, part of a listed terrace on the southern side of Regent Street. It stands at the western corner of the junction between Regent Street and Augusta Place. It is a three-storey building with restaurant premises on the ground floor, but reduces to two storeys at the rear. Apart from the shop-front, which extends around the splayed corner, the building is finished in stucco, painted cream on the upper floors.

The appeal on ground (c)

5. This ground is that matters alleged to constitute a contravention of section 9(1) or (2) of the Act (if they occurred) do not constitute such a contravention.
6. S.9(1) sets out that if a person contravenes s.7 he shall be guilty of an offence. S.7 relates to restriction on works affecting listed buildings, and sets out that no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised.
7. The principal consideration under this ground is whether or not there has been a breach of listed building control, and raises the question of whether the alleged works have been such as to affect the character of the building as one of special architectural or historic interest – either positively or negatively. The merits of the works are not for consideration under this ground.
8. The building, and the listed terrace as a whole, are illustrative of the simple and elegant architecture of the late Georgian period. The painted stucco, well-proportioned and carefully positioned sash windows, and overall scale and somewhat austere appearance create a restrained and impressive architectural composition. Furthermore, the building type contributes to the historic record of development of this part of the town. It is an irreplaceable element in the make-up of the street, and I regard its conservation as being of considerable importance, to which great weight should be attached- as advised by paragraph 132 of the National Planning Policy Framework (NPPF).
9. The windows, cills and reveals, and the ground floor walls have been painted in a mid to dark grey colour that contrasts distinctly with the cream of the stucco and white painted joinery of the upper floors. As the Council say, one of the

dominant features of the architectural style of this and other similar terraces is the use of lime stucco as the principal facing material, which is predominantly painted in white or cream, with terraces and rows in which each part is painted the same colour. I saw that this is very much the case in this part of Regent Street. The introduction of the grey painted ground storey significantly changes the appearance of this building. Given such a clear divergence from the prevailing aesthetic of cream painted stucco, and in this case white painted windows, I consider this aspect of the unauthorised works has a significant impact upon the special architectural interest of the listed building.

10. The artificial hedge foliage has been installed above the projecting shop-front for its full width, and also along the flank elevation from the splayed corner to the southern end of the appeal building, adjacent to Crown House in Augusta Place. It is a highly prominent feature, of a form and material that is wholly uncharacteristic in the context of the elegant architecture of this building. I consider it has a distinct and significant effect on the special interest of the listed building.
11. The Council also identify the black painted ironwork of balconies, verandas, and railings as a dominant feature of the architectural style of these buildings. Indeed the railings and balconies of this terrace, as well as Portland House at the western end of the terrace appear in the list description in their own right. I concur with the view that features such as these, uniformly painted in black, are important in the architectural make-up of this and many other buildings in the area. The introduction of a gold painted arch over the main entrance door, and the gold painted balcony rail above is again wholly uncharacteristic of the architectural style, and has a significant effect upon the character of the listed building.
12. Furthermore, I consider the works as a whole are uncharacteristic of the Conservation Area, which derives much of its interest from the consistency of the architecture. The works are highly prominent in this corner position and cause significant harm to the appearance of the Area.
13. The appellant argues that the Council have adopted an overly prescriptive approach in bringing enforcement action that is inconsistent with supporting an independent business which contributes to the vibrancy of the Conservation Area. Furthermore, it is claimed they are stifling individuality, and effectively preventing independent small businesses from advertising their offer in a distinctive manner.
14. The appellant suggests that such things as planter boxes, floral baskets and greenery are commonly used to decorate and promote businesses. Furthermore, distinctive names, signage, colours and shop-front details are used to attract custom. It is contended that, in this light, the alterations do not affect the character of the listed building.
15. I saw numerous examples of distinctive shop-fronts in the area, with varied colours, lettering, and decorative details, many clearly on listed buildings, and within the Conservation Area. Indeed the shop-front of the appeal building is distinctive and attractive. In my opinion the shop-fronts themselves have in many cases been treated in a somewhat different manner from the remainder of these historic buildings. It is not necessary for the other parts of the buildings to be decorated in the same way. Neither is it necessary to carry out such works without authorisation. Furthermore, I do not consider that planter

boxes, floral baskets, and greenery are comparable with the highly uncharacteristic materials and colours used in this case. Notably, the artificial hedging is of a geometric form that is virtually an architectural feature in itself, of quite different scale from a window box or hanging basket.

16. The appellant claims the appeal property is not covered by any Article 4 directions, and that part of the building is not listed. However, Article 4 directions are used to restrict the scope of development rights permitted under the provisions of The Town and Country Planning (General Permitted Development)(England) Order 2015, they do not affect the need for authorisation of certain works to listed buildings under the provisions of the Act. As to the extent of the listed building, listings of this date (1970) do not differentiate or exclude any parts of a building. The listing covers the entirety of the building.
17. Overall, as a matter of fact and degree, I consider all the works enforced against have affected the character of the building as one of special architectural or historic interest. These works have not been authorised, and a contravention of s.9(1) of the Act has thus occurred. The appeal on ground (c) therefore fails.

Conclusions

18. For the reasons given above and having regard to all other matters raised, I consider the appeal should not succeed, and I intend to uphold the listed building enforcement notice.

Stephen Brown

INSPECTOR