



Appeal Decisions

Site visit made on 6 August 2019

by Anthony J Wharton BArch RIBA RIASI

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

Decision date: 19 August 2019

Appeal A - Ref: APP/F1610/F/18/3217460

Windrush Restaurant, St Kevins, High Street, Bourton-on-the-Water GL54 2AP

- 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 Mr Les De La Haye against a listed building enforcement notice (LBEN) issued by Cotswold District Council (the LPA).
- The listed building enforcement notice was issued on 12 October 2018.
- The contraventions of listed building control alleged in the notice are as follows:
The installation of air intake and extraction flues, air conditioning units, flues, glazed screens, fascia, UPVC rainwater goods and guttering, new doors and windows, fascia signs and changes to the existing prentice roof, Cotswold stone wall and vehicle access gate'.
- The requirements of the notice are as follows:
 1. Permanently remove the seven air conditioning units and all associated cablings and fixings from the North West and South West elevations of the building and make good existing surfaces;
 2. Permanently remove the three air intake and extraction flues situated on the roofs of the North and West elevations of the single storey extension and make good existing surfaces;
 3. Permanently remove the two metal flues on the South West elevation of the Building including all fixings and make good existing surfaces;
 4. Permanently remove the glazed screens on the South West elevation of the Building and return this part of the building to the condition it was in prior to the installation of the screens;
 5. Permanently remove the fascia to the external kitchen wall and make good existing surfaces;
 6. Permanently remove all UPVC rainwater goods and guttering and make good existing surfaces;
 7. Permanently remove the external kitchen windows and doors and make good existing surfaces;
 8. Permanently remove the three fascia signs on the South East elevation of the Building and make good existing surfaces;
 9. Restore the prentice roof to the South East elevation of the Building to its prior to the unauthorised works having been undertaken;
 10. Permanently remove the Cotswold stone wall and vehicle access gate located in the courtyard to the west of the main building.
- The period for compliance with the requirements is 3 Months.
- The appeal is made on grounds (e), (g) and (h) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (PLBCAA).

Appeal B - Ref: APP/F1610/C/18/3217457

Windrush Restaurant, St Kevins, High Street, Bourton-on-the-Water GL54 2AP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (TCPA) as amended by the Planning and Compensation Act 1991 (PCA).
- The appeal is made by Mr Les De La Haye against an enforcement notice (EN) issued by Cotswold District Council (the LPA).
- The enforcement notice, ref was issued on 12 October 2018
- The breaches of planning control as alleged in the notice are:
Th installation of air intake and extraction flues, air conditioning units, flues, lamps; a detached refrigeratio unit, metal railings a Cotswold stone wall and vehicle access gate on the land.
- The requirements of the notice are as follows:
 - (i) Permanently remove the seven air conditioning units and all associated cabling and fixings from the North West and South West elevations and make good existing surfaces.
 - (ii) Permanently remove the three air intake and extraction flues situated on the roofs of the North and West elevations and make good existing surfaces.

- (iii) *Permanently remove the two metal flues on the south west elevation of the building including all fixings and make good existing surfaces.*
 - (iv) *Permanently remove from the site the six lamps located to the front of the premises.*
 - (v) *Permanently remove the refrigeration unit located along the west boundary of the site and the air conditioning units either side, including all cabling and fixings and make good existing surfaces.*
 - (vi) *Permanently remove the metal railings erected around the south and east boundary of the site.*
 - (vii) *Permanently remove the Cotswold stone wall and vehicle access gate located in the courtyard to the west of the main building.*
- The period for compliance with each of the requirements is 3 months.*
- The appeal is proceeding on grounds (a) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. Appeal A is allowed in part and dismissed in part.
2. Appeal B is allowed in part and dismissed in part. See both formal decisions below.

Matters of clarification

The Appeals Procedure

3. On 2 July 2019 a request had been made on behalf of an interested person (Diana Ray of 'Kevinscot' High Street), that the appeal procedure be changed to a hearing from the Written Representation procedure which had been agreed between the Council and the appellant. Subsequently the procedure was reviewed but the request was rejected because the criteria for a hearing were not considered to meet the Planning Inspectorate's published criteria relating to Appeal Procedures.

4. During my site visit of the appeals property and the surrounding area, I also visited the property of the above interested person and was able to view relevant parts of the appeal premises and the works enforced against from her property. From all of the submissions and my detailed inspection, I have seen all that I need to see in relation to both appeals. Furthermore, I am satisfied that the written procedure method is appropriate in this case and that, in dealing with it accordingly, no injustice will be caused to the appellant, the Council or any interested person. I have taken into account all of the representations made by interested persons at both the applications and the appeals stages relating to the works carried out and enforced against. I have referred to the LBEN appeal as Appeal A and to the EN appeal as Appeal B. This differs to the parties' references to the appeals.

The Listed Building Enforcement Notice (LBEN) and the Enforcement Notice (EN)

5. Some of the allegations relating to the various works carried out at the Windrush Restaurant premises are common to both the LBEN and the EN. These are *'the seven air-conditioning units; the three air intake and extraction flues; two metal flues to the South west elevation and the Cotswold stone wall and vehicle access gate*. The allegations in the LBEN relate to contraventions of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) and those in the EN to breaches of planning control under the Town and Country Planning 1990 (the Act) as amended by the Planning and Compensation Act 1991 (PCA).

6. In dealing with the two appeals I have first considered the LBEN appeal (Appeal A), under the three grounds pleaded and in relation to each of the ten different elements of works carried out. I have then dealt with the EN appeal (Appeal B), under the two grounds pleaded and in relation to the seven different elements of works carried out. With regard to the ground (a) appeal in Appeal B (that planning permission should be granted), my conclusions in respect of the common elements set out above have clearly been affected by my conclusions as to whether or not Listed

Building Consent (LBC) should have been granted under the ground (e) appeal in Appeal A.

Background information and relevant policy

Background information

7. The appeals premises (Windrush Restaurant) is a Grade II listed building, located on the south-west side of the High Street in the centre of Bourton-on-the Water; close to the River Windrush; to the east of the Cotswold Motor Museum and opposite the 'Church Rooms' and a building known as the Old Forge on the opposite side of the street. The whole of this part of the town lies within the Bourton-on-the-Water Conservation Area (BWCA) and the prominent village Green lies to the south-east parallel to the river. There is a commercial property immediately to the north-west of the restaurant and beyond that lies 'Kevinscot', where the interested person lives. It has a walled garden and shares part of its rear boundary with the appeals premises.

8. The planning history of the listed building dates back to the mid-1960s and the Council has outlined the most relevant developments at the site. In January 2007 planning permission (PP) was refused for the demolition of outbuildings and an extension to create a new kitchen and storage area, as well as internal alterations. In July 2009 PP and LBC were granted for the demolition of outbuildings, the relocation of the kitchen, redesign of the restaurant area and a re-building of a toilet block. The next approvals for PP and LBC were granted in November 2011 for works which are described by the LPA as being roughly the same as for the 2009 approvals and PP and LBC were granted in June 2016 for a single storey rear extension.

9. The next planning application was for a partial change of use (COU) of the ground floor, which was then in Class A1 retail use (Newsagent), to a Class A5, Hot Food Takeaway, use. This was refused by the LPA on 15 December 2016 but was allowed on appeal (APP/F1610/W/17/3170029) on 6 July 2017. In the meantime PP had been granted in November 2016 for the variation of a condition relating to the 2016 approval and consent for the relocated toilets and enclosure of the rear courtyard.

10. On 13 June 2018, an application was made for PP for the *'Retention of works to Windrush Restaurant, including air intake and extraction flues; air conditioning units; the erection of a detached refrigeration unit and gas box; the erection of a stone wall and gates and boundary fencing; the extension of the flat roof above the lobby; insertion of new windows and doors; increased width to the kitchen; and restaurant extensions and the erection of a hanging sign'* at the appeal premises.

11. At the same time a LBC application was made for *'Retention of works to Windrush Restaurant, including air intake and extraction flues; air conditioning units; the erection of a detached refrigeration unit and gas box; the erection of a stone wall and gates and boundary fencing; the extension of the flat roof above the lobby; insertion of new windows and doors; downpipes and guttering, increased width to the kitchen and internal works'*.

12. Both applications were refused and the Reasons for Refusal (RfR) are set out in the CDC Decision notices (references 17/04248/FUL; CD4049/1/P and 17/04249/LBC; CD.4049/1/Q). These works as carried out are now the subject of the LBEN and the EN now forming respectively, Appeals A and B.

Relevant Policy

13. The most relevant development plan policies are contained within the Cotswold District Local Plan 2011-2031 (CDLP). These are Policies EN1 (Built, Natural and Historic Environment); EN10 (Historic Environment: Designated Heritage Assets) and

EN11 (Historic Environment: Designated Heritage Assets Conservation Area). The National Planning Policy Framework (NPPF) is a major material consideration. The Council has referred in the delegated reports to an earlier version of the NPPF but the latest 2019 version, which I must consider, sets out the same basic aims and objectives relating to the conservation and enhancement of the historic environment.

14. Thus I have had regard to the general policies in the NPPF, as well as to sections 12 (Achieving well-designed places) and 16 (Conserving and enhancing the historic environment). I have also had regard to relevant guidance in Planning Practice Guidance (PPG). Because the building is listed in Grade II and lies within the BWCA with the BCCA and the CAONB I have also had special regard and paid special attention to the requirements of Sections 16(2) and 72 of the PLBCAA.

Appeal A on ground (e)

15. The main issues in relation to all ten elements of the works carried out on the listed building are as follows:

- The effect on the character and integrity of the listed building;
- The effect on its setting;
- The effect on its special architectural and historic features and,
- The effect on the character and appearance of the BWCA.

The seven air conditioning units

16. Having seen the air conditioning units as fitted to the rear of the building, I share the Council's concerns about their harmful visual impact on the listed building. I acknowledge that such units are necessary for the proper functioning of premises such as restaurants but, at the same time, if they are to be fixed to a listed building some attention to detail is required in order not to detract from the character and integrity of the building, its setting and its features of special architectural and historic interest.

17. It seems to me that no thought whatsoever has been put into their positioning on the building. They may well have been sited to work functionally in these positions but they are perceived as obtrusive and alien elements. There has been no attempt to design an appropriate housing for the units which would be sympathetic to its heritage features. Instead they have, as the Council describes, been simply retrofitted to the building in an unacceptable sprawl of components fixed to the building.

18. I disagree completely with the contention made on behalf of the appellant that all of the equipment has been as sensitively positioned as possible or that they have been positioned so as to lessen the impact on the appearance of the building and the conservation area. They may well have been located on the most private parts of the building but, in terms of protecting heritage assets these are equally as important as the more public focussing elevations. The other examples referred to in Bourton cannot, in my view, be justification for the inappropriate and harmful air conditioning units fixed to the rear of this Grade II listed building. In any case, each situation must be assessed on its merits.

19. In conclusion on this part of the unauthorised works I consider that the units are contrary to both local and national policies which seek to safeguard our heritage assets and do not consider that LBC should be granted for their retention. It follows that I consider that the units neither preserve nor enhance the character or appearance of the BWCA. Appeal A, therefore, fails on ground (e) in relation to the air conditioning units.

The three air intake and extraction flues

20. These units are as starkly noticeable as the air conditioning units and metal flues. These three components are, in my view, large and bulky elements which are

completely out of proportion on the roof of the building. They are perceived more as heavy industrial intake/extraction units. Although some attempt has been made to partially match the colour of the roof covering, these two-tone additions to the roof appear as some sort of giant 'mushroom-shaped' appendages which have no place on the roof of part of the listed building.

21. Again it follows that the installation of these units on the roof of the listed building neither preserve nor enhance the character or appearance of the BWCA. Appeal A, therefore, also fails on ground (e) in relation to the air intake and extract fans as fitted.

The two metal flues on the South-West elevation

22. These two stainless steel (or similar material) flues are again seen as obtrusive, alien and most inappropriate additions to the rear of the building. As well as being extremely long they step most ungainly out from the main line of the rear wall in order to clear the eaves detailing. In doing so they cut across the eaves and protrude above the gutter line. I acknowledge that one is not currently in use and may not be required. However it forms part of the EN and I must consider it on that basis.

23. In my view the metal flues have not only resulted in harm being caused to the character and appearance of the listed building but harm to its setting and its features of special architectural and historic interest. In particular it has crudely broken the roof line, detracting from the roof itself and, secondly, the flues are seen as being close to the historic brick chimney stack. The flues, therefore, jar most noticeably when seen against these architectural features. Again I find them to be contrary to local and national policies referred to above and do not consider that LBC should be granted for their retention. The appeal fails on ground (e) in relation to these flues.

The Glazed Screens

24. The approved drawings relating to PA 16/00922/FUL and LBA 16/00923/LBC show the proposed elevations. There are a line of eight vertical full-height glazed screens of equal widths shown on the principal South-East elevation (SE) and nine similar glazed screens wrapping around the corner on to the South-West elevation (SW). What has been built bears no relationship to what has been shown on the drawings and the screens are of differing widths .

25. The Council refers to concerns being raised about the irregular widths and asymmetrical spacing of the glazed screens. It is stated that these were changed because the panes shown on the approved drawings were wider than was possible. However, the revised drawings show three of the panes even wider than the original panes with a total of 9 to the SE elevation (six narrow and three wide) and a total of 12 to the SW elevation (all narrow).

26. The Council argues that the submission of an apparently unbuildable scheme initially does not justify implementing an entirely different proposal which had not been negotiated. It is argued by the Council that the glazed screens have made little attempt to relate meaningfully to the composition of the listed building. It is contended that the arbitrary and irregular spacing has resulted in a cluttered and confusing appearance that has upset the simple and logical construction of the front of the listed building. It is considered that, despite the timber materials used, the aesthetic value and significance of the listed building has been harmed.

27. Having seen the glazed screens as installed I can understand the Council's points relating to their unbalancing visual effects to the SE and SW elevations. However, in the overall context of the works as carried out and having had regard to the original design of the screens I do not consider that the ones fitted have detracted significantly from the character and integrity of the listed building.

28. When viewed from both near and distant viewpoints I consider that the screens are acceptable. The two elevations are not seen together and, in my view, the only slightly jarring visual effect is when the narrow screens and the wider ones on the SE elevation effect are seen together. However, I do not consider that this justifies a refusal of LBC. Appeal A succeeds, therefore, in respect of this element of the works and LBC will be granted for the screens. The LBEN will be varied accordingly in relation to the requirement to remove the glazed screens as fitted.

The Fascia to external kitchen wall

29. Having seen the fascias in-situ, I again share the Council's concerns about the effect on the character of the listed building and on its features of architectural and historic interest. The fascia detail is a clumsy and heavy-handed addition which detracts markedly from the eaves of this part of the building. It is far too deep. It is a modern detail which is far from being an appropriate and characteristic eaves detail for a listed building. The fascias, have, in my view, harmed the integrity of this part of the listed building. It has also detracted from the historic roofscape and the historic and architecturally important elements of the listed building. I do not consider that LBC should be granted for the retention of these fascias. Having seen the works in-situ, as well as the photographs taken when the works were carried out, I find no justification in allowing these works to remain in place. It follows that Appeal A fails on ground (e) in relation to these works.

The uPVC rainwater goods

30. The latest applications for PP and LBC had indicated that it was proposed to replace the uPVC components with cast-iron fittings. The Planning Officer had welcomed this in his report. During my visit I noted that the uPVC goods had indeed been replaced with cast-iron fittings. In effect this means that this part of the notice has been complied with and no further action would need to be taken. However this element of the works will remain as a requirement of the notice and, in any case, I would not have granted LBC for retention of uPVC components in this instance.

The external kitchen windows and doors

31. Concerns had been raised over the non-traditional and low quality door and windows fitted to the kitchen. In the Officer report it is stated that the appellant had agreed to change the doors to the previously consented design. It is considered by the appellant that the windows are appropriate and acceptable due to the fact that they 'are not visible from the public realm'.

32. Having seen the doors and windows, I note that one was a plain fire door and the other had a glazed pane. The windows were of simple design and of timber construction. In my view and in these particular locations, I consider that they are satisfactory and are not noticeably harmful to the character or setting of the listed building. I also consider that they preserve the character and appearance of this part of the BWCA. In conclusion I find that these works accord with both local and national relevant policies which seek to protect our heritage assets and that LBC should be granted for their retention. Again the LBEN will be varied accordingly by deleting the specific requirement for their removal. Appeal A succeeds, therefore, on ground (e) in relation to these works as carried out.

The three Fascia signs on the South-East elevation

33. The three fascias on the SE elevation are not, in my view, sympathetic with the rather simple Italianate design frontage of the listed property. They appear as over-sized, deep and garish modern fascias, more akin to those expected in a major urban shopping area, as opposed to being applied to a sensitive building within a conservation

area. Having seen other signage within the BWCA, I acknowledge that some of the signage is also garish and inappropriate. However, that cannot be justification to add even more visually harmful inappropriate clutter to the fronts of listed buildings in this part of Bourton. I understand that the lettering is not part of the notice but the fascias are stark, too deep and visually harmful to the character and integrity of the building.

34. The Windrush restaurant is in a most prominent, centrally located part of the town, adjacent to the river with its principal elevation facing SE towards the linear village green. Clearly signage is required to advertise its presence. However, these 'advertisements' should not be at the expense of detracting from the character of the listed building and the character and appearance of the BWCA. Irrespective of whether or not the signage is approved, there is no approval or consent in place for the fascias as fitted and I do not consider that LBC should be granted for their retention. Appeal A also fails, therefore, on ground (e) in relation to this part of the unauthorised works carried out to the listed property.

The Prentice Roof to the South-East elevation

35. Concerns had initially been raised regarding the eaves of the verandah in that it has been constructed markedly thicker than that which had been granted LBC. It is stated on behalf of the appellant that this was required under the Building Regulations. However, as indicated by the Council, if what had been proposed was not implementable, that does not justify carrying out works which are harmful to the significance of the heritage asset.

36. However, the Council also refers to part of the works being undertaken as having raised the slope of the prentice roof. This has caused a break in the line of the roof and a noticeable step in what should be a continuous length of roof. This is not shown on the drawings submitted as part of the latest applications. As indicated by the Council the SE elevation is the only formally-composed original symmetrical elevation with a pair of recessed bays flanking a central, projecting frontispiece.

37. The stepping of the pitch has broken the original uniformity of the verandah which now appears as two different structures that crudely abut in front of the central frontispiece. I agree with the Council that this compromises the coherence and uniformity of this main elevation and thereby fails to sustain the aesthetic value and significance of the listed building. It follows that I do not consider that LBC should be granted for its retention in this manner. Appeal A also fails on ground (e) in relation to the unauthorised works carried out to the prentice roof.

The Cotswold stone wall and vehicle access gate

38. The initial concerns related to the fact that the stone piers were heavier than the slender posts which had previously been granted consent. However the Council acknowledges that there had been a stone pier at the corner originally and that on the SE elevation there is a stone pier at the opposite end of the verandah. Having seen the stone wall and the piers I consider that, in themselves, they do not harm the significance of the heritage asset.

39. However I find that the wrought iron gates to be totally inappropriate in this historic setting. Whilst acknowledging that there might be others of similar design within the BWCA, in this particular location the gates are perceived as those which one might be expected to be fitted on driveway to a suburban bungalow. In my view the gates neither preserve nor enhance the character or appearance of this part of the BWCA.

40. In conclusion on this part of the works, therefore, although I find the stone piers and wall to be acceptable, I do not consider that LBC should be granted for the

retention of the metal gates. Appeal A on ground (e) fails in relation the gates, but LBC will be granted for retention of the wall and the piers.

Overall conclusions: Appeal A on ground (e)

41. Other than the glazed screens; the kitchen doors and windows and the stone piers and Cotswold stone wall, I have found that all of the unauthorised works to the listed building have been harmful to its character, its setting and some of its special architectural and historic features. As outlined above I do not consider that there is any justification to grant LBC for the harmful works carried out. I agree with the LPA that the overall effect of the works I have concluded are harmful, has resulted in the harmful erosion of the formal composition of the listed building; harm to its setting and a failure to preserve or enhance its historic significance. The works are contrary to policies EN1; EN10 and EN11 of the CDLP as well as to sections 12 and 16 of the NPPF. Appeal A fails on ground (e) in respect of the works carried out as detailed above.

Appeal A on ground (g)

42. To be successful on this ground it must be shown that the requirements of the LBEN exceed what is necessary for restoring the listed building to its condition before the flue was installed. On behalf of the appellant it is stated that the main concern is what is considered to be the previous condition of the building. Secondly it is stressed that the need to permanently remove the uPVC guttering would leave the building with no rainwater goods which cannot be practical. However, on this latter point the uPVC goods have already been replaced.

43. On the first point most of the works carried out relate to components which have been affixed to the building. These include *the air intake and extraction flues, the air conditioning units, the two metal flues, the fascia (to kitchen walls), fascias to south-east elevation, changes to the existing prentice roof and the metal gate.*

44. I do not consider that the requirements to remove these are excessive. All have caused harm to the significance of both the listed building and the BWCA. I agree with the Council that the requirements are the minimum necessary to restore the building to its condition before any of these unauthorised works were carried out. I acknowledge that the requirements do not go on to specify how these should be replaced. But I do not consider that the requirements need to go to this extent in this instance since it is quite clear that the appellant, through the PA and LBC application had proposed to carry out works in accordance with the approval and consent. Indeed, in relation to the uPVC rainwater goods, these have already been replaced.

45. In any case the appellant is not precluded from completing the works in accordance with the previous permissions and LBC or even submitting other detailed LBC applications to enable all of the necessary ventilation and air conditioning which would still be required in association with the use of the restaurant. Basically the appellant will need to find ways to enable the functioning of the restaurant to continue without the works being detrimental to the significance of the listed building and the BWCA. Appeal A on ground (g) therefore fails.

Appeal A on ground (h)

46. Having considered all of the circumstances of this case I consider that the compliance period of 3 months for the LBEN falls short of what should reasonably be allowed. I accept that in having to remove all of the unauthorised components the appellant will need to consider alternative proposals. However I also consider that a period of 12 months is excessive having regard to the harm that some of the works will continue to have over that period.

47. On balance, therefore, it is my view that a 6 month period is appropriate and necessary and I shall, therefore, vary the LBEN accordingly. Appeal A also succeeds to this limited degree, therefore, on ground (h).

Appeal B on ground (a)

48. The main issues in relation to all seven of the elements of the unauthorised works carried out, are as follows:

- The effect on the character and integrity of the listed building;
- The effect on its setting;
- The effect on its special architectural and historic features.
- The effect on the character and appearance of the BWCA and
- The effect on the living conditions of nearby residents
- The effect on highway safety

The seven air conditioning units and the air intake and extract fans

49. I have already concluded above that the air conditioning units and the air intake/extract fans are harmful to the character and integrity of the listed building, to its setting and to its special features of architectural and historic interest. In addition I have also confirmed that it follows that these particular additions to the listed building neither preserve nor enhance the character or appearance of the BWCA. It follows that I do not consider that planning permission should be granted for these works.

50. In addition to the harm identified to the listed building and the BCWA I also consider that these units have detrimentally affected the living conditions of nearby residents and in particular those living at 'Kevinscot'. Having noted the proximity of the air conditioning units to this and other nearby buildings (including the motor museum and the estate agents); having heard the extract fan during my site visit and having read the report of the acoustic consultant (commissioned by the occupant at Kevinscot), I share the Council's concerns about the effect that these works have had on the living conditions of those living or working close to and adjacent to the appeals premises.

51. The acoustic tests were carried out in accordance with British Standard requirements (BS 4142:2014). The overall conclusion of the report on the basis of the tests carried out was that the noise impact is above '*the significant adverse effects*' threshold that the NPPF advises should be avoided. There is also a noise abatement notice (NAN) in force under S80 of the Environmental Protection Act 1990 (EPA) and the Council has accepted that there has been a statutory nuisance under S79(1)(g) of the EPA. I have no details of any appeal against the NAN.

52. From the readings taken and from my own site visit experience, I agree with the Council and occupant at 'Kevinscot', therefore, that the noise from these particular installations (air conditioning units and air intake and extract fans) must be '*well above the significant observed adverse effect level*' and that there is very clear planning evidence that a breach of planning policy and a noise nuisance has occurred and continues to occur when the plant is operational. In my view, the evidence submitted on behalf of the appellant has not demonstrated that the air conditioning units and the intake and extract flues has not been detrimental to the adjacent occupants in terms of noise and disturbance.

53. For the above reasons, therefore, I also consider that these elements are contrary to local and national policies which seek to protect heritage assets and residential amenity/living conditions. Appeal B also fails in respect of these elements of development and planning permission will not be granted for their retention.

The two metal flues on the South-West elevation

54. Again, in Appeal A, I have concluded that the metal flues on the South-West elevation have been harmful to the character and appearance of the listed building; to its setting and to its special features of architectural and historic interest. It follows that they neither preserve nor enhance the character or appearance of the BWCA. There can, therefore, be no justification to grant planning permission for this part of the works at this appeal stage. Appeal B therefore fails in relation to these two metal flues.

The six lamps

55. The six lamps have been erected in the front garden of the property between the boundary and the front entrance. They are described by the LPA as being massive and generally adding to the clutter which detracts from the setting of the listed building. I agree with this assessment.

56. Having seen the large, top-heavy, black decorative lamps I agree with the LPA about their detrimental effect on the of the setting of this Grade II listed building. They are located next to a kiosk (not part of either notice) which has been positioned within the garden. In my view they appear as out-of-scale, out-of-place and unbalanced elements within the curtilage of the listed building. Although the ironworks appears to be based on a historic design, the lights look top-heavy and overbearing on the footpath leading into the building. They also look obtrusive and out of place when viewed from the in front of the building. I consider that they are perceived as pastiche copies of Victorian fittings.

57. Thus, although black, like the kiosk, they have resulted in unacceptable visual clutter in this part of Bourton and in front of the listed building. In my view they are harmful to the setting of the listed building, as well as to the character and appearance of the BWCA. Having had regard to the requirements of sections 66(1) and 72 of the PLBCAA, I do not consider that these particular lamps should be granted planning permission and Appeal B fails on ground (a) in relation to these unauthorised light fitting installations in the front garden of the listed building.

The refrigeration unit

58. Having seen the refrigeration unit I again share the Council's concerns about its impact on the setting of the listed building itself and on the BWCA. This seems to me to be yet another ad-hoc addition to the building, whereby no thought whatsoever has been given to its positioning, its design and visual impact. The fact that it has been hidden away and cannot be seen from public viewpoints is no justification for an element that in my view is as harmful as the air-conditioning units; the air intake fans and the metal flues. When items such as this are needed in relation to the business needs operated from a listed building, it is necessary to give some consideration to housing them so as they are not harmful and not a 'blot' or 'carbuncle' on the face of the listed building.

59. On the basis that the whole of the kitchen was re-designed, I fail to understand why so many components, including this free-standing unit, have seemingly been almost randomly and unsympathetically positioned within and around the listed building. Whilst accepting that a restaurant needs such components to function properly, it cannot have been beyond the realms of possibility to provide a well-designed scheme which did not put the simple functionality of the premises place above the need to protect these heritage assets. It seems to me that the easiest and probably the cheapest solutions have been carried out without due consideration to the physical impacts on the building.

60. I conclude that the refrigeration unit as installed should not be granted PP and, therefore, Appeal B fails on ground (a) in relation to this part of the unauthorised works carried out at the restaurant.

The metal railings

61. I have noted that these were copies of other railings in another part of Bourton at the old village hall (Victoria Hall). However, as indicated by the planning officer in the delegated report, unlike other historic railings in the town (including the ones at the Victoria Hall) they are not traditionally on a stone plinth wall. In addition to this the two buildings are completely different in character and historic appearance. The Victoria Hall (which I saw during my walk around the town before my site visit) is a decorative Tudor-style building whereas the appeal building is a simpler late-Italianate designed building of a completely different architectural style.

62. Unfortunately the railings as installed around the boundary look, as stated by the Council, to be totally incongruous and out of place in the centre of the town. To my mind they are perceived as domestic-scaled ornamental railings more appropriate for enclosing a suburban and much more modern dwelling. I consider that they are significantly detrimental to the setting of the Windrush Restaurant as well as neither preserving the character or appearance of the BWCA.

63. Together with the inappropriate metal gates which I have referred to above, these railings combined with the light fittings and indeed the modern-looking kiosk, detract markedly from the important architectural and historic features of these heritage assets: that is, both the listed building and the BWCA. For these reasons and having had special regard to section 66(1) of the PLBCAA as well as both local and national policies referred to above, I do not consider that planning permission should be granted for their retention. Appeal B also, fails, therefore in relation to this element of the unauthorised works carried out.

The Cotswold stone wall and vehicle access gate

64. I have concluded above, in Appeal A, that the piers and the Cotswold stone wall are acceptable and so Appeal B on ground (a) is also successful for these two elements of development. However, for the same reasons as set out in that appeal, I do not consider that planning permission ought to be granted for the retention of the metal gates. Appeal B fails on ground (a) in respect of the gates.

Overall conclusions on ground (a) in Appeal B

65. On the merits of the various development carried out without planning permission and, therefore, the subject to the EN, I have found in favour of the appellant with regard to the retention of the Cotswold stone piers and walls. However, I have found all of the other unauthorised works to be unacceptably harmful to the listed building and/or to the character and appearance of the BWCA. I find them to be contrary to the relevant local and national policies which aim to protect our heritage assets.

66. For the above reasons, therefore, other than the piers and stone walls, Appeal B fails and planning permission will not be granted for the unauthorised works carried out in accordance with the Act.

Appeal B on ground (g)

67. For the same reasons as those set out in the ground (h) appeal in Appeal A above, I consider that the compliance period should be increased from 3 months to 6 months. Appeal B is successful to this limited degree on ground (g) and the EN will be varied accordingly.

All other matters in relation to both Appeals A and B

68. In relation to the contraventions of listed building control, I consider that the harmful elements of the work, taken together, amount to '*less than substantial harm*' as referred to in the NPPF. However, where this is the case it is necessary to show that there are public benefits which outweigh the harm identified. In this case I have not seen any evidence that such public benefits exist. The benefits simply relate to the immediate business needs of the appellant.

69. Bourton-on-the-Water is an important tourist destination and it is extremely important to the economy of this part of the Cotswolds. However, in developing and promoting businesses, there can be no excuse for developers to do so at the expense of harming the important heritage assets in this part of the District. There are many successful businesses in Bourton and the rest of the Cotswold District where sympathetic and appropriate alterations have been carried out, at the same time as ensuring that no harm is caused to listed buildings or conservation areas.

70. The local plan policies aim to achieve this and they are up-to-date with national policies. I acknowledge that the requirements of both enforcement notices will impact on the appellant's business. However, these commercial matters cannot outweigh the need to protect these heritage assets. When altering such premises in the middle of such an historic setting as Bourton it is necessary to carefully consider how each change to a listed building will affect its character, its setting and its features of architectural and historic interest.

71. From all of the representations and the planning history of these appeals, I do not consider that adequate attention has been given to the balance required between the obvious necessary business related needs and the need to ensure that heritage assets are enhanced or conserved.

72. In the appeal representations I have noted references to other possibly unauthorised works having been carried out to the listed building and within its curtilage. These include matters relating to the obtrusive kiosk and the fact that it overhangs the footway. However, I am only empowered to deal with the matters as alleged and set out in the LBEN and the EN, the subject of the two appeals. Any further matters are for the Council, the appellant and/or others.

73. In reaching my conclusions in both appeals I have taken into account all of the submissions made by and on behalf of the appellant; by the Council and by the numerous objectors/third parties (over 80 in total) and the interested person. These matters include the detailed planning history of the premises; the initial appeal submissions and grounds of appeal in each case; the further detailed statements; the various delegated reports and decisions made by the Council; the detailed statement made on behalf of the occupier at Kevinscot; the acoustic report submitted on behalf of that occupier, the final comments and all of the submitted plans, drawings and photographs.

74. However, none of these matters carries sufficient weight to alter any of my conclusions on any of the grounds pleaded in either Appeal A or Appeal B. Nor is any other factor of such significance so as to change my decisions that both Appeals A and B should fail in relation to those matters set out above.

Formal Decisions

Appeal A

75. Appeal A succeeds in part and Listed Building Consent (LBC) is granted for the glazed screens on the South-East and South-West elevations of the building; for the

external kitchen windows and doors and for the Cotswold stone piers and wall, all at Windrush Restaurant, St Kevins, High Street, Bourton-on the Water, Gloucestershire GL54 2AP.

76. I direct that requirement No 4, in the Schedule following Part 4 of the Listed Building Enforcement (LBEN) notice, be deleted in its entirety.

77. I direct that the words '*Cotswold stone wall*' as set out in requirement No 10 in the Schedule following Part 4 of the LBEN be deleted.

78. I direct that the figure '3', under Part 4 (and before the heading NOTICE IS HEREBY GIVEN) of the LBEN be deleted and that the figure '6' be inserted therefor.

79. Otherwise Appeal A is dismissed and the LBEN is upheld as varied. LBC is refused for the rest of the other works referred to in the LBEN and carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended at Windrush Restaurant, St Kevins, High Street, Bourton-on the Water, Gloucestershire GL54 2AP.

Appeal B

80. Appeal B succeeds in part and planning permission is granted for the Cotswold stone piers and walls at Windrush Restaurant, St Kevins, High Street, Bourton-on the Water, Gloucestershire GL54 2AP.

81. I direct that the words '*Cotswold stone wall and*', in requirement No (vii) in Part 5 of the notice (WHAT YOU ARE REQUIRED TO DO) 4, be deleted.

82. I direct that, in relation to requirements (i) to (vi), the time for compliance of '*3 months*' be deleted in each case and the time be changed to '*6 months*' in each case.

83. Otherwise Appeal B is dismissed and the EN is upheld as varied. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act in relation to those parts of the unauthorised development which I have found to be unacceptable as outlined above.

Anthony J Wharton

Inspector