



Appeal Decisions

Site visit made on 29 October 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 November 2019

Appeal A: APP/P1045/C/19/3229973

Appeal B: APP/P1045/C/19/3229974

196-198 South Parade, Matlock Bath, Derbyshire DE4 3NR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Matthew Oliver (Appeal A) and Miss Margaret Newton (Appeal B) against an enforcement notice issued by Derbyshire Dales District Council.
 - The enforcement notice was issued on 21 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission:
(a) The painting of the shopfront with a paint colour that is not approved under the Matlock Bath Conservation Area Article 4 Direction.
 - The requirements of the notice are to repaint the entire shopfront to its former black colour, with cream detailing, in order to match those colours which were the last approved colours for the painting of the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
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Decisions

1. The appeals are dismissed and the enforcement notice is upheld.

Procedural Matters

2. The evidence before me refers to the planning merits of the development and whether planning permission should be granted. However, as there is no appeal on ground (a) and no deemed planning application for me to consider they are not relevant to my decision. Furthermore, I am not empowered to consider whether or not planning permission should be granted for the development as there is no appeal on ground (a).

The ground (f) appeal

3. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
4. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).

5. The Council has not identified which of these purposes it seeks to achieve. Nonetheless, in requiring the shopfront to be repainted to its former colour scheme, it is evident that the Council seeks to remedy the breach.
6. The appellants suggest that the shopfront has never been painted black and cream as stated in the requirements of the enforcement notice. However, the Council has provided a photograph which, has a date stamp of 16 March 2015 on it, indicates that at that time the shopfront was painted in those colours. The Council have also stated that that colour scheme was in place when the Article 4(1) Direction of the Town and Country Planning (General Permitted Development) Order 1995 (Article 4 direction) was adopted. I have no reason to dispute this.
7. I accept that the schedule attached to the revised Article 4 direction suggests alternative colour schemes that could be utilised on the appeal property's shopfront. Nevertheless, the appellants' argument is not supported by any details of an alternative colour scheme. Consequently, without those details I am unable to fully assess whether the changes being proposed would be in line with the Article 4 direction. Neither am I able to vary the notice to the necessary level of precision.
8. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive. The appeals on ground (f) fails.

Conclusion

9. For the reasons given above I consider that the appeals should not succeed.

D. Boffin

INSPECTOR