
Appeal Decision

Site visit made on 10 January 2020

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 24 January 2020

Appeal Ref: APP/F1610/F/19/3237578

Mayfair and Grace, 2 Long Street, Tetbury GL8 8AN

- 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 Mayfair and Grace against a listed building enforcement notice (LBEN) issued by Cotswold District Council (the LPA).
 - The listed building enforcement notice was issued on 9 August 2019.
 - The contravention of listed building control alleged in the notice is: the erection of four flag poles and associated flags to the front elevation of the building.
 - The requirements of the notice are as follows:
 1. Remove the four unauthorised flag poles and associated flags and fittings.
 2. Make good any damage to the building using like for like materials.
 - The period for compliance with the requirements is 3 months.
 - The appeal is made on grounds (e) and (h) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (PLBCAA).
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Decision

1. The appeal is dismissed. See formal decision below.

Matter of clarification

2. All planning matters concerning Members of Parliament and their constituents were in purdah during the general election and MPs were unable to submit representations relating to appeals during the period. Although technically late, a representation by Sir Geoffrey Clifton-Brown FRICS MP (MP for the Cotswolds) made in support of the appellant's case was, therefore, accepted. The Planning Inspectorate Case Officer therefore informed the main parties of this on 9 January 2020 and invited comments to be made by 16 January 2020. Together with all of the initial submissions I have taken all of these matters into account in reaching my decision in this appeal.

Background information and relevant policy

Background information

3. The appeal building is located on the west side of Long Street and is listed in Grade II. It lies within the Tetbury Conservation Area (TCA). There is no dispute that this is the case and there is no need to repeat the list description. The Council refers to the planning history which dates back to the 1990s when the property was in use as a bank. In 1997 and 1999 various approvals were granted for corporate bank signage to the front of the building.

4. In November 2016 a change of use from bank (Class A2) to retail A1 and Beauty Salon (Sui Generis) was granted. The premises have since been in use by Mayfair and Grace (the appellant Company) as a Hair and Beauty Salon. At the time of that application there was an existing flagpole bracket between two of the front windows

(left and central when facing the building) at window cill level. A second bracket was granted consent at the same level and between the central window and the right hand window (again when facing the building).

5. On 5 November 2018 the Council had informed the appellant company that it had received a complaint regarding the installation of four flagpoles and advertisements (flags) to the front of the building. The Council also indicated that an application for their retention was unlikely to be supported due to their impact on the character and appearance of the listed building. The brackets for these flagpoles are much higher than those approved and are positioned roughly mid-way up the height of the first floor windows. There are now brackets and flags between the left and central windows; the central and right windows and between the columned edges of the building and the left and right windows.

6. The appellant company then arranged for a retrospective listed building consent application to be made for the retention of the four flagpoles. The Council had replied indicating that there *'could be scope 2 No flag advertisements of an appropriate scale with sympathetic fixings'*. That was then qualified to indicate that it would be subject to a formal application. However, it is stated that it was understood by the appellant company that 2 of the flags and poles were approved and it was unclear as to which particular poles were the subject of approval.

Relevant Policy

7. The most relevant development plan policies are EN2 (Design of the Built and Natural Environment) and EN10 (Historic Environment Designated Heritage Assets) of the Cotswold District Local Plan 2011-2031 (CDLP). The National Planning Policy Framework (NPPF) is a major material consideration and the most relevant sections are 12 (Achieving good design) and 16 (Conserving and enhancing the historic environment. Because the building is listed in Grade II and also within the TCA I have had special regard and have paid special attention to sections 16(2) and 72 of the PLBCAA. I have also had regard to national Planning Practice Guidance (PPG) and in particular to matters relating to the Local Enforcement Plan (LEP).

The validity of the notice

8. References have been made to PPG relating to the LEP and it is stated that the Council has refused to disclose the iteration of the thought process leading up to the service of the notice. It is contended that the notice does not pass the Council's own test for validity when considering the guidance in the LEP. It is argued that the person handling the case on behalf of the LPA was not an *'authorised person'* and that the *'authorised person'* who signed the notice was not dealing with the case.

9. However, from the submissions it is clear to me that the notice was properly issued and served. There was a delegated report prepared by an *'Accountable Officer'*. This was signed off by an *'Authorising Officer'*. The notice was then signed formally on behalf of the LPA by the Head of Legal Services. This is perfectly normal enforcement procedure as stated by the Council.

10. In such situations a case officer need not be the one to sign a notice and indeed, in this case, the case officer was not authorised to do so. A LPA must work closely through all levels of responsibility in relation to taking enforcement action. At each stage this can involve different officers being responsible for different stages of the enforcement procedure. The critical matter is that an authority follows its set procedures. From what I have seen of the LEP and the documentation leading up to the issuing of the notice I am satisfied that the authority has not strayed from its procedures in this instance and I conclude, therefore, that the notice is not invalid.

The appeal on ground (e)

11. The main issues are as follows:

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

12. Having seen the four flagpoles from both near and distant viewpoints, I share the LPA's concerns about their effect on the character of the listed building. Due to the positioning of the brackets; the length of the poles; the size of the flags and the number of brackets and flags, I consider that the character and appearance of the frontage to this building has been significantly visually harmed. The flags, brackets and poles have resulted in a cluttered and obtrusive appearance to the front of this important and attractive listed building in this part of the TCA.

13. I consider that the flags completely dominate the frontage of the building, detracting markedly from its fine historic physical features. I consider that when viewed from street level the installations are perceived as crude, over-sized and inappropriate fixtures on the face of an architecturally important building in this part of the town. Depending on the various viewpoints, due to the height and angle of the poles, the first floor windows and their entablatures are completely dominated visually. In my view, the scale of the Union Jacks and flag advertisements is out of all proportion in the overall context of the street scene.

14. As well as causing harm to the overall integrity and character of the listed building, the poles, flags and white brackets detract from the special architectural and historic features of the late neo-classical façade of this former early C19 town house. The stonework, the windows and their surrounds and the overall proportions of the façade have, in my view, been detrimentally affected by these inappropriately out of scale fixtures and fittings.

15. I also consider that the flags as fixed detract markedly from the setting of the building in this part of Tetbury. I noted other flag brackets on other buildings in this part of the historic market town and understand that these are used to celebrate special occasions such as the Woolsack Races. I also noted the specific nearby examples and in particular the numerous flags attached to the Snooty Fox. I refer to these in more detail below. But, as far as the appeal flags are concerned, I consider that they are perceived as being some sort of permanent 'independent celebration' at the appeal premises: completely out of scale within the streetscene and in the context of other historic buildings within the conservation area.

16. Due to the detrimental effects of the listed building and its setting, it follows that I do not consider that the works as carried out have preserved or enhanced the character and appearance of the TCA. I find that the white brackets, as well as being too high, are obtrusive and poorly designed in comparison with the traditional brackets which were granted LBC. The stark white colour contrasts markedly with the sandy colour of the Ashlar stonework and I do not agree with the contention that the bracket colours is in tone with the stonework.

17. In conclusion, therefore on this ground of appeal I do not consider that LBC should be granted for the retention of the four brackets, flagpoles and flags. I find them to be contrary to policies EN2 and EN10 of the CDLP, as well as to policies within the NPPF which seek to achieve good design (section 12) and to conserve and enhance the historic environment (section 16). The appeal must fail, therefore, on ground (e).

The appeal on ground (h)

18. Having considered the scale of the unauthorised works carried out, I agree with the Council that a 3 month compliance period is a reasonable and sufficient timescale for compliance with the LBEN. The removal works are minor in terms of what needs to be done to remove the brackets and flagpoles. The flags and poles are easily detachable and the removal of the brackets is far from a major building operation. The most important part of the requirements will be the remedial works to the stonework but even this element should easily be achievable within a 3 month period. The appeal on ground (h), therefore, also fails

Other Matters

19. With regard to the approved brackets (2) and the appellant's seemingly confused position regarding which two flagpoles might be considered acceptable by the LPA, the answer appears to be quite simple. None of the flagpoles and brackets as fitted are approved. The LPA has indicated that an appropriate application would need to be made even for two flagpoles. I agree with the LPA since, as they stand, none of the four flag poles benefit from LBC. They are all higher than the approved positions; the brackets are different to those approved and in my view these differences are far from '*de-minimis*'.

20. Clearly the appellant company can revert to the approved scheme with the two lower traditional brackets being reinstated in accordance with the approved drawing. If these are too low then it seems to me that two traditional brackets positioned slightly higher would also be acceptable. However, I do not consider that any combination of just two of the unauthorised brackets and poles could be allowed to remain in position due to the harm which I have identified above relating the poor design of the inappropriate white brackets and the overall effect on the listed building, its setting and its features of architectural and historic importance. I note that the height (of the brackets) is stated to relate to the need to keep the flags from being blown around the poles but this does not overcome my concerns about the white brackets as used.

21. With regard to the inappropriate plethora of flags and poles attached to the Snooty Fox it is suggested on behalf of the appellant that these do not benefit from planning permission. Whether this is the case or not I find those particular flags to be similarly harmful to the building and the streetscene in that they completely overwhelm the façade of the property. The other three nearby installations which I noted during my site visit were much less obtrusive and none dominated the buildings as much as those at the Snooty Fox or the appeal building. There is a balance to be struck as to how many flags might be appropriate and this relies on a variety of factors which include the width of the elevation to which they are fixed; the height at which they are fixed and the design of the flag pole brackets.

22. In reaching my conclusions I have taken into account all of the points raised by Sir Geoffrey Clifton-Brown FRICS MP (MP for the Cotswolds) and by others. Firstly, with regard to the appellant's dissatisfaction with the manner in which the LPA has dealt with the matter, this is not directly related to my consideration of the merits of the appeal. Any grievances are a matter between the parties. I am only empowered to deal with the appeal on the grounds pleaded.

23. On the matter raised regarding the permission already granted, this was for a second lower level flag pole on a traditional bracket which was to match an existing bracket. As indicated above the appellant can still revert to this two flag bracket and pole situation. I acknowledge that the Council has accepted the principle of additional adornments such as the awnings etc to the frontage. This has resulted in a very

'visually' complex elevation but one which is finely balanced. The four flags and poles as fitted in my view upset this delicate balance and result in a cluttered effect.

24. For the reasons set out above, I consider that four flag poles are excessive and have resulted in an over-complicated and obtrusive main elevation. I do not agree, therefore, with the contention that *'the additional flagpoles must be of minor consequence'*. In my view the two additional poles have tipped the balance away from an overall acceptable and commendable scheme for the frontage of the listed building to one which is harmful to the character of the building and the TCA.

25. With regard to the benefits which the business brings to the town, I acknowledge that this is most important in terms of financial benefits and job opportunities. I also accept that the appellant has vastly improved the appearance of the building, whereas other buildings have been left to deteriorate. However, the NPPF policies relating to achieving sustainable development; building a strong competitive economy and ensuring the vitality of town centres must be balanced against the aims of achieving well-designed places and conserving and enhancing the historic environment.

26. I agree with others, including the former Mayor, Tetbury Town Council, A Chartered Surveyor, and the Tetbury Advertiser that the town needs to remain vibrant to attract customers and visitors to this attractive town in the Cotswolds. I also agree with them that the appellant has carried out commendable works to improve the building in this part of the street. But, in considering the planning balance in this case, I consider that any financial, business and job related advantages of these four particular flags/advertisements are far outweighed by what I have concluded to be a scheme of poor design which has neither conserved nor enhanced the historic assets of this Grade II listed building and the TCA.

27. Furthermore, I consider that to allow this appeal would set an unfortunate precedent and make it more difficult for the LPA to resist further excessive flag or banner or advertisement features adornments to the buildings within the town. Clearly there is a need for such adornments as flags and advertisement banners to advertise businesses. However, if the LPA were to lose control of achieving a balanced approach to such matters, I consider that this fine historic Cotswold Town could end up looking completely out of character as an attractive and historic market town.

28. I agree that in the current economic climate many high streets in market towns such as Tetbury are suffering due to more purchases being made on line. I also agree that planning rules should be as flexible as possible to allow business to thrive in such difficult circumstances. However, that flexibility should not be at the expense of allowing harmful alterations to listed buildings which detract from, rather than enhancing the historic environment.

29. In this case I cannot envisage that restricting the flag poles to the frontage to just two would seriously cause harm to this clearly successful business and the benefits it brings to the town. On the other hand, to allow the four flag poles to remain as installed would, in my view, prejudice the both the Council's recognisable aims and objectives to conserve this part of the Cotswolds unique built environment and national policies which seek to conserve and enhance our architecturally and historically interesting assets.

Overall Conclusion

30. For the reasons set out above, therefore, I conclude that LBC should not be granted for the retention of the four flag poles as installed. I also consider that the 3 month compliance period is reasonable and appropriate.

31. In reaching my conclusion I have taken into account all of the submissions made by the Council; those made by and on behalf of the appellant; the matters raised by the MP and the support for the appellant by many other parties and individuals. These include the full planning history; references to the LEP and validity issues; the Appeal Background Rules; the initial submissions; the detailed statements; all other references to local policies (CDLP); to national planning policies (NPPF) and guidance (PPG) and to the PLBCAA; references to the Tetbury Conservation Area Assessment; the No 2 Long Street Planning History; the photographs showing other examples of flags and advertisements on buildings in Tetbury; any financial and commercial advantages and the fact that the flags were produced and provided by a reputable flag maker.

32. However, none of the above carries sufficient weight to alter my conclusions on the main issues and nor is any other factor of such significance so as to change my decision that the appeal should be dismissed.

Formal Decision

33. The appeal is dismissed and the listed building enforcement notice is upheld. Listed Building Consent is refused for the works carried out in contravention of the Planning (listed Buildings and Conservation Areas) Act 1990 as amended.

Anthony J Wharton

Inspector