



Appeal Decisions

Site visit made on 7 November 2023

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 24 November 2023

Appeal A Ref: APP/X1355/F/23/3319974

8 Market Place, BISHOP AUCKLAND, County Durham, DL14 7NJ

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
 - The appeal is made by Breaking Bread Durham Limited against a listed building enforcement notice issued by Durham County Council.
 - The enforcement notice was issued on 5 April 2023.
 - The contravention of listed building control alleged in the notice is: Without listed building consent, works constituting the alteration of the building resulting from; the exterior painting of the entirety of the front and gable of the building - involving the painting of exterior walls on the front and gable elevations and chimney of the building using dark grey colour, and the painting of all of the features and fenestration on the front elevation including the window frames, cornice, stone lintels, sills and stone surrounds, sill band/stringcourse, stone eaves gutter cornice, guttering and downpipes and plinth using a darker grey paint. These works are considered to affect the character of the building as a building of architectural or historic interest for the purposes of section 7 of the Act.
 - The requirements of the notice are: a. Clean and prepare the exterior surfaces of the front and gable of the building, removing any flaking paint and repair any defects of the surfaces in readiness for repainting. b. Repaint the render of the exterior walls of the front elevation of the building using an exterior masonry undercoat and finish with exterior smooth masonry paint in light cream colour to ensure that the dark grey is completely covered and the finished colour is a light cream. c. Repaint the render of the exterior walls of the gable elevation of the building (including the chimney), using an exterior masonry undercoat and finish with exterior smooth masonry paint in sandstone colour to ensure that the dark grey is completely covered and the finished colour is sandstone. d. Repaint the stone plinth on the front elevation of the building in smooth exterior masonry paint in black. e. Repaint the window and door surrounds, lintels and sills, to first and second floor openings, the stone eaves gutter cornice and the sill band/stringcourse below the first floor window on the front elevation of the Building using undercoat and finish in exterior smooth masonry paint in sandstone colour to ensure the finished colour is sandstone. f. Repaint the entirety of the bow window frame and surround (with the exception of the cornice/window head) and repaint all other window frames and the door frame in the front elevation of the building using white exterior gloss paint. g. Repaint the front door and the cornice/window head of the bow window on the front elevation of the building in black exterior paint. h. Repaint the guttering and downpipe on the front elevation of the building in sandstone colour, using appropriate undercoat and gloss paint.
 - The period for compliance with the requirements is 26 weeks.
 - The appeal is made on the grounds set out in section 39(1)(c), (e), (g) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Appeal B Ref: APP/X1355/Y/23/3321798

8 Market Place, BISHOP AUCKLAND, DL14 7NJ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Breaking Bread Durham Limited against the decision of Durham County Council.
- The application Ref DM/20/01838/LB, dated 10 July 2020, was refused by notice dated 14 November 2022.
- The works are described as: 'We are looking to alter the paintwork of the exterior of the building front and rear. Current colour is an off white, and we are looking to paint the walls a "downpipe grey" with the joinery to be black.'

Decisions

1. Appeal A is dismissed and the enforcement notice is upheld.
2. Appeal B is dismissed.

Appeal A on grounds (c) and (e), and Appeal B

3. Ground (e) is that listed building consent ought to be granted for the works, and Appeal B seeks consent for the same scheme. Ground (c) is that the alleged matters do not constitute a contravention. As the arguments under each are closely aligned, I have considered these elements of the appeals together in the interests of avoiding unnecessary repetition.

Main Issue

4. The main issue is the effect of the works on the special architectural or historic interest of 8 Market Place, a grade II listed building, and on the character or appearance of the Bishop Auckland Conservation Area.

Reasons

5. Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires, when considering whether to grant listed building consent for any works to a listed building, that special regard be had to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses. Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas in the exercise of planning functions.

Significance

6. The Bishop Auckland Conservation Area (CA) is a sizeable area taking in much of the built settlement, and extending to take in the more rural area to the north. Within the CA, there is a mix of historic buildings along with some more modern developments. The relationships between the buildings, their age, materials and architectural detailing are all important to the character and appearance of the CA.
7. The listed building at 8 Market Place is a three-storey structure dating from the early 18th century, with early 19th century alterations. It was originally a house, but now has a café on the ground floor. It has modern concrete tiles, a

gable end chimney, and raised stone copings. There is a stone corniced gutter at eaves level, and downpipes on either side of the main elevation.

8. To the front, the main entrance is set to the left side, with a plain stone surround and plain light above. Next to this is a shallow bow window with multi-pane sash windows. A painted stone plinth is apparent at the base of the frontage, and a recess for a boot scraper sits next to the front door.
9. Directly above the bow window is a set of paired sash windows with a string course running beneath at cill level. On the upper floor are two nine-pane sash windows set apart from each other. The windows all have plain surrounds. The building was rendered and painted by the time of its listing in 1994, with the description noting that the side elevation was rendered when the adjacent building was demolished.
10. The door and upper window openings appear to be original, and the variety of sizes and disposition of the window openings add to the interest of the façade. The bow window is likely to be a later addition to a building that is generally informal and unassuming in its appearance. Despite some changes over the years, the overall historic form and character of the listed building remains legible, and the factors I have identified contribute to its significance.

Effect of the works

11. Prior to the unauthorised works, the front wall of the building had been painted red. Most of the architectural features were painted in contrasting white, with the exception of the plinth and the roof of the bow window, which were black. The side elevation was finished in a dull buff colour.
12. This colour scheme is shown in photographs produced by the Council from 2000 through until 2014. By 2016, the elevations, the door surround, the cornice and the downpipes had been painted in soft yellow tones, but the window surrounds, and window and door frames remained white. The plinth also stayed black, and the front door may be black, although it is harder to tell as it is open in the pictures.
13. By 2021, the front and side elevations of the building had been painted dark grey. The features of the building have all been painted black. The appellant explains that the colour scheme was chosen to appear more modern, but also welcoming to customers.
14. My attention has been drawn to the mixture of historic and modern architecture in the Market Place. Buildings such as the church and the contemporary Auckland Tower introduce considerable variety and contrast to the area. However, within the row where No 8 sits, the form and heights of the buildings are broadly consistent. They are mostly three storeys tall, following the pattern of taller sash windows on the first floor, and smaller square windows on the top floor. Several have bow windows, or projecting bays. To that extent, the row is quite consistent in its character.
15. On my visit, I saw a mixture of finishes in the vicinity, including brick, stone and painted render. Where buildings were painted, it seemed that the colours had been chosen to be similar to the natural materials that characterise the area. I noted a mellow red paint finish next to red brick buildings, and a buff colour that reflected the colour of the local stone.

16. By contrast, the distinctive colouring of the grey and black paintwork at No 8 is at odds with the mellow, paler colours that characterise this part of the CA. It is a particularly cool, blue-toned grey which does not sit well with the warm buffs and reds found in the vicinity. It serves to individualise the appeal site to the extent that it harms the generally consistent character of the row, harming the appearance of the CA. The previous colour schemes at the appeal site were much less strident and kept in with this general appearance. Conversely, the grey/black colour combination is overly bold and dominant, and fails to complement the architecturally restrained, sober character of the listed building.
17. The appellant argues that the new colour scheme has not damaged the character of the building, but has subtly distinguished the elevation and features such as the joinery. However, from my observation on site, the painting over the decorative detailing in black against dark grey makes the features markedly less obvious. The monochrome scheme and the lack of contrast result in the features visually receding within the façade. This effect detracts from the articulation that characterises the frontage.
18. By contrast, the adjacent building has the door frame and windows painted white, which has the visual effect of bringing these features forward, enlivening the frontage and highlighting these architectural details. I saw this effect repeated along the row, leading me to the view that it is the predominant style in the area.
19. Drawing these factors together, I find that the works have altered the character of the building such that listed building consent is required. The appeal on ground (c) thus fails.
20. I also conclude that the works unacceptably harm the significance of the appeal and the CA. Accordingly, the works conflict with the overarching statutory duty as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, which must be given considerable importance and weight. In addition, the scheme fails to comply with Policy 44 of the County Durham Plan (CDP), which seeks to sustain the significance of designated heritage assets, and CDP Policy 29, which requires all development to achieve well designed buildings and places.
21. Although serious, the harm in this case is less than substantial, within the meaning of the term in paragraph 199 of the National Planning Policy Framework (NPPF). Paragraph 200 states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Paragraph 202 requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal.
22. The appellant argues that the new colour scheme forms part of a rebranding of the café to attract increased footfall. They consider that they have raised the character of the Market Place and revitalised the appeal site itself. I fully acknowledge the benefits of a thriving business in the heart of the town, both for the listed building itself and for the wider community.
23. I have also taken into account the representations of support for the business. However, there is no evidence that these benefits depend on the specific colour scheme that has been implemented. That being the case, a grant of consent

could not be justified when a more sympathetic scheme would be likely to have the same benefits.

24. In summation, I find that insufficient public benefits have been identified that would outweigh the harm I have identified to the heritage assets. The works therefore conflict with the NPPF, which directs, at paragraph 199, that great weight should be given to the assets' conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Conclusion

25. For those reasons, Appeal A on grounds (c) and (e) and Appeal B fail.

Appeal A on ground (g)

26. Ground (g) is that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out.
27. The appellant argues that changing the colour back to a cream colour will be damaging to both the business and the ongoing renovation and development of the surrounding area. However, they do not give any detail as to how this harm will arise from complying with the requirements.
28. Moreover, leaving the building with its current paint finish would not restore it to its previous condition, which is the aim of the notice. It may be that an alternative colour scheme might be acceptable. However, the appellant has not submitted any alternative schemes for my consideration.
29. I therefore find that the requirements are commensurate with the aim of the notice, and are not excessive. The appeal on ground (g) fails.

Appeal A on ground (h)

30. Ground (h) is that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed.
31. The appellant states that they would not be able to repaint the building during their peak summer season as it would affect their on-site sales. However, due to the timing of the appeal process, the end of the six-month period would now coincide with the beginning of next summer.
32. The appellant goes on to say that due to the current financial climate and cost of living crisis, they need more time to generate revenue to pay for the works, which they estimate at over £10,000. However, as the appellant effectively incurred these costs by carrying out the works without listed building consent, this factor in itself does not justify any further extension of the stated time period.
33. As it does not take six months to physically paint a building, it is evident that the period for compliance already includes some lead-in time for the works to be arranged, and finances addressed. I note that the appellant has not suggested an alternative timeframe that they consider more reasonable. In any event, I am mindful that the Council has discretionary powers to extend the compliance period should this be shown to be necessary.

34. I therefore conclude that the appeal on ground (h) should fail.

Overall conclusion

35. For the reasons above, Appeals A and B are dismissed, listed building consent is refused, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/X1355/F/23/3319974	Breaking Bread Durham Limited
Appeal B	APP/X1355/Y/23/3321798	Breaking Bread Durham Limited