



Appeal Decision

Site visit made on 9 July 2024

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 06 August 2024

Appeal Ref: APP/U1105/Y/23/3329576

Flat above Flix Hair Salon, Market Place, Colyton EX24 6JR

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the 'LBCA Act') against a refusal to grant listed building consent ('LBC').
 - The appeal is made by Jill Bayliss against the decision of East Devon District Council ('EDDC').
 - The application ref. is 23/0809/LBC.
 - The works are described in the application form as 'replacement first floor windows, front elevation (retrospective)'.
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Decision

1. The appeal is dismissed.

Preliminary matters

The works

2. The application form states that the works described in the banner heading were completed by 8 June 2016. LBC is therefore sought retrospectively.¹ Determining the acceptability of works already undertaken is challenging; what was is no more. In this instance Colyton Parish Council contend that the current windows 'are visually identical to the single glazed ones they replaced'. They are similarly described in the appellant's Heritage Statement as 'copies' of the former marginal 3 light sashes here.
3. In this instance those statements can be evaluated with reference to photographs of the flat and ground floor shop unit beforehand (the latter now signed Parkside Antiques, formerly Haynes Hardware). The former windows are shown in a photograph in the appellant's statement of case reproduced from evidence supporting a 2013 scheme in respect of Haynes Hardware.² Appended to the representation of Priscilla Daniels, the freeholder of the shop, is a photograph said to be from 2007 (before the purchase of the flat by the appellant that year).
4. Another approach to determining the appeal would be to evaluate simply whether what now exists is acceptable. In the abstract it may be that whilst change has taken place, that change is not harmful. I also understand that the present windows were designed to emulate those recently installed at the Bellflower Gallery on the opposite side of the Market Place. I address both approaches.

¹ With reference to section 8(3) of the LBCA Act.

² Planning permission ref. 13/0326/COU.

The listed building

5. The appellant accepts that there is the need for LBC. The appellant does not expressly argue that the building, or at least the part of the flat to which this appeal relates, is not listed. Moreover the Secretary of State is responsible for listing, or de-listing, buildings with reference to the recommendations of Historic England. Therefore, although the appellant may separately have approached Historic England on that matter, that is not for this decision.
6. It is, though, worth noting some context in respect of the clarity of the list entry and the nature of the flat and its surroundings. List entry no. 1098530 is entitled 'Parkside Antiques, Merchant's Tea Rooms and Merchant's House'.³ As above, Parkside Antiques is the shop. The details given in the list entry do not specifically focus on the flat. Greater attention is instead paid to Parkside Antique's frontage, and also to internal features at Merchant's Tea Rooms and Merchant's House (both to the west). Parkside Antiques is the easternmost element of the listed building, the run of properties to the south-east between the flat and Queen Street are not listed.
7. Moreover, as with many Devon towns and villages, overlaying an essentially medieval structure are jumbled layers of development, redevelopment and alteration at Colyton (much of which occurred before modern planning). There also appear to have been various insensitive later alterations at the listed building and in its surroundings. Discerning where history ends and modern interventions begin is therefore challenging, notwithstanding that significance may not be embodied solely in the original form of an asset.
8. Priscilla Daniels refers to various works said to have been undertaken, or not undertaken, in respect of the flat. The appellant is separately intending to regularise certain other works. Nevertheless my decision focusses squarely on the works described in the application form, namely the replacement of two first floor windows in the front elevation of the flat facing the Market Place.
9. Given the list description and nature of the surroundings to the listed building as above, there appears to have arisen some ambiguity as to whether the flat was part of the listed building. Although incidental, the appellant's statement of case explains how 'the conveyance documents [which transferred ownership of the flat to the appellant in 2007] clearly state that the building was not listed.' Whilst I have not seen those documents, I also understand that the appellant is pursuing litigation separately in that respect.

Legislative and policy context

10. Notwithstanding the foregoing, the flat is part of a grade II listed building. Moreover, if there were any ambiguity in that respect the list entry describes how the listed building was originally 'a range of houses'. The appellant's Heritage Statement includes a photograph estimated to be from the late nineteenth century. At that point in time the flat exists (or, more accurately, there is a second storey above the shop below). I note there was also then advertising on the gable end to which the canted modern form of Flix Hair

³ Recorded before 7 July 2022 as 'Premises of DIY Shop, Gribble Booth and Taylor and Law Chambers'.

Salon now abuts. Setting aside who should have informed whom in 2007,⁴ the appellant also draws my attention to EDDC having granted LBC for a 'new window in gable wall on first floor' via decision notice of 16 July 1996.⁵

11. I have therefore approached the appeal in the context of section 16(2) of the LBCA Act, namely giving 'special regard to the desirability of preserving the [listed] building or its setting or any features of special architectural or historic interest which it possesses.' In this instance the listed building also falls within the Colyton Conservation Area (the 'CA') to which the duty under section 72(1) of the LBCA Act applies. The listed building further forms part of the surroundings in which other heritage assets are experienced, to which the duty under section 66(1) of the LBCA Act relates. Whilst EDDC's decision notice appears to relate solely to the listed building, the significance of heritage assets here overlaps and interrelates.
12. As reflected in paragraph 195 to the National Planning Policy Framework (published 20 December 2023, the 'NPPF') heritage assets are an irreplaceable resource that should be conserved in a manner appropriate to their significance. Policy EN9 of the East Devon Local Plan 2013-2031 (adopted 28 January 2016, the 'LP') is comparable. Whilst only LP policy EN9 is cited in EDDC's decision notice, the Colyton and Colyford Neighbourhood Plan 2020-2031 is part of the development plan (made originally in January 2022, the 'NP'). Criterion iv. to NP policy Coly6 is that there should be 'no harmful impact' on heritage assets as a result of development. The NP, however, serves to illustrate also that development plans and guidance inevitably pull in different directions; criterion v. to policy Coly6 sets out how extensions and alterations to existing properties requiring planning permission should be geared towards 'a high level of energy efficiency'.

Special interest and significance

13. The list entry indicates that the listed building traces its origins to the sixteenth century. Elements are perhaps older still. Many Devon buildings have a lengthier history than their present form might indicate; the list entry refers to the structure being jointed cruck trusses (which is suggestive in that respect). Walls appear to be a mix of local stone, likely consistent with those visible at nearby grade II listed 'Colyton Post Office'.⁶ Elevations are finished principally with plain painted stucco or render. The absence of ornamentation is consistent with a robust quasi-rural character. The exception are pilasters either side of the shopfront, which extend to first floor level. Those emulate stonework at a lower level with a simple (Greek) key pattern above. There is similar detailing at other properties around the Market Place.
14. In all likelihood the listed building was originally thatched. It now has a tiled roof. Judging by the appearance and condition of those tiles, and the presence of some machined timbers, much of the roof structure appears mid-to-late twentieth century. As explained in the list entry, the listed building originated as a range of houses. The Victorian shop front to Parkside Antiques appears to have been created by removing a large proportion of the historic front wall.

⁴ Noting the provisions of LBCA section 2(2)(b) which apply 'as soon as possible after the inclusion of any building' in the list, the listed building here having been first listed on 8 May 1967.

⁵ Reference: 7/79/93/P0858/00693/LBC.

⁶ List entry no. 1098531, now no longer a post office.

Structural support has been provided by virtue of functional steel columns and beams. It appears that console brackets were added either side of the shopfront at that time, as were likely the pilasters. There are shopfronts of similar era at Merchant's Tea Rooms and several other properties fronting the Market Place. Those reflect architectural tastes of the time and the shift to shops being within building as opposed to market trading (which, in turn, reflects growing societal affluence associated with rural areas supplying an increasingly urbanised population).

15. First floor window openings at the flat facing the Market Place are set symmetrically within that elevation. Of greater height than width, shorter than the height of ground floor openings at the listed building and elsewhere, they are unsurprisingly traditionally in terms of proportions. There is some variety in fenestration around the Market Place and within the CA, again reflecting successive overlays of redevelopment. 2, 6 and 8 pane sash windows of different sizes are commonplace, as are those without glazing bars. There are bay windows at Anton's Butchers next to Merchant's House, mullioned windows at the Old Church House,⁷ and 'modern' windows at the Bellflower Gallery and at dormers at Eglantine and the Premises of R. A. Dyke.⁸ Some window units around the Market Place, and more broadly throughout the CA, are double-glazed.
16. Insofar as relevant to this appeal, the significance of the listed building, and also that of the CA and other nearby listed buildings, derives principally from historic fabric, detailing, and successive layers of development and intervention. Those characteristics reflect in physical form the evolution of Colyton amidst wider socio-economic change and architectural tastes. Whilst there are more recent insensitive interventions, those are not so prevalent or significant so as to meaningfully undermine historic integrity hereabouts. Moreover the existence of interventions which adversely affect significance do not justify further harm; if anything they indicate that greater focus should be given to preserving that integrity which remains.

The effect of the works

17. With reference to the approach in paragraph 3 of this decision, the present windows are similar to those they replaced in proportions, and also being marginal 3 light sashes. They are principally of wood painted white, as were the former windows. I saw that upper and lower sashes each comprise 3 panes of glass separated by bars, as opposed to a single pane separated by astragals. There are, as above, double glazed units peppered about the CA. Former windows at the flat were, in all likelihood, younger than much of the fabric of the listed buildings; marginal glazing only becoming prevalent through the nineteenth century.
18. There are, nevertheless, some clear differences. Glazing bars, jambs and rails appear bulkier than previously (likely a necessity of supporting the greater weight of double glazing). Window surrounds likewise seem wider than previously, potentially on account of the inclusion of counterbalancing springs

⁷ List entry no. 1098527.

⁸ Eglantine being list entry no. 1098528, the Premises of R. A. Dyke being list entry no. 1098529.

which Historic England guides against.⁹ Sashes are guided by plastic, as opposed to wooden, runners or strips. Double glazing is inherently anachronistic. In this instance double glazing appears clearly modern and engineered, with the windows having a more cluttered character on account of reflections from two panes of glass (an effect which is not inevitably so pronounced subject to sensitive approaches to glazing).

19. The appellant provides correspondence on behalf of the installer indicating that former windowsills were retained. That appears unlikely. Sills now in place appear smaller than previously. There is evidence of damage to render at the lower corners of the window units. Cracks in the stucco or render have been patched. If sills have been retained, however, they are now finished with a drip edge and some form of fascia. In either eventuality the works undertaken have rendered the sills inconsistent with that which existed previously, prevails around the Market Place, or that which is typical of many historic properties.
20. Moreover other first floor windows at the listed building are more significantly recessed from the plane of the relevant elevation, such that there is an appreciable depth of sill and reveal. That arrangement is characteristic of first floor windows around the Market Place and commonplace within the CA.¹⁰ I acknowledge the former windows diverged from that arrangement somewhat. It now appears, however, that the detailing of the window surrounds projects beyond the plane of the northern elevation of the flat. Moreover the trim beside the windows appears more detailed than that which existed previously, diverging from a robust rural aesthetic.
21. In short there are various differences between what exists now and beforehand. Inherent in my reasoning above is that the cumulative effect of those differences means that the windows now present are markedly different from the prevailing character of the area and inconsistent with historic character and appearance.
22. Whilst the window units were designed to emulate those recently installed at the Bellflower Gallery, that is not a listed building. The Bellflower Gallery building is also of an atypical aesthetic here, being of rubblestone with accentuated red brick quoins, window surrounds and segmental arches. Incidentally, permitted development rights allowing for the alteration of a dwellinghouse without planning permission do not relate to a building containing one or more flats (other than in certain circumstances).¹¹ In all likelihood the replacement windows here would have needed planning permission were the building not listed (to be considered pursuant to the duties under LBCA Act sections 66(1) and 72(1) referenced above).

Consideration

23. Accordingly the windows in place lack the integrity and subtlety of traditional glazing and joinery, and also fail to integrate well with the elevation of the flat

⁹ Albeit under review in connection with other guidance on adapting historic buildings for energy and carbon efficiency, section 5.1 of Historic England's guidance of 8 February 2017 entitled 'Traditional Windows: their care, repair and upgrading' explains how 'normally for replacement sliding sash windows counterbalancing springs should not be used in as a substitute for pulleys and weights as this significantly alters the detailing and appearance of the window.'

¹⁰ Including at London House, Eglantine, and the premises of R. A. Dyke.

¹¹ Article 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended.

facing the Market Place. Their installation has also adversely affected the existing fabric and appearance of the building. The failure to obtain LBC beforehand meant that there was no opportunity for either their design or method of installation to have appropriately addressed adverse implications. The works fail to preserve the special interest and significance of the listed building, contrary to the clear expectations of the LBCA Act and the relevant provisions of LP policy EN9, NP policy Coly6 and NPPF paragraph 205. NPPF paragraph 206 sets out how any harm, not just that which is substantial, should require 'clear and convincing' justification. I now turn to whether that is the case.

The heritage balance

24. It is for the decision-taker, having identified that harm would result, to gauge its magnitude. As set out in paragraph 17 above, there is some comparability between the windows now in place and those previously. There is also some variety nearby, as reflected in paragraph 15 of this decision. A small proportion of the listed building has been affected. The extent of harm may therefore fairly be characterised as less than substantial with reference to NPPF paragraph 205, and at the low end of a spectrum of harm within that categorisation. NPPF paragraph 208 guides that, in such circumstances, the extent of harm should be weighed against any public benefits.
25. The works are evidently an improvement to the condition of the windows previously present (setting aside any suggestion of deliberate neglect).¹² Double glazing has improved thermal, acoustic and security performance relative to single glazing. Historic properties need to evolve somewhat to ensure that they remain in use. They are best conserved by being in use. I acknowledge that the removal or alteration of the windows now in place, as necessary, would entail some further disruption and embodied energy. Critically, however, there is nothing to indicate that alternative measures could not readily have been put in place, or could not now be undertaken, to achieve similar benefits with lesser harm. In that context the public benefits do not provide clear and convincing justification for the works.
26. Pre-empting the foregoing, the appellant has suggested I grant LBC temporarily for 10 years. That is understandable, including in the light of the cost of the windows. Nevertheless, bluntly put, the works should not have occurred. The cost incurred in their installation is essentially a private matter: the appellant makes no argument that dismissing the appeal would be to the detriment of an optimum viable use of part of the listed building. Personal circumstances are rarely sufficient justification for any scheme.¹³
27. Planning conditions should, moreover, only be used where necessary to make unacceptable development acceptable.¹⁴ Although a 10 year consent would limit the duration for which harmful works exists, that would still be a significant length of time, and would not materially affect the heritage balance above. Moreover the consequences of this decision are to be addressed as necessary between the main parties. I note in that context, without indicating what may transpire, that section 38 of the LBCA Act makes provision in respect

¹² Relevant provisions being at NPPF paragraph 202, PPG Reference ID: 18a-014-20190723.

¹³ PPG Reference ID: 21a-015-20140306.

¹⁴ NPPF paragraph 55.

of enforcement, including as to the timing of any necessary steps. Therefore substantively the same approach to a time limited consent could be achieved in that manner (if expedient and proportionate).¹⁵

Conclusion

28. Notwithstanding the context to present circumstances, the works for which LBC is sought do not preserve the listed building, contrary to the clear expectations of statute, the development plan and NPPF. There are no public benefits or other considerations of sufficient weight that serve to justify that harm. I therefore conclude that the appeal should be dismissed.

Tom Bristow

INSPECTOR

¹⁵ To which PPG Reference ID: 17b-011-20140306 relates.