



Appeal Decisions

Site visit made on 14 July 2025

by **A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

an Inspector appointed by the Secretary of State

Decision date: 11 August 2025

Appeal A Ref: APP/Q1445/F/23/3333339

18- 19 Charlotte Street, Brighton BN2 1AG

- 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 Charlotte Wilmann against a listed building enforcement notice (LBEN) issued by Brighton & Hove City Council.
 - The enforcement notice was issued on 7 November 2023.
 - The contravention of listed building control alleged in the notice is the external painting of the principal elevation of the Listed Building.
 - The requirements of the notice are to repaint the Listed Building to restore the principal elevation to the colour existing immediately prior to the unauthorised re-painting.
 - The period for compliance with the requirements is 10 (ten) months.
 - The appeal is made on the grounds set out in section 39(1)(e), (f) and (i) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Appeal B Ref: APP/Q1445/Y/23/3321888

Paskins Hotel, 19 Charlotte Street, Brighton BN2 1AG

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
 - The appeal is made by Charlotte Wilmann against Brighton & Hove City Council.
 - The application Ref: BN2022/02940 is dated 4 October 2022.
 - The works proposed are described on the application form as internal refurbishment of basement.
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Decisions

Appeal A

1. The appeal is dismissed and the LBEN is upheld. Listed building consent is refused for the retention of the works carried out in contravention of section 9(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (LBCAA).

Appeal B

2. The appeal is dismissed and listed building consent is refused for the works.

Appeal A on ground (f)

3. The ground of appeal is that copies of the notice were not served as required by section 38(4). Section 38(4) of the LBCAA states that *"A copy of a listed building enforcement notice shall be served...on the owner and on the occupier of the building to which it relates and on any other person having an interest in the building which...is materially affected by the notice"*.

4. The appellant contends that the freeholders of the appeal property were not served with the Notice at their home address and were unaware that such Notice had been served. The evidence is that the Land Registry provided the freeholders address as the appeal property and, subsequently, the LBEN was served on the two named freeholders at 18-19 Charlotte Street, Brighton BN2 1AG.
5. Even if the LBEN was not served as specified in s38(4) of the LBCAA, s41(5) allows for this fact to be disregarded if no substantial prejudice would result. Since an appeal against the Notice has been submitted, I cannot see how the appeal on ground (f) can succeed. Therefore, the appeal on ground (f) is dismissed.

Appeal A on ground (e) and Appeal B

1. Ground (e) is that listed building consent ought to be granted for the works and therefore the main issue in both appeals is the effect of the works on the special architectural and historic interest of the listed building.
2. Section 16(2) of the Act requires the decision-maker, in considering whether to grant listed building consent for any works affecting a listed building or its setting, to have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest it possesses.
3. Policy CP12 of the Brighton and Hove City Plan Part One Brighton & Hove City Council's Development Plan March 2016 (the CPP1) states that all new development will be expected to conserve or enhance the city's built and archaeological heritage and its setting. Policy CP15 of the CPP1 relates to heritage and states that the Council will work with its partners to promote the city's heritage and ensure that the historic environment plays an integral part in the wider social, cultural, economic and environmental future of the City....giving the greatest weight to designated heritage assets and their settings and prioritising positive action for those assets at risk through neglect, decay, vacancy or other threats.
4. Policy DM27 of the City Plan Part Two Brighton & Hove City Council's Development Plan October 2022 (the CPP2) relates to listed buildings and states that, among other things, "*a listed building should be retained in viable use and good repair. Proposals involving any alteration...of a listed building will be permitted where they would not harm the special architectural or historic interest of the building, having particular regard to: a) The exterior of the building, its design, construction, fabric, finishes and architectural features, b) The interior of the building, its plan form, internal hierarchy, construction, fabric, finishes, features and fixtures, d) Any boundary wall, railings, gates or fences etc. e) Any group value the building possesses.*".
5. The appeal property is in a group of early nineteenth century terraced houses, but is now being used as a hotel. It is constructed of stucco with roofs obscured by a blocking course and is four storeys over a basement; each storey having two windows on each property. The entry to each is round arched with a fanlight and reached up to by a short flight of steps. To the right of each entry is a full height segmental bay with tripartite windows. All windows are flat arched sashes of original design and some of the windows over the entries of the appeal property are blocked. There are first floor balconies with railings and stacks to party walls. Its overall composition as an early nineteenth century terraced four storey property and its external treatment, including external painting contributes to defining the appeal building's historic and architectural significance.

External painting

6. The significance of a heritage asset is the sum of its heritage values and external elevation treatment will usually be of such significance that every effort should be made to conserve them. In this case the painting of the stucco on the front elevation with a pale or pastel cream or similar colour is fundamental to its external appearance. Although I do not have clear evidence of its previous colour it is my understanding that the walls of the façade were cream until at least 2009. This would be in line with other buildings in the immediate locality which are mainly painted cream or white with some later introduction of pale pastel colours.
7. The Study and Enhancement Plan for East Cliff Conservation Area describes the area as predominantly in the Regency style, but not necessarily in period and most properties are faced in smooth stucco render painted in shades of cream to reflect the stucco's original objective of imitating stone. The coloured paint used on the frontage has transformed its appearance and its relatively dark, drab colour is not traditional to Regency or Victorian buildings in the area. The works have resulted in an unattractive, discordant and visually intrusive elevation which is very much at odds with the historic character and appearance of the building. In addition, it disrupts the harmony and cohesiveness of the group of Grade II listed buildings of which it is a fundamental part.
8. There is no evidence that regard has been given to the historic significance of the building, in terms of its finishes and architectural features, in particular. The National Planning Policy Framework (the Framework) advises that when considering the effect of works on the significance of designated heritage assets great weight should be given to their conservation. It goes on to advise that significance can be harmed or lost through the alteration of those assets. Given the degree of harm caused by painting the principal elevation, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
9. Under such circumstances, the Framework advises that this harm should be weighed against the public benefits of the works. The painting of the building in the colour chosen is not a public benefit but instead is more of a private preference. I am also aware of there being local support for the works, but the level of support does not itself amount to a public benefit. Furthermore, I am conscious to the costs associated with remedying the breach and economic circumstances in which the business has to operate, but that does not outweigh the harm caused by the unauthorised works nor does it amount to a public benefit. The appellant has also stated that there have been no complaints from members of the public or local businesses in the area, but instead there is widespread support for the external painting. However, the lack of opposition or specific request for enforcement action to be taken does not mitigate the harm caused in any way.
10. The appellant has commented that the Council has not taken enforcement action against colour changes elsewhere, including close to the appeal site. However, the evidence before me is that action has been taken against coloured paint on other buildings in the immediate vicinity of the appeal site, including Nos 16 and 17 Charlotte Street. Another building identified by the appellant is not listed nor is it in

the same Conservation Area as the appeal property. As such no permission was required for that change.

11. In addition, it is argued that there is no rationale to restore the principal elevation to the colour existing immediately prior to the unauthorised re-painting; however, under s38 of the PLBCAA 1990 a listed building enforcement notice shall specify the alleged contravention and require such steps as may be required to restore the building to its former state, or for carrying out further works specified in the Notice necessary to alleviate the effects of the unauthorised works. That is the clear rationale in this case.
12. The Council's External Paint Finishes and Colours Supplementary Planning Guidance Note 2 does advise against applying too many layers of paint too frequently due to potential resultant damage to the surface of the façade. However, the SPG does not state that a building cannot sustain more than 2 coats of paint but rather that *"the preservation of traditional buildings relies on allowing moisture absorbed in walls to evaporate from the surface. Impermeable paints and hard renders trap moisture and can cause severe damage to walls, structural timbers and interiors and should be avoided. Whichever paint type is chosen, quality preparation and careful choice of base coats is crucial for long term durability of the coating. The application of paints to new render before it is completely dry will fail. An alkali resisting treatment may also be required. The paint manufacturer's specification and recommendations should always be followed. Two finish/top coats are always recommended to ensure good coverage and maximum durability."*
13. Consequently, the unauthorised painting should not automatically mean that listed building consent should be granted or to extend the time of compliance to allow the application of a suitable paint colour when the appellant considers the next round of maintenance is required.
14. Given the above, and in the absence of any clearly defined public benefit, I conclude that the external painting of the principal elevation has a harmful effect on the special architectural and historic interest of the listed building. This would fail to satisfy the requirements of the Act, the Framework and would conflict with Policies CP12 and CP15 of the CPP1 and Policy DM27 of the CPP2 and the Framework. The appeal on ground (e) is dismissed.
15. The appellant raises concerns about how the action taken by the Council interferes with the rights under the United Nations Convention on Human Rights which are enshrined in Articles 8 and 10 of the Human Rights Act 1998, which states that everyone has a right to respect and family life, and their home, among others. These are qualified rights, whereby interference may be justified if in the public interest, but the concept of proportionality is crucial. In this case it is in the public interest and proportional to control the external appearance of the listed building in order to preserve or enhance its special architectural and historic interest.

Internal refurbishment of the basement

16. The appeal is against the non-determination of the application. Had the Council been able to make a decision it would have been refused for the following reason:
 1. Insufficient and inaccurate information regarding the pre-existing and existing layout has been submitted, which prevents the local planning authority from making a full assessment of the scheme, and to secure any

details through condition. Accordingly, it is considered that the proposal could not be assessed, contrary to policies CP12 and CP15 of the Brighton & Hove City Plan Part One, DM18, DM20, DM21 and DM26 of the Brighton & Hove City Plan Part Two and paragraphs 201 and 205 of the National Planning Policy Framework.

17. Therefore, the main issue is the effect of the works on the special architectural and historic interest of the listed building.
18. The proposal is for internal refurbishment of the basement area, but the overall scheme involves external works and refurbishment, as well. From the evidence submitted and my own site observations some works have been carried out and the basement is currently being used for residential purposes. The application form states that the work was started without consent. The Council's main concern is that the submitted plans do not accurately reflect what is on site and what is proposed. Some additional details have been submitted with the appeal, including proposed and existing drawings at 1:50.
19. The schedule of works states that the following are to be carried out:
 - Existing timber windows retained and overhauled and repaired as necessary;
 - Existing floors to be repaired and maintained and refurbished as needed to maintain a level surface. There will be some necessary damp treatment which will involve the use of chemicals to counteract the impact of wood boring insects and other organisms which may deteriorate the internal fabric;
 - Upgrading the kitchen and WC to modern standards; and
 - Railings to the pavement and balcony railings will be kept and maintained in accordance with the historic interest and architectural vernacular for the period property. Metal welding repairs and anticorrosion protection will be undertaken.
20. The details submitted are scarce given the scope of proposed works. There are no detailed accurate plans of the existing basement or proposals for the overall refurbishment of the basement area. There is a lack of clarity with respect to the original and proposed layout, features and works. Plans are inaccurate in terms of the layout of the front bay, missing chimney breast and thickness of the original rear masonry wall, for example. Although there is a description of the proposed works and a layout plan at a scale of 1:50, the evidence is that the layout on site does not accurately reflect what is shown on the submitted plans.
21. In addition, there are few details of how the existing windows will be retained and overhauled; including the condition of the existing windows, details and methodology for the works to be carried out. There are no details of how the floors are to be repaired, maintained and refurbished, including damp treatment proposed and the chemicals to be used. Maintenance plans and methodology for the railings, metal welding repairs and anticorrosion protection have not been submitted.
22. Consequently, it is not possible to fully understand the proposed works or assess the effect of the works on the special architectural and historic interest of the listed building. Therefore, I conclude that there is insufficient and inaccurate information regarding the pre-existing and existing layout, which prevents a full assessment of

the internal refurbishment of the basement to be made. Accordingly, it fails to satisfy the requirements of the Act, the Framework and conflicts with Policies CP12 and CP15 of the CPP1 and Policy DM27 of the CPP2. I find no conflict with Policies DM18, DM20 and DM21 of the CPP2. Nonetheless, it is contrary to the objectives of the development plan as a whole.

Appeal A on ground (i)

23. The ground of appeal is that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose. The appellant is concerned that overpainting the property is likely to be detrimental to the stucco and mortar underneath as water will be trapped in the newly formed layers leading to harm which can cause spalling of mortar, stucco and substrate due to freezing of trapped water expanding and breaking off sections of stucco and mortar.
24. The main argument presented by the appellant under ground (i) does not relate to whether the steps required would serve the purpose of the notice to restore the character of the building to its former state, but rather whether the steps required would cause further harm to the building. This argument is misplaced here and ignores the harm that has been caused by the unlawful works that have been carried out and the overall requirement to restore the character of the building to its former condition.
25. The steps required by the LBEN would serve the purpose of restoring the character of the building to its former state and the appeal on ground (i) therefore fails.

Conclusion

26. For the reasons given above, I conclude that the appeals should be dismissed.

A A Phillips

INSPECTOR