

**STATEMENT OF APPEAL AGAINST REFUSAL OF
ADVERTISEMENT CONSENT APPLICATION 3/2012/1079
BY RIBBLE VALLEY BOROUGH COUNCIL**

**APPLICATION FOR 2NO SIGNS, MATCHING MATERIALS, INTERNALLY ILLUMINATED
(RETROSPECTIVE APPLICATION)**

79 KING STREET, WHALLEY, LANCs, BB7 9SW

Introduction

This Appeal is against the refusal by Ribble Valley Borough Council of application reference 3/2012/1079.

The application is for the retention of two existing internally illuminated signs on the front of the building.

The application was submitted on 16 November 2012, registered and accepted as valid on 30 November 2012.

The refusal is dated 7 February 2013 and was received by the applicant's agent on 11 February 2013.

The reason for refusal is as follows:

"The retrospective advertisements have an unduly harmful impact upon the character of the building, a Building of Townscape Merit, the street scene, and the character, and significance of Whalley Conservation Area because of the number, siting, illumination, visual intrusiveness, conspicuousness and incongruity of adverts and resulting domination and cluttered appearance of the facade, and use of incongruous modern materials. This is contrary to Policies G1 and ENV16 of the Ribble Valley Districtwide Local Plan, Policies DMG1 and DME4 of the Regulation 22 Submission Draft Core Strategy and Sections 7 and 12 of the National Planning Policy Framework.

"Policies in the Framework have been considered but in light of the facts in this case the National Planning Policy Framework does not alter the Borough Council's conclusions. With the advertisements in situ it was considered inappropriate to negotiate with the applicant because significant change to the proposal, namely, the removal of the unauthorised illuminated signs would have been needed to overcome the harm caused by the proposal to visual amenity."

The application was prompted by the LPA approaching the applicant after the signs were erected.

The building is within a Conservation Area (CA). The CA Appraisal and Management Guidance are attached, together with a plan of the CA.

For clarity we have referred to the two signs as:

- The "recessed sign", being the sign mounted flat to the recessed front wall of the property
- The "projecting sign", being the sign mounted at right angles to the building line.

History

The applicant has occupied the first floor of 79 King Street since 2012. The building is owned by a third party.

The applicant arranged for the illuminated sign that was associated with the business of the previous occupants of the first floor to be replaced by the signs that are the subject of this appeal, identifying the business now carried out on the premises. The applicant had anticipated that the signage would be acceptable, one replacing a previous sequence of signs and the other echoing the signage of the ground floor business.

The replaced fascia sign on the recessed wall had been in place for six years and, in turn, had replaced a previous sign that had also been in place for a long period. The external illumination fitting remains in place and is a number of years old. It has not been possible to date these events accurately but it is reasonable to estimate that there has been a sign on the recessed wall for ten years.

Ribble Valley Borough Council's enforcement team contacted the applicant to prompt the removal of the new signs or a regularising application, in October 2012.

The significant dates of the application are listed in the introduction above.

Subsequent to the Decision Notice efforts were made to secure advice from the Case Officer. The relevant parts of the correspondence are attached. It was not possible to establish a dialogue. Neither was it possible to reach a point at which the applicant might have avoided prosecution without, at least temporarily, having no signage at all on his premises. In fact the Case Officer's position reflected the tone and content of the covering letter sent with the Decision Notice.

Had the signage been obviously and completely unacceptable, with no comparable previous signage on the building or in the immediate area, we would have accepted the Council's approach more readily. As it is we would see the position taken as unreasonable and unhelpful. This appeal has been forced, in our view unnecessarily, by the Council offering no alternative to either prosecution/enforcement or the complete removal of the signs.

Council Planning Policy

The LPA's Decision Notice and Report list and make reference to the structure of policies with which they see the signs conflicting. The interpretation of the policies themselves is of necessity subjective, to some degree. We do not dismiss the policies but, rather, consider that it would be unproductive to examine the wording of each LPA policy and so have limited our analysis to the CA documentation and the NPPF. We also see it as relevant that the policies were written and adopted under a different collection of national planning guidance documents.

National Planning Policy Framework

We have considered the extent to which the NPPF provides guidance. We have identified the following as being of relevance and have quoted them only to the extent that the text seemed relevant:

"60. Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness."

The paragraph appears to establish that the LPA cannot simply dictate a style. In fact the area exhibits a wide range of styles of signs, lighting and associated elevational treatments. None of these are, to our knowledge, the subject of current enforcement action. We have not identified any local distinctiveness in signage or elevational treatment of buildings in this immediate area.

"67. Poorly placed advertisements can have a negative impact on the appearance of the built and natural environment. Control over outdoor advertisements should be efficient, effective and simple in concept and operation. Only those advertisements which will clearly have an appreciable impact on a building or on their surroundings should be subject to the local planning authority's detailed assessment. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts."

The issue, then, is amenity, there being no safety issue. There is no cumulative impact, because the number and size of signs on the façade has not increased, so the question is whether the effect of the signs themselves is appreciable.

"132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Etc etc"

The asset is in excellent condition. Its condition is, quite clearly, a significant element of the owners' marketing. There is no issue in this, then.

“133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent”

It is surely not substantial harm to the asset and is obviously not total loss to retain this signage. We are considering signs of comparable size to a predecessor and an adjacent sign, a further sign having been removed.

“134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.”

This appears to establish a link between the viability of the use of the building and whatever harm might arise and, then, we would suggest that it is logical to allow the business some reasonable degree of freedom to choose the style of sign as part of managing the business.

Relationship with the CA and the CA documentation

Legislation in the 1960's established the basis for Conservation Areas. The Council moved to the designation of this CA only in 2005. The CA documentation concludes, inter alia, that an Article 4 Direction is desirable. Our understanding is that the Council, some eight years later, has not pursued this.

The CA Appraisal is critical of shop fronts and signage within the CA. This row of properties is singled out specifically only in the context of the removal of front garden/boundary walls.

Various issues are carried forward as weaknesses through to proposed actions. So far as we may ascertain the main proposition in the immediate area of the appeal site is the securing of an Article 4 Direction. We find this both surprising and, for our purposes, irrelevant in this context since it would only remove permitted development rights. It would have no effect on signage or existing shop fronts - which are not included in the list of restricted works and it would appear that commercial properties would be excluded anyway. Curiously, the gardens (and so front boundaries) on this part of King Street are apparently excluded from the identified (green shaded) area and so even the important remaining boundaries are not to be protected.

The CA documentation, then, does not have any material effect, in this appeal, beyond the LPA's district wide policies – except that, as we would acknowledge, the CA is different to other areas in what might be acceptable.

The issue comes down to what effect the signs have on amenity and the importance of that amenity in this part of the CA.

The detail of the refusal

The reason for refusal is as follows:

“The retrospective advertisements have an unduly harmful impact upon the character of the building, a Building of Townscape Merit, the street scene, and the character, and significance of Whalley Conservation Area because of the number, siting, illumination, visual intrusiveness, conspicuousness and incongruity of adverts and resulting domination and cluttered appearance of the facade, and use of incongruous modern materials. This is contrary to Policies G1 and ENV16 of the Ribble Valley Districtwide Local Plan, Policies DMG1 and DME4 of the Regulation 22 Submission Draft Core Strategy and Sections 7 and 12 of the National Planning Policy Framework.

“Policies in the Framework have been considered but in light of the facts in this case the National Planning Policy Framework does not alter the Borough Council's conclusions. With the advertisements in situ it was considered inappropriate to negotiate with the applicant because significant change to the proposal, namely, the removal of the unauthorised illuminated signs would have been needed to overcome the harm caused by the proposal to visual amenity.”

We have listed the key points as we understand them to be:

- Number
- Siting
- Illumination
- Visual intrusiveness
- Conspicuousness
- Incongruity
- Resulting domination and cluttered appearance of facade
- Use of incongruous materials
- Contrary to quoted policies
- Contrary to NPPF

Dealing with these points in turn:

The number of signs is hardly great. The recessed sign replaces a previously existing sign in a location used for many years and the projecting sign (the one additional sign) is comparable in size to the sign below it. Further, a sign for the ground floor use has recently been removed from a position between the first floor windows. Numerically there is no change.

The siting of the recessed sign would be an odd reason for refusal since it replaced a previously existing sign and is smaller. The projecting sign has been positioned as close as seemed reasonable to the sign below it, in order to minimise any intrusiveness.

The recessed sign is internally illuminated and replaced an externally illuminated sign. Both types of illumination appear to be common in the CA and elsewhere in Whalley. The projecting sign is internally illuminated, as is the existing sign adjacent to it. If the level of illumination is considered by the Inspector to be too intense the luminance could be reduced to, say, the highway authority's standard.

With regard to conspicuousness, the recessed sign cannot be significantly more conspicuous than its predecessor – which was larger. The projecting sign is no more conspicuous than the adjacent one and is in more subdued colours. When viewing the façade from, say, across King Street, it is evident that the conspicuity of the signs is less than that of the other signage on this and other buildings.

Adjacent and nearby premises exhibit a range of modern and “traditional” styles of signage – whatever “traditional” might be in this context. We do not see any greater incongruity in these signs than in others in the vicinity and in the same views.

In considering the number of signs we noted that one of these signs replaced a larger pre-existing sign and the other is additional. However, as is noted, a sign has also been removed from the first floor façade. The projecting sign is close to the adjacent sign, whereas the recently removed sign was not. In our view there is no more domination or clutter than hitherto – and no previous enforcement action had been taken.

Dealing specifically with the incongruity of the materials – they are no different to others on the same façade or on nearby signs in the CA and elsewhere in Whalley.

The LPA's quoted policies require subjective judgements to be made, without clear parameters, on what causes a harmful impact and any mitigation there might be. In fact the NPPF offers a more comprehensive, objective and practical framework for considering this balance.

We have dealt with the NPPF above and do not propose to repeat the comments. In our view the NPPF allows the LPA to consider a number of aspects of the sign and its context. We do not accept their conclusion. In our view the signs do not have an “appreciable impact”.

Although the point is not addressed in the application or LPA papers, we do consider that the occupier of business premises has a reasonable expectation of securing an appropriate level of signage. For example, whilst not applicable to this case, The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 contain provision for a range of types of sign to have deemed consent. One of these, suggesting at least a degree of reasonableness, is signage indicating

the business/profession carried on within the premises. The range of deemed consents does not include adverts for goods in the same way.

The LPA has not included size in the reasons for refusal. It is useful to note that the recessed sign is smaller than its predecessor and the existing "Telegraph" advert next door on the newsagents' wall. The projecting sign is comparable in size to the existing sign adjacent to it and other internally illuminated signs in the area..

It is convenient to deal with the Parish Council's response to the consultation at this point. The end of their submission makes it clear, in our view, that they would wish to see a substantial reduction in commercial signage throughout Whalley. Their comments are, therefore, based on this perception and it would be difficult to imagine the Parish Council finding any comparable sign acceptable. We respect their position but do not see a vehicle for achieving their aspiration within the LPA's policies.

Other signage in the area

Whilst we do not suggest that the LPA should be entirely bound by the signage around the appeal site we do consider it reasonable to make the comparison.

The applicant had submitted a Heritage Merit Statement with the application. A copy of this is attached. . The signage included in the photographs covers a significant area of Whalley. It clearly demonstrates the wide range of comparable signage in the CA and adjacent area after dark. The immediate conclusion to be drawn from the photographs in this document is that the amount of stray light from externally illuminated signs is far greater than from internally illuminated fittings. The further conclusion is that a large proportion of the premises leave lighting on after their trading hours, presumably time switched. It is also quite obvious that a large proportion of the signs included in the document are of significant size.

The adjacent property (No 77) is in use as a newsagents. It has substantial blinds, above which is an advertising panel of significant size – higher than the equivalent panel on 79/81. It has an internally illuminated sign advertising a specific newspaper and a further advertising panel at first floor level on the recessed wall sponsored by the same newspaper. The main fascia signage is sponsored by and advertises national newspapers. Most of the area of the signage on the building, therefore, provides advertising for third parties.

The other half of the semi detached pair shares the blind treatment with less signage. The corner property has the benefit of blinds and high level signage, at least as conspicuous as the appeal site's signage.

We would see the signage at the Maureen Cookson and the Checkmate premises, slightly closer to the older "heart" of the CA, as more conspicuous and, therefore, less acceptable than the signs that are the subject of this appeal.

Conditions

A condition as required under section 91 is anticipated.

The applicant has indicated that, if the Inspector is minded to uphold the appeal but has remaining concerns over the hours of illumination of the signs, a condition limiting illumination to the hours of 7.30am – 7pm five days a week would be acceptable.

With the exception of a limit on luminance – to, say, that which would usually be sought by the highway authority's standard condition. We have not identified any other conditions that might be considered useful but would be happy to comment on any put forward by the Council.

Summary

The refusal identifies the following issues:

- Number
- Siting
- Illumination
- Visual intrusiveness
- Conspicuousness
- Incongruity
- Resulting domination and cluttered appearance of facade
- Use of incongruous materials
- Contrary to quoted policies
- Contrary to NPPF

Our assessment of the sign's impact does not bear out the wording or the substance of the reason for refusal.

We do not consider that the signs are damaging to the character and appearance of this part of the Conservation Area – and if they are we are unable to understand why the LPA has not found a whole range of other signs similarly unacceptable.

Our examination of the NPPF suggests that it is relatively sympathetic to the retention of the signs.

We do not accept that the LPA can seek to impose a style. The style chosen is by no means unique in the area.

We consider the LPA to have acted unreasonably.

Conclusion

We believe that we have dealt satisfactorily with the reasons given in the refusal notice and with the application of the NPPF, the Council's policies and the CA documentation.

We respectfully request that the Appeal Officer upholds the Appeal.