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## Appeal Decisions

Site visit made on 16 November 2015

by **Peter Rose BA MRTPI DMS MCMi**

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

Decision date: 04 December 2015

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### **Appeal A Ref: APP/J1915/Y/15/3097687**

#### **Café Rouge, 3 Parliament Square, Hertford, Hertfordshire SG14 1EX**

- 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 Tragus Holdings against the decision of East Hertfordshire District Council.
  - The application Ref: 3/15/0313/LBC, dated 9 February 2015, was refused by notice dated 16 April 2015.
  - The works proposed are described as 'like for like change of signage'.
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### **Appeal B Ref: APP/J1915/H/15/3087258**

#### **Café Rouge, 3 Parliament Square, Hertford, Hertfordshire SG14 1EX**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
  - The appeal is made by Tragus Holdings against the decision of East Hertfordshire District Council.
  - The application Ref: 3/15/0312/ADV, dated 9 February 2015, was refused by notice dated 16 April 2015.
  - The advertisements proposed are fascia sign, projection sign and awnings.
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### **Decisions**

1. The appeals are dismissed.

### **Procedural Matters**

2. At the time of my visit, advertising was displayed very similar to that set out in the applications, and the appellant has confirmed that the proposals are in place. There are no provisions for retrospective listed building consent or express advertisement consent, however, and these appeals are determined with reference to the proposed details as shown on the submitted drawings and which formed the basis of the Council's decisions.
3. I note in relation to **Appeal B** that the Council has issued a split decision. In particular, the decision notice grants advertisement consent for the proposed awning, but refuses consent for the proposed fascia sign and hanging sign. The fascia and hanging signs therefore form the subject of my consideration of **Appeal B**, and they are also the focus of the Council's refusal of listed building consent in **Appeal A**.

## **Main Issues**

4. The main issue in relation to **Appeal A** is effect of the proposed scheme upon the special architectural and historic interest of Nos 1-3 Parliament Square, a grade II listed building and, in particular, whether the proposal would preserve the building or its setting or any features of special architectural or historic interest which it possesses.
5. In relation to **Appeal B**, the control of advertisements is exercisable only with respect to amenity and public safety. The main issue in this appeal relates to whether the proposed displays would be harmful to amenity. In this respect, it is also my statutory duty to have regard to the effect of the proposal upon the character and appearance of the surrounding Hertford Conservation Area. I am also mindful that the site forms part of a grade II listed building as a relevant material consideration of local amenity.

## **Reasons**

### **Appeal A**

6. The appeal site comprises part of a three-storey mid-terrace building and is occupied as a restaurant.
7. The significance of the appeal site as part of a building of special architectural and historic interest relates to its heritage and form. No 1 and No 3 combine as an interesting and impressive historic building dating from the 1870's and occupy a prominent position within the historic heart of Hertford Town Centre. The site fronts Parliament Square and is adjacent to, and overlooks, a large and distinctive war memorial to the north west.
8. At ground floor, the front elevation of No 3 contains a relatively modern shopfront with awning. The second floor comprises three 8-pane sash windows as part of a wider pattern of fenestration extending across No 1. The first floor to No 3 has a grey painted full width showroom window sub-divided into a fairly regular pattern of smaller panes, also similar to that at No 1. The first floors to the appeal site and No 1 are each set below fascia boards where the appeal premises display further advertising in the form of individual gold letters. Features of the elevation include a pitched slate roof, cornice, stucco, pilasters and other historic detailing.
9. The proposals in dispute involve an externally illuminated fascia sign at ground floor with individual built-up perspex letters and set within an aluminium tray, and a projecting sign at first floor also externally illuminated but with individual flat-cut perspex letters on a timber frame. The Council's objection relates to the proposed external materials, and I agree with the authority's assessment that the scale and overall design of the displays would not otherwise be harmful.
10. I acknowledge that the scheme endeavours to provide a high quality design sympathetic to its surroundings. That is achieved insofar as the proposals involve individual lettering and are part of an overall shopfront design which reverts back to a more traditional appearance with gold letters on a restrained dark red background. Nevertheless, the displays would be highly visible and the modern perspex and aluminium finishes would appear conspicuous within the historic frontage. The contrasting, modern texture of the displays and their inherent sheen and accompanying contemporary character would be readily

apparent and would so present a discordant finish relative to the more traditional features and impression of the wider elevation. The fascia would also be exposed to the side given that it would sit slightly forward of the main building line, and would be illuminated.

11. The appellant maintains that, from any distance, both of the signs would look exactly the same whatever material is used. I disagree as, notwithstanding the presence of a modern ground floor shopfront, I find that the unsympathetic materials of the displays, allied to their overall extent, height and position, would create visually dissenting features viewed against the more refined historic character of the main elevation.
12. The resultant incongruous relationship would harm the significance of the listed building by reducing its visual presence and by detracting from its impressive appearance. As such, the building would not be preserved but would be harmed.
13. Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) places a duty upon the decision-maker, in considering applications for listed building consent, to have special regard to the desirability of preserving the listed building. There is a clear presumption in this duty that preservation is desirable, and I find that the special interest of Nos 1-3 would be diminished by the proposed scheme such that it would fail to preserve the significance of the listed building.
14. Despite the impact upon the significance of the designated asset, I consider that the extent of harm to the building would be less than substantial. Thus, it is necessary to consider, in accordance with the National Planning Policy Framework (the Framework), whether there would be public benefits to the scheme sufficient to outweigh that harm. I recognise the commercial significance of advertising to the restaurant, and acknowledge the selected materials may be less prone to weathering and deterioration than some, but that does result in a stark appearance which is harmful. I also have no reason to conclude that the particular materials which are the subject of this appeal represent the only means of effective, durable advertising. From the evidence before me, I have found no overall public benefits sufficient to outweigh the harm likely to arise to the listed building.
15. Hence I conclude that the proposed works would be harmful to the special architectural and historic interest of Nos 1-3 Parliament Square, a grade II listed building, and contrary to the Framework which recognises that heritage assets are an irreplaceable resource and requires them to be conserved in a manner appropriate to their significance. The Framework further states that 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.

## **Appeal B**

16. The appeal site is located within a setting of rich local heritage on the east side of Parliament Square and forms part of Hertford Conservation Area. The site faces towards the open setting of the war memorial and is clearly visible within this distinguished vicinity by virtue of its exposed and prominent location. This part of the Conservation Area is characterised by historic buildings in a variety

of architectural styles and which make for a distinct sense of local amenity significantly shaped and influenced by its local historic context.

17. Of particular significance for the appeal proposal is the presence of the historic war memorial immediately to the north-west of the appeal site. Nos 1-3 form part of the backdrop to exposed views of both the memorial and of the wider junction and enclose a very open civic area to the front. It is therefore important that such elevations should provide an appropriate heritage-sensitive setting in terms of their character and appearance.
18. A further feature of the special character of this part of the Conservation Area is an impression of relatively low-key advertising. Advertising is generally of limited size and extent, not all is illuminated, and signage broadly appears to be physically incidental to, and characteristic of, the host buildings.
19. By virtue of the features described in **Appeal A**, the building makes a similarly refined and distinguished contribution to the historic character and appearance of the Conservation Area, and thereby to the amenity of this part of the town centre, and the proposed signage would be inconsistent with those attributes. In particular, the proposed displays, by virtue of their materials, would appear as intrusive and visually jarring additions and would so undermine its contribution to the wider Conservation Area. Views of the Conservation Area would be materially harmed, the scheme would fail to preserve its character and appearance, and the existing contribution of the appeal site to local amenity would thereby be diminished.
20. My findings are also consistent with the advice of the Framework that poorly placed advertisements can have a negative impact on the appearance of the built environment.
21. I therefore conclude that the proposed signs would be harmful to the amenity of the area created by the host building, by the character and appearance of the Conservation Area, and by the rich cultural heritage of the town centre. To the extent that the development plan is a material consideration, the scheme would be contrary to Policy BH15(a) of the East Herts Local Plan Second Review April 2007. This seeks to ensure that advertisements in Conservation Areas are either painted or individually lettered in a suitable material of an appropriate size and design in relation to the building or fascia.

### **Other Matters**

22. I have noted the appellant's reference to various other advertising elsewhere, and I am conscious of the importance of consistency in decision-making. Nevertheless, the full planning backgrounds to other displays are not before me, and each proposal and site must be considered with reference to its own particular merits.
23. Particular reference is made to decisions regarding No 70 Fore Street, and I note the similarities with the appeal site, and the contrasting views in that instance taken by the authority regarding an aluminium fascia and metal letters. From the information before me, I do not agree that the specific circumstances and merits of that scheme relate directly to the current appeal, as I consider the principle of such modern materials to be inconsistent with the particular historical significance and more exposed setting of the appeal site. No 70 occupies a materially different location, No 3 is indicated to have

previously contained a timber fascia and, in any case, the appeal proposal would not involve a suitable material as generally expected of Policy BH15. Besides, I do not find that any existing displays would either offset the significant harm from the particular scheme which is the subject of this appeal, nor otherwise justify the impact arising.

24. The appellant also refers to a previous acceptance of aluminium in earlier decisions at the site, but that does not alter my assessment of the overall merits of the current appeal proposal as described. Reference is also made to the reversible nature of the works, but the harm which forms the determining factors of my decisions would relate to the on-going presence of the displays themselves. I also note the absence of third party objections.
25. None of the other matters raised are of such significance, either individually or cumulatively, that they would outweigh the considerations that have led to my conclusions on the main issues.

### **Conclusion**

26. In summary, I find that, whilst the materials in dispute may represent relatively minor aspects of the displays, they would still have a significant impact upon an important building in a prominent location.
27. At the heart of the Framework is a presumption in favour of sustainable development, and I find the scheme would not accord with that expectation. Nor would it accord with the regard I must have towards the listed building in **Appeal A** or to the Conservation Area in **Appeal B**. These are considerations to which I am required to attach significance importance and weight.
28. For the above reasons, **Appeal A** and **Appeal B** are both dismissed.

*Peter Rose*  
INSPECTOR



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## Appeal Decision

Site visit made on 3 November 2015

**by Jonathon Parsons MSc BSc (Hons) DipTP Cert(Urb) MRTPI**

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

Decision date: 09/12/2015

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**Appeal Ref: APP/J1915/W/15/3095770**

**Holborn Farm, West End Road, Wormley West End, Herts, EN10 7QN**

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO).
  - The appeal is made by Mr Adam Hunt against the decision of East Hertfordshire District Council.
  - The application Ref 3/15/0323/ARPN, dated 21 February 2015 was refused by notice dated 15 April 2015.
  - The development proposed is the subdivision and conversion of agricultural building into two single occupancy dwellings (C3) and alterations to front, side, flank and rear elevations.
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### Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Paragraph Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the subdivision and conversion of agricultural building into two single occupancy dwellings (C3) and alterations to front, side, flank and rear elevations, at Holborn Farm, West End Road, Wormley, West End, Herts, EN10 7QN in accordance with the details submitted and subject to the following condition:
  - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1056 001; 1056 002; 1056 111 and 1056 112.

### Procedural Matters

2. The appellant was unaware of a third party's representation during the appeal process and therefore was given an opportunity to comment upon this. During the appeal process, the appellant has re-submitted three letters of support regarding agricultural use of the appeal building as legal affidavits and some appeal decisions. As this evidence related directly to the issues raised by the Council, an opportunity was given for it to comment on this. My decision has taken into account further representations on these matters.

### Main Issue

3. The main issue is whether or not the proposal constitutes permitted development.

## Reasons

4. The appeal site comprises a single storey building with tiled roof sited to the west of Holborn Farm. The appellant submits that the building and land adjacent to it is part of a farm holding.
5. The proposal would result in the change of use, with associated building operations, of the barn to form two Class C3 dwellinghouses. Schedule 2, Part 3, Class Q of the GPDO, permits development consisting of:

*(a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and (b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that schedule.*
6. Paragraph Q.1.(a)(i)(ii) of the GPDO states development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013, or if it was not in use on that date, when it was last in use.
7. The Council found the building to be vacant at the time of their site visit in September 2014 but what is relevant is the use on the designated date as set out in the GPDO above. The appellant has submitted four legal affidavits, landlord agreements, invoices and tax returns. The landlord agreements, invoices and tax returns do not provide specific evidence on the use of the building on the designated date.
8. However, an affidavit letter from a Mr R Osborne, a farm labourer, dated 9 May 2015, stated that agricultural use of the building continued up to and including 20 March 2013. A further written letter from Paradise Plants Ltd, a customer, dated 1 May 2015, stated that the farm building had been entered into over many years and more frequently over the past five years to collect bagged compost and plant pots. Within this letter, it is stated that for the past four/five years this building has been full with hay, bagged compost and other products used for the production of their whole sale plant business. Furthermore, the appellant has also provided a legal affidavit detailing agricultural use of the building from 2011 to 20 March 2013.
9. A neighbour has commented that the building is purely equine with a multi-bay stable block, horse walker and 'fasting' pen. In response, the appellant has indicated that the subject building has been used to house cattle and other working and ancillary farm animals on the farm. Although the neighbour's evidence contradicts that of the appellants, it is not specific on the use of the building on the designated date. Furthermore, the layout of the building does not physically preclude the agricultural uses put forward and as the appellant has explained, the horse walker does not provide overriding evidence of an equestrian use. Therefore, I am not persuaded that the building was in equestrian use on the designated date for these reasons.
10. Indeed, the detail of the legal affidavits, referred to, would demonstrate that the building was used for an agricultural use for the purpose of a trade or business on the designated date. Accordingly, on the balance of evidence before me, I am satisfied that the proposal meets the requirements of paragraph Q.1.(a)(i)(ii) of the GPDO.

11. Under Class Q, development is permitted subject to the condition that the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required. Such a determination is dependent upon whether certain conditions are met. Condition Q.2.(1)(e) considers whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order.
12. Planning Practice Guidance (PPG)<sup>1</sup> states impractical or undesirable are not defined in the regulations but that local planning authorities are required to apply a reasonable ordinary dictionary meaning in making any judgement. In this regard, it states that impractical reflects that the location and siting would "not be sensible or realistic" and undesirable reflects that it would be "harmful or objectionable". The PPG also indicates when considering whether it is appropriate for the change of use to take place in a particular location, it should start from the premise that the permitted development right grants planning permission, subject to the prior approval requirements. Furthermore, the PPG indicates that if an agricultural building is in a location where the local planning authority would not normally grant planning permission, this is not sufficient reason for refusing prior approval.
13. The Council has drawn my attention to the presumption in favour of sustainable development at paragraph 49 of the National Planning Policy Framework (the Framework). It also relies on paragraph 55 of the Framework where it promotes sustainable development in rural areas and the location of housing to enhance or maintain the vitality of rural communities. In this regard, the Council has referred to the isolated location of the development some considerable distance from a village or any services.
14. However, the PPG states location is not a sufficient reason for refusing prior approval and therefore prior approval should not be refused on the grounds of the un-sustainability of its location. Although the PPG is not a substitute for legislation, it is the most up-to-date policy interpretation of the Class Q requirements and provides clarity in applying requirements. It has been suggested that the government could have changed the GPDO requirements if had intended the sustainability presumption to not apply. However, as I have indicated, the issue is a matter of interpretation and the government has stated its position in the PPG. For all these reasons, the PPG carries substantial weight.
15. The Council argue that the sustainability test has not been applied as set out in the PPG but its reference to the two paragraphs in the Framework and poor location in relation to facilities contradicts this. Accordingly, the Council's evidence on sustainability is outweighed by the PPG. In summary, the location or siting of the dwellings would not be impractical or undesirable as detailed in the PPG and thus, the proposal would accord with condition Q.2.(1)(e).
16. A representation has been made regarding highways and transport impacts, noise impacts, flood risk and design. In terms of highway impacts, there is a satisfactory access serving the site at present and the Council saw no reason to consult the highway authority on this. The noise and disturbance from the occupants of the dwellings would not be harmful to the neighbour adjacent by

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<sup>1</sup> Paragraph 109 Reference ID:13-109-20150305.



reason of the separation distance between the properties. Furthermore, residential uses are not significant noise emitting uses by their nature and in any case, there would have been some noise from the previous use of the barn, including that from comings and goings of people and vehicles to it.

17. Turning to flooding, the Council has confirmed that the Environment Agency was not required to be consulted as the actual building does not lie within a designated Flood Zone 2 or 3, or registered as an area of critical drainage problems. No enlargement of the appeal building would also take place. Consequently, I am not persuaded that the proposal would result in a significant risk of flooding which would be harmful to neighbouring property and people. The proposal would result in new window and door openings but the existing building already has many ground floor openings especially to the front and rear. It would also only sub-divide and convert an existing building and for these reasons, its design and external appearance would not be adversely affected. Therefore, I concur with the Council that the development would not conflict with conditions Q.2.(1)(a)(b)(d) and (f) of Class Q.
18. My attention has been drawn to several appeal decisions but the proposal has been considered on its individual planning merits. There is a dispute over the accuracy of the plans but the proposal would be for sub-division and conversion of an existing building and on my site visit, I was able to see the appeal building and its relationship to nearby watercourses and a neighbouring property. For these reasons, there is no impediment to prevent me from considering this appeal on the basis of the plans submitted.
19. Comments relating to the effect of the cramped nature of development, its impact on the character and appearance of the area, erosion of a stream bank and a neighbour's living conditions are not matters that constitute reasons for dismissing this appeal. They go beyond what can be considered within this prior approval procedure.

### **Conclusion**

20. I conclude that the appeal should be allowed and that approval is granted subject to conditions. I have considered the conditions proposed by the Council. Paragraph Q.2.(3) states permitted development is subject to a condition that development permitted under Class Q must be completed within a period of 3 years starting from the prior approval date. As such, no time limit is necessary or appropriate. Paragraph W.(12) simply sets out that development must be carried out in accordance with the details approved and for clarity, a condition has been imposed to this effect.

*Jonathon Parsons*

INSPECTOR



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## Appeal Decision

Site visit made on 30 November 2015

**by Christa Masters MA (Hons) MRTPI**

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

Decision date: 08/12/2015

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**Appeal Ref: APP/J1915/Z/15/3133189**

**Goodliffe Park, Bishops Stortford, Hertfordshire CM23 5PP**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
  - The appeal is made by Pets at Home Plc against the decision of East Hertfordshire District Council.
  - The application Ref 3/15/1218/ADV, dated 9 June 2015, was refused by notice dated 30 July 2015.
  - The advertisement proposed is 3 no. internally illuminated fascia signs.
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### Decision

1. The appeal is allowed and express consent is granted for the display of the advertisement as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations.

### Procedural matters

2. I have used the description of development as provided on the decision notice as this provides an accurate description of the proposal.
3. From the site visit, it was evident that some of the proposed signage had been erected although it was not illuminated at the time of the visit.

### Main Issue

4. The effect of the signage on the character and appearance of the area.

### Reasons

1. The appeal property is an existing retail premises. The surrounding area is primarily light industrial and retail and there are a variety of signage types and styles in the vicinity of the property. The unit is located well back from the main road frontage and is therefore not in a prominent position.
2. The advertisements would be illuminated and sit neatly above the entrance, across the front elevation of the property. They would be recessed in from the sides of the property, and both the lettering and colouring complement the existing branding used on the host property and the main shopfront. For these reasons, I consider the proposal would be a discrete addition to the property. In terms of the illumination proposed, I consider this to be entirely in

accordance with the commercial setting of the building, and would complement existing signage within the vicinity of the appeal property.

3. In light of the above, I therefore conclude that the advertisement does not appear dominant or visually intrusive. The proposal is acceptable in terms of its effect on the character and appearance of the area and the street scene generally. The Council have drawn my attention to policy ENV29 of the East Hertfordshire Local Plan Second Review, 2007. This policy alone cannot be decisive, however I have taken it into account as a material consideration. I find that the proposal would accord with policy ENV29, in that it would be in keeping with the style, scale and character of the building.
4. For the reasons given above, I find that the proposal would not harm the character and appearance of the area. I therefore conclude the display of the advertisement is acceptable on amenity grounds.

*Christa Masters*

INSPECTOR