

REPORT

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ROSSITER HOUSE, THE HEADLANDS, DOWNTON

Report Summary:

To consider whether listed building enforcement action is appropriate in respect of the unauthorized repointing of the grade II Listed building at the above address.

Introduction:

The repointing of brickwork to the front of this listed building without listed building consent was first drawn to the Council's attention in January 2003 as the pointing carried out overdominated the front elevation of the building and was unsympathetic to its character.

It is understood that the front elevation of the building was repointed around October 2002 with a light coloured mortar incorporating a modest recess to the jointing.

The property owner's daughter subsequently explained that the works were undertaken to damage caused by an extensive creeper across the front elevation, which had resulted in little or no mortar joint, and consequently the house experienced damp problems. According to her, the mortar mix used was 1 part lime, 3 parts sand in water. The joint used was the most weather resistant, given the orientation of the property.

The owner's daughter also alleged that before the works were carried out, repointing of the building had been discussed verbally with a former Officer of the Council who had advised that, as a repair, listed building consent was not required. Also, it was alleged that an Enforcement Officer who subsequently visited the site made no comment in respect of the pointing.

The owner's daughter has not challenged the assertion put to her however that the original pointing was removed by cutting it out using an angle grinder.

Since initial contact was made with the owner's daughter in January 2003, protracted negotiations have continued with the owner to attempt to get them to "tone down" the pointing by applying a weathering/staining agent. Expert advice (including advice from English Heritage) has been sought by both the Council and the owner's daughter, concerning the most appropriate method of toning down the pointing. Various suggestions have been made to achieve this objective. The matter was also discussed at meetings of the Salisbury Conservation Area Advisory Panel.

Up to now it has been understood that the owner was in principle willing to apply a weathering agent to the front elevation of the building to tone down the pointing. However to date, little progress has been made in terms of applying a weathering agent.

Site and surroundings:

Rossiter House is a mid 19th century, 2 –storey semi detached dwelling constructed of brickwork laid in Flemish bond, with a symmetrical sash windowed front and a tiled roof. It is a prominent house, situated on the western side of the A338 opposite The Bull Public House, in a linear group of other properties of varying ages and styles but mainly of traditional appearance, and is also within the Downton Conservation Area.

The listing description indicates that Rossiter House was listed primarily for group value with the adjacent dwelling, Crossways, now known as Headlands House.

The listing description of the latter, the front elevation of which is covered with an extensive creeper, refers to a 2 storey building with Flemish bond brickwork under a slate roof with brick stacks, gables with wavy barge boards, moulded capping and decorated pots.

Planning history:

02/ 65	Two storey rear extension.	AC	11.02.02
02/66LB	Demolish attached outbuildings, rebuild stairwell and two storey rear extension to replace existing kitchen and bathroom	AC	11.02.22
02/526	Replace box sash windows with new ones, but small pane style	AC	23.04.02
02/645	Two storey extension of 1.2m more than previously granted. Variation to permission S/02/65.	AC	13.05.02
02/646LB	Variation to permission S/02/66 to increase the length of the approved rear extension by approx 1.2m.	AC	13.05.02
02/1260	Proposed dwelling with garage and parking adjacent to Rossiter House.	AC	05.02.03
02/1261	Proposed dwelling with garage adjacent to Rossiter House.	AC	03.10.02
03/0946	Detached garage	AC	20.06.03

Planning Policies:

2003 Replacement Salisbury District Local Plan –

Policy CN3 -Proposed works, including extensions or other alterations, which would in any manner affect the character or setting of a listed building will be granted listed building consent only if the following criteria are met:

- (i) new work respects the character of the existing building in terms of scale, design and materials;
- (ii) sympathetic natural materials, matching the original, are used in repair or replacement work;
- (iii) the historic form and structural integrity of the building is retained; and
- (iv) architectural or historic features, including internal features, are retained unaltered.

Detailed guidance on alterations to listed buildings is contained in Annex C to Planning Policy Guidance Note 15 "Planning and the Historic Environment". Paragraphs C10 and C11 concern pointing:

"The primary feature of a wall is the building material itself and the pointing should normally be visually subservient to it. There are occasions where decorative pointing is used, such as flint galleting, but in general pointing that speaks louder than the walling material is inappropriate. Repointing should normally be no more than a repair—a repeat of the existing mix and appearance—except where the mix is inappropriate or damaging. Any change in the character of the pointing can be visually and physically damaging and requires listed building consent."

"It is important to ensure that repointing does not extend beyond the area where it is necessary. Historic pointing may survive wholly or in part and this should be preserved. New work or repair work should integrate with the existing coursing. Tumbled brick or stone work in gables and patterned and polychrome brickwork are particularly important in this context. Cutting out old mortar with mechanical cutters should not be permitted because it makes the joints unacceptably wide, and may score the masonry above perpendicular joints."

Supplementary Planning Guidance – *the Downton Village Design Statement* was adopted as Supplementary Planning Guidance to the 1996 Salisbury District Local Plan. The Section on Buildings and Materials states that extensions and alterations to houses should use quality materials and components that match or blend with the existing construction and adjoining properties.

Considerations:

The need for listed building consent

Listed building consent is required by virtue of Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 in respect of works of alteration to a listed building which would affect its character as a building of special architectural or historic interest. PPG 15 at Section 3 indicates that whilst consent is not normally required for repairs, where repairs involve alterations which would affect the character of the listed building, then listed building consent is required.

Evidence of the appearance of the front elevation of the building before the repointing works were undertaken, appears to show that the pointing on the front elevation was generally subservient to the brickwork. This is similar to the adjacent and other buildings in the locality. It is not apparent from the photographs that the mortar was in a poor state of repair, although it is accepted that this is difficult to judge.

The repointing of this listed building has affected its character as the pointing is now a much more prominent feature in relation to the front elevation than was historically the case therefore, listed building consent would have been required for the works.

The owner's comments regarding site visits by Council Officers are noted. However, there is no record of the alleged comments made by an Officer regarding the lack of need for listed building consent in this case or on any information supplied on the proposed works (i.e. the method of removal of the old pointing material and details of the new pointing such as the pointing method and mortar mix) on which any opinion offered was based. Therefore, it is not possible to know the basis on which any advice was given.

Moreover, that another Officer may have made no comment about the pointing on a subsequent site visit cannot be reasonably taken to imply that listed building consent was not required.

Furthermore, it is now well established that local authorities are not prevented from acting in such situations, as the planning system regulates use and development of land in the public interest; public involvement in the planning process would be undermined if the Council were in effect bound in a private contract by its Officers' actions.

Effect of the works on the character of the listed building

As noted above, the listed building in question is a substantial, brick –built property of traditional character and appearance, adjacent to buildings of similar materials.

The owner's description of the mortar mix used and reasons for repointing in this fashion are noted. However, the end result is that the new pointing due to its bright, white colouring (contrasting excessively with the muted tones of the brickwork) and lack of adequate recessed jointing, overdominates the brickwork of the front elevation and has significantly altered the appearance of that elevation as a result.

The passage of time since the work was carried and natural weathering down out has not reduced the visual dominance of the pointing to any significant degree.

Moreover, the alleged removal of the old pointing with an angle grinder in this case, resulting in damage to the brickwork either side of the joints, is considered to be a harmful operation in relation to listed buildings in PPG 15 above.

As already noted above, it is considered that the above works would have required listed building consent and the works have therefore been undertaken in breach of listed building control. The works have changed the character of the building in a manner which is considered to seriously detract from the special architectural or historic importance of the listed building.

As already noted above, Rossiter House is listed for group value with Headlands House adjacent. Headlands House is a Mid-19th century Grade II listed building. It is a similar date to the adjacent Rossiter House, and the listing mentions that the buildings are listed primarily for their group value.

Both properties are constructed of red brick laid in Flemish Bond. Although much of Headlands House is covered with ivy, part of the gable is exposed, and it is possible to see an area of brickwork around the window. The joints between the bricks are narrow and the mortar is a greyish colour, which means that the mortar does not stand out. This is in sharp contrast with the pointing on Rossiter House which dominates the appearance of the brickwork.

Human Rights

Listed building enforcement action would only be considered lawful if the public interest outweighed that of the individual concerned and would be justified only if any interference in the Human Rights of the occupiers is considered proportionate to the breach.

Article 8 which seeks to safeguard an occupiers' rights to a home is not considered to be engaged in this case as enforcement action would not affect the occupier's right to live at the property.

Article 1, Protocol 1 which seeks to safeguard an owner's property rights, is however engaged. In this case, it is considered that any interference in the owner's First Protocol rights is considered justified, having regard to the seriousness of the harm to the listed building identified above which would occur if the works were allowed to remain as existing. Failure to take enforcement action would therefore not remedy the harm caused by the breach. The public interest expects that the nation's built heritage is protected and Development Plan policies seeking to protect such heritage are upheld. Furthermore it is considered that the enforcement action recommended is proportionate, as lesser steps would not remedy the harm caused by the breach.

Remedial steps

Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that a listed building enforcement notice can specify steps for restoring the building to its former state; or if it is considered that such restoration would not be reasonably practicable or would be undesirable, for executing such further

works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent.

Relevant case law has qualified the extent of works that can reasonably be specified by the remedial steps, in that, in the case of works to alleviate the effect of the unauthorised works, they should not require an improvement to the listed building over that compared with its state prior to the carrying out of the works.

Options for consideration

1. *Removal of the current pointing and repointing of the elevation.* The purpose of issuing a Notice to remove the current pointing and repoint the elevation would be to restore the building to its appearance prior to the unauthorised repointing works being carried out. A detailed specification could be attached to the Notice dealing with the precise mortar mix and method of jointing to be applied.

However, Officers are concerned that it is neither practicable nor desirable to require the building to be restored to its former state prior to the repointing works being undertaken. The removal of the current pointing could, having regard to the possible damage inflicted to the brickwork caused when the previous mortar was removed by angle grinders, do further damage to the fabric of the building. Furthermore, the materials and mix of the mortar present on the building prior to the works in question being undertaken is unknown, therefore repointing works specified in the Notice are at risk of being categorised as an 'improvement'.

Officers therefore consider that a Notice containing such steps therefore risks failing on appeal to the Planning Inspectorate.

2. *Applying a solution of a weathering/staining agent.* Such an agent could be applied to mimic the effects of weathering on the pointing and would assist in reducing the excessive contrast between the bright, white colour of the existing mortar and that of the brickwork, and thus mitigate the harm to the listed building. Following research it has been difficult to establish an historically accurate example of pointing in the vicinity against which the colour of the pointing of the building when treated with a weathering agent could be compared. However, on balance it is considered that if after the weathering agent were applied the pointing emulated in colour the pointing of the front gable of Headlands House immediately adjacent to the site a more unified appearance would be created to this group of buildings, such that the harmful effects of the new pointing would have been remedied sufficiently that no objections to its retention remained.

The steps in an Enforcement Notice are required to be complete and precise. The Council has no detailed specification of a suitable weathering agent which would achieve the above desired effect. Indeed, there may be several types of weathering agent which may be appropriate to apply to the pointing to alleviate the harm to the listed building. Any weathering agent would probably therefore have to be applied to the building on a 'trial and error' basis to ascertain its suitability. To avoid the possibility of the application of several different weathering treatments to the elevation before a good match is found, it would be desirable if the Council were able to view a sample panel of any weathering treatment prior to its application. However, in an Enforcement Notice, the Council cannot specify that a sample panel of the weathering agent should be agreed with the Council before being applied to all of the elevation as this would fail the tests of completeness and precision referred to above. This matter could be addressed if a side letter were issued with the Enforcement Notice, suggesting that a sample panel should be prepared and inspected and approved by Council Officers before any weathering treatment is applied to the whole elevation.

Officers consider that this latter option would be a clearer method of remedying the harm to the character of the listed building and also offers less risk in terms of being defended at appeal.

3. *Resolving to take enforcement action as per option 2 above, but giving a limited period of time (4 weeks) to allow submission of an application for retrospective application for listed building consent to retain the pointing.* Such an application could be accompanied by a detailed specification of a weathering agent to be applied, together with a completed Unilateral Undertaking under Section 106 of the Town and Country Planning Act. Such an Undertaking could be used to (a) give the Council the opportunity to inspect and approve/ refuse a sample panel of the weathering agent proposed; and (b) require the application of the approved weathering agent to the pointing within one month of listed building consent being granted.

It is considered that the above would give the owner a final opportunity to apply for listed building consent whilst demonstrating the Council's commitment to taking enforcement action if an adequate application were not received. Such an application accompanied by an Undertaking would also increase potential for certainty in the weathering works to be carried out as it would need to be accompanied by a full specification of the works. It would also allow greater scope for dialogue between Officers and the owner in terms of the exact detail of the works to be carried out than could be required by the steps in an Enforcement Notice. Such an approach may also speed up compliance, as unlike an Enforcement Notice an Undertaking cannot be appealed. Additionally, breach of any Undertaking could be enforced more quickly and effectively than breach of an Enforcement Notice by instigating court proceedings.

For the above reasons, option 2 as modified by option 3 above is that most favoured by Officers in the circumstances of this case.

4. *Taking no enforcement action and inviting a retrospective application for listed building consent to retain the pointing.* If Members were minded to invite such an application, conditions could then be applied to any consent given to require the prior approval and application of a weathering agent. However, if conditions were not complied with or an application not received, the Council would still then be faced with the prospect of taking enforcement action through issuing a Listed Building Enforcement Notice to remedy the breach. Unlike planning permissions there are no equivalent powers to enforce conditions under the Planning (Listed Buildings and Conservation Areas) Act 1990.

For this reason, option 4 is not favoured.

The remedial steps recommended below therefore seek to alleviate the adverse effects of the breach on the character of the listed building, in accordance with options 2 and 3 above.

Conclusions:

The repointing of this listed building seriously harms its character as a building of special architectural or historic importance. Protracted negotiations with the owner's daughter have failed to resolve the breach to date nor has any remedial action been undertaken voluntarily. The passage of time and weathering of the pointing has not diminished its impact.

The enforcement action proposed is considered both justified and proportionate, in Human Rights terms.

It is therefore considered that the issue of a listed building enforcement notice to remedy the breach of listed building control identified above, is both necessary and expedient in this case. The remedial works recommended would not undo the works undertaken without listed building consent, but will mitigate the harm caused by the works.

However, it is also felt appropriate to allow a short period for the owner to make a retrospective application for listed building consent to retain the pointing accompanied by a detailed specification of the weathering agent to be applied to it, and a completed Unilateral Undertaking giving the timetable for carrying out the work not to exceed one month from the date of any listed building consent granted. It should also be made clear that the issuing of an Enforcement Notice would not be delayed by the submission of an inadequate

listed building application, i.e. an application not accompanied by the specification of the weathering agent to be applied and a completed Unilateral Undertaking.

Recommendation:

A: That the owner is informed that they should, within four weeks of the date of the meeting, submit an application for retrospective listed building consent to retain the pointing accompanied by a detailed specification of the weathering agent to be applied to it and a completed Unilateral Undertaking giving the timetable for carrying out the application of the weathering agent not to exceed one month from the date of any listed building consent granted.

B: If, after the four week period in A above has expired, a retrospective application for listed building consent as specified in A above, which is accompanied by a detailed specification of the weathering agent to be applied to it and a completed Unilateral Undertaking giving the timetable for carrying out the application of the weathering agent not to exceed one month from the date of any listed building consent granted has NOT been received by the Council, the Head of Legal and Property Services be authorised to issue a Listed Building Enforcement Notice under the Town and Country Planning Act 1990 (as amended) and serve it on the appropriate Person(s)

Alleging the following breach of listed building control:

Without listed building consent, the carrying out of works of alteration consisting of the repointing of the brickwork on the front elevation of the Grade II listed building, which affects its character as a building of Special Architectural or Historic Importance.

Requiring the following steps to be taken:

- (1) To apply a weathering agent to the pointing to the brickwork on the front elevation of this listed building, which has the effect that once applied, the said pointing exactly matches in colour the area of pointing to the brickwork on the front gable of Headlands House (immediately adjacent to the site) above first floor window level.

Reasons for serving the Notice:

The carrying out of works of alteration to this Grade II listed building consisting of the repointing of its front elevation in a manner and utilising materials without regard to the character of the existing building, has adversely affected its character as a building of Special Architectural or Historic Importance. This is contrary to policy HE7 of the Wiltshire Structure Plan 2011, policy CN3 (i) & (ii) of the adopted 2003 Replacement Salisbury District Local Plan and is contrary to the guidance on alterations to listed buildings contained in Annex C to Planning Policy Guidance Note 15 "Planning and the Historic Environment" at paragraphs C10 and C11.

Time Period For Compliance:

1. Within one month following the date of the Notice taking effect.

Implications:

- Financial: None at this time.
- Legal: Contained in the above report.
- Human Rights: Contained in the above report.
- Environmental implications: The proposed enforcement action would alleviate the harm to the character of this Grade II listed building.
- Council's Core Values: Protecting the environment; fairness and equality.
- Wards Affected: Downton Parish.