

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

**PLANNING (LISTED BUILDING AND CONSERVATION AREAS) ACT 1990,
SECTION 38**

LISTED BUILDING ENFORCEMENT NOTICE

ISSUED BY: The Council of the City of Newcastle upon Tyne ("the Council")

1. The Council is the local planning authority for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Act") for the area containing the following building: 44 Dean Street, Newcastle upon Tyne, NE1 1PG ("the Building") shown edged with a red line on the attached plan.
2. This Building is included within a list of buildings of special architectural or historic interests compiled or approved by the Secretary of State under section 1 of the Act.
3. This Notice is issued by the Council because it appears to them that there has been a breach of listed building consent at the Building under section 38 of the Act. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

4. BREACH OF THE LISTED BUILDING ACT

Without listed building consent, the installation of a black metal back lit fascia box above the restaurant frontage windows with three-dimensional gold lettering on top of this advertising Topolino, the installation of an illuminated projecting sign to the left of the fascia and the installation of gold window vinyls. ("the Works")

It appears to the Council that the Works have been executed to the Building and are such as to constitute a contravention of section 9(1) of the Act.

5. REASONS FOR ISSUING THIS NOTICE

Both the fascia and signage relating to 'Topolino' affixed to the ground floor restaurant front by reason of design, positioning and overall appearance are considered to have a detrimental impact upon the visual amenity of the Grade II Listed Building and character and appearance of the Central Conservation Area contrary to saved Policies EN1.1 and C2 of the Unitary Development Plan, the Newcastle City Council Grainger Town Shop Front Design Guide, Policies CS15, UC12 and UC14 of Planning for the Future: Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne, and the National Planning Policy Framework.

The Council considers that it is expedient to issue this notice having regard to the effect of the Works on the character of the Building as one of special architectural and historic interest.

6. WHAT YOU ARE REQUIRED TO DO

- I. Remove the three-dimensional gold 'Topolino' lettering that is attached to the black metal back lit fascia box.
- II. Remove the black metal back lit fascia box attached directly to the building and all associated wiring and lighting fixtures that sit behind this.
- III. Remove the illuminated projecting sign that is attached to restaurant frontage and all associated wiring and lighting fixtures.
- IV. Repair any underlying damage to the timber work beneath the black metal back lit fascia box and the illuminated projecting sign.
- V. On completion of the above steps, repaint the fascia so that it matches the rest of the restaurant front window and door frames.

7. TIME FOR COMPLIANCE

FOUR MONTHS after this notice takes effect.

8. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 15 November 2019 unless an appeal is made against it beforehand.

Dated: 11 OCTOBER 2019

[Date of issue]



Signed:.....

[Council's authorised officer]

J R Softly
Assistant Director, Legal Services
On behalf of the Council of the City of Newcastle upon Tyne

ANNEX

EXPLANATORY NOTE

YOUR RIGHT OF APPEAL

You can appeal against this Notice, but you must ensure that any appeal is sent in time to be delivered by post/electronic transmission to the Secretary of State (at the Planning Inspectorate) **before** the date specified in paragraph 8 of the Notice. An information sheet from the Planning Inspectorate is enclosed which also contains important information about appealing against this Notice and how appeal forms can be obtained and submitted.

Under section 39(1) of the Act, you may appeal on one or more of the following grounds:-

- (a) for a listed building – that the building is not of special or architectural or historic interest;

for a building within a conservation area – that retention of the building is not necessary in the interests of preserving or enhancing the character or appearance of the conservation area in which it is situated;
- (b) that the matters alleged to constitute a contravention of section 9(1) or (2) of the Act have not occurred;
- (c) that those matters (if they occurred) do not constitute such a contravention;
- (d) that the works to the building were urgently necessary in the interest of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;
- (e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
- (f) that copies of the notice were not served as required by section 38(4) of the Act;
- (g) except in relation to such a requirement as is mentioned in section 38(2)(b) or (c) of the Act, that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out; (Note: It should be noted that its condition before the works were carried out refers to its former authorised condition, which is its condition when listed, subject to any listed building consents subsequently granted. It does not refer to its physical condition, for example in terms of repair);
- (h) that the period specified in the notice as the period within which any steps required by the notice to be taken falls short of what should reasonably be allowed;

- (i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve the purpose. (Note: this ground cannot be pleaded at the same times as grounds (j) and/or (k) – see note below);
- (j) that the steps required to be taken by virtue of section 38(2)(b) of the Act exceed what is necessary to alleviate the effect of the works executed to the building. (Note: this ground is concerned with alleviation, not with restoration and cannot be pleaded at the same time as grounds (i) and/or (k) - see note below); and
- (k) that steps required to be taken by virtue of section 38(2)(c) of the Act exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with (Note: this ground cannot be pleaded at the same time as grounds (i) and/or (j) – see note below).

Note: Not all of these grounds may be relevant to you.

Please also note that grounds (i), (j) and (k) are mutually exclusive and cannot be pleaded simultaneously although any one of them can be pleaded at the same time as ground (g).

Ground (i) should be pleaded if the notice has been served under section 38(2)(a) of the Act and relates only to restoration.

Ground (j) should be pleaded if the notice requires alleviation of the works and it has been issued under section 38(2)(b) of the Act.

Ground (k) should be pleaded if the notice has been issued under section 38(2)(c) of the Act and requires bringing the building to the state it would have been if the terms and conditions of any Listed Building Consent had been complied with.

If you decide to appeal, when you submit it, you should state in writing the ground(s) on which you are appealing against the enforcement notice and you should state briefly the facts on which you intend to rely in support of those grounds. If you do not do this when you make your appeal the Secretary of State will send you a notice requiring you to do so within 14 days.

PARTIES SERVED WITH THE ENFORCEMENT NOTICE

The parties served with a copy of the Notice are as follows:

The Occupier, 44 Dean Street, Newcastle upon Tyne NE1 1PG

Ritvan Memenika, 44 Dean Street, Newcastle upon Tyne, NE1 1PG.

Ritvan Memenika, 74 Whitfield Grove, Benton, Newcastle upon Tyne, NE12 8DP.

Mrs. S R Chawla, 24 Woolsington Park South, Woolsington, Newcastle upon Tyne, NE13 8BJ.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this Notice, it will take effect on the date specified in paragraph 8 of the Notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period[s] specified in paragraph 7 of the Notice. Failure to comply with a Notice which has taken effect can result in prosecution and/or remedial action by the Council.



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Topolino, 44 Dean Street, Newcastle upon Tyne, NE1 1PG.

Newcastle
 City Council

