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**LISTED BUILDING ENFORCEMENT NOTICE APPEAL DECISION WITH REGARD THE INSTALLATION OF SIGNAGE, VINYL GRAPHICS AND CHANGE OF COLOUR OF SHOP FRONTAGE AT 118 HIGH STREET, DALKEITH.**

Report by Chief Officer Place

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**1 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to advise the Committee of a listed building enforcement notice appeal decision with regard the installation of signage, vinyl graphics and change of colour of shop frontage at 118 High Street, Dalkeith (USA Nails).

**2 BACKGROUND**

- 2.1 118 High Street, Dalkeith is a Category C listed building. It is part of a C Group of listed buildings with Nos 116 and 118a High Street. It is also within the Dalkeith House and Park Conservation Area.
- 2.2 A listed building enforcement notice was issued on the occupiers and owner of the property on 16 August 2023, with a take effect date of 16 September 2023 and a compliance date of 16 December 2023. A copy of the enforcement notice is attached to this report as Appendix B. The enforcement notice required the owner and occupier of the property to:
- 1) Remove the fascia signage panel from the shopfront and make good any holes created for fixings.
  - 2) Repaint the shopfront in any of the following colours
    - RAL1014 or
    - RAL7000-7006 or
    - RAL7009-7012 or
    - RAL5008
  - 3) Removal of vinyl graphics from the shop windows.
- 2.3 The occupier appealed the listed building enforcement notice - a Scottish Government Reporter appointed to determine the appeal dismissed it and upheld the listed building enforcement notice. A copy of the appeal decision is attached to this report as Appendix A. As a

consequence of the appeal the compliance period is extended to 10 February 2024.

### **3 THE DECISION**

3.1 In considering the appeal the Reporter concluded:

“... I consider that neither the fascia signage nor the vinyl graphic signage are in keeping with the character of the listed building or the conservation area. The proposed fascia signage also extends slightly below the original window opening, cutting across the window detailing. I find that the signage (fascia and vinyl graphics) does not preserve the listed building, nor does it preserve or enhance the character or appearance of the conservation area, contrary to the HES guidance and LDP policy ENV 22. While I acknowledge the financial implications for the appellant, I am not convinced that the cost of and time involved in removing or replacing the signage is reasonable grounds to allow inappropriate signage in this sensitive and prominent location.”

3.2 The Reporter therefore dismissed the appeal, refusing to grant listed building consent for the matters covered in the listed building enforcement notice, and directed the notice be upheld subject to variation of the compliance period.

### **4 RECOMMENDATION**

4.1 It is recommended that the Committee notes the enforcement notice appeal decision with regard the installation of signage, vinyl graphics and change of colour of shop frontage at 118 High Street, Dalkeith (USA Nails).

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 17 November 2023  
**Contact Person:** Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager  
peter.arnsdorf@midlothian.gov.uk



## Appeal Decision Notice

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Decision by Rosie Leven, a Reporter appointed by the Scottish Ministers

- Listed building enforcement appeal reference: LBE-290-2001
- Site address: 118 High Street, Dalkeith, EH22 1HZ
- Appeal by USA Nails Dalkeith against the listed building enforcement notice dated 16 August 2023 served by Midlothian Council
- Alleged breach of listed building control: installation of signage, vinyl graphics and change of colour
- Ground(s) of appeal under s.35(1) of the Act: (e)
- Date of site visit by Reporter: 2 November 2023

Date of appeal decision: 10 November 2023

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### Decision

I dismiss the appeal and refuse to grant listed building consent for the matters covered in the listed building enforcement notice. I direct that the notice be upheld, subject to an amendment to section 6 of the notice, to delete 'by 16 December 2023' and replace with 'within three months of this notice taking effect'. Subject to any application to the Court of Session, this notice takes effect on the date of the decision, which constitutes the determination of the appeal for the purpose of Section 35(3) of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 (the Listed Buildings Act).

### Reasoning

1. The appeal was made on the following grounds as provided for by section 35(1) of the Listed Buildings Act:

(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.

2. I am required by Section 14(2) of the Listed Buildings Act to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Under section 64(1) of the Listed Buildings Act, I must also pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

3. The building is category C listed, in a group with 116 and 118a High Street. It lies within the Dalkeith House and Park Conservation Area. The site is one of a number of retail and commercial uses along both sides of the High Street. The appeal site is a prominent location, clearly visible on the main approach into the town centre from the north.

4. Section 5 of the enforcement notice requires three steps: remove the fascia signage panel from the shopfront and make good any holes created for fixings; repaint the shopfront (in one of a range of specified colours); and remove vinyl graphics from the shop windows.

5. Historic Environment Scotland's advice on shopfronts and signs (the HES guidance) highlights the contribution that historic shopfronts can make to the character of a place. It notes that alterations including signage can affect a building's visual amenity and character. New lettering must be carefully designed to respect the character of a building and be located appropriately. Fixings that cut across architectural detail should be avoided.

6. The council points me to policy ENV22 of the Midlothian Local Development Plan (LDP) which seeks to protect the character and appearance of the listed building and I have had regard to this in my assessment.

7. The council highlights that a previous successful townscape heritage scheme has resulted in a number of updated shopfronts in the town centre. This was evident from my site visit, with a number of well designed, attractive shopfronts and signs. The council considers that the signage installed (fascia and vinyl graphics) does not respect the historic character and appearance of the shopfront and detracts from the character, appearance and historic interest of the property. In relation to this part of the conservation area, the council's Conservation Area Character Appraisal highlights opportunities for much better design of shop fronts which frequently detract from the better facades above.

8. At the time of lodging the appeal the appellant indicated that the vinyl graphic signage had been removed and the shopfront repainted. On the date of my site visit, the vinyl signage had not been removed and was apparent on both windows. On my site visit I was also able to confirm that the shopfront has been repainted from pink to grey, as shown on the appellant's photographs. The appellant has confirmed that the paint used is one of the colours specified by the council. While I note that the majority of the shopfront has been repainted, the new paint appears to stop near to the edge of the fascia signage and I assume that it does not continue behind the fascia panel.

9. The appellant wishes to retain the fascia signage, suggesting that it is expensive and time-consuming to change. The fascia signage is modern in terms of style and material, with the lettering in a modern font, in bright, primary colours. I consider that this style and colour contrasts negatively with the traditionally designed shopfront, now in a muted colour.

10. Along the High Street, there are a range of different styles of shopfront and signage, using different colours and fonts. While the property immediately to the south west has fairly modern signage, it does use muted colours and no evidence is submitted on whether that signage required, or has received, listed building consent. Many of the other shopfronts along the High Street use traditional signage, fonts and muted colours. It is evident to me that attempts are being made to improve signage and shopfront design in this part of the town centre.

11. As a result, I consider that neither the fascia signage nor the vinyl graphic signage are in keeping with the character of the listed building or the conservation area. The proposed fascia signage also extends slightly below the original window opening, cutting across the window detailing. I find that the signage (fascia and vinyl graphics) does not preserve the listed building, nor does it preserve or enhance the character or appearance of the conservation area, contrary to the HES guidance and LDP policy ENV 22. While I acknowledge the financial implications for the appellant, I am not convinced that the cost

of and time involved in removing or replacing the signage is reasonable grounds to allow inappropriate signage in this sensitive and prominent location.

12. Taking all of the above into account, I dismiss the appeal in relation to the removal of the fascia signage and vinyl graphics. I recognise that the shopfront has been partially repainted. However, in the absence of any approved signage, the requirement to repaint the shopfront is retained to ensure that the terms of the enforcement notice are fully met following removal of the fascia signage, to preserve the character of the listed building and the conservation area.

13. I note that the time period for compliance in the council's enforcement notice is stated as 16 December 2023. As this would have provided three months for compliance from the date the notice came into effect, I amend the notice to provide similar provision. Accordingly, the appeal is dismissed in its entirety, subject to an amendment on the time period for compliance.

*Rosie Leven*

Reporter

**IMPORTANT – THIS COMMUNICATION AFFECTS YOUR LAND OR  
PROPERTY**

***Planning (Listed Buildings and Conservation Areas) (Scotland) Act  
1997, as amended (“the Act”)***

## **LISTED BUILDING ENFORCEMENT NOTICE**

**Issued by Midlothian Council**

**16 August 2023**

*This Notice is served on:*

USA Nail and Spa

118 High Street

Dalkeith

EH22 1HZ

The Property Owner

118 High Street

Dalkeith

EH22 1HZ

The Occupier

118 High Street

Dalkeith

EH22 1HZ

Ashiq Commercial Properties Limited

32 Redburn Road

Prestonpans

EH32 9NG

**IMPORTANT – CONTINUES ON NEXT PAGE**

Hestiview Limited  
One Chamberlain Square Cs  
Birmingham  
B3 3AX

**1. THIS IS A FORMAL NOTICE** which is issued by Midlothian Council under Section 34 of the Act because the Council considers that there has been a breach of planning control within Sections 6 and 8(1) of the Act at the listed building described below. The Council considers that it is expedient to issue this notice, having regard to the effect of the character of the building as one of special architectural or historic interest and provisions of the development plan.

**2. THE LISTED BUILDING AFFECTED**

118 High Street, Dalkeith, EH22 1HZ

It forms part of a Category C Listed Building (Listed Building Reference 24412, date of listing 30 June 1983).

It is located within the Dalkeith House and Park Conservation Area.

**3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without listed building consent:

- Repainting of the shopfront
- Installation of fascia signage
- Installation of vinyl graphic signage

**4. REASONS FOR ISSUING THIS NOTICE**

Section 6 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states “no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised. The test for whether Listed Building Consent is required is whether the works “would affect its character as a building of special architectural or historic interest”.

**IMPORTANT – CONTINUES ON NEXT PAGE**

118 High Street is a Category C listed building.

The signage that has been installed without consent does not reflect the traditional features of a modern shop frontage. The use of traditional materials, colours and designs for the shopfront and signage are encouraged to preserve the historic interest of the listed building and prevent detrimental impact to the character and appearance of the conservation area. The signage installed (fascia and vinyl graphics) does not respect the historic character and appearance of the shopfront and detract from the character, appearance and historic interest of the property.

The building has also been repainted. The bright pink colour does not reflect the traditional characters of the conservation area and has a significant adverse impact on the character, appearance, setting and historic context of this C listed building.

In view of the harmful impact of the alterations, enforcement action is required.

## **5. WHAT YOU ARE REQUIRED TO DO**

- 1) Remove the fascia signage panel from the shopfront and make good any holes created for fixings.
- 2) Repaint the shopfront in any of the following colours
  - RAL1014 or
  - RAL7000-7006 or
  - RAL7009-7012 or
  - RAL5008
- 3) Removal of vinyl graphics from the shop windows.

## **6. TIME FOR COMPLIANCE**

Requirement 5(1), 5(2) and 5(3) to be complied with by 16 December 2023.

## **7. WHEN THIS NOTICE TAKES EFFECT**

This Notice takes effect on 16 September 2023 unless an appeal is made against it beforehand.

**IMPORTANT – CONTINUES ON NEXT PAGE**

Signed:

A handwritten signature in black ink, appearing to read 'M.A.', is positioned below the 'Signed:' label.

Matthew Atkins  
Lead Officer – Planning Obligations  
Planning, Sustainable Growth and Investment Service  
Place Directorate  
Midlothian Council

Date: 16 August 2023

## **8. YOUR RIGHT OF APPEAL**

You can appeal against this notice, but any appeal must be received, or posted in time to be received by the Scottish Ministers before 16<sup>th</sup> September 2023. Any other person who has an interest in the land to which this notice relates may also appeal to the Scottish Ministers by the same date.

**Schedule 1 of this notice gives information on your Right of Appeal**

## **9. WHAT HAPPENS IF YOU DO NO APPEAL**

If you do not appeal against this enforcement notice, it will take effect on 16<sup>th</sup> September 2023 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 specified in the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution or the service of a Fixed Penalty Notice on the relevant person(s) who have not complied with its requirements. Failure to comply with an enforcement notice which has taken effect may also result in the Council taking direct action to correct the breach.

## **SCHEDULE 1**

### **EXPLANATORY NOTE FOR THOSE IN RECEIPT OF AN ENFORCEMENT NOTICE**

#### **RELEVANT LEGISLATION**

Sections 6, 8 and 34-39 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997, as amended.

You may wish to note in particular the points referred to below

#### **RIGHT OF APPEAL**

If you wish to appeal against this notice, you should write to The Directorate for Planning and Environmental Appeals, Ground Floor, Hadrian House, Callendar Road, Falkirk, FK1 1XR or contact the DPEA via their website <https://www.dpea.scotland.gov.uk/>. The appeal must be received, or posted in time to be received by the Scottish Ministers before the date on which this notice takes effect. The Scottish Ministers have no power to consider an appeal lodged out of time.

The appeal, which must be made in writing, must be based on one or more of the grounds set out in section 35 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997, as amended. If you decide to appeal you should state the facts on which you propose to rely in support of each of the grounds of appeal. The grounds of appeal and the statement of facts must be submitted with your appeal or within fourteen days of your being required to do so by the Scottish Ministers.

If you lodge an appeal, the enforcement notice is suspended and will not take effect unless the appeal is withdrawn or dismissed.

#### **PENALTIES FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE**

Where, after the end of the period for compliance with this notice, any steps required to be taken have not been complied with, unless a valid appeal has been made to the directorate, the person who is, for the time being the owner of the building shall be in breach of this notice and guilty of an offence. Any person guilty of such an offence shall be liable on summary conviction to a fine of £50,000 or on conviction on indictment to an unlimited fine.

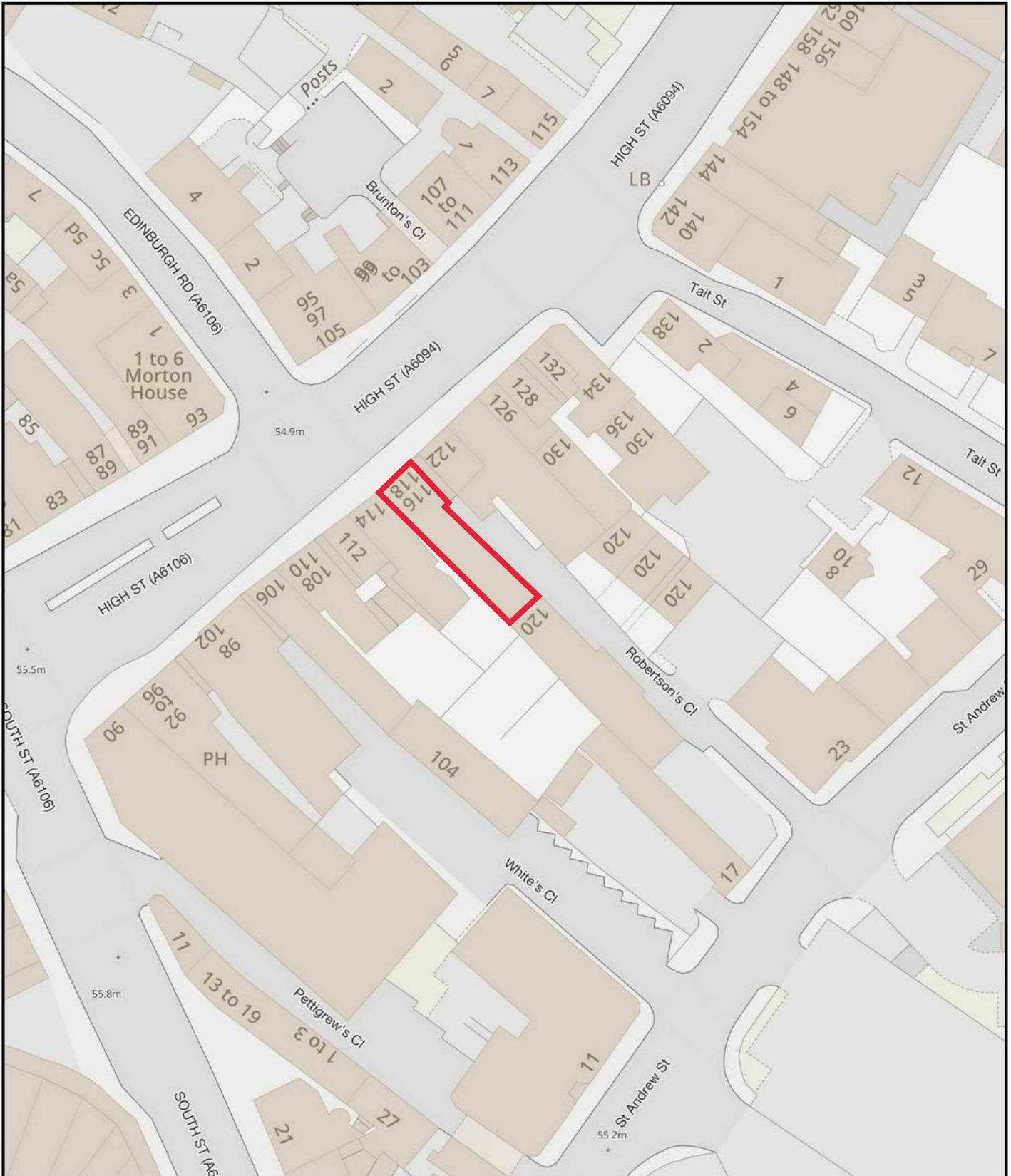
**IMPORTANT – CONTINUES ON NEXT PAGE**

## **DIRECT ACTION FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE**

If the steps required by a Listed Building Enforcement Notice are not taken within the specified period(s) the Council may enter on the land, take those steps and recover as a civil debt from the person who is then the owner, or the lessee of the land, any expenses reasonably incurred.

## **FURTHER OFFENCES**

Compliance with the terms of a listed building enforcement notice does not discharge that notice. It will continue in effect and any repetition of the breach of control may incur further penalties or may result in direct action by the Council.




**Education, Economy & Communities**  
 Midlothian Council  
 Fairfield House  
 8 Lothian Road  
 Dalkeith  
 EH22 3AA

**Listed Building Enforcement Notice**  
  
 118 High Street  
 Dalkeith  
 EH22 1HZ

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**File No. E/23/34**

**Scale: 1:750**

