



Appeal Decision

Site visit made on 18 June 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Appeal Ref: APP/C2741/C/19/3220808

Land known as The Three Little Birds, 8 The Crescent, York

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Alice Morwood-Leyland against an enforcement notice issued by City of York Council.
- The enforcement notice was issued on 11 December 2018.
- The breach of planning control as alleged in the notice is Without planning permission, the unauthorised removal of the gable chimney stack.
- The requirements of the notice are Reinstate the chimney stack to the gable of 8 The Crescent to match its former state using the original bricks removed as part of the unauthorised works or if they are no longer available bricks of matching size, colour and appearance to the former bricks.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the ground set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Preliminary Matter

1. I have not been provided with evidence of the appearance of the gable chimney stack that was removed. The parties appear to disagree over whether the removed chimney was part of the original construction of this feature. However, it is undisputed that, despite what was in place at No 8 being in a reduced form, due to the absence of pots and a number of brick courses, a shorter stack, at least approximating to the same shape as the original chimney breast, was nevertheless present. I have therefore approached the development on this basis.

Main Issue

2. The appeal on ground (a) is that planning permission should be granted. The main issue is the effect of the development on the character and appearance of the York Central Historic Core Conservation Area (CA) and the setting of listed buildings in the immediate vicinity.

Reasons

3. The CA is characterised by buildings of varying age, design and historic and architectural significance. The Crescent, adjoins Blossom Street, a vibrant and heavily trafficked thoroughfare, relatively close to Micklegate Bar, recognised as a key landmark feature on the City Wall.

4. The appeal site comprises the northern end property in a tall curved Victorian terraced building. Despite the presence of some small dormer windows in the roof at one end of the terrace, the similarity in window design and proportions on the frontage, and the uniform height of the roof ridge, gives the terrace a sense of visual rhythm and cohesion. This, together with its curved alignment and prominent position, in relation to Blossom Street, serves to draw the eye towards the terrace as an attractive building. Indeed it is formally recognised by the Council as a Building of Merit in its Blossom Street and Nunnery Lane Character Area publication.
5. Whilst varying in scale and position, chimney stacks are well represented along the terraced building, as they are on older properties in the wider area, including residential terraces. Some of the stacks on The Crescent terrace are particularly large and incorporate square pots. The property at the opposite end of the building, No 1, incorporates a chimney, albeit of narrower design than elsewhere on the terrace. Notwithstanding this, I concur with the view that the prominence and verticality of the feature helps to express the beginning and end of the terrace, in architectural terms, and as such is a key characteristic of the building and the wider CA. There is no evidence provided to persuade me that the chimney at No 8, even despite its reduced form, would not likewise have added to that character for the same reason.
6. Although the appellant claims that the demolished stack was not original; was structurally weak and therefore in danger of collapse and was compromising the internal weatherproofing of the building, no evidence has been provided that the feature could not have been repaired.
7. In accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 I have a statutory duty under Section 72(1) to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. For the reasons set out above, I conclude that the removal of the gable chimney stack has resulted in less than substantial harm to the character and appearance of the building and wider CA. However in terms of the guidance in the National Planning Policy Framework (the Framework), there would still be real and serious harm which is a consideration of significant weight.
8. In such circumstances, where harm is identified to the significance of a designated heritage asset, in this case the CA, the Framework requires that this harm is weighed against the public benefits of the proposal. A convincing case has not been made that there would be public benefits resulting from the development, sufficient to outweigh the harm I have identified.
9. I have a further statutory duty under Section 66(1) of the same Act to consider the effect of the proposal on the setting of the nearby listed buildings. These have been identified by the Council as 54 - 58 The Mount (Grade II) and the Odeon Cinema on Blossom Street (Grade II). It seems to me that the special interest of both buildings derives from their form and appearance, and prominent position in relation to the highway. However because of the limited size of the development in this case and, despite some intervisibility, the degree of separation between the sites, I consider there would be no harm caused to the heritage significance of the listed buildings.
10. However for the above reasons I conclude that the development is in conflict with the Framework and also with Policies D1, D4 and D11 of the City of York

Draft Local Plan 2018 insofar as they seek to promote high quality design and conserve or enhance the appearance, character and setting of heritage assets.

Other Matter

11. The appellant has expressed concern regarding potential plans to re-develop No 9 The Crescent, calling for consistency in the application of planning rules. If a re-development scheme is proposed at some point in the future in relation to that site, this would be a matter for the Council to consider on its merits and is not for my deliberations in this case.

Conclusion

12. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

13. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Merrett

INSPECTOR