



Appeal Decision

Site visit made on 8 January 2020

by M Seaton DipTP MRTPI

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

Decision date: 04 February 2020

Appeal Ref: APP/C2741/W/19/3239385

O C H Ltd, 27 The Village, Haxby, York, YO32 3HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Alexander Murray (on behalf of O C H (Haxby) Limited) against the decision of City of York Council.
 - The application Ref 18/02826/FUL, dated 9 December 2018, was refused by notice dated 10 May 2019.
 - The development is the modification of kitchen ventilation system with external ducting and replacement cowl.
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Procedural Matters

1. There is a certain degree of discrepancy between the description of development as proposed by the appellant and that set out by the Council on the Notice of Decision. Whilst I am satisfied that both are referring to the same extent of development, I have adopted the Council's version as being more concise.
2. On the basis of my observations on the site visit, the works to the ventilation system including the jet cowl had already been undertaken. However, it is evident that the overall height of the flue and jet cowl as implemented had been reduced from that which was submitted for determination under the auspices of the planning application. In order to address this discrepancy, the appellant has subsequently submitted an additional plan to reflect the works which had been undertaken.
3. I have considered the implications of accepting these plans in the light of the principles of the '*Wheatcroft*' judgement, which essentially requires that any amendments to proposals do not materially alter the nature of the application, and that no one who would normally have been consulted would be prejudiced by the lack of opportunity to comment on the revised plans.
4. I am satisfied that whilst the amendment is a clear revision to the scheme which would have been assessed by the Council and commented on by interested parties during the planning application, the effect of the reduction in the height of the flue and jet cowl would not disadvantage any parties. I am also mindful that the opportunity to comment on the amendment to the scheme would have been available to both the Council and interested parties during the course of the appeal, and I note that the Council has directly commented on the revisions within the Grounds of Appeal. In this instance, I am satisfied that to accept the revised plans would not sit contrary to the

principles of the judgement. My decision-making has therefore been based on the revised plan.

Decision

5. The appeal is allowed and planning permission is granted for the modification of kitchen ventilation system with external ducting and replacement cowl at O C H Ltd, 27 The Village, Haxby, York, YO32 3HS, in accordance with the terms of application Ref 18/02826/FUL, dated 9 December 2018, and subject to accordance with Drawing Nos. AL(0)203 Revision A, Proposed Elevations, and AL(0)202 Proposed Roof Plans, dated Dec 2018.

Main Issue

6. The main issue is whether the development preserves or enhances the character or appearance of the Haxby Conservation Area.

Reasons

7. The appeal site is within the centre of Haxby and on the south side of The Village, the main thoroughfare through Haxby. The site is currently occupied by a two-storey building which accommodates a restaurant. At the time of my site visit the works the subject of this appeal had already been completed.
8. The appeal site lies within the Haxby Conservation Area. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) places a duty upon the decision-maker, in the exercise of planning functions, to have special regard to the desirability of preserving or enhancing the character or appearance of conservation areas. This is also reflected in the approach set out within the National Planning Policy Framework (the Framework), which advises 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.
9. The Haxby Conservation Area Statement highlights that, whilst referred to as a village, the main street today has more of a market town atmosphere and character, being a thriving shopping centre for the population in the surrounding hinterland. Buildings are of varied character with some dating back to mid-18th Century, interspersed with more imposing houses and short Victorian terraces with a shared sense of scale. The interplay of the varied building frontages is identified as providing much of the visual appeal of the village, along with unifying elements of the street scene, such as the use of traditional materials, building forms, roofscape and traditional detailing.
10. The Council accepts that there is a requirement for the provision of extraction and ventilation equipment for the restaurant. The development largely involves the replacement and modification of much of the existing extraction equipment on a like-for-like basis towards the eastern end of the rear elevation of the appeal property. However, the visual appearance of the jet cowl in contrast with the previous equipment, whilst retaining a more commercial/industrial character, would differ.
11. The Council indicates that it made several requests to amend the scheme during the planning application. In respect of the movement of the flue and equipment further to the west along the rear elevation, I acknowledge and accept the appellant's reasoning regarding the adverse impact and

complications that would be caused in respect of considering a revised location for the flue and the impact on occupiers of the existing property.

12. In addressing the Council's further request to reduce the height of the flue and colour finish the flue and jet cowl, whilst the appellant has reduced the height as already discussed, in the absence of an agreement on the colour finishing of the equipment, the Council concluded that the reduction in height on its own would be insufficient to mitigate the visual impact.
13. In this regard, the height and girth of the amended equipment in this location would seem to have been limited to the minimum possible in order to provide a more efficient and environmentally compliant form of extraction equipment for the unit. Being mindful of the appearance of the previous equipment, I am satisfied that the extent of the changes and the continued position on the rear of the building would not in practice result in any greater impact on the significance of the Conservation Area than the previous arrangement. Based on my observations of the equipment, I am also not persuaded that there is a necessity to add a colour finish or that such an action would have any discernible visual benefit in the context of its position and visual impact on the building. I have therefore omitted the suggested condition.
14. I have had regard to the appellant's reference to other developments within the village through submitted photographic records, and in particular a similar installation of extraction equipment at the premises of Millers, at 56 The Village. However, I have not been provided with any details of the circumstances within which these developments have come into being. In any event, I have determined the appeal on its own merits and these submissions have not had any bearing on my decision-making.
15. The appellant also makes the point that the jet cowl operates far more effectively than the previous extraction equipment, and in the absence of any comparative technical information or data on this point, I have no reason to disagree with this conclusion. Whilst there is no evidence that the operation of the previous equipment in the same location had led to problems regarding odours, an improved technical solution to addressing odours and emissions from the restaurant must attract some limited weight in support of the development.
16. In determining the planning application, the Council has referred to Policies HE2 and HE3 of The City of York Draft Local Plan – incorporating the 4th set of changes Approved April 2005 (the Draft Local Plan) and Policy D4 of the Consultation Draft Local Plan (2018). However, in advance of the examination and adoption of the emerging Local Plan, I am satisfied that it must carry only very limited weight at this stage. As a consequence the Council continues to rely upon the Framework and the Draft Local Plan, which was approved for development control purposes in April 2005, with both material considerations.
17. I am satisfied that the development preserves the character and appearance of the Conservation Area, and does not therefore conflict with the requirements of s72 of the Act, or the policies of either the emerging Local Plan or the Draft Local Plan. These policies address development in historic locations, ensuring that development in conservation areas is only permitted where there is no adverse effect on the character and appearance of the area, and the special character and appearance of the conservation area would be preserved or

enhanced. I also do not find there to be conflict with paragraph 16 of the Framework.

Conclusion

18. For these reasons, I therefore allow the appeal.

Martin Seaton

INSPECTOR