The Planning Inspectorate

Appeal Decision

Site visit made on 13 October 2020

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th January 2021

Appeal Ref: APP/C2741/Y/20/3256299
St Andrew's Old Churchyard, Chantry Lane, Bishopthorpe, York YO23 2QF

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Mrs Gowar of St Andrew's Trust, Bishopthorpe against the decision of City of York Council.
- The application Ref 19/01510/LBC, dated 15 July 2019, was refused by notice dated 27 February 2020.
- The works proposed are described as: Erection of flood alleviation works and repairs to St Andrew's Cross.

Decision

1. The appeal is allowed, and listed building consent is granted for the erection of flood alleviation works and repairs to St Andrew's Cross at St Andrew's Old Churchyard, Chantry Lane, Bishopthorpe, York YO23 2QF in accordance with the terms of the application, Ref: 19/01510/LBC, dated 15 July 2019, and subject to the conditions in the attached schedule.

Procedural matters

2. The listed building consent application form gave the site address as 'The Stable Yard, Chantry Lane, Bishopthorpe'. It has subsequently been confirmed that the correct address for the site is that given in the heading above.

3. The application form described the proposed works as 'Flood alleviation and monument conservation'. The decision notice issued by the Council uses the description 'Erection of flood alleviation works and repairs to St Andrew's Cross'. This more accurately sets out the works proposed, and I have therefore used this description for the purposes of the appeal

Application for costs

4. An application for costs was made by Mrs Gowar of St Andrew's Trust, Bishopthorpe against City of York Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue in this appeal is the effect of the works on the Ruined Church of St Andrew, which is a Grade II Listed Building, its setting, and the setting of other nearby Listed Buildings.

Reasons

6. The appeal proposal consists of two elements. The first is the carrying out of works intended to assist in flood alleviation. These comprise the installation of sheet piling below ground level along the north and west boundaries of the appeal site, extending to the boundary wall with Bishopthorpe Palace, to help contain sub-surface flooding, and the formation of a raised soil bank on the western boundary of the churchyard, at the end of Chantry Lane, to contain flood water from the River Ouse. The sheet piling would be installed along the line of an existing, low, brick, boundary wall to the grounds of Bishopthorpe Palace. The boundary wall would be rebuilt above the piling once this was installed and the current timber fence that is affixed to the top of this wall reinstated.

7. The second element involves the dismantling of St Andrew's Cross which marks the tomb of Archbishop Drummond, a former Archbishop of York credited with the Eighteenth Century remodelling of the nearby Bishopthorpe Palace and Chapel and the construction of St Andrew's Church, within the ruins of which the cross is sited. The evidence sets out that the cross has started to lean, most likely as a result of ground stability issues, and could potentially collapse if this is not addressed. It is necessary to dismantle the cross in order to allow investigation of the tomb beneath to determine the cause of the instability.

8. St Andrew's Cross and the boundary walls are considered to be curtilage listed structures by Council. This is not disputed by the appellant.

9. The proposed works would also be within the setting of several other listed buildings to a greater or lesser degree. These are Bishopthorpe Palace and Chapel (Grade I), the Wall and Archway Adjoining Bishopthorpe Palace To Right (Grade II) and The Chantry (Grade II).

10. Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) states that in considering whether to grant listed building consent for any works, the local planning authority, or the Secretary of State, shall 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. Paragraph 193 of the National Planning Policy Framework (the Framework) requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the assets conservation.

11. From the evidence, the significance of the listed buildings, in so far as it relates to this appeal, is from the architectural style, which is a blend of classical and gothic architecture that is particular to the area, and the long historical connection with the religious use of appeal site and the surrounding area prior to erection of current church in the Eighteenth Century. St Andrew's Cross is of significance as it marks the site of the burial place of the Archbishop of York who was responsible for the remodelling of the adjacent Palace and the construction of the church within which it is located. There is little information on the significance of The Chantry as it relates to the appeal proposals. Although it is suggested that the low brick boundary walls separating the churchyard from the Palace and The Chantry are part of an earlier flood defence scheme, there is no documentary evidence before me to support this claim.

12. The proposed works would result in the low brick boundary wall being slightly increased in height, although the submitted drawings show that the overall height would not be increased once the timber fence was reinstated. The submitted details show the sheet piling within and below a foundation of concrete and engineering bricks with the boundary wall re-built above ground level using the original bricks.

13. The works would also result in the localised raising of the ground level within the front part of the churchyard by between 35 and 60 centimetres. This would result in the existing metal railings around the churchyard being reinstated with the overall height being approximately 30 centimetres higher than at present, due to the raised level of the land on which they would be sited. Beyond the existing boundary fence to Chantry Lane an area of new grass verge would be established to accommodate the remainder of the bank area.

14. Although the Council states that there is insufficient information to understand the effects of the works on the boundary walls and the setting of the heritage assets, it has not identified any harm that would be caused to features of special architectural or historic interest, or to the significance of the heritage assets. The Council has not raised any concerns in respect of the dismantling of St Andrew's Cross and I note that neither the Council's Conservation Architect, nor the Council Archaeologist have raised objections to either element of the proposed works.

15. None of the works proposed would directly affect the extant remains of the listed church building. The proposed piling works would result in the removal and rebuilding of a low brick wall which, although evidently of some age, has no particular significance attributed to it. I saw that in places on the path around the side of the churchyard, the wall is almost entirely below ground level. This low wall continues beyond the appeal site, along the north side of Chantry Lane and to the entrance to the Palace on Bishopthorpe Road. The proposed works would, albeit in a re-built form, reinstate this continuous feature where it has been concealed by changes to the ground level.

16. The proposed raised ground level to the front part of the churchyard would result in a localised raising of the level of the ground within the churchyard and the path along the edge of the churchyard, and replacing part of the existing tarmac carriageway of Chantry Lane with an area of grass verge. The resulting ground level would not be so high that it would obscure views to the frontage of the church, which is an important terminal feature in views along Chantry Lane, nor would it substantially alter the appearance of the Churchyard. The extension of the existing grass verge to the south side of Chantry Lane where the carriageway currently terminates at the site boundary would, similarly, have little effect on the setting of the adjacent listed buildings due to its small scale.

17. Taken as a whole, I find that the proposed works in connection with potential flood alleviation measures would have a neutral effect on the special architectural and historic interest, and the significance, of the listed buildings and their settings.

18. The dismantling of St Andrew's Cross would have a greater effect on its significance, although this must be balanced against the potential for the monument to collapse, and elements of it damaged by the collapse, if the cause of the instability is not investigated and addressed. It was clear from my site visit that the monument is visibly leaning to one side and the dressed stones

that form the base of the monument are being forced apart, whereas the photographic evidence shows them previously being tightly fitting.

19. Whilst there is no proposal for re-instatement of the monument at this time, I accept that until the underlying cause of the instability is investigated and addressed this would not be a practical exercise.

20. The dismantling of the cross would result in some loss of its significance. Nonetheless, as it is ultimately intended that the instability is to be remedied and the cross reinstated, the harm that would result would be less than substantial in the terms of the Framework and limited to the cross itself.

21. The Framework requires that where a proposal would result in less than substantial harm to a designated heritage asset, that harm must be balanced against the public benefits of the proposal. In this case the proposed dismantling is part of a longer term scheme to preserve and ensure the future survival of the cross and, as a result, the harm that would be caused is reversible. In these circumstances, securing the long term survival of the heritage asset amounts to a public benefit, that would outweigh the less than substantial harm that would be caused by its temporary dismantling.

22. I therefore conclude that the proposed works would not cause harm to the Ruined Church of St Andrew, its setting, and the setting of other nearby Listed Buildings. They would comply with the relevant requirements of the Act and the Framework and would not conflict with Policy D5 of the Draft City of York Local Plan 2018 which expects proposals to preserve, enhance or better reveal those elements which contribute to the significance of the building or its setting.

Other matters

23. The appeal site is within the Bishopthorpe Conservation Area. This encompasses the historic core of the village and the area around, and associated with, the Archbishop's Palace. The Archbishop's Palace, its attendant buildings and Chantry Lane are identified as an enclave of outstanding historic and cultural quality within the conservation area. Due to the small scale and minimal visual effect of the proposed works, these would have a neutral effect on the character or appearance of the conservation area.

24. Many of the arguments made by both parties relate to functional aspects of the proposed flood alleviation works. These works are likely to require planning permission and I understand that at this time no planning application has been made. This notwithstanding, within the context of this appeal against the refusal of Listed Building Consent, it is not for me to consider the efficacy or otherwise of the proposed flood alleviation works, or to reconcile the competing merits of this scheme and an alternative scheme promoted by the Environment Agency, which I understand has previously been granted planning permission.

25. The Council has also pointed out that part of the proposed mounding would be on land outside the control of the appellant, and that no notice was served on the owner of the land, in this case the Highway Authority. Regulation 6 of The Planning (Listed Buildings and Conservation Areas) Regulations 1990 (the Regulations) requires that an application for Listed Building Consent to be accompanied by a certificate stating that, at the beginning of the period of 21 days ending with the date of the application, no person (other than the applicant) was the owner of any of the building to which the application relates,

or a certificate stating that the applicant has given the requisite notice of the application to all persons (other than himself) who at the beginning of that period were owners of any of the building to which the application relates. The Act defines a listed building as a building which is for the time being included in a list compiled or approved by the Secretary of State. For the purposes of the Act this also includes any object or structure fixed to the building, and any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948.

26. Within this context, although part of the proposed works would be on land outside the ownership of the appellant, these works would not affect anything that is covered by the Listing. Failure to serve notice of an application for planning permission on the owners of land would be a technical deficiency. However, in the case of this application for listed building consent, the appellant has correctly certified ownership of the building, as defined by the Act, which meets the requirement of Regulation 6 of the Regulations. Whilst the appellant does not control some of the land, which may affect the ability to implement any consent, this does not prevent consent from being granted.

27. I have noted the comments that have been made by local residents in respect of the original application for Listed Building Consent. These comments relate almost exclusively to the technical merits of the flood alleviation scheme and these technical merits are not a matter which is before me in determining this appeal.

Conditions

28. I have had regard to the conditions that have been suggested by the Council. In order to provide certainty in respect of the works authorised by the consent, I have included a condition specifying the approved plans. I have also noted the comments of the City Archaeologist, who recommended that a condition is required in respect of a written scheme of investigation to establish the ground conditions and inform a restoration strategy for the cross. I agree that this is necessary in order to ensure that an appropriate restoration strategy to secure the long term survival of the cross is developed.

29. Although it has not been suggested by the Council, I have also included a condition requiring that the cross be dismantled in accordance with the submitted Method Statement for the pre-emptive dismantling of St. Andrew's Cross in St. Andrew's Old Churchyard, Chantry Lane, Bishopthorpe, York - dated 22 October 2019. As this was a document submitted with the appeal proposals, it is not unreasonable to require compliance with its terms and I consider that it is necessary to do so in order to safely dismantle the cross and avoid any damage to the listed building and other historic features within the churchyard.

Conclusion

30. For the above reasons, I conclude that the appeal should be allowed.

John Dowsett

INSPECTOR

Schedule of conditions

1) The works authorised by this consent shall begin not later than 3 years from the date of this consent.

2) The works hereby authorised shall be carried out in accordance with the following approved plans: 1:2500 Location Plan; Elevation from Chantry Lane and Location Plan; Proposed Part Plan; SAT/01 - Existing and Proposed Part Plans of Site Entrance Works; SAT/02 - Existing and Proposed South Elevation and Existing and Proposed North Sectional Elevation; and SAT/03 – Sectional Elevations through Footpath Ramp and Restoration of Historic Verge.

3) No works to dismantle the St Andrew's Cross shall be undertaken until a Written Scheme of Investigation for archaeological trial holes to investigate the ground conditions and inform a future restoration strategy shall have been submitted to, and approved in writing by, the local planning authority. The scheme shall include an assessment of significance and:
   i) the programme and methodology of site investigation and recording;
   ii) the programme for post investigation assessment and development of the restoration strategy;
   iii) the provision to be made for analysis of the site investigation and recording;
   iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
   v) the provision to be made for archive deposition of the analysis and records of the site investigation;
   vi) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.

4) The dismantling of the St Andrew's Cross shall be carried out in accordance with the submitted Method Statement for the pre-emptive dismantling of St. Andrew's Cross in St. Andrew's Old Churchyard, Chantry Lane, Bishopthorpe, York - dated 22 October 2019.