



Appeal Decisions

Site visit made on 7 May 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09th May 2024

Appeal A Ref: APP/W2465/C/24/3336719

Appeal B Ref: APP/W2465/C/24/3336720

352 Fosse Road North, Leicester, LE3 5RS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mrs Barabara North and Appeal B is made by Mr Stewart North against an enforcement notice issued by Leicester City Council.
- The notice was issued on 7 December 2023.
- The breach of planning control as alleged in the notice is the removal of four chimneys to the roof of the property.
- The requirements of the notice are to:
 1. Reinstate the four missing chimneys.
 2. Chimney 1 – located above the internal flue in the north-western corner of the roof. Chimney's alignment to match the northern wall of the building, with wider face facing northwards. Base to have lead flashings with sawtooth detail to sides. Base section to be 15 courses high with half brick height flaunching to apex. Five and a half bricks width along principal face, with two and a half bricks width to returns. Upper part is 16 courses high, with two further courses projecting out slightly and topped with flaunching in contrasting blue brick. Four and a half bricks width along principal face, with two bricks width to returns. Topped with two orange coloured clay chimney pots. (As shown in Google Image 1 and Google Image 3 attached).
 3. Chimney 2 – located above the internal flue in the south-western corner of the roof. Chimney's alignment to match the southern wall of the building, with wider face facing southwards. Base to have lead flashings with sawtooth detail to sides. Base section to be 12 courses high with half brick height flaunching to apex. Five and a half bricks width along principal face, with two and a half bricks width to returns. Upper part is 11 courses high, with two further courses projecting out slightly and topped with flaunching in contrasting blue brick. Four and a half bricks width along principal face, with two bricks width to returns. Topped with two gault castellated clay chimney pots. (As shown in Google Image 1 and Google Image 3 attached).
 4. Chimney 3 – located above the internal flue in the south-eastern corner of the roof. Chimney's alignment to match the eastern wall of the building, with wider face facing eastwards. Base to have lead flashings with sawtooth detail to sides. Base section to be 10 courses high with half brick height flaunching to apex. Five and a half bricks width along principal face, with two and a half bricks width to returns. Upper part is 10 courses high, with two further courses projecting out slightly and topped with flaunching in contrasting blue brick. Four and a half bricks width along principal face, with two bricks width to returns. Topped with two gault castellated clay chimney pots. (As shown in Google Image 2 and Google Image 3 attached).
 5. Chimney 4 – located above the internal flue in the north-eastern corner of the roof. Chimney's alignment to match the eastern wall of the building, with wider face facing eastwards. Base to have lead flashings with sawtooth detail to sides. Base section to be 12 courses high with half brick height flaunching to apex. Five and a half bricks width along principal face, with two and a half bricks width to returns. Upper part is 10 courses high, with two further courses projecting out slightly and topped with flaunching in contrasting blue brick. Four and a half bricks width along principal face, with two bricks width to returns. Topped with two gault castellated clay chimney pots. (As shown in Google Image 2 and Google Image 3 attached).
 6. All chimneys to be constructed in Leicester red brick – either new or reclaimed, to match the host building, in stretcher bond. Using a lime mortar mix

(NHL 3.5 [100% pure Natural Hydraulic Lime - NHL 3.5 binder made from the calcination of specially selected limestone to produce the best quality lime for the conservation and restoration of historic buildings and new-build construction, a white natural hydraulic lime.]), with a mix of 1 part lime to 3 parts sharp sand. 7. For the avoidance of doubt, the chimneys are shown as 1, 2, 3 and 4 on the attached Google Images 1, 2 and 3.

- The period for compliance with the requirements is six months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (d), (e), (f), (g) of the Town and Country Planning Act 1990 (as amended) and Appeal B is proceeding on the grounds set out in section 174(2) (d), (e), (f), (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

Appeal A Ref: APP/W2465/C/24/3336719

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

Appeal B Ref: APP/W2465/C/24/3336720

2. The appeal is dismissed and the enforcement notice is upheld.

Ground (e) appeals

3. An appeal on ground (e) is that copies of the notice were not properly served on everyone with an interest in the land as required by section 172 of the Act.
4. The evidence is that the Council did properly serve notice on all those with an interest in the land from the point of view of relevant addresses. However, it is claimed that Mrs Barbara North did not see a copy of the notice as she was living away from the property at the time.
5. I have no reason to doubt the details of the telephone call between Mr Stewart North and the Council officer on 11 January 2024 where it was stated '*my wife has said to submit an appeal which is what I am doing*'. In my judgement, this demonstrates that Mrs Barbara North was aware that a notice had been served.
6. I am satisfied that the Council did take all reasonable steps to serve a copy of the notice on the owner and occupiers of the site and everyone with an interest in the land that would be materially affected by such a notice as required by section 172 of the Act. Even if Mrs Barbara North did not see a copy of the notice until 11 January 2024, as she was not living at the appeal property, she has nonetheless made a valid appeal. In this context, Mrs Barbara North has not been substantially prejudiced.
7. For the above reasons, I conclude that the ground (e) appeals fail.

Ground (d) appeals

8. An appeal made under ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant

facts is on the appellant, and the relevant test of the evidence is on the balance of probability.

9. The claim made is that Mrs Barbara North did not 'receive' a notice until 11 January 2023. This is not a ground (d) appeal matter and has already been considered as part of the ground (e) appeals above. It is also claimed that the owners were not aware that planning permission was required for the removal of the four chimneys and that *'the builder instructed to carry out work, stated planning for a new roof and solar installation is not required'*. These are not matters that are relevant to the consideration of the ground (d) appeals.
10. However, to the extent that there is a hidden ground (c) appeal, i.e., that the matters alleged do not constitute a breach of planning control, it is noteworthy that an Article 4 Direction was made for the area in 2022 which, inter alia, removes classes A, C and D of Part 1 of Schedule 2 Town and Country Planning (General Permitted Development) (England) Order (GPDO). There is no evidence to indicate that the chimneys were removed prior to the made Article 4 Direction.
11. Indeed, in a letter to the Council from Mr Stewart North dated 25 June 2023, he comments that *'in March early this year and last year debris from the chimney had fallen into the car parking area and neighbouring property, presenting a dangerous hazard to property and life. We instructed a local builder, who had carried out work to a property in Wentworth Road to make the chimneys safe. On inspection it was discovered that the chimneys were in such a condition, they also damaged the roof'*. In my judgement, this evidence indicates that the chimneys were in situ in March 2023. This position is reaffirmed by evidence from the Council where it says that the senior conservation officer visited the site on 5 May 2023 and *'notified the builders that day on the site during those works that removal of the chimneys was unauthorised and left contact details.'* This postdates the made Article 4 Direction.
12. The removal of the chimneys amounts to operational development in respect of section 55 of the Act. It has materially affected the external appearance of the building and so is not exempt from development by virtue of section 55(2)(a) of the Act. Even if one were to take the view that the development falls under class B of Part 1 of Schedule 2 of the GPDO (as distinct from falling within any of the classes A, C and D referenced in the Article 4 direction), planning permission would still be required under this class of development because alterations to roofs require planning permission in conservation areas (i.e., article 2(3) land). I therefore find that the removal of the chimneys amounted to an alteration(s) to the appeal building requiring planning permission. While no appeal has been made on ground (c), I nonetheless conclude that any hidden ground (c) appeal fails.
13. The onus is on the appellants to make their case in respect of the legal grounds of appeal. In respect of the ground (d) appeal, there is no evidence to support a claim that the unauthorised alterations to the building have been in place for four years. The Council has provided a photograph from the St Paul's Conservation Area Assessment. It is not disputed that this was taken on 21 January 2021. This shows the four chimneys on the appeal building. Furthermore, Google images of the building show chimneys on the building and four years has not passed from the dates of these images and the date when

the notice was issued. This evidence alone casts sufficient doubt about any possible claim that it would not have been possible for the Council to have taken enforcement action owing to there being a period of four years beginning with the date on which the alterations were substantially completed. Consequently, and, on the balance of probability, I conclude that the ground (d) appeals fail.

Ground (a) appeal and the deemed planning application

Main issue

14. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the notice and the main issue is whether the development preserves or enhances the character or appearance of the St Paul's Conservation Area, and, its effect on the setting of the Grade II listed building of the Church of St Paul's, locally listed buildings known as Nos. 354-364 Fosse Road North, and the locally listed park and garden known as Fosse Road Recreation Ground, Fosse Road North.

Reasons

15. The St Paul's Conservation Area (CA) was designated on 7 June 2022. It sits closely to the north of the West End Conservation Area and features part of the Victorian suburban expansion of the city out to the west. It stretches between the churches on Fosse Road Central and the Fosse Recreation Ground.
16. The Council prepared the St Paul's Conservation Area Character Appraisal in June 2022 (Character Appraisal). The CA features many finely detailed buildings, many of which retain most of their original architectural features. While there are a limited number of modern buildings, the prevailing architectural character is dominated by attractive Victorian and Edwardian buildings in a variety of styles and designs, contributing to a townscape that is rich in pattern and detail, yet somewhat cohesive due to similar scale, form, building materials and date.
17. In respect of the more traditional building styles, they tend to include simple and unbroken roofscapes interrupted only by relatively substantial and imposing chimney stacks. This is particularly the case in Fosse Road North where there is a predominance of imposing brick chimney stacks, many of which have terracotta pots, which assimilate well with the brick material used on the elevations of the properties.
18. The grade II listed St Paul's Church (1869), St Andrew's Methodist Church (1888) and the Estonian House are the main landmarks in the area of considerable architectural and historic merit. Fosse Road Recreational Ground, which is locally listed, and the trees located throughout the area add positively and distinctively to the verdant character of the urban landscape. In addition, there are some locally listed buildings in the area, including Nos. 354-364 Fosse Road North immediately adjacent to the appeal building, which include cohesive and finely detailed/decorative architectural detailing such as elegant windowsills and heads, ground floor bays and eaves, and contrasting brickwork. The significance of the CA as a whole is its Victorian and Edwardian architecture, the architectural detailing and the cohesive grouping of the more traditional buildings.

19. The appeal dwellinghouse is positioned in a prominent position and can be seen from several views within the CA. The Character Appraisal describes it as a classically detailed red brick 19th century dwellinghouse, set behind a red brick boundary with railings, and that it contributes positively to the character of the CA.
20. The appeal building can be seen from short and long-distance views in Wentworth Road. It is also seen in the context of other properties from the locally listed Fosse Road Recreational Ground. It is also appreciated in views from Glenfield Road and in the context of St Paul's Church which is grade II listed.
21. I have been able to appreciate what the appeal building looked like prior to the breach of planning control occurring as the Council has provided Google images in its notice. Prior to the four chimneys being removed, the dwellinghouse contributed positively to the character and appearance of the CA. Indeed, the chimneys were imposing and characterful and very much reflected the cohesive character of the chimneys in Fosse Road North.
22. Owing to the removal of the four chimneys, the solar panels which have been installed within the roof (albeit that the evidence indicates they are permitted development) are not screened to the same extent as they would have been had the chimneys not been removed. They are not a characterising feature of this part of the CA and are experienced as having a jarring and incongruous impact when experienced in the context of the surrounding properties where there is a pleasing simplicity to the roofscape. I find that the removal of the chimneys has caused harm to Fosse Road North and has neither preserved nor enhanced the character or appearance of the CA. In the context of paragraph 208 of the National Planning Policy Framework 2023 (the Framework), I find that less than substantial harm has been caused to the CA. Paragraph 205 of the Framework states that great weight should be given to the asset's conservation. This is irrespective of whether the harm amounts to substantial harm, total loss or less than substantial harm to its significance.
23. While the appellants state that the chimneys were dangerous, I have little evidence to support this view. In any event, there is nothing before me to suggest that it would not have been possible to repair the chimneys as distinct from removing them. I acknowledge that the removal of the chimneys has facilitated the installation of solar panels on the roof. From an energy generation and climate change point of view, the latter has some environmental and public benefits. However, the evidence is that while compliance with the requirements of the notice may result in the loss of some solar panels, the evidence does not suggest that it would not be possible to continue to install/retain solar panels on the roof given the existence of permitted development rights.
24. Furthermore, and, save for any part removal of the solar panels to ensure compliance with the requirements of the notice, there is nothing to indicate that it would not still be possible to deliver some environmental benefits arising from the installation of solar panels on the roof of the appeal property. Therefore, on balance, I do not consider that there are any public benefits which outweigh the less than substantial harm caused to the character and appearance of the CA.

25. The appeal property can be seen in view in the context of St Paul's Church, particularly from the point of view of the cohesiveness afforded to the traditional properties on Fosse Road North which mainly include chimney stacks. I find that the subject alterations do fall within the setting of St Paul's Church, and, in the absence of the chimneys, harm has been caused to the significance of this listed building from a setting point of view.
26. Consequently, the breach of planning control has not preserved the setting of this listed building. Moreover, on balance, I consider that harm has been caused to the way that the setting of Fosse Recreation Ground is appreciated by its users in respect of views of the row of dwellinghouses on Fosse Road North and where there is noticeable cohesiveness to the presence of chimney stacks and a general absence of broken roof slopes. In addition, and, as the appeal building is adjacent to Nos. 354-364 Fosse Road North, I find that the loss of the chimneys has detracted unacceptably from the existence and rhythm of chimney stacks within this locally listed terrace of dwellings. In this regard, some harm has been caused to their significance from a setting point of view. Overall, the breach of planning control has eroded the historic and conservation significance of the CA, the listed building and non-designated heritage assets.
27. For the above reasons, I conclude that the breach of planning control has not preserved or enhanced the character and appearance of the CA. The less than substantial harm caused to the CA is not outweighed by public benefits. Furthermore, the significance of St Paul's Church as a grade II listed building has not been preserved given the harm caused to its setting. In addition, some harm has been caused to locally listed buildings and the locally listed Fosse Recreation Ground from a setting point of view. Therefore, the removal of the four chimneys has failed to accord with the conservation and heritage requirements of policy CS18 of the Leicester Core Strategy 2014, and chapter 16 of the Framework.

Ground (a) appeal conclusion

28. For the reasons given above, I conclude that the development does not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal should be dismissed.

Ground (f) appeals

29. An appeal made under ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.
30. The appellants state that the requirement to reinstate the chimneys could have been carried out '*at the time of the repair work*'. It is not clear what the appellants mean when they refer to '*repair work*' as the evidence is that alterations have been carried out to the appeal building and not repairs. In any event, this is not a matter that is relevant to the consideration of the ground (f) appeals.

31. The purpose of the notice is to remedy the breach of planning control by reinstating the four removed chimneys. In this regard, the steps in the notice are not excessive. I therefore conclude that the ground (f) appeals fail.

Ground (g) appeals

32. An appeal made under ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed. The notice gives the appellants six months to comply with the requirements of the notice, i.e., to reinstate the chimneys. The appellants claim under ground (g) is that they need more time due to the cost of reinstatement and *'I also need to discuss and make a claim against the builder if procedures have not been followed'*.
33. The appellants do not actually say how much longer they would need to comply with the requirements of the notice. I note that the appellants want to discuss matters with their builder. This is a private matter between the relevant parties. However, the appellants do not dispute the Council's comment that a conversation took place with one of the appellants on 11 January 2024 who stated that *'the builder has already said he would rectify at his own cost if necessary'*.
34. Given the above, the evidence demonstrates that a period of six months to comply with the requirements of the notice is reasonable. Therefore, the ground (g) appeals fail.

Conclusion

35. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

D Hartley

INSPECTOR