
Appeal Decision

Site visit made on 12 November 2016

by Paul Dignan MSc PhD

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

Decision date: 13 December 2016

Appeal Ref: APP/L5810/X/16/3154780

St Anne's Church, Kew Green, Richmond, TW9 3AA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by CTIL and Vodafone Ltd against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 16/1489/PS192, dated 15 April 2016, was refused by notice dated 10 June 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is Installation of a shared electronic communications radio base station.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by CTIL and Vodafone Ltd against the Council of the London Borough of Richmond-upon-Thames. This application is the subject of a separate Decision.

Reasons

3. St Anne's Church is a Grade II* listed building that forms the central focus of Kew Green. The church tower or belfry is topped by a cupola housing the church bell. The bell section of the cupola is octagonal with alternate open sides and stone lattice-work sides. Woven mesh or netting has been installed across the openings to keep birds out. The proposed installation of the radio base station within the church tower would include the installation of 4 antennae in the open sections just behind the bird mesh. The antennae supports would be fixed to the internal surfaces of the cupola stonework, but the antennae themselves would be clearly visible from the outside.
4. The appellants contend that the installation would not be development¹ for the purposes of the 1990 Act because it would benefit from the section 55(2)(a)(i) exemption from the definition of development for the purposes of the Act in that it would comprise works that "affect only the interior of the building". This is on the basis that the equipment would be installed inside the building. However, while I note that the cupola is an open structure that does not

¹ Section 55(1)

- necessarily have an “inside”, and that the bird mesh is a device rather than an essential part of the fabric of the building, it is not solely the physical location of the works that stands to be considered. If the apparatus affects the external appearance of the building then it has affected more than the interior.
5. The cupola is a very significant and prominent element of the church building. It could hardly be more prominent. It is designed to be seen, and indeed it is visible from a wide range of viewpoints. Light spilling through the different openings, along with the visible presence of the church bell, are pleasing and notable features that are integral to the overall composition and style of the belfry, and the church building as a whole. The woven mesh/bird netting can be discerned, but it has little visual impact and the cupola is striking for its openness. The installation of the antennae would have the effect of almost completely obscuring views through the cupola. The open sides would be almost entirely filled by the antennae, light passage through the cupola would be greatly diminished, and the church bell would be barely, if at all, visible. In short, the works would have a significant impact on the external appearance of the cupola. It would not be correct, therefore, to say that the works would affect only the interior. I conclude therefore that the proposed works would not benefit from the section 55(2)(a)(i) exemption.
 6. It has also been argued that any effect on the appearance of the cupola would be trivial in terms of the appearance of the building as a whole, and would thus be exempt from the definition of development in any case, by virtue of section 55(2)(a)(i). The case of *Burroughs Day v Bristol City Council* [1996] 1 PLR 78 has established that the effect on the external appearance must be judged in relation to the building as a whole and not by reference to a part of the building taken in isolation. Further, whether an alteration is material depends upon the building, its character, the change and the available viewpoints.
 7. In these respects I consider that the attributes of the cupola that would be substantially changed would affect how the building as a whole is perceived and appreciated. The belfry draws the eye, housing, but retaining in public view, the church bell, and views through the open structure give the tower a special quality. The openness of the cupola structure is a key part of the character of the church building. The antennae would not only be visible, and indeed discordant in the context of the historic building, but the change in terms of the openness of the cupola structure would have an impact on the appearance of the building as a whole that would be of significance, of substance and of consequence, and it would be noticeable from very many public viewpoints. On this point I conclude, as a matter of fact and degree, that the proposed installation would materially affect the external appearance of the building.
 8. In summary, I conclude that the proposed installation would be development for which planning permission is required, by reference to sections 55(1) and 57(1) of the 1990 Act. It follows that the Council’s decision to refuse to grant an LDC was well founded and the appeal cannot therefore succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Paul Dignan

INSPECTOR