



Appeal Decisions

Site visit made on 2 September 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th October 2020

Appeal A: APP/T0355/W/20/3248510

31-32 Theatre Royal, Thames Street, Windsor SL4 1PS

- 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 Cornerstone, Telefonica UK Ltd & Vodafone Ltd against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 19/01222, dated 3 May 2019, was refused by notice dated 13 September 2019.
 - The development proposed is telecommunications installation comprising 4no. pole mounted antennas, 4no. equipment cabinets on steel grillage RRUs, ERS, luminars and a fire alarm sounder installed on the lower roof on the west side of the building behind a GRP enclosure coloured and finished to match the existing building, replacement of existing window with a new access doorway to enclosure with steps, along with 2no. externally antennas painted to match the brickwork on wall mounted support poles, 2no. GPS modules, wall mounted RRUs and ERS toward the eastern end of the building, new cable trays to run internally, replacement of existing external access ladder and development ancillary thereto. Installation of 2no. antennas behind a GRP (glass reinforced plastic) screen, 1no. pole mounted antenna and 4no. equipment cabinets all at roof level, along with development ancillary thereto.
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Appeal B: APP/T0355/Y/20/3248512

31-32 Theatre Royal, Thames Street, Windsor SL4 1PS

- 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 Cornerstone, Telefonica UK Ltd & Vodafone Ltd against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 19/01223, dated 3 May 2019, was refused by notice dated 13 September 2019.
 - The works proposed are telecommunications installation comprising 4no. pole mounted antennas, 4no. equipment cabinets on steel grillage RRUs, ERS, luminars and a fire alarm sounder installed on the lower roof on the west side of the building behind a GRP enclosure coloured and finished to match the existing building, replacement of existing window with a new access doorway to enclosure with steps, along with 2no. externally antennas painted to match the brickwork on wall mounted support poles, 2no. GPS modules, wall mounted RRUs and ERS toward the eastern end of the building, new cable trays to run internally, replacement of existing external access ladder and development ancillary thereto. Installation of 2no. antennas behind a GRP (glass reinforced plastic) screen, 1no. pole mounted antenna and 4no. equipment cabinets all at roof level, along with development ancillary thereto.
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Decision

1. Appeals A and B are dismissed.

Procedural Matters

2. The two appeals concern the same scheme under different, complementary legislation, I have therefore dealt with both appeals together in my reasoning.
3. The main parties have referred to the emerging Borough Local Plan 2013-2033, which has been submitted for examination and further Hearings were due to resume in May/June 2020. However, I have not received any compelling evidence to suggest that the examination has progressed further. Emerging policies are not therefore matters that have a significant bearing on my consideration of the merits of these appeals, particularly as there may be unresolved objections to contend with. Therefore, in accordance with the requirements of Paragraph 48 of the Framework, Policies HE1, HE2, HE3 and IF8 of the emerging plan attract only limited weight in my consideration of the merits of the appeals.

Main Issues

4. The main issues are: -
 - whether the proposal would preserve a Grade II listed building, known as 'Theatre Royal' and any features of special historic interest that it possesses, and the extent to which it would preserve or enhance the character or appearance of the Windsor Town Centre Conservation Area, including in respect of the site selection process for the proposal (for both appeals); and
 - whether the proposal would accord with national planning policies, in so far as being supported by the necessary evidence to justify electronic communications development, particularly in respect of a statement that self-certifies that, when operational, International Commission guidelines will be met and the consultation undertaken with organisations with an interest in the proposal (for Appeal A only).

Reasons

Significance

5. The Theatre Royal was built in 1903 by Sir William Shipley but the interior was refurbished after a fire in 1910. The Theatre is Grade II listed and situated within the Windsor Town Centre Conservation Area (CA), opposite Windsor Castle. The listed building is therefore in a very sensitive location. The Theatre occupies the whole of the plots that extend northwest from Thames Street to Thames Avenue and is formed of a number of component parts, each with a different scale, appearance and roof form.
6. The public face of the Theatre is to Thames Street where its entrance lies. This is a grand three-storey ashlar fronted building with high quality architectural detailing. Moreover, the listing refers to its deep frieze, parapet with swept coping and tapered square finials, tall stone mullioned transomed windows and a broad entrance and glazed canopy on iron columns over the pavement. The scale of the building at Thames Street drops down to meet the standing seam metal clad roof of the theatre at the rear, which extends to meet the taller elements of the building at the rear

7. These elements of the building are arranged in two parts and largely encompass 'back-of-house' rooms. They are both of more modest appearance in the context of the public façade of the Theatre. The eastern part is a tall functional building extending around two-storeys above the theatre roof with a blank brick wall to the south façade, which currently incorporates air conditioning units, and a mostly rendered façade featuring shield motifs to the north. The latter has a more modern appearance but incorporates a coursed stuccoed ground floor, with a large loading door. The roof is part mansard and part hipped, with a central valley.
8. The western part of the rear of the building sits lower than the east and is a two-bay traditionally vertically proportioned four-storey building with sash windows and an attic space in its mansard roof. There is a white rectangular structure set back on the mansard roof so it is flush with the south façade. The building to the east wraps around the back of this, so the southeast elevation is mostly obscured from that direction, but remains a poorly articulated and awkward imposition to the mansard roof. There is also a short chimney stack to the southwest corner.
9. The western façade of the Theatre incorporates stepped and ladder accesses to the roof as well as an assembly of plant and machinery, which are unsightly and prominent in views from the west in River Street.
10. Despite the varied appearance and scale of the component parts of the listed building and the presence of plant and machinery and the existing white painted structure on various parts of its roof, the Theatre is well preserved and the scale of the functional elements of the building to its rear emphasise its importance as a working theatre. Its significance today therefore lies in its architectural and historic interest, as a renowned 20th Century theatre.
11. The CA covers an area encompassing a significant proportion of the town centre, but most notably includes Windsor Castle, which dominates due to its scale and prominent position on higher ground. The Castle therefore makes a telling contribution to the significance of the CA. However, its significance is also derived from the rich legacy of historic structures, particularly the consistent quality of the Georgian, Victorian and some medieval timber framed buildings. Together with the River Thames, these buildings and the uses therein contribute to the diversity, character and history of Windsor.
12. The Theatre represents such an example and thus makes a positive contribution to the character and appearance of the CA. Moreover, it sits within a long row of listed buildings dating from the 18th Century, but which have primarily been refaced in the 19th Century. These buildings are primarily listed for group value and create an important backdrop to and a feeling of containment around the perimeter of Windsor Castle. Furthermore, the roofscape created by the varied form of the roofs of the buildings, including those of the Theatre, make a positive contribution to the character and appearance of the CA, particularly in the important view from the river identified in the Windsor Town Centre Conservation Area Appraisal¹ (CAA), and emphasises the contribution of public buildings to the growth of the town.

¹ Adopted November 2009.

The site selection process and the effect on the significance of the listed building and the character and appearance of the Windsor Town Centre Conservation Area

13. The appellants have provided details of the sites identified in their selection process, which was informed by, amongst other things, the operational need for the site to be situated within the town centre at a height to enable radio signals to travel efficiently in all directions, avoiding ground-based masts and overlapping with established cells. Of the fifteen sites considered, all but the appeal site were discounted in respect of the quality or location of the coverage that would be provided or for having greater impacts than the appeal site. In particular, the proposal would not require tall supports or project above the highest point of the building.
14. During the course of my site visit I observed much of the roofscape of the surrounding buildings, including many of the locations specified in the appellants' site selection process, as well as others near to the Windsor and Eton Central Station along Thames Street. With this in mind and, having reviewed the information provided for the site selection process, I find that it follows accepted best practice and policies contained within the Framework, which suggests that the use of existing buildings for new electronic communications capability should be encouraged. This therefore provides some justification for the need for the proposal at the site.
15. The proposed Glass Reinforced Plastic (GRP) enclosure would be situated on the lower western mansard roof, next to the existing white flat roofed structure. It would be set in from the south and north façades of the structure and sited behind the parapet and chimney stack to the west.
16. I accept that the use of GRP is commonplace in the industry, used regularly in varying types of enclosures, such as chimney stacks and pots, and is required instead of natural materials to ensure that telecommunications apparatus is effective. The proposed enclosure would also be colourcoded to match the finish of the existing structure atop the mansard roof. Nevertheless, the form of the enclosure would ensure that it appears as a stark and incongruous appendage to the existing structure on the mansard roof, which I have referred to above as already appearing as an uncharacteristic addition to the mansard roof.
17. The proposal would be highly prominent within its immediate surroundings, particularly in the views available across both of the nearby car parks, including from the footpath alongside the River Thames, and from within River Street over neighbouring buildings, such as Providence House. Therefore, the nature of the material utilised in the proposed enclosure would not usefully diminish its unacceptable intrusiveness.
18. The harm that I have identified above would be compounded by the other apparatus which would be situated on the southern side of the taller rear building north of the Theatre. I acknowledge that the Council ultimately did not identify harm in respect of this part of the proposal but note that their Conservation Officer did raise concerns. Nevertheless, as part of my statutory duties (see below), I have considered the entirety of the proposal, as determined by the Council, afresh in light of the evidence before me. Moreover, given that the CAA identifies an opportunity to hide the rather stark side elevation of the Theatre with taller buildings on River Street, the appearance of the apparatus at a higher level on the building would add to the visual harm

already caused by the existing plant and machinery and roof accesses visible from River Street, particularly as the proposed apparatus would project above the parapet of this part of the building.

19. I also appreciate that each element of the proposal would be unlikely to be in situ in its proposed form in perpetuity. Nevertheless, the proposal would then be likely to be replaced by an upgraded version. I have therefore afforded this argument limited weight in my consideration of the harm I have identified above.
20. Despite my findings in relation to the site selection process for the proposal, it would appear as discordant additions to the listed building that would have a significantly detrimental effect on its individual character and appearance and that of the wider CA and, thereby, their understanding and significance as heritage assets.

Public benefits and conclusions on the first main issue

21. The statutory duties in Sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) are matters of considerable importance and weight. Paragraph 192 of the National Planning Policy Framework (the Framework) states that the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation should be taken into account in determining applications. Meanwhile, paragraph 193 of the Framework also advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Furthermore, paragraph 194 of the Framework also requires that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification.
22. The main parties agree that the proposal would result in less than substantial harm to the listed building and the CA. Given that the proposal would be harmful to the special interest of the Grade II listed building and the character and appearance of the CA, which would have negative effect on the significance of these designated heritage assets, I also find the harm to be less than substantial in this instance, but nevertheless of considerable importance and weight. In such circumstances, paragraph 196 of the Framework identifies that this harm should be weighed against the public benefits of proposals, which includes the securing of optimal viable use of listed buildings.
23. I have been referred to a number of documents emphasising the importance of mobile coverage and connectivity, including those produced by the appellants and central government. These align with the main thrust of the Framework, which suggests that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being.
24. In the local context of Eton and Windsor, the businesses and residents of the towns, together with the large numbers of visitors attracted to the towns each year, require mobile connectivity and coverage in respect of calls, texts and data. The proposal would provide 2G, 3G and 4G network coverage for the operators in this location, particularly in relation to gaps in coverage around the two railway stations situated in Windsor; and could be upgraded to 5G connectivity in the future. Other than express some concern with respect to the

- ability to upgrade to 5G, the Council has not provided any substantive evidence to demonstrate that this would not be a possibility for the proposed site.
25. I also appreciate that there has been a greater reliance on telecommunications during the social restrictions imposed during the COVID-19 outbreak, which would have been as much the case in Eton and Windsor as anywhere else.
26. The aforementioned matters would therefore amount to public benefits in social and economic terms to the residents, businesses and visitors of Eton and Windsor, which would be balanced by the harm that would be caused to the special interest of the listed building and the character and appearance of the CA.
27. Taking the above public benefits together, I acknowledge that there is a fine balance between these and the harms that I have identified to the special historic interest of the Grade II listed building and the character and appearance of the Windsor Town Centre Conservation Area. However, in my view, the significant harm I have identified, in respect of the form and materials of the proposed enclosure, the overall visual prominence of the proposal, together with the appearance of the other apparatus, is determinative. Therefore, in accordance with paragraphs 193, 194 and 196 of the Framework, considered together, I conclude that the public benefits do not provide a clear and convincing justification to outweigh the great weight to be given to the less than substantial harm that I have identified.
28. In arriving at this conclusion I have had regard to the appeal² for the use of GRP chimneys on the roof of a modern office building within Eton Conservation Area; and an appeal for a monopole telecom near to a conservation area and listed building, at Barnard Castle³. In terms of the former, the Inspector found that the installation of GRP chimneys would be inconsistent with the overall design and appearance of the host building, so would be harmful to the conservation area. However, that harm was outweighed by the public benefits of the proposal. In particular, the Inspector acknowledged the support given within the Framework for the delivery of mobile technology and the absence of suitable alternative sites within the vicinity. In terms of the latter, the Inspector took a similar approach when considering the effect of that appeal scheme. Nevertheless, in the case of the appeal scheme before me, the balancing exercise has fallen in favour of the designated heritage assets.
29. In light of all of the above, I conclude that, on balance, the proposal would fail to preserve the special historic interest of the Grade II listed building and the character and appearance of the Windsor Town Centre Conservation Area. Hence, the proposal would fail to satisfy the requirements of the Act, paragraphs 127, 192, 193 and 194 of the Framework and conflicts with Policies DG1, CA2, LB2 and TEL1 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 (including Adopted Alterations, 2003) (the LP), which together seek to ensure that the character of listed buildings will not be adversely affected, both internally and externally by proposals; proposals should enhance or preserve the character or appearance of conservation areas, including through being of a high design standard which is sympathetic in terms of, amongst other things, siting, proportion and form; and telecommunications development should be sited and designed so as to minimise obtrusiveness.

² Appeal Reference: APP/T0355/W/20/3246710 - Intersystems House, 70 Tangier Lane, Eton SL4 6BB.

³ Appeal Reference: APP/X1355/W/16/3161196 - Darlington Road / Bede Road, Barnard Castle, Durham DL12 8LL.

Supporting evidence for electronic communications development (Appeal A)

30. The planning application was supported by a statement that self-certifies that, when operational, International Commission guidelines will be met. This was only signed on behalf of one of the proposed operators (Telefónica UK Limited). However, as part of the appeal, a new statement now refers to the other operator, Vodafone Limited. It is signed on their behalf by Cornerstone Telecommunications Infrastructure Ltd, a joint venture company owned by both operators, that will be responsible for operating and managing the proposed apparatus. This would therefore meet the requirements of paragraph 115(c) of the Framework
31. Furthermore, the appellant has also provided confirmation through their 'Supplementary Information' document and copies of correspondence sent as part of their consultation exercise to St George's School, which is situated nearby, Ward councillors, the local MP, the Windsor and Eton Society and a nearby resident, details of which were said to be included with the planning application. In light of this the appellant has discharged their duty in respect of referring to the outcome of the consultation exercise for the proposal, as required by paragraph 115(a) of the Framework.
32. I therefore conclude that the proposal would accord with paragraphs 115 (a) and (c) of the Framework.

Other Matters

33. The appeal property is near to Windsor Castle, which is a Grade I listed building and Park and Garden and a Scheduled Monument; and Nos 20-25 and 28-30 (consecutive), which are all Grade II listed buildings. The appellants have referred to each of these designated heritage assets in their Heritage Impact Assessment and consider that the proposal would cause less than substantial harm to each of them. The Council, however, has not raised any concerns in respect of any of these designated assets. I have had regard to the statutory duty referred to in the Act and I have arrived at a similar conclusion. Moreover, given the scale of the proposal and its proximity and physical relationship with these designated assets, their settings will be preserved and the proposal will not detract from them.

Conclusion

34. I have found harm in respect of Appeals A and B in relation to the Grade II listed building and the character and appearance of the Windsor Town Centre Conservation Area, and there are no other considerations which would outweigh these findings. Accordingly, for the reasons given, I conclude that the appeals should be dismissed.

Paul Thompson

INSPECTOR