
Appeal Decisions

Site visit made on 13 October 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 24 April 2023

Appeal Ref: APP/U5360/C/21/3288944 (Appeal A)

Land at 17-23 Gransden Avenue, Hackney, London E8 3QA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Cornerstone Telecommunications Infrastructure Limited against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice is dated 5 November 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a 25m lightweight lattice mast with 6 x antennas, 2 x 300mm dishes, radio housing and ancillary development.
 - The requirements of the notice are: 1. Remove the 25m lightweight lattice mast with 6 x antennas, 2 x 300mm dishes, radio housing and ancillary development from the land; 2. Remove all materials, debris waste and equipment resulting from compliance with the other requirements from the land; and 3. Make good on all damage to the land resulting from the removal of the unauthorised works and restore the relevant parts of the land to the condition they were before the unauthorised development occurred.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/U5360/W/21/3285206 (Appeal B)

Land at 17-23 Gransden Avenue, Hackney, London E8 3QA

- 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 Ms Jenny Bye against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2021/1634, dated 25 May 2021, was refused by notice dated 12 October 2021.
 - The development is described as 'the retention of the temporary 25m lightweight lattice mast with 6 no. antennas, 2 no. 300mm dishes, radio equipment housing and ancillary development for a further 24 months'.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 23rd December 2022.

Decisions

1. Appeal A is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.
2. Appeal B is dismissed.

Appeal A on ground (a) and Appeal B

Main Issue

3. The main issue is the effect of the development on the character and appearance of the surrounding area, including the significance of the conservation area.

Reasons

Background

4. The mast was initially erected in March 2018 under permitted development rights as set out in the Town and Country Planning (General Permitted Development) (England) Order 2015. Coverage was previously achieved via shared apparatus on the roof of 203-213 Mare Street, but this needed to move due to the redevelopment of the building. In its existing form and location, the structure was permitted for up to 18 months, until September 2019.

Assessment

5. The Mare Street Conservation Area (CA) is a sizeable area centred on Mare Street which runs north/south and forms its core. The area is mixed in character, including a range of land uses, and a variety of building styles and ages. Gransden Avenue forms the western edge of the CA, with the east side of the street, including the appeal site, falling within the boundary.
6. I note from excerpts from the Mare Street Conservation Area Appraisal that words such as 'bleak', 'poor design' and 'low quality' are used of the street. However, this was not my general impression of the area on my site visit. It is the case that Gransden Avenue is predominantly characterised by contemporary buildings. Similarly, the buildings at either end of the street, which frame views in each direction, are modern.
7. Nonetheless, I saw that there are some historic survivals. On the same side of the road as the appeal site is 5a Gransden Avenue, an attractive brick fronted building with a door opening at first floor level, which speaks to the industrial past of the area. On the other side, outside the CA but forming part of its setting, is a modest two storey row of white painted buildings of traditional character. Therefore, although much of Gransden Avenue has been altered, it still makes a modest contribution to the historic and architectural significance of the CA as a whole.
8. I accept that masts of this kind need to be of a certain height and form, and that there is little flexibility in terms of their design. To an extent, the modern lattice design of the mast is in keeping with the design of the more contemporary buildings in its vicinity. Nonetheless, it is significantly taller than the other features in the street and so dominates the views along Gransden Avenue.
9. When viewed from either end of the street, I saw the due to the perspectives in play, the mast blends more with the buildings at the junctions. However, as one approaches the mast, its excessive height and intrusive appearance becomes evident. It erodes the ability to experience the remaining historic buildings in the street, and does not respond favourably to this context.

10. The appellant goes to some length to note that the mast is difficult to see from Mare Street and other locations beyond Grandsen Avenue. However, this is neutral in my consideration, as harm to character and appearance need not be extensive in order to attract great weight in the planning balance.
11. These factors lead me to the conclusion that the mast harms the significance of the CA as a whole, albeit that this harm is less than substantial. Accordingly, the development conflicts with the overarching statutory duty as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, which must be given considerable importance and weight. In addition, the scheme fails to comply with Policy LP3 of the Hackney Local Plan (HLP), insofar as it requires development affecting CAs to preserve or enhance the character and appearance of the area.
12. Although serious, the harm in this case would be less than substantial, within the meaning of the term in paragraph 195 of the National Planning Policy Framework (NPPF). Paragraph 194 states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Paragraph 196 requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal.
13. Digital connectivity infrastructure finds support within HLP Policy LP11, which recognises that the continued expansion of high quality and reliable communications infrastructure is essential for economic growth and social well-being. It goes on to say that a digital connection is now widely seen as an everyday essential alongside traditional utilities such as water, energy and waste management. The NPPF at paragraph 115 says that the number of communications masts, and the site for such installations, should be kept to a minimum consistent with the needs of customers and the efficient operation of the network.
14. The appellant states that the retention of the existing mast is an 'emergency' and that a permanent replacement site is now being sought. She cites the Electronic Communications Code 2017 (ECC) as a main source of the difficulties that have been encountered, stating that it has caused a number of problems within the marketplace. The primary issue arising from the ECC is the reluctance of landowners to countenance a drop in rental income.
15. In this context, the appellant asserts that losing a communications base station in this busy area will have a significant impact on a large number of people in the area. However, the Council have stated that there will not be a loss of 4G broadband in the area. I have also taken into account the significant number of public representations against the appeal scheme, which indicates that the public do not share the appellant's concern over the potential loss of connectivity.
16. Although the Council have given a period of six months for compliance with the notice, they have powers to extend this timescale should it be necessary to maintain amenity and essential services. There is therefore little evidence that connectivity would unacceptably be lost were I to dismiss the appeals.
17. In the absence of substantive evidence to the contrary, I therefore find that insufficient public benefits have been identified that would outweigh the harm I have identified to the heritage asset. The scheme therefore conflicts with the

NPPF, which directs, at paragraph 193, that great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

18. I have been directed to appeal decision ref: APP/F9498/W/21/3270428, where the inspector allowed a mast in the Exmoor National Park. He found that there would be limited visual harm, but concluded that this would be outweighed primarily due to the enhanced modern communication technology for the emergency services. Conversely, the appeal site in this case is in a densely populated area where there will be less reliance on a single mast. Furthermore, there is little evidence of the same level of need of the mast on Gransden Avenue for the Emergency Services Network. These factors alone limit the weight I can give to this decision.
19. I have also considered appeal decision ref: APP/U5360/C/21/3278704, where an enforcement notice was quashed and planning permission was allowed for a telecommunications installation in another CA within the same Council area. The development comprised antennae that were attached to a building. The inspector found that they were harmful to the CA, but that they could be camouflaged so as to reduce their harmful impact 'to the low end of the spectrum of less than substantial harm'.
20. That being the case, the inspector was able to find that the public benefits of connectivity outweighed the identified harm. Although I do not have the full details before me, it is apparent that there is a material difference with the case before me, where the mast is prominent in the streetscene, with little scope for alteration to lessen its visual impact.
21. Finally, I have taken into account the support for the appeal scheme, but this has not led me to a different conclusion on the main issue.

Conclusion

22. For those reasons, Appeal A on ground (a) fails, and Appeal B is dismissed.

Appeal A on ground (g)

23. Ground (g) is that the time given for carrying out the requirements of the notice, in this case six months, is too short. In terms of the physical works needed to carry out the requirements, I am satisfied that six months is reasonable.
24. However, the appellant requests a period of 24 months in order to find a replacement site for the emergency mast. I accept that, generally speaking, there can be significant difficulties in finding suitable sites for communications masts. Within the appellant's final comments, some more specific details are offered that pertain to the appeal scheme. It is confirmed that prior approval, ref: 2021/2125, has been obtained for the location of apparatus on a building owned by the Council, which could form a solution. However, the appellant refers to a lack of a property agreement between the parties that would allow this scheme to go ahead. Although reference is made to the need for a tribunal, no specific timescales are given for this process.
25. Alternatively, the appellant refers to an upcoming application for an installation on the property at 203-213 Mare Street. She states that there are no negotiation hurdles here, but that she is working through a suitable design.

However, no further details are given, and the expected timescale for this application is unclear.

26. To allow more than a year for compliance would be tantamount to a temporary planning permission, which would be inappropriate in light of the harm I have identified above. This is particularly so in view of the fact that the mast has now been in place for a number of four years. I am mindful that the Council have powers to extend the period beyond six months should this be justified, and they have explicitly referred to this power in their evidence.
27. In the absence of convincing evidence to the contrary, I am satisfied that a compliance period of six months is reasonable and commensurate with the aims of the notice.
28. Appeal A on ground (g) therefore fails.

Conclusion

29. Appeal A is dismissed, the deemed planning application is refused, and the enforcement notice is upheld. Appeal B is dismissed.

Elaine Gray

INSPECTOR