



Appeal Decision

Site visits made on 18 April and 6 June 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2023

Appeal Ref: APP/Q1445/W/21/3286740

Coombe Lea, Grand Avenue, Hove BN3 2NE

- 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 MBNL Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2021/00799, dated 22 January 2021, was refused by notice dated 11 May 2021.
 - The development proposed is described as the 'installation of 6No. antenna apertures across 3No. steel support structures, 3No. 600mm wide dishes and 8No. equipment cabinets all at roof-level, 1No. cabinet at ground-level, plus ancillary works'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Brighton & Hove City Council's City Plan Part Two was adopted in October 2022, while the appeal was under consideration. This replaces retained policies of the Brighton & Hove Local Plan 2005. The Council has provided an update on the implications of the newly adopted Local Plan and the appellant has had the opportunity to comment. I have considered the appeal based on the adopted development plan.
3. Following my initial site visit on 18 April 2023, I returned on 6 June 2023 to complete my inspection of the wider area around the appeal site.

Main Issue

4. The main issue is whether the proposed development would preserve or enhance the character or appearance of the Avenues Conservation Area and its effect on the setting of nearby listed buildings and non-designated heritage assets.

Reasons

Conservation Area

5. The appeal site is a mid-20th century block of flats; one of several occupying plots formerly occupied by grand detached houses along one side of Grand Avenue. It is a substantial rectangular building of 11 storeys, with a flat roof.
6. The Avenues Conservation Area (ACA) has its origins in the Victorian era and includes a wide variety of ornately detailed and impressive buildings dating from that period. The significance of the ACA includes its development by a range of architects over a period of several years, within a formal street plan.

This planned layout can be clearly understood within the central Grand Avenue, which comprises several imposing buildings to either side of a wide central street. The public realm includes formally laid out lawns and street trees. A statue of Queen Victoria and a war memorial, at either end of the central Avenue, are both Grade II listed buildings.

7. The buildings on Grand Avenue include Hove's first block of flats, Grand Avenue Mansions, which is a locally listed building adjacent to the appeal site. There are several other buildings dating from the late 19th/early 20th centuries, mainly on the east side of the Avenue. There are also several more recent mid-20th century additions, including the building on the appeal site. These later blocks of flats are not identified as heritage assets in their own right. However, they are a prominent and distinctive element in the street scene, being all of a similarly imposing scale.
8. By virtue of its layout and scale, Grand Avenue is a distinctive focal point in the heart of the ACA, between the more modestly proportioned buildings lining the two parallel Avenues to either side. The Avenues Conservation Area Statement highlights that the scale of the buildings and recurring architectural features are among the characteristics that need to be protected. Although roof forms along Grand Avenue vary, the majority of the buildings on the west side have flat roofs, all at a similar height and presenting a simple, uncluttered roofscape against the sky.
9. The proposal includes measures to minimise views of the proposed masts, by dividing them into three clusters, two of which would be at the rear of the roof. However, they would nevertheless project well above the flat roof, disrupting its uncluttered form. Some views of the masts at the rear would be screened by neighbouring buildings, which are set further forward. However, there are oblique views of the rear corners of the roof from a variety of points within Grand Avenue. The masts at the rear would also be clearly visible from Third Avenue, where the building is prominently located above and behind the adjacent two and three storey buildings.
10. The impressive scale of the buildings on Grand Avenue tends to draw the eye upwards to the roofscape. Therefore, although the masts would be elevated considerably above street level, and would appear relatively modest in proportion to the height of the building, this would not prevent them from intruding to a harmful degree above the roofscape. Neither the street trees nor the proposed pale colour would sufficiently mitigate their visual impact. Furthermore, the more discreet, central location of the rooftop equipment cabinets would not mitigate the harm arising from the taller and more prominent masts on the outer edge of the building.
11. While telecommunications equipment is relatively commonplace in urban environments, this does not prevent the proposal from being harmful to the particular characteristics of the ACA. Although the host building is not identified as a heritage asset in its own right, its proportions and roofscape are consistent with the formal layout of imposing buildings to either side of Grand Avenue. As such, the disruption to its roofscape has a harmful effect on the character and appearance of the area, notwithstanding its more recent construction.
12. For the reasons given above, I find that the proposal would neither preserve nor enhance the character or appearance of the ACA. The harm to the significance of the ACA would be less than substantial, given the scale of the

masts in relation to the height of the building, and the degree of separation from ground level views.

Setting of Listed Buildings and Non-Designated Heritage Assets

13. Listed buildings in the immediate vicinity of the appeal site include a cluster of detached houses/flats around the northeast corner of Grand Avenue, the war memorial in front of the appeal site, and Kings Mews, off Third Avenue to the rear. All of these are Grade II listed. There are additional Grade II listed buildings on the east side of Grand Avenue, together with the statue of Queen Victoria at its southern end.
14. Grand Avenue Mansions, immediately adjacent to the appeal site, is a locally listed building and consequently a non-designated heritage asset for purposes of the National Planning Policy Framework (the Framework). While the reason for refusal did not allege any harm to the setting of locally listed buildings, such harm has been identified by interested parties and by the Council's Heritage Officer, and is relevant to the overall effect on heritage assets surrounding the site.
15. For the most part, the significance of the listed buildings includes their varied, good quality architectural detailing, which reflects the gradual evolution of taste during the extended period of development to the original street plan. Kings Mews at the rear of the site is of a rather different scale and character, being a collection of more modestly proportioned, but highly detailed, two storey buildings around a mews courtyard.
16. All of the statutorily and locally listed buildings are set within the planned street layout described above. Their setting includes the variety of imposing buildings, from the 19th to mid-20th century, fronting parallel streets each with its own characteristic scale. Since the appeal building is located at the heart of this composition of buildings and public realm, the proposal would consequently be harmful to the setting of the nearby listed and locally listed buildings within Grand Avenue. As described above, it would disrupt the consistent and largely unpunctuated roofscape along the west side of the Avenue, introducing an intrusive and incongruous feature into the street scene.
17. In the case of the Grade II listed war memorial and statue, the expansive and formal street layout is an important aspect of their setting, reflecting their role as civic memorials, designed to be appreciated within an appropriately laid out public space. These structures are relatively modest in height compared to the surrounding buildings, and largely appreciated at ground level. The statue of Queen Victoria is also some distance from the appeal site. Given the above factors, the proposal is not directly harmful to the setting of the statue. The siting of two mast clusters at the rear of the roof would also help to mitigate the degree of intrusion into views of the war memorial. Nevertheless, there would be some limited degree of harm to its setting, given its position immediately in front of the appeal site.
18. With regard to Kings Mews, the building on the appeal site towers above this more modest listed building and is already an intrusive feature in its setting. The proposed masts on the two rear corners would be particularly prominent against the sky, as viewed from Third Avenue. Therefore, the proposal would increase the existing degree of harm to the setting of Kings Mews.

19. For the reasons given above, I find that the proposal would fail to preserve the setting of statutorily and locally listed buildings within Grand Avenue and Third Avenue. The harm to their setting would be less than substantial, given the scale of the proposed development in relation to the roofscape as a whole and the degree of vertical separation from street-level views.

Public Benefits

20. I have found that there would be less than substantial harm to the significance of the ACA and the setting of nearby statutorily and locally listed buildings. Although the harm is less than substantial, it should not be treated as a less than substantial objection to the proposal. I have attached considerable importance and weight to the desirability of avoiding such harm, in accordance with Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
21. Paragraph 202 of the Framework states that where a proposal would lead to less than substantial harm to the significance of heritage assets, such harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
22. Section 10 of the Framework recognises that high quality and reliable communications infrastructure is essential for economic growth and social well-being. It therefore supports the expansion of electronic communications networks, including 5G. This reflects more general Government support for digital infrastructure rollout.
23. The application is accompanied by evidence of the need for the proposed installation, which particularly highlights a requirement to reinstate telecommunications coverage lost as a result of the decommissioning of a base station at Bath Court. The proposal would also enable introduction of the latest 5G technology and increase network capacity, particularly within buildings, to prevent further strain on the network as demand increases. In consequence, the public benefits of the proposal include improved communications infrastructure to support economic growth (including for home workers and local businesses), public health and emergency services communications, social and community well-being.
24. The surrounding urban area is densely developed and therefore the presence of taller buildings, including those on Grand Avenue, is a constraint on effective mobile telecommunications coverage. The decommissioning of an existing base station due to its obstruction by a new, taller building nearby, is evidence that this is a key consideration in the search for a suitable site. Coverage maps provided with the application suggest that the Victoria Terrace installation largely reinstated the coverage lost at Bath Court, in terms of its geographical extent. However, adding the appeal proposal would extend coverage further to the east, as well as providing increased capacity and improved technology.
25. Evidence submitted with the application includes details of several alternative sites which were rejected for various reasons. These are generally located within Grand Avenue, along Kingsway and the sea front to the west or within a block of streets to the north and northwest. In response to the constraints of the dense urban environment, they focus on taller buildings with flat roofs, potentially suitable for a rooftop installation. The evidence also highlights that such installations need to be on the edge of the rooftop, to provide effective

- coverage. The appellant states that all the buildings identified as suitable for the installation are within the ACA and therefore the lack of suitable alternatives outside the ACA should weigh in favour of the proposal, in order to deliver the associated public benefits.
26. The reasons for rejecting alternative sites use a variety of wording in relation to the extent of coverage. Whereas some sites are described as not meeting radio planning requirements, others are described as 'unsuitable' in relation to the Operators' established network or 'less preferable' with respect to meeting radio planning requirements. It is somewhat ambiguous to what extent these 'unsuitable' or 'less preferable' sites would nevertheless be capable of delivering an improved service, albeit potentially to a less optimal degree.
27. The sites described in these terms include alternatives outside the ACA. Therefore, the somewhat ambiguous evidence on this point weighs against any clear conclusion that a location within the ACA is the only means of delivering the public benefits.
28. In addition, evidence from interested parties identifies several additional alternative sites, including a number of taller buildings close to the County Cricket Ground and in the vicinity of the former Sackville Industrial Estate. Some of the latter were at an advanced stage of construction at the time of my site visits. They are also located further to the north. However, although the appellant states that alternative sites were reviewed again prior to submission of the appeal, no further evidence has been provided in relation to the additional sites identified in representations. Therefore, the evidence does not clearly confirm whether or not they would be capable of delivering a similar degree of public benefit.
29. Given the above, the evidence that a site within the ACA is the only feasible option is not entirely persuasive. On that basis, while I have given significant weight to the public benefits associated with the proposal, based on the evidence before me I am not satisfied that these benefits can only be delivered in the proposed location. Since the building is already occupied for residential purposes and appears to be in generally good order, there is also no clear evidence of any need to secure a more viable use, by means of a rooftop installation or otherwise. I have therefore given this factor limited weight.
30. I have attributed considerable importance and weight to the harm to the significance of the ACA and the setting of nearby listed buildings, in line with the statutory duties highlighted above. On that basis, the harm to heritage assets is not clearly outweighed by the public benefits of the proposal, based on the evidence which is before me.
31. For the above reasons, I conclude that the proposed development would not preserve or enhance the character or appearance of the Avenues Conservation Area and would fail to preserve the setting of nearby listed buildings and non-designated heritage assets. I furthermore conclude that, based on the evidence before me, the public benefits associated with the proposal would not outweigh the harm to the significance of these heritage assets, contrary to relevant paragraphs of the Framework.
32. For the same reasons, the development would conflict with Policies CP12 and CP15 of the Brighton & Hove City Plan Part One 2016 and Policies DM25, DM26 and DM29 of the City Plan Part Two. These policies, amongst other things,

require that development, including communications infrastructure, preserves or enhances the City's built heritage, including conservation areas, having regard to features including the roofscape and the setting of heritage assets.

Other Matters

33. A variety of appeal decisions have been brought to my attention, including other proposals involving rooftop installations affecting heritage assets. However, there is no substantive evidence that any of them share notably similar characteristics with the appeal site or the ACA, or that any evidence on potential alternative siting was similarly unconvincing. Therefore, these decisions do not outweigh my conclusions as set out above, based on the specific circumstances of this case.
34. The proposed development was recommended by Council officers for approval. However, elected Members of the Council are not bound to accept the recommendations of their officers and my consideration of the appeal has been based on the evidence before me. The need to balance the degree of harm to heritage assets against the scale of public benefits was clearly highlighted in both the Officer Report and advice from the Council's Heritage Officer. Therefore, this requirement was before the decision-making Committee when it reached its decision. While other matters may have been raised at the Committee meeting, including some which lie outside the scope of the planning system, such matters have not had a bearing on my consideration of the main issues, as set out above.
35. Support for the proposal has been expressed by some interested parties, largely based on the public benefits. While I have had regard to such support, for the reasons given above I have concluded that those benefits do not outweigh the harm in this case.

Conclusion

36. The proposed development would fail to preserve or enhance the character or appearance of the Avenues Conservation Area and would not preserve the setting of nearby statutorily and locally listed buildings. It would result in less than substantial harm to the significance of heritage assets, which is not outweighed by public benefits. Having had regard to the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Jane Smith

INSPECTOR