



## Appeal Decision

Site visit made on 7 November 2023

**by Samuel Watson BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28<sup>th</sup> November 2023**

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**Appeal Ref: APP/A0665/W/23/3322849**

**Area of Footpath, Grosvenor Road Roundabout outside the Cheshire Military Museum, Colvin House, Chester, CH1 2XA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by CK Hutchison Networks Limited against the decision of Cheshire West and Chester Council.
  - The application Ref 22/04041/TEL, dated 28 October 2022, was refused by notice dated 14 December 2022. The development proposed is Proposed 5G telecoms installation: H3G 20m street pole and additional equipment cabinets.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.
3. Part 16 of the GPDO establishes that the proposal is permitted development and therefore it is accepted in principle by virtue of the legislation and there is no requirement to have regard to the development plan as there would be for any development requiring planning permission.
4. Nevertheless, Policies ENV5, ENV6 and STRAT10 of the Cheshire West and Chester Council Local Plan (Part One): Strategic Policies (the LP1) and Policies CH1, CH5, CH6, DM3, DM18, DM46, DM47 and T5 of the Cheshire West and Chester Council Local Plan (Part Two): Local Land Allocations and Detailed Policies (the LP2) are material considerations as they relate to issues of siting and appearance, including with regard to telecommunications infrastructure. Similarly, the National Planning Policy Framework (the Framework) is also a material consideration and, in particular, including Sections 10, 12 and 16 on supporting high quality communications, achieving well-designed places and conserving and enhancing the historic environment.

## **Main Issues**

5. The main issues are the effect of the siting and appearance of the proposal on:

- The character and appearance of the surrounding area, with particular regard to the Chester (City Centre) Conservation Area (the CCA);
- Highway safety; and,
- Whether any harm caused would be outweighed by any benefits of the proposal, including the need to site the installation in the location proposed having regard to the potential availability of alternative sites.

## **Reasons**

### *Character and Appearance*

6. The appeal site is located on a deep area of pavement to the front of Chester Castle and adjacent to a sizeable roundabout. To the back of the pavement is an area of grass leading up to the castle and there are a pair of mature trees adjacent to the appeal site. Within the area generally, I noted street furniture such as lampposts, traffic lights and signage. I also noted a number of statues and other monuments close to the appeal site. In my mind the area forms somewhat of a gateway to the centre of Chester for motorists travelling along Grosvenor Road.
7. The appellant's submissions state that the appeal site is not within a conservation area and does not make any reference to other heritage assets. However, the appeal site and the surrounding area is located fairly centrally within the CCA. This covers a wide portion of the city centre along with some islands identified further beyond the centre. Although predominantly commercial, the CCA presents a mix of commercial and residential buildings characterised by various examples of architectural styles that demonstrate the wealth and growth of Chester. The significance of this area stems, at least in part, from the legibility of this history in the architecture of the buildings and their relationship to each other.
8. As noted above, adjacent to the appeal site is Chester Castle, this is a Scheduled Ancient Monument (SAM) and the complex within which it sits also holds a number of Grade I and Grade II listed buildings, including the Propylaea and the walls and railings bounding the castle grounds. Surrounding the roundabout are a number of further listed buildings, including the Tombstone of Thomas Gould and the Cenotaph to Matthew Henry, both Grade II listed; the former Trustee Savings Bank and the Statue of Viscount Combermere, both Grade II\* listed; and, St Mary's Church which is Grade I listed. Alongside creating an area of historic interest around the appeal site, they also collectively contribute towards the interest and significance of the wider CCA.
9. Into this historic area the proposal would introduce a utilitarian feature that, given its siting and height would be prominent and intrusive within the street scene. It is clear from the submissions before me that proposed mast would be significantly taller than the surrounding buildings and street furniture. Whilst I am mindful of nearby trees, they would not be sufficient to suitably screen the proposal or soften its visual impact.

10. Moreover, views of the mast and its associated cabinets would be afforded in direct relation to the castle, as well as the listed buildings from a number of public viewpoints. Whilst masts and cabinets may be typical features within some urban environments, due to the historic interest set out above this is not a location where a generic solution would be appropriate. Although somewhat compact with regards to its bulk, the very modern and utilitarian design of the mast would nevertheless be a jarring feature against the historic and largely ornate appearance of the buildings and lampposts within the surrounding area. Although shorter in height, I find the cabinets would similarly be harmful in this regard. Furthermore, the proposed grey finish would not be sufficient to lessen the harm identified above.
11. The siting and appearance of the mast and its associated cabinets would therefore harm the character and appearance of the surrounding area and would not preserve or enhance the character or appearance of the CCA and the settings of a number of listed buildings and a SAM. Consequently, the proposal would fail to meet the requirements of S72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). I have also been mindful of, and the proposal would conflict with, LP1 Policies ENV5 and ENV6 and LP2 Policies CH1, CH5, CH6, DM3, DM18, DM46 and DM47 and Sections 10, 12 and 16 of the Framework which are a material consideration as outlined above.

#### *Highway Safety*

12. The proposed mast and the associated cabinets would form a row centrally within the footpath. As noted above, there are two trees adjacent to the appeal site, these are located within a partially cobbled area. The pavement widens on the approach to the trees before dividing in to two narrower routes either side of them. The cobbled area did not appear as an extension of the pavement and would not likely be useable for more vulnerable pedestrians.
13. The linear nature of the mast and cabinets would follow the flow of pedestrians using the pavement and would be relatively narrow along the length of the proposal. Moreover, as noted above it would be sited where the pavement becomes wider on approach to the trees. From the plans before me it does not appear that the pavement to either side of the proposal would be significantly narrower than that either side of the trees. Whilst it may be more difficult for pedestrians to pass each other between the proposal and the carriageway, there is sufficient space to the other side of the proposal that it would be unnecessary to pass here.
14. The siting of the mast and its associated cabinets would therefore not result in any harm to highway safety with regard to pedestrians using the surrounding pavement. I have been mindful of, and the proposal would comply with, LP1 Policies ENV6 and STRAT10 and LP2 Policies DM18 and T5 and Section 9 of the Framework.

#### *Whether any Harm is Outweighed by Other Considerations*

15. Paragraph 199 of the Framework advises that when considering the impact of a proposed development on the significance of designated heritage assets, great weight should be given to the asset's conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of the heritage asset or from development within its setting and that this should have clear and convincing justification.

16. I find that, given the scale of the proposal and its effects, it would cause less than substantial harm to the significance of the CCA and the settings of the nearby SAM and listed buildings. Paragraph 202 of the Framework states that where less than substantial harm occurs, this should be weighed against the public benefits of the proposal.
17. The proposal would provide 5G mobile coverage in an area where such coverage is currently not available. I note that the Site Specific Supplementary Information (the SSSI) demonstrates that other locations have been considered by the appellant and that they consider this to be the best available option to achieve this additional provision. I am also mindful that the 20 metre height of the mast is as short as could be achieved for a viable installation.
18. The appellant has raised economic and social benefits that would be secured through the provision of a 5G network in this area and that they would be beneficial both locally and nationally. I also recognise the importance the Government puts on such provision. I consequently afford these matters, collectively, substantial weight in favour of the proposal.
19. The proposal would not result in any harm to highway safety or living conditions. However, a lack of harm is not a benefit in itself and so this attracts only neutral weight in my considerations.
20. Although I am content that the five discounted sites would not be appropriate for a new mast, the appellant's submissions provide only very limited information on the search area and finding alternative sites. In particular, it has not been demonstrated that sufficient investigations have been carried out as to the sharing of existing masts or sites, or the use of existing buildings and structures. The SSSI makes reference to this sequential approach but no substantive details for discounting each step have been provided. I note the Council have referred to a number of buildings nearby that could be appropriate and to which the appellant has made no reference.
21. Although I attach the public benefits of the scheme substantial weight, it has not been adequately demonstrated that a less harmful alternative site, providing the same public benefits, would be unachievable.
22. Consequently, the considerable importance and weight I attach to the harm outlined above would not be outweighed by the substantial weight I afford the benefits of the proposal and the need for it to be sited at this location. No clear and convincing justification for the harm to the designated heritage assets has therefore been provided and the proposal would fail to comply with Section 72(1) of the Act. I have also been mindful of, and the proposal would conflict with LP1 Policies ENV5, ENV6 and STRAT10 and LP2 Policies CH1, CH5, CH6, DM3, DM18, DM46, DM47 and T5 and Paragraphs 117, 189, 197, 199, 200 and 202 of the Framework.

## **Conclusion**

23. For the reasons given above, the appeal is dismissed.

*Samuel Watson*

INSPECTOR