



Appeal Decision

Site visit made on 21 November 2023

by E Worthington BA (Hons) MTP MUED MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 6th December 2023

Appeal Ref: APP/Q3060/W/23/3318196

Castle Boulevard street works, Castle Boulevard, Nottingham, NG7 1FG

- 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 GDPO).
 - The appeal is made Gallivan, CK Hutchinson Networks (UK) Ltd against the decision of Nottingham City Council.
 - The application Ref 22/02122/PAT (PP-11645204), dated 25 October 2022, was refused by notice dated 19 December 2022.
 - The telecommunications installation proposed is described as 'proposed 5G telecoms installation: H3G 18m street pole and additional equipment cabinets'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the proposal relates to a Conservation Area, I have had special regard to section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). This requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of that area.
3. The provisions of the GDPO 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.
4. The provisions of Schedule 2, Part 16, Class A of the GDPO do not require regard to be had to the development plan. I have had regard to the policies of the development plan and the National Planning Policy Framework (the Framework) only in so far as they are a material consideration relevant to the matters of siting and appearance.

Main Issues

5. The principle of development is not subject to consideration in a prior approval application since this has been established by virtue of the GDPO.
 6. The main issues are the effect of the siting and appearance of the proposed installation on the character and appearance of the area and the significance of heritage assets, and its effect on pedestrian safety.
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Reasons

The heritage assets

7. The appeal site is part of the footway fronting Castle Boulevard and is within the Canal Conservation Area. This covers part of the Nottingham Canal west of the city centre and south of Nottingham Castle and the Park Estate. The Canal Conservation Area Appraisal (CAA) states that the area is part of the urban landscape of Nottingham sandwiched between the railway and Castle Rock. It represents the development of part of the Nottingham Canal and its surrounding area from its construction in 1793 through its development in the 19th century and regeneration in the 20th century.
8. Located around the town wharves the area comprises a commercial and industrial hub with a mix of industrial, commercial and residential elements where buildings are focussed on the canal and the street network. The CAA finds that Nottingham Castle and Castle Rock dominate, both visually and physically, the canal basin, Canal Street and Castle Boulevard as one moves west through the conservation area.
9. The CAA also recognises the importance of views between the area and its surroundings and states that the relationship with other nearby conservation areas is important, and that in some locations the character of each is inseparable. This includes at the junction of Hope Drive and Fishpond Drive where the Canal Conservation Area adjoins the Park Conservation Area. Here a break in the building line reveals the Park Estate.
10. The appeal site takes in part of the footway at this junction and so is immediately adjacent to the Park Conservation Area. This incorporates the Park Estate, a historic residential estate immediately to the west of the castle which was historically the castle's deer park. The Park Conservation Area Appraisal and Management Plan Supplementary Planning Document (SPD) describes the area as a pioneering example of a residential park suburb remarkable for the quality of its urban design and architecture and its historical integrity. The area's historical relationship with Nottingham Castle is important. As the outstanding landmark feature of the area the castle is the subject of several designed views that promote its role as the centrepiece of the estate's Arcadian aesthetic.
11. I consider that the significance of both the Canal Conservation Area and the Park Conservation Area, in so far as relating to this appeal, is mainly derived from the quality and variety of the historic buildings and the relationships of these to each other and the spaces, streets, and public realm around them that make up the distinctive townscape. It also stems from the visual and historic connections and relationship between the two areas and the landmark castle.
12. The appeal site fronts Castle Boulevard which is a main road running along the northern edge of the Canal Conservation Area and the southern edge of the Park Conservation Area. Castle Boulevard is recognised in the CAA as the most architecturally and historically cohesive and complete part of the conservation area. It forms part of a prominent area of open public realm in the middle of a wide section of pavement and is seen in views up and down Castle Boulevard and at the pedestrian entrance to Fishpond Drive and Hope Drive at the edge of the Park Estate. As a result, it contributes positively to the historic character and appearance of the Canal Conservation Area.

13. The National Planning Policy Framework (the Framework) defines setting as the surroundings in which a heritage asset is experienced. As set out above, the appeal site is at the edge of the Park Estate. There is direct inter-visibility between the appeal site and the Park Conservation Area, and some contextual views of the conservation area include the appeal site. Thus the appeal site also has a visual relationship with that conservation area, and therefore contributes to its setting.
14. The Grade I listed Castle Museum and Art Gallery (Ref: 1271188) is nearby. This Ducal palace, now a museum and art gallery dates to around 1674-79 and is recognised as being of the highest national significance and of exceptional architectural and historic interest. Built in a Provincial Baroque style of ashlar stone this substantial and handsome mansion building is located in a visually prominent elevated position between the city centre and the Park Estate where the ridge terminates in an abrupt cliff known as the Castle Rock. It is an imposing landmark building that dominates the city.
15. Insofar as relating to this appeal, the significance of this listed building is derived from its architectural and historic interest as an iconic landmark building to which the grandeur of its design and elevated position in relation to the surrounding area contribute, and tell of the role and status of Nottingham and its historic development.
16. The setting of the castle, and the contribution it makes to the significance of that asset, in so far as it relates to this appeal, is derived from its relationship with the surrounding city and visual connection with it. This is allowed via streets and other gaps in the built form which afford an appreciation of the castle, and these vistas all contribute to the setting of the castle and affect how it is appreciated. They provide inter visibility between the castle and the surrounding townscape and maintain the important visual connection which reinforces the dominance and importance of the castle to Nottingham.
17. Whilst located on Castle Boulevard, the appeal site is close to Hope Drive which leads through the Park Estate eastwards to the foot of Castle Rock. The castle overlooks the appeal site, albeit at distance, and forms the backdrop to it when looking eastwards along Hope Drive. There is clear and uninterrupted inter-visibility between the castle and the appeal site, and important views of the listed building on approach from the west include the appeal site. Thus the appeal site has a direct visual relationship with the building and contributes positively to its setting.
18. I have had special regard to these matters in considering the appeal.

The effect of the proposal – character and appearance and heritage assets

19. The proposal concerns an 18 metre high slimline telecommunications pole with supporting antennae, a wraparound cabinet at the base, and three additional associated equipment cabinets. These would be located in the middle of a wide area of open footpath on Castle Boulevard at the pedestrian entrance to the Park Estate.
20. Paragraph 115 of the Framework states that where new sites are required, equipment should be sympathetically designed and camouflaged where appropriate. The appeal site is within an urban area next to a busy road and forms part of a wide footpath which is close to lamp posts and trees. The pole

is designed to sit alongside street furniture including lamp posts. There are three storey residential properties in the vicinity of the appeal site. The grey pole and cabinets would be of a simplistic functional design and the cabinets would be typical of control boxes commonly seen on the public highway. I also appreciate that the height of the pole proposed is the lowest required for the improved 5G service.

21. Nevertheless, the installation would introduce a substantial and dominant feature to the street scene. The three storey residential buildings nearby are appreciated as relatively low rise suburban development. The proposed pole would be much taller than them and would also significantly exceed the height of the existing street furniture (including the street lights) and mature street trees. Despite being located next to a cluster of trees and shrubs and sections of railings near the pedestrian entrance to Hope Drive from Castle Boulevard, the installation would tower over these street level features.
22. Given its height and prominent siting, the installation would be obvious in views taken in both directions along Castle Boulevard. Notably, it would be highly conspicuous looking eastwards towards Hope Drive and the castle beyond. It would interrupt important vistas towards that distinctive landmark building and seriously erode the picturesque quality of elevated views of the castle. The SPD recognises that longer range views at street level are comparatively rare and consequently of notable value, especially where they land on the castle.
23. Taking these factors into account, I find that the proposal would be visually intrusive and would appear at odds with the attractive suburban townscape and the quality and variety of the traditional buildings nearby. It would detract from its surroundings and stand out as an incongruous and jarring addition to the site and the street scene that would undermine the appreciation of the important historic suburban townscape nearby. Moreover it would compromise views of the castle, compete visually with that listed building and distract from its visual primacy and dominance. In doing so it would undermine the important visual and historic connection between the surrounding area and the castle.
24. For these reasons I find that the proposal would diminish the contribution of the setting of the nearby castle to its significance and would fail to preserve the setting of the castle. In undermining the setting, which also contributes to the historic significance of the Canal Conservation area and the setting of the Park Conservation Area, the proposal would also detrimentally affect how both these conservation areas are experienced. I therefore find that the siting and appearance of the proposed installation would have a harmful effect on the character and appearance of the area and the significance of heritage assets.

Heritage balance

25. The Framework advises at paragraph 199 that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation. I consider that the harm in this case, although serious, would be less than substantial in the terms meant by the Framework. Paragraph 202 of the Framework requires that less than substantial harm should be weighed against the public benefits of the proposal, including where appropriate, securing its optimum viable use.

26. The proposal would provide 5G coverage to the area. This would meet an identified requirement for new 5G coverage and improve service in and around the Castle Boulevard area. The appellant refers to an acute need for a new base station and a target coverage hole. A new site is required to meet the appellant's operational requirements and to provide much needed coverage to the densely populated area. It would provide modern high speed communications to the residential area, where there is increased demand arising from home working, remote education, gaming and social media.
27. There is support for the proposal from some local residents for whom the benefits of 5G would be significant, given that the area only receives a 3G mobile signal (due to being in the shadow of Castle Rock). Reference is also made to the specific cost savings over current cable broadband.
28. The Government is committed to promoting technology and recognises the importance of telecommunications to the wider economy. Paragraph 114 of the Framework states that advanced high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G). Paragraph 118 of the Framework is also clear that local planning authorities must determine applications on planning grounds only and should not seek to prevent competition between different operators or question the need for an electronic communications system.
29. The appellant also refers to a letter from the Department for Digital, Culture, Media and Sport of 27 August 2020 urging local authorities to speed up digital infrastructure roll out. Reference is also made to the government's 2017 White Paper 'Next Generation Mobile Technologies: A 5G strategy for the UK'. These also lend support to the scheme. Additionally, the Nottingham City Land and Planning Policies Development Plan Document Local Plan Part 2 (LAPP) recognises that telecommunications systems have an important role in the development of the local and national economies and seeks to ensure that acceptable provision can continue to be made for information communications technology whilst ensuring that the impact on the environment, visual and residential amenity is limited.
30. The appellant indicates that a 5G cell typically has a smaller radius area and stations must be situated within close proximity of the area they are covering. The intended target/search area has a radius of approximately 100 metres (although reference is also made in the SSSI to a cell search area of 50 metres). Nevertheless, I appreciate that base stations operate on a low power and need to be located close to the residential areas they serve.
31. Against this background, the appellant undertook a sequential approach to site selection. Paragraph 117 of the Framework requires applications to be supported by the necessary evidence to justify the proposed development and indicates that this should include; for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure (c).
32. Policy IN1 of the Nottingham City Land and Planning Policies Development Plan Document Local Plan Part 2 (LAPP) relates to telecommunications and requires it to be demonstrated that no existing masts or structures are available that can reasonably be shared (b). It also seeks to ensure that equipment does not

- have a detrimental impact on the character and appearance of the area (c), and that heritage assets are preserved or enhanced (e).
33. A desk top study and physical inspection of the area was undertaken but no mast/site sharing opportunities or existing buildings/structures were identified. The appellant's Site Specification Supplementary Information and Planning Justification Statement (SSSI) states that in this location existing mast sites are not capable of supporting additional equipment to compliment or extend coverage reach, and prospective 'in-fill' mast sites are extremely limited. Accordingly, a street pole with associated cabinets was deemed to be the only and most appropriate solution available. However, I have seen no assessment of the alternative buildings, masts or other structures that were considered as part of this exercise, or the reasons as to why they were ruled out.
34. Whilst the Council accepts that a range of alternative locations in the Park Estate have been considered, I am conscious that the site search for alternative locations relates only to a street pole type of installation. Although the appellant's statement refers to one other option put forward during the site selection process no further details are given. Notwithstanding this, the SSSI considers five discounted sites.
35. All of these are in pavement locations and a number of them were ruled out due to narrow pavements or proximity to residential properties (amongst other things). No further details are given, and no explanation is given as to the width of pavement or proximity to residential properties that would have been tolerated. Moreover, the possible presence of heritage assets nearby is not listed as a potential constraint to development or as a factor which has been considered as part of the site selection process. This being so, I cannot be assured that the important matter of the impact of the proposal on heritage assets has been taken into account in choosing the appeal site.
36. Whilst it is acknowledged that the appeal site is close to them, no consideration appears to have been given to the particular characteristics or significance of the conservation areas or the listed building in this case. I have seen no heritage impact assessment of the appeal site, in what is a highly sensitive location in terms of heritage assets. As such, it has not been established that no suitable alternatives sites for the installation exist that would prove less harmful. This limits the public benefit of the proposal, since I cannot be sure the benefits as outlined could not be realised by development elsewhere.
37. Bringing matters together, for the reasons set out above I find that the siting and appearance of the proposed installation would be harmful to the character and appearance of the area and heritage assets. Even taking all the factors considered above into account, I find that the public benefits arising from the proposal would not outweigh the harm to the significance of the heritage assets I have identified.
38. In view of my conclusions, and insofar as they are material considerations relevant to siting and appearance, I consider that the proposal's harm to the character and appearance of the area and heritage assets would be contrary to Policy 10 of the Greater Nottingham Aligned Core Strategies Part 1 Local Plan (ACS) which concerns design and enhancing local identity and requires all new development to (amongst other things), have regard to the impact on important views and vistas including of townscape and landmarks (2i), and the setting of heritage assets (2j). Furthermore it would be at odds with ACS

Policy 11 which is supportive of proposals where the historic environment and heritage assets and their settings are conserved and/or enhanced in line with their interests and significance.

39. The proposal would also conflict with LAPP Policy DE1 which considers proposals against design criteria including whether they would respect and enhance the streetscape, local environment, townscape and character of the area (a). It would fail to support LAPP Policy DE2 which relates to context and place making and requires proposals to help to reinforce and enhance positive characteristics. It would also be contrary to LAPP Policy HE1 which concerns heritage assets and indicates that where a proposal would result in less than substantial harm, permission will only be granted where the public benefits outweigh the harm. Finally it would fail to support LAPP Policy IN1 which relates to telecommunications and seeks to ensure that equipment does not have a detrimental impact on the character and appearance of the area (c), and that heritage assets are preserved or enhanced (e).
40. For these reasons the proposed development would fail to satisfy the requirements of the Act and paragraph 197 of the Framework and would be in conflict with the development plan.

The effect of the proposal - Pedestrian safety

41. The cabinets and pole would be sited in the middle of the pavement in a linear arrangement. The Council is concerned that the proposal would be an obstacle to pedestrian movement and hazard for the visually impaired in particular. The wide area of pavement is at the pedestrian entrance to the Park Estate and is an important and well used expansive area of public realm. This being so, pedestrians are currently free to travel along and across the pavement unencumbered.
42. ACS Policy DE2 expects proposals to (amongst other things) contribute to the creation of an attractive, safe and inclusive pedestrian environment and wider public realm that provides good accessibility, especially for people with disabilities (g).
43. The proposal would be sited in the middle of this thoroughfare and would narrow the pavement and limit the currently available space there. By its nature it would introduce an obstruction to the footway that would constrict the channel for movement, and which pedestrians would need to navigate their way past. This additional street clutter would make this section of the busy thoroughfare a more awkward area for pedestrians to negotiate and cause inconvenience to users including those who are visually impaired. Thus the proposal would fail to create a safe and inclusive pedestrian environment or public realm and would not provide good accessibility, particularly for people with disabilities.
44. I therefore conclude on this main issue that the siting of the proposed installation would compromise the primary purpose of the footpath and disadvantage more vulnerable users and has the potential to have a detrimental effect on the safety of pedestrians. This would be contrary to ACS Policy 10 which requires new development to be designed to create an attractive, safe, inclusive and healthy environment. It would also conflict with ACS Policy DE1 which considers whether development would enhance community safety and street activity (amongst other things) and ACS Policy

DE2. Whilst reference is made to LAPP Policy TR1 since this relates to parking and travel planning, I do not regard it to be relevant to the appeal scheme.

Overall conclusion

45. As set out above, whilst the proposal would lead to some public benefits and is supported in principle by the Framework, I have found that these would be insufficient to outweigh the less than substantial harm to the heritage assets that I have identified. I also confirm that even taken together, and in combination with any private benefits of the proposal, these benefits are insufficient to outweigh the harm to the safety of pedestrians.

Other matters

46. The appellant undertook pre-consultation with the Council and notified ward members. However this is not a reason to allow an installation which would be harmful.
47. Reference is made to an appeal decision in Walworth London. However, I am not aware of the full circumstances that led to that decision and so cannot be sure that they are the same as in the case before me. I note for example that that scheme was refused due to pedestrian safety concerns. I confirm in any case that I have considered the appeal proposal on its own individual merits and made my own assessment as to its potential impacts.
48. The appellant has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). In these circumstances, the Framework advises that health safeguards are not something which a decision-maker should determine. No sufficiently authoritative evidence has been provided to indicate that the ICNIRP guidelines would not be complied with, or that a departure from national policy would be justified. The absence of harm in this regard counts neither for, nor against the proposal.

Conclusion

49. For the reasons set out above, and having regard to all the other matters raised, I conclude that the appeal should be dismissed.

E Worthington

INSPECTOR