



Appeal Decision

Site visit made on 21 November 2023

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 December 2023

Appeal Ref: APP/Q3060/W/23/3323462

Barker Gate/Bellar Gate, Nottingham, Nottinghamshire NG1 1JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and 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 Cornerstone against the decision of Nottingham City Council.
 - The application Ref 22/02115/PAT, dated 19 October 2022, was refused by notice dated 6 December 2022.
 - The development proposed is described as 20.00m high Apollo Street pole supporting 3 no. shrouded antennas and 3 no. unshrouded antennas, together with ground-based equipment cabinets and ancillary development thereto.
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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. Nevertheless, Policies 10 and 11 of the Greater Nottingham Aligned Core Strategies Part 1 Local Plan 2014 (ACS) and Policies DE1, DE2, HE1 and IN1 of the Nottingham City Land and Planning Policies Development Plan Document Local Plan Part 2 2020 (LAPP) are material considerations only in so far as they relate to issues of siting and appearance and heritage. Similarly, the National Planning Policy Framework (the Framework) is also a material consideration and includes a section on supporting high quality communications.
4. Since the determination of this application, the Government published a revised Framework in December 2023, replacing the version published September 2021. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Main Issues

5. The main issues are:

- i) the effect of the siting and appearance of the proposal on the character and appearance of the surrounding area, with particular regard to whether it would preserve or enhance the character or appearance of the Lace Market Conservation Area (CA); and
- ii) 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 paved area at the back edge of the pavement on Barker Gate. The site lies adjacent to a group of trees and at the junction of Barker Gate with Bellar Gate which is a busy main road with a pedestrian crossing within close to the appeal site. Barker Gate rises up in a westerly direction towards Stoney Street. Whilst street furniture is not uncommon in the area, with streetlamps, road signs, cabinets and seating located within the immediate vicinity of the site these are of modest height.
7. The appeal site is within the Lace Market Conservation Area (CA) where there are views of both contemporary developments and historic buildings. To the east of the appeal site are numerous large scale contemporary developments including the Motorpoint Arena, the National Ice Centre and to the north of Bolero Square is Ice House, a tall apartment building. To the south-west of the appeal site is St. Mary's School and associated school gate, both which are Grade II listed.
8. The CA includes a rich collection of buildings, including tall and imposing Victorian warehouses and factories on narrow streets. The quality and variety of historic buildings and the relationship of these to each other and the spaces, streets and public realm around them make up the distinctive townscape. The CA derives its significance from its architectural value and historical association with the lace trade and other clothing and textile industries.
9. The Lace Market Conservation Policy 1993 (LMCP) notes that the eastern fringe of the CA has been affected by demolition associated with the widening of Barker Gate and Bellar Gate and Belward Street which has created an open character. The re-creation of the historic urban form and visual improvement of this area is an important objective of the LMCP, which recognises the importance of views within the CA.
10. Nos. 23/23A Barker Gate, St. Mary's School and St. Mary's School Gateway, are listed buildings and the green immediately to the south of the appeal site to be locally listed. I observed these buildings and spaces to provide a backdrop to important views within the CA and contribute positively to its significance.
11. The junction of Barker Gate and Bellar Gate is a main traffic and pedestrian route, which provides access through, and appreciation of the designated heritage assets and the CA. The group of trees situated at the back edge of the pavement adjacent to the appeal site contribute positively to the spacious and

verdant character of this part of the CA. The appeal site, being an area of hardstanding, makes a neutral contribution to the CA.

12. The proposal includes the erection of a 20m tall mast with associated cabinets of varied sizes, that would be sited in a row. The proposed mast and its associated cabinets would be positioned in a prominent location, close to, and readily visible from, the adjoining roads for some distance.
13. The proposed mast and cabinets would be positioned towards the back edge of the footway adjacent to the trees. Whilst the proposal would add to the number of cabinets and street furniture in the immediate locality, given the extent of the deep area of hardstanding I do not consider that their siting would result in an unacceptable degree of visual clutter, as the spacious and verdant character would largely remain.
14. Although there are tall vertical features, such as trees, streetlights and signage within the adjoining streets, these are not of a similar appearance to the proposal. In particular, the trees provide a soft verdant character, and street furniture is much shorter and more slender in their proportions than the proposal. Similarly, the nearby tall buildings are not comparable to the appeal proposal due to their significantly differing form. The adjacent trees would provide some mitigation to soften the appearance of the lower sections of the mast from numerous views, particularly when approaching from the south and north. However, the mast would project over the height of the adjacent trees and it would be a dominant and intrusive feature. Notwithstanding the grey proposed external finish of the mast, its height and bulk would appear incongruous in this prominent area of public realm.
15. Based on the evidence before me, no pruning works are proposed to the branches of the trees. I have no substantive evidence before me that the mast could not be installed without requiring tree pruning. In any event I consider that any tree pruning works would likely to be minimal and would not diminish the overall group value of the trees. In any case the trees are afforded statutory protection, and any works to the trees would require separate tree works consent.
16. Notwithstanding the above, due to the proximity of the proposed development to the adjacent group of trees, in the absence of an arboricultural survey there are no details of the nature and extent of root protection areas of the trees to enable an assessment of the impact on the tree roots to be made. It is my judgement that foundations required for its installation would affect the roots of some of the trees which could lead to their deterioration or eventual loss, with implications for the verdant character and appearance of the area. Whilst the majority of trees would be unaffected, I afford moderate weight to this harm.
17. For the reasons stated above, the siting and appearance of the mast would therefore harm the character and appearance of the surrounding area and would not preserve or enhance the character of the CA. Consequently, the proposal would fail to meet the requirements of S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). In so far as they are a material consideration, the proposal is therefore contrary to Policies 10 and 11 of the ACS and DE1, DE2, HE1 and IN1 of the LAPP. In addition, the proposed development would conflict with the Framework. These policies require,

amongst other things, high quality design that preserves or enhances local character.

Alternative Sites

18. The Council has not disputed the appellant's need for improved 5G coverage, and I see no reason to take a different stance. However, Paragraph 117 of the Framework sets out that evidence must be supplied to demonstrate that alternatives have been taken into consideration. Policy IN1 of 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).
19. The appellant states that a sequential approach has been followed in the selection of the site and I note alternative locations considered within the Site Specific Supplementary Information submitted by the appellant. The appellant considers the site to be the best available option with regard to the needs of the appellant and the effect of the proposal's siting and appearance.
20. The supporting information refers to 8 discounted alternative site options for the proposed development, some of which fall outside of the search area. The reasons given as to why these sites have been discounted include inadequate height of buildings for roof top options, insufficient space below ground to install foundations and cabling due to existing services for new masts and proximity to housing and effects upon heritage assets. However, the reasons are unsupported by any further evidence to support the reasoning. It is noted that the search area includes land outside of the CA designation and at my visit I observed that there were a number of buildings and paved areas which may be suitable for the location of antenna. It is not clear why these were discounted or would be more harmful than the proposed location. On this basis, the appellants sequential approach is not suitably robust. Therefore, I cannot be satisfied that this is the only site on which the development could be located or that the discounted options are the only reasonable alternatives that could have been considered.

Other Matters

21. 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.
22. My attention has been drawn to a number of appeal decisions that the appellant submits are comparable to the appeal proposal. Although I do not dispute that the description of development may be comparable to the appeal proposal, 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. From the limited information available to me, amongst others, cases referred relate to

the replacement of an existing monopole and consideration of living conditions; neither of which are relevant to the appeal before me. These other decisions therefore do not lead me to a different conclusion on the main issues in this appeal. In any event, I have assessed the appeal on its own merits.

Planning Balance

23. I find that the proposal would cause less than substantial harm to the significance of the CA to which I attribute considerable importance and weight. Under such circumstances, the Framework states that this harm should be weighed against the public benefits of the proposal.
24. The proposal would improve the provision of a 5G network in this location, with associated benefits including faster and more reliable 5G connectivity. In turn it would contribute to economic growth in the UK, improve connectivity in society and serve potential new technologies including in terms of sustainability, health and education. I acknowledge that the proposal to provide coverage in this geographical area is part of a wider whole and that the network would be undermined by gaps in coverage. I consider that the public benefits would be moderate, but they would not be sufficient to outweigh the less than substantial harm to the significance of the heritage asset.
25. 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 Policies 10 and 11 of the ACS and DE1, DE2, HE1 and IN1 of the LAPP and the Framework, which the proposal would conflict with.

Conclusion

26. In conclusion, the siting and appearance of the proposed development would cause harm to the character and appearance of the surrounding area, and would not preserve or enhance the character or appearance of the Lace Market CA. Given suitable alternatives have not been robustly explored, this harm is not outweighed by the need for the installation to be sited as proposed. As such, I find the siting and appearance of the proposed development to be unacceptable.
27. The appeal is dismissed.

R Gee

INSPECTOR