



Appeal Decision

Site visit made on 11 January 2024

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2024

Appeal Ref: APP/N1160/W/23/3327378

Cumberland Road, Plymouth PL1 4HN

- 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 Gallivan, CK Hutchison Networks (UK) Ltd against the decision of Plymouth City Council.
 - The application Ref 23/00186/16, dated 8 February 2023, was refused by notice dated 4 April 2023.
 - The development proposed is described as 'Proposed 5G telecoms installation: H3G 15m 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 (GPDO 2015), 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. The application form states the first part of the site address as 'CUMBERLAND ROAD street works', and the appeal form states it as 'Area of Footpath, Cumberland Street Works.' Within the banner heading above I have not included reference to street works or area of footpath as these are descriptions of the proposal and the site is not solely a footpath.

Planning Policy

4. There is no requirement to have regard to the development plan as there would be for any development requiring planning permission.
5. Nevertheless, Policies DEV20 and DEV21 of the Plymouth and South West Devon Joint Local Plan (2014-2034) (March 2019) (LP) are material considerations as they relate to issues of siting and appearance. In particular, they seek to ensure development proposals meet a good standard of design, contribute positively to the townscape, and enhance the historic environment and their settings according to their national and local significance. Similarly, the National Planning Policy Framework (the Framework) is also a material

consideration, and this includes sections on supporting high quality communications and conserving and enhancing the historic environment.

Main Issues

6. The main issues are the effect of the siting and appearance of the proposed installation on:
 - the character and appearance of the Devonport Conservation Area (CA) and the setting of nearby Listed Buildings; and
 - if any harm would occur, whether this is outweighed by the need for the installation to be sited as proposed taking into account any suitable alternatives.

Reasons

Character and Appearance

Conservation Area

7. The appeal site is part of a hard and soft area of public space within, and at the gateway to, the CA. The site itself is within a hard-surfaced area forming part of the public space. The proposal would comprise a 15-metre-high pole and associated equipment cabinets.
8. The Conservation Area is centred around the former civic, administrative, and commercial centre of Devonport with links to the town's historic Dockyard and sea. The Devonport Conservation Area Appraisal and Management Proposals (July 2006) (DCAA) highlight 42 buildings on the statutory list of Buildings of Special Architectural or Historic Interest, with a further 32 buildings identified as making a positive contribution to the CA. It further states that the appeal site falls within Area 1: Duke Street, Cumberland Street, Ker Street and Cumberland Gardens. These streets and buildings comprise some commercial uses at ground floor with residential uses above, retaining the intrinsic quality of these streets and buildings reflecting the town at the height of its economic and civic power. A number of the buildings front onto, and have a visual relationship with, the public space. The DCAA further states that Cumberland Gardens is a key public open space serving as an entrance into the area being an important green area within an otherwise extensive hard urban landscape. The significance of the Conservation Area is in part derived from these aspects.
9. Vertical structures in the form of streetlights and heritage streetlights of regular spacing are apparent in the street scape. There are also several trees within the public space, which the submitted plans show as around 12 metres in height.
10. The site sits in a central position within a hard surfaced area close to an existing bench within the public space set back considerably from the road edge. The proposed street pole would be visible in views from Cumberland Street, Cumberland Road and Chapel Street. In such views, the pole and cabinets would be seen as part of the open area which, given its history as a key public open space, contributes positively to the character and appearance of the CA. In addition, the pole would be visible through the trees in views from Duke Street, George Street and Theatre Ope.

11. The height of the pole has been reduced to the minimum necessary for its purpose of deploying 5G services and meeting the International Commission on Non-Ionizing Radiation Protection standard. However, it would appear as an obviously engineered feature of a greater scale and bulk than the existing vertical structures. Furthermore, its position within the public space set back from the roads would be at odds with the existing streetlights that are regularly spaced and follow the road edges.
12. The trees within the public space would provide some screening to the lower parts of the pole from certain vantage points. However, even when the trees are in full leaf, the pole would still appear conspicuously tall. During the winter months, when the tree canopies are reduced, it would stand out further. The black colour proposed for the pole and cabinets as shown on the submitted plans would help reduce the contrast with the backdrop, although much less so for the upper sections of the pole which would mainly be viewed against the sky. The pole would remain highly prominent in views from the surrounding area, particularly along Cumberland Street, Cumberland Road and Chapel Street. Given its location, height and uncompromisingly modern and utilitarian appearance, the pole would be dominant and discordant in this location.
13. I appreciate that efforts have been made to keep the development away from potentially sensitive receptors and to locate it on a wider area of public realm away from residential properties and where the flow of pedestrians would not be adversely affected. However, the height and positioning of the proposal would stand out as an incongruous feature. The presence of some limited nearby street furniture in the form of directional signage, pedestrian crossing and telephone boxes would not result in the proposal appearing compatible.
14. For the reasons given, I conclude that the siting and appearance of the proposal would not preserve the character or appearance of the Conservation Area. Consequently, there would be harm to its significance.

Setting of nearby Listed Buildings

15. The Council has raised concern about the effect on the nearby Grade II listed buildings forming 4 and 5 Theatre Ope (List Entry Number 1386474), The Shakespeare Public House (List Entry Number 1386473), 1 and 2 Theatre Ope (List Entry Number 1386472), 8 George Street (List Entry Number 1319612), 2, 4 and 6 George Street (List Entry Number 1322039), 6 Cumberland Street (List Entry Number 1130052), 7 Cumberland Street (List Entry Number 1130053) and 41-43 and 44-45 Chapel Street (List Entry Number 1130018), although little explanation is given for the concerns other than proximity.
16. The listed buildings are valuable for their historic and architectural value creating the quality of the associated streets and reflecting the town at the height of its economic and civic power. The listed buildings have a physical and visual relationship with the public space that forms part of their settings. The significance of the listed buildings is in part derived from these aspects. The proposal would be visible in views from, or viewed in association with, these listed buildings where it would appear as an unduly modern, urban and jarring feature. The proposal would appear as a visually disruptive element within the setting of the listed buildings and so would harm their significance.

Balance and Conclusion on Heritage Assets

17. In terms of the Framework, I assess the harm to the Conservation Area and the setting of the listed buildings as less than substantial. Even so, less than substantial harm does not equate to a less than substantial planning objection, especially where national policy expectations for conserving such assets have not been met. In such circumstances, paragraph 208 of the Framework states that the harm should be weighed against the public benefits of the proposal.
18. Paragraph 118 of the Framework states that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. The proposal would allow for the construction of infrastructure which would enable the roll out of 5G coverage, enhance network speeds and connectivity within the surrounding area. It would therefore contribute towards the Framework's objective of supporting high quality communications infrastructure such as 5G. Those implications may be considered public benefits and carry moderate weight in favour of the proposal.
19. Paragraph 205 of the Framework states that great weight should be given to the heritage asset's conservation. Paragraph 206 requires clear and convincing justification for any harm to or loss of significance of a designated heritage asset. Therefore, the harm I have identified to the significance of the Conservation Area and the setting of the listed buildings attracts considerable weight against the proposal. Given the weight that I attach to the public benefits, these would not outweigh the harm that would be caused.
20. Consequently, insofar as they are a material consideration, the proposal would conflict with Policies DEV20 and DEV21 of the Local Plan. Amongst other things, these policies seek to protect and improve the quality of the built environment, conserve and where appropriate enhance its historic environment and states that where development proposals will lead to any harm to the significance of a designated heritage asset, they must be justified against the public benefits of the development. There would also be conflict with the Framework's historic environment objectives as set out in paragraphs 205, 206 and 208.

Alternative Sites

21. Paragraph 119 of the Framework states that the number of communications masts and the sites for such installations should be kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion. It encourages the use of existing masts. The appellant has investigated alternative sites as required by paragraph 121 of the Framework and discounted them, due to unsuitable pavements, potential to impact on visibility splays and close proximity to housing.
22. I appreciate that the search area for the proposal is constrained. I am also mindful that there is a limit to how far an operator can reasonably be expected to go to demonstrate no other less intrusive or harmful sites are available. However, only limited information has been provided as to why the alternative sites were discounted or why these were the only possible locations within the search area. The evidence does not include detailed mapping or analysis of the potential for mast sharing, co-location or installing a base station on an existing building. Furthermore, there is little assessment within the appellant's evidence about the presence and effect of the proposal on the CA or listed

buildings. I am not therefore satisfied that all alternative, potentially less harmful options have reasonably been explored and therefore that no more suitable sites are available.

23. Consequently, I conclude that the harm I have identified to the character and appearance and significance of the Conservation Area and to the setting and significance of the nearby Grade II listed buildings, is not outweighed by the need for the installation to be sited as proposed, having regard to the potential availability of alternative sites.

Other Matters

24. Reference has been made to various social, economic and sustainability benefits. While these are relevant with regard to the consideration of the significance of the designated heritage assets, they have not been taken into account in considering the matters of siting and appearance.
25. The appellant states that the siting and appearance of the associated cabinets are permitted development. However, the appeal before me relates to the scheme in its entirety, and I have assessed the proposal on this basis. In any event, I am not persuaded that there would be a greater than theoretical possibility of the cabinets being installed at the site without the associated street pole, such that I attach very little weight to this argument.
26. The appellant draws attention to an appeal decision¹ in Walworth, London. However, I have limited information in relation to this appeal to determine whether it is comparable. In any case I am required to consider the current proposal on its merits.

Conclusion

27. The siting and appearance of the proposal would result in harm to the character and appearance of the Devonport Conservation Area and the setting of nearby Listed Buildings. This harm is not outweighed by the public benefits of the proposal including the support in the Framework for high quality communications, or by the need for the installation to be sited in this location, having regard to the potential availability of alternative sites. In addition, the harm is not outweighed by any other considerations when weighed against the development plan harm and the wider requirements of the Framework.
28. Therefore, having regard to all matters raised, I conclude that the appeal should be dismissed.

C Rose

INSPECTOR

¹ APP/A5840/W/20/3254830