



Appeal Decision

Site visit made on 20 February 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2024

Appeal Ref: APP/R5510/C/22/3312442

Wellington House, 4-10 Cowley Road, Uxbridge, UB8 2XW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Cornerstone against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The notice was issued on 24 October 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the development of a large lattice tower and associated equipment cabin and fencing.
 - The requirements of the notice are: (i) Remove the lattice tower. (ii) Remove from the land all the debris, items, fixtures and fittings, building materials, plant and machinery resulting from the works listed above.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be varied by in paragraph 6 substituting '3 months' with '9 months' as the period for compliance. Subject to this variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

2. The revised National Planning Policy Framework (the Framework), published on 19 December 2023, has been taken into account in my Decision.

Ground (a) appeal

Background & Main Issues

3. The enforcement notice attacks a tower around 30 metres tall, mounted on which are a number of telecommunications antennae and dishes, together with an associated equipment cabin and fencing. The tower is situated in the grounds of a modern four-storey office building.
4. My understanding is that the tower and the ancillary development were erected to support telecommunications equipment temporarily displaced from the office building roof, pending the undertaking of enlargement works. The equipment is used by two mobile communications operators. At Article 3, Schedule 2, Part 16, Class A, the GPDO¹ grants planning permission for the use of land in an

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

emergency for up to 18 months by or on behalf of an electronic communications code operator to station and operate moveable electronic communications apparatus required for the replacement of unserviceable electronic communications apparatus, including the provision of moveable structures on the land for the purposes of that use. There is no dispute that, as the tower was erected in or around the autumn of 2019, the period specified in Class A has expired.

5. I am given to understand that the pandemic and changing economic conditions have contributed to a significant delay in commencing the works to enlarge the office building. The deemed planning application arising from the ground (a) appeal seeks retention of the tower and ancillary development for a further two years. This is intended to allow for the office building to be enlarged, following which the equipment would be re-installed on the roof. The main issues in this ground of appeal are therefore whether temporary planning permission should be granted for the tower and the ancillary development, having regard to:
- The effect on the character and appearance of the area.
 - The effect on the significance of designated heritage assets.
 - The effect on the living conditions of occupiers of neighbouring residential property, having regard to outlook.

Reasons

Character and appearance

6. The office building is located near the centre of town, close to the intersection of busy main roads. An extended row of three storey residential buildings, known as Cochrane House, is alongside, with further three storey residential buildings behind. Towards the town centre, buildings are generally larger in scale and more commercial in character, whilst further away they are for the most part smaller in scale and arranged close together, reflecting an older established residential character. These factors contribute to the urban feel in the vicinity of the office building. This is offset slightly by the well-planted public gardens, known as The Old Graveyard, almost opposite the office building, together with nearby roadside verges and their associated planting.
7. The lattice framework provides the tower with a substantial profile and contributes to its markedly utilitarian appearance. The profile and appearance of the tower does not compare favourably with the more slimline qualities of other items of upstanding urban infrastructure in the vicinity such as street lighting columns. Moreover, although set back from the street frontage close to the rear of the office building, the tower is of great height in relation to even the tallest buildings in the immediate and wider environs. A substantial portion of the tower protrudes well above the urban skyline. There are few features of similar height in the immediate or wider locality. These factors mean that the tower has a considerable visual presence in its surroundings and fails to assimilate satisfactorily within the prevailing pattern of local development. Even accounting for the largely urban setting, the tower is seen as an unduly assertive and alien feature, looming above the surrounding rooftops in views over a wide area, from the public realm as well as from residential property.
8. As a result, the tower causes unacceptable harm to the character and appearance of the area. This is in conflict with criterion in Policy DMHB 11 of

the London Borough of Hillingdon Local Plan Part 2-Development Management Policies (LP Part 2), which requires development to be of the highest standards of design, incorporating principles of good design, including by harmonising with the local context by taking into account the surrounding scale of development as well as rooflines and views both from and to the site. By failing to integrate well into the surrounding area, the tower also conflicts with LP Part 2 Policy DMHB 12. In addition, as the siting and design does not minimise its visual impact, with a detrimental effect on the character and appearance of the local area, the tower conflicts with criteria in LP Part 2 Policy DMHB 21.

Heritage assets

9. Designated heritage assets in the vicinity of the tower include the Grade II listed gateway to The Old Graveyard and the similarly listed War Memorial therein. Closer to the town centre and on slightly higher ground is the Grade II* listed Church of St Margaret. Also, not far away are the Old Uxbridge/Windsor Street and Rockingham Bridge Conservation Areas (CAs).
10. Part of the significance of the War Memorial comes from its high-quality design, together with the focus for public commemoration it provides and the sense of civic responsibility fostered. The significance of the gateway and the church, as well as that of the Old Uxbridge/Windsor Street CA, is to some extent derived from their strong evocation of earlier phases in the evolution of the town, including in the scale of buildings and the historic street pattern. In the Rockingham Bridge CA, development is largely characterised by tightly knit, two storey residential terraces dating from the 19th Century. The reiteration of similar patterns of development and the general absence of very tall structures in areas adjacent to the CAs contributes to their significance.
11. Since the tower is part of the surroundings in which the above heritage assets are experienced, it forms part of their settings. By standing well above the rooflines of adjacent buildings as a nearby, obviously modern and utilitarian feature, the tower draws focus away from the slender, elegant proportions of the War Memorial and the classically inspired gateway. Even during the summer and autumn months, maturing trees in the public gardens are unlikely to make much difference to the visually intrusive nature of the tower in relation to these assets. Although at a greater distance, similar considerations apply in respect of the tower intruding into important views of the robust flint and stone elevations of the medieval St Margaret's Church. Likewise, the tower represents an obviously modern, functional intrusion into views above the roofs of buildings following the historic street pattern in the Old Uxbridge/Windsor Street CA and above the rooflines of terraces in the Rockingham Bridge CA.
12. Therefore, the tower fails to preserve the settings of listed buildings and harms the contribution made by the settings of the CAs to their significance. By failing to safeguard the settings of heritage assets, the tower conflicts with criterion in LP Part 2 Policy DMHB 11. The failure of the tower to sustain the significance of the CAs and to positively contribute to local character and distinctiveness is in conflict with LP Part 2 Policy DMHB 4. The adverse impact on heritage assets is also in conflict with criterion in LP Part 2 Policy DMHB 21.

Living conditions

13. The considerable overall height and substantial profile, together with the siting in proximity to Cochrane House, means that the tower is readily apparent from rear-facing windows in the nearest neighbouring residential accommodation. There are clear, close-up views of the tower from some of the habitable rooms in accommodation in Cochrane House. The tower is seen as a very tall and obtrusive built feature from those rooms, more or less dominating outward views. Also, the tower appears as a very conspicuous built feature in views from accommodation in nearby residential blocks and associated communal space. Due to the proximity of such a tall and utilitarian structure, a number of neighbouring residential occupiers are experiencing an appreciably more enclosed feeling and a stronger sense of oppressiveness in their accommodation, contributing to a significant and harmful erosion in the level of outlook that they would otherwise enjoy.
14. As a result, the tower also causes unacceptable harm to the living conditions of the existing and future occupiers of neighbouring residential property. This is in conflict with criterion in LP Part 2 Policy DMHB 11, which requires that development has no adverse impact on the amenity of adjacent properties. Since the tower has not been sited and designed to minimise its visual impact, there is also conflict with criterion in LP Part 2 Policy DMHB 21 in relation to the adverse effect on the living conditions of neighbouring residential occupiers. There is no conflict in this respect however with LP Part 2 Policy DMHB 12, which makes no reference to such matters.

Other Matters

15. Although there were few details of the extent of the surrounding area that receives mobile signal coverage, there is little sound reason to doubt that the tower facilitates continued connectivity for a substantial number of people living and/or working in the locality or travelling through it. It is entirely possible that such connectivity would be adversely affected if the tower were to be removed without suitable alternative provision for the associated equipment having been made. Reliance on high-quality mobile communications has increased considerably since the pandemic. This includes for example much more shopping activity taking place online, as well as larger numbers of residential occupiers no longer making use of landlines. The Framework recognises the importance of providing advanced, high quality and reliable communications infrastructure in terms of economic growth and social well-being. The public benefits therefore weigh considerably towards granting temporary permission for the tower.
16. The appellant is largely reliant on eventually re-using the office building for the equipment currently mounted on the tower. It is unclear however whether meaningful steps have been taken to investigate suitable permanent alternative sites for that equipment in the event the office building continues to be unavailable. The absence of supporting information regarding alternative sites suggests that to date, limited consideration has been given in this respect. The Framework makes it clear that all applications for electronic communications development should be supported by the necessary evidence to justify the development, including in relation to a new mast evidence that the possibility of erecting antennas on an existing building, mast or other structure has been explored. There is no good reason why that should not also

apply where, as in this case, a temporary permission is being sought, particularly having regard to the harm arising from the tower identified above.

17. I acknowledge that there might well be constraints on finding a suitable alternative site for the equipment, having regard to factors including nearby heritage assets and their settings. I also understand that recent changes to the Electronic Communications Code (ECC) have increased the complexity of negotiating for and securing sites to support such equipment. Even so, on the basis of the limited evidence available, I am not persuaded that the tower represents the most suitable alternative site that might reasonably be available for the equipment whilst the enlargement works are undertaken.
18. Besides, there is continued uncertainty regarding when the enlargement works might commence, let alone be completed. Progress on the works is largely outside of the appellant's control. The works did not commence during 2023 as in the initial estimate. A more recent forecast suggests that the works would commence during autumn 2024, but this is dependent on further approvals for an alternative scheme being forthcoming. In the context of an already challenging economic background and having regard to geopolitical factors which may create further volatility, it is entirely possible that fluctuations in market conditions would lead to further delay in the delivery of the enlargement works. Accordingly, I am not persuaded that there is a realistic likelihood of the equipment being re-installed on the office building within the next two years. This adds to my concerns over whether the tower represents the most suitable site for the equipment.

Planning Balance & Conclusion-Ground (a) appeal

19. The tower causes unacceptable harm to the character and appearance of the area, also causing harm to the significance of designated heritage assets and to the living conditions of the existing and future occupiers of neighbouring residential property. This is in conflict with the Development Plan and is inconsistent with the Framework.
20. The harm caused to the significance of the designated heritage assets is less than substantial. The Framework advises that such harm should be weighed against any public benefits. It also advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. The public benefits associated with the tower attract considerable weight. This is tempered somewhat however by the uncertainty over whether the tower represents the most suitable site for the equipment pending the undertaking of the enlargement works, as well as over when those works might reasonably be expected to be delivered. Overall and on balance, in my view the public benefits are not of sufficient magnitude to outweigh the continued harm to the significance of the heritage assets that would be sustained for the duration of a temporary permission.
21. Therefore, I conclude that the ground (a) appeal should not succeed.

Ground (g) appeal

22. The ground of appeal is that the time allowed for complying with the notice requirements is too short.
23. Prior to decommissioning and dismantling the tower and its ancillary development, the appellant will need to search for, negotiate and secure a

suitable alternative site or sites for the equipment, obtain any necessary approvals and to install the equipment, including any supporting mast or tower required. This is whilst ensuring that mobile connectivity in the locality remains continuous as far as is practicable. Possible constraints on alternative sites, as well as complexity associated with negotiating with landowners to comply with the ECC, might also contribute to a lengthening of the time it would take to secure suitable alternative provision. Furthermore, given the substantial height of the tower the remedial works themselves may not be straightforward, necessitating for example the use of specialised equipment to dismantle the structure and/or involving obtaining access to or over adjoining land or the public highway. Therefore, it is difficult to be reasonably assured that the three-month period specified in the notice provides sufficient time for the remedial works to be undertaken.

24. Taking the above factors into account, in my view nine months affords a more realistic timescale in which all the above actions could largely be completed. This is not as long as the twelve-month period sought by the appellant. However, it would offer ample scope for securing suitable alternative provision as required and to facilitate continuity of mobile connectivity in the locality as far as is possible, thereby not placing a disproportionate burden on the appellant, whilst also ensuring that the breach of planning control is remedied as soon as is practicable. Any longer period however would perpetuate the breach and its associated planning harm.
25. Accordingly, I shall exercise the power available in s176(1)(b) of the Act to vary the notice to extend the period for compliance to nine months. The ground (g) appeal succeeds to that extent.

Conclusion

26. For the reasons set out above, the tower and its ancillary development is in conflict with the Development Plan taken as a whole. There are no other considerations that outweigh this conflict. Therefore, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR