

Appeal Decision

Site visit made on 24 September 2024

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2024

Appeal Ref: APP/P4605/W/24/3344677

Harborne Gala Bingo, Harborne High Street, Birmingham B17 9QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by EE UK Ltd and Hutchison 3G UK Limited against the decision of Birmingham City Council.
 - The application Ref is 2024/01289/PA .
 - The development is described as 'Proposed temporary telecommunications installation and associated ancillary works. Temporary consent for a further 12 months while a permanent solution is addressed.'
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the character or appearance of the area, including the setting of a listed building.

Reasons

3. The appeal site is located on a High Street with local food and drink outlets, retail units and other local services. These commercial units are mixed with apartment blocks and terraces of houses in the wider area. While this mixed use area is distinctly urban, development is generally no taller than four storeys.
4. The site is in the forecourt of the Royalty, which is a Grade II listed building. The building is currently not in use and previous to this was a bingo hall. However, it was constructed originally in the 1930s as a cinema at a time when there was a legislative basis to build cinemas in support of the British film industry. The buildings' significance goes beyond this historic context, as it was designed by a noted cinema architect and is identified as a good example of Art Deco architecture in its external and internal details.
5. The domed roof building is a striking Art Deco form constructed in brick and stone. The building has a wide frontage, which includes considerable architectural details such as tall, round headed windows with stone pilasters, stone band across the length of the façade, stone cornicing, leaded windows and a sizeable stone porch.

6. Unfortunately, the building has not been used for many years. It was also subject to a major fire in 2018. However, the fire damage is largely confined to the rear of the building. Moreover, although poorly maintained and with some dereliction, much of the original decorative architectural details is still apparent at the front of the building. Also, with a distinctive form, the building's history, as a former cinema, is clearly legible and this contributes to the significance of this designated heritage asset in this area.
7. The forecourt of the building is tarmacked and appears to have been part of a car park in recent years. The boundary treatment at the edge of this space is relatively low profile bollards linked with a simple chain. The space in the front of the building is also fairly free of structures. As such, the immediate setting of the Royalty is reasonably open and uncluttered.
8. Not only is this listed building located on the High Street, but it is also near a busy junction where the ground rises, such that it has a relatively elevated and somewhat commanding position in the street scene. With this prominent location and relatively open setting, the architectural interest and decorative detail is clearly visible, and the Royalty appears a distinct feature, with its historic significance appreciable from the public realm and nearby properties.
9. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires, in considering whether to grant planning permission for development which affects a listed building or its setting, special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
10. The mast and associated cabinets are within the forecourt of the listed building and immediately adjacent to the chain linked boundary treatment. Although the submitted plans suggest that the monopole is a similar height to the Royalty, the mast is considerably taller than the front roof parapet of the designated heritage asset. As such, the antennae at the top of the mast significantly encroaches into the existing space around the listed building which frames its form and decorative architectural detail. These are sizeable antennae, of a hi tech design that appears stark against the sky. In turn, the antennae draws the eye away from the historic detail of the asset and is a detracting feature in this regard.
11. It is asserted that the development is designed to merge with street lighting columns. However, the monopole is significantly thicker and taller than nearby streetlights. While there is other street furniture in this locale, this is largely limited to bins, bollards, road signs and a pedestrian crossing. As such the mast, with antennae at its pinnacle, is much taller than existing street furniture; it is also taller than most other buildings in this area.
12. The four cabinets, at the base of the mast, are also sizeable. These cabinets form a bank of structures that have a distinctive utilitarian aesthetic at odds with the Art Deco style of the asset. Moreover, given their scale and unsympathetic design, and positioned so close to the façade of the building, the installation visually competes with the remaining positive features of the Royalty. This harmful visual contrast is very much apparent in this relatively open setting, and in turn this significantly diminishes this setting and how the historic significance of the asset is appreciated.

13. Also, enclosed at street level by temporary fence panels, with cables protruding from the cabinets, I find little evidence that the development has been designed to minimise its harmful visual impact in this sensitive setting. For the reasons outlined, the development fails to preserve the setting of this listed building.
14. The appellant states that the cabinets are permitted development. This may be so, but the plans show these structures as part of the scheme before me, and I have considered the proposal as submitted. Refreshing the paint on the cabinets or painting the installation a different colour, while making a small improvement, would not significantly reduce the visual harm of this incongruous development in the setting of a listed building. A condition dealing with this would not make the development acceptable.
15. It is highlighted that 18 months is required to find an alternative site, secure permission and for construction. But the appellant is only seeking a 12 month permission in this case. This aside, it is asserted that any harm would be for a short period of time. However, an application for a temporary mast at the appeal site dates back to 2019; over four years ago. If I was to allow this appeal, the visual harm to the setting of the heritage asset would be apparent for another significant period of time on top of the previous four years.
16. The Council has not suggested any other site. Be this as it may, the appellant has submitted very limited evidence regarding the search for a permanent alternative solution. Also, no compelling explanation has been provided as to why an alternative has not already been constructed to replace this harmful development in the reasonable period of time which has already elapsed. These matters have not altered my findings.
17. The National Planning Policy Framework (the Framework) states when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
18. For the reasons outlined above, the development has an adverse effect on the setting of a listed building. The harmful visual effect resulting from the development fails to preserve the setting of the listed asset. The development does not conserve the asset in this regard. This effect is localised, and the harm caused to this setting is less than substantial. In accordance with paragraph 208 of the Framework, this harm needs to be weighed against the public benefits of the proposal.
19. It is highlighted that this mast hosts the Emergency Service Network (ESN). However, I note that the mast with prior approval at War Lane, which is just a few minutes' walk from the appeal site, is also identified as being available for the ESN. This aside, the mast is part of the telecommunication infrastructure, providing coverage of 5G network in this area.
20. Also, the mast is shared by different network providers. There is support in the Framework and in Policy TP46 of the Birmingham Development Plan for the provision of such infrastructure and the sharing of masts. Moreover, specific benefits of improved 5G coverage include a faster service for a range of users, better productivity and greater efficiencies in service delivery. This

amounts to considerable social and economic and environmental public benefits.

21. However, while I am in no doubt that this is much needed infrastructure and appreciate the technical challenges of finding suitable alternative sites, very limited information has been advanced in this case that these benefits could not be achieved by the sharing of other existing masts in this area, or that there are no other sites which would be less harmful to the character of the area than is the case in this particular location. The benefits identified above are somewhat countered by this factor.
22. The installation does not interfere with pedestrian movement. Nor does it appear to result in any harm to highway safety. This should be an expectation of development and are neutral factors for this reason.
23. It is also stated that the development is not located next to sensitive receptors. However, again very little evidence has been submitted with this appeal such that I am unable to conclude whether there would be no other sites in the appellant's search area which could ensure this outcome. This matter attracts limited weight for this reason.
24. The public benefits identified above are considerable. However, this does not outweigh the great weight given to the asset's conservation, and the less than substantial harm to its significance which I have identified. Therefore, the harm to the designated heritage asset does not have a clear and convincing justification that is required by paragraph 206 of the Framework.
25. In light of the above, I find that the development is harmful to the character or appearance of the area and fails to preserve the setting of a listed building. In this regard the development conflicts with Policies PG3 and TP12 of the Birmingham Development Plan and Policy DM16 of the Development Management in Birmingham Development Plan Document. These Policies collectively seek high design quality and to protect the historic environment.
26. The development also fails to accord with advice set out in the Birmingham Design Guide – Principles Document and provisions of the Framework which seek to conserve the historic environment.

Conclusion

27. The development results in harm to the setting of a listed building and is contrary to the development plan and the Framework, and there are no other considerations which outweigh this finding. Accordingly, for the reasons stated above and having regard to the development plan taken as a whole, this appeal should be dismissed.

A J Sutton

INSPECTOR