
Appeal Decision

Site visit made on 12 September 2024

by G J Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2024

Appeal Ref: APP/Q0505/W/24/3345079

Job Centre, Henry Giles House, 73-79 Chesterton Road, Cambridge, Cambridgeshire CB4 3BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 MBNL, EE Ltd and H3G UK Ltd against the decision of Cambridge City Council.
- The application Ref is 23/04247/PRIOR.
- The development proposed is the installation of 3 no. 5.45m support poles supporting 3 no. antenna apertures (1 antenna aperture on each support pole) at 23.85m AGL and 3 no. 3.0m support poles supporting 3 no. 600mm diameter transmission dishes (1 dish on each support pole) at 21.3m AGL and ancillary development thereto, along with 4 no. equipment cabinets at roof level.

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the installation of 3 no. 5.45m support poles supporting 3 no. antenna apertures (1 antenna aperture on each support pole) at 23.85m AGL and 3 no. 3.0m support poles supporting 3 no. 600mm diameter transmission dishes (1 dish on each support pole) at 21.3m AGL and ancillary development thereto, along with 4 no. equipment cabinets at roof level at Job Centre, Henry Giles House, 73-79 Chesterton Road, Cambridge, Cambridgeshire CB4 3BQ in accordance with the application 23/04247/PRIOR and the details submitted with it.

Preliminary Matters

2. In the banner heading above, I have used the description of development from the appeal form as it more accurately reflects the scope of the proposal than the description used in the application form¹.

¹ Which is "the installation of 3 no. 5.45m support poles supporting 3 no. antenna apertures (1 antenna aperture on each support pole) at 23.85m AGL and 3 no. 3.0m support poles supporting 3 no. 600mm diameter transmission dishes (1 dish on each support pole) at 21.3m AGL and ancillary development thereto, along with 4 no. equipment cabinets at roof level which are permitted by Class A1(9)(c)"

3. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GDPO) grants permission for development such as that described in the banner heading above. However, this is conditional upon requirements set out in the GDPO including that developers need to make an application to the local planning authority for its prior approval of such proposals (per Schedule 16, A1(4)). Developers must also provide a notice to the owner of the land to which the development relates (per Schedule 16 A3(1) and (2)) before making an application for prior approval, where the name and address of the owner is known. In circumstances where the developer is unable to ascertain the names and addresses of site owners after taking reasonable steps, the notice could be made by local advertisement.
4. The appellants provided a copy of the notice that they sent to the tenants of the appeal site. However, in their representation on the application that led to this appeal the owner of the site contends that they were not served with the required notice. I note that the site owner's representation refers to a letter dated 11 October 2023 (the letter) making reference to an intention to submit a 'planning application'. Whilst I have not been supplied with a copy of the letter, it appears to have been sent by a different party (Cornerstone) rather than the appellants. It would seem therefore that the letter relates to a different proposal² for the same site, which was being considered by the Council at around the same time as the application that led to this appeal.
5. Against this background, I note that the appellants have not refuted the site owner's claims, nor have they included a copy of a notice to the owner in their appeal submissions. Neither have they sought to establish that the name and/or address of the site owner was unknown to them prior to making the application. Even if this were the case the appellants have not given details of any local advertisement that sought to notify the site owner in the event that they were unknown after taking reasonable steps to ascertain names and addresses. Consequently, on the basis of the material before me in this appeal, I find that the appellants do not appear to have complied with the GPDO's notice requirements set out in Schedule 16 A3(1) and (2).
6. Section 79(1) of the Town and Country Planning Act 1990 (the 1990 Act) provides that if an appeal is made the Secretary of State (and by corollary an appointed Inspector) "may deal with the application as if it had been made to him in the first instance". This could include an assessment of the validity of an application. In the current case although the site owner was not served with a notice, they nevertheless made representations at the application stage, which, in addition to their concerns about the validity of the application, included views on the planning merits of the proposal. Moreover, at the appeal stage the site owner's further comments were sought at my direction, although none were forthcoming.
7. These considerations lead me to the view that despite the appellants' failure to comply with the pre-application notice arrangements set out in the GDPO the site owner was able to take a full part in both the application and subsequent appeal processes due to the consultations that have taken place.

² Council reference: 23/04053/FUL

I therefore consider that no prejudice would occur to the interests of any party as a result of me exercising the discretion provided by s79 of the 1990 Act and proceeding to determine the appeal. In doing so, I will take into account the appeal site owner's representations on the planning merits of the proposal. In arriving at this view, I note that the Council treated the application as a valid one fully aware of the views set out in the site owner's consultation response at that stage.

Background and Main Issues

8. The GPDO sets out that the siting and appearance of telecommunications developments are the relevant considerations in a determination of whether prior approval should be granted. However, the GPDO does not require regard to be had to the development plan. Nevertheless, I have taken into account the Cambridge Local Plan (adopted October 2018) (the Local Plan) only insofar as its policies are material to matters of siting and appearance. Similarly, I have taken into account the National Planning Policy Framework (the Framework) insofar as it is relevant to siting and appearance matters.
9. The appeal site is within the Castle and Victoria Road Conservation Area, is adjacent to the Central/Historic Core Conservation Area, and is inter-visible with Jesus Green Lock and Bridge, the Lock Keeper's Cottage and a pair of K6 telephone kiosks by the Bridge, which are all Grade II Listed Buildings. The Planning (Listed Buildings and Conservation) Act 1990 imposes duties on decision-makers for proposals relating to such heritage assets. Of these, the duty imposed by s72(1) is relevant to the appeal, which requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of conservation areas. As the duty relating to the setting of listed buildings only applies when "considering whether to grant planning permission" it is not applicable to this case, as planning permission is granted by the GPDO. Nevertheless, the Framework is material insofar as its contents relating to conservation of the historic environment are relevant to consideration of the siting and appearance of the proposed development, both in terms of the listed buildings and the setting of the Central/Historic Core Conservation Area.
10. Against this background, I consider the main issues in this appeal to be as follows: firstly, the effects of the siting and appearance of the appeal proposal on the significance of heritage assets, including whether the character or appearance of the Castle and Victoria Road Conservation Area would be preserved or enhanced;
secondly, whether the siting of the proposed development is justified by the necessary evidence with reference to national and local planning policy;
and thirdly, whether any public benefits of the proposal would outweigh any harm to the significance of heritage assets.

Reasons

Site, surroundings and significance

11. Situated in the Castle and Victoria Road Conservation Area, the appeal site is a relatively modern building predominantly of four storeys with a flat roof. Across the road from the appeal property is the River Cam and Jesus Green, the latter a broad open area with a number of associated listed buildings,

which is situated in the Central/Historic Core Conservation Area. The appeal building's height and the prominence of its location in the context of the wide highway, the river, open space, and sparsely distributed low scale structures and features associated with Jesus Green mean that its roofscape is widely visible.

12. The Castle and Victoria Road Conservation Area is densely developed and urban in character. Terraces are a predominant building form with those either side of the appeal building featuring elegant rhythmical façades that take advantage of and respect their relationship with the Cam and Jesus Green. These terraces, with their locally distinctive roofscape features, such as mansards, pantiles, gables, dormers and belvederes are high quality elements of the streetscape, which provide a strong solid edge to views from Jesus Green. The Lock Keeper's Cottage, Lock and Bridge, all listed at Grade II, are illustrative of the importance of the Cam to the economic history of Cambridge. Taken together with the pair of Grade II listed telephone kiosks adjacent to the Bridge, and other listed buildings in the area³ these aspects and features all contribute to a high-quality historic environment in the environs of the appeal site, and are elements of heritage significance of most relevance to the current proposal.

The proposed development

13. As described in the banner heading above, the appeal scheme would locate antennae and related equipment on an existing water tank room located on the roof of Henry Giles House. The proposed development would replace telecommunications apparatus removed from the adjacent Carlyle House as a result of alterations to that property.

The effect of the proposed development on the significance of heritage assets

14. The flat roofscape of the appeal property is already at variance with the elegant articulation and materials employed in its adjacent terraces. The installation of the proposed antennae due to their overall height, number and concentrated clustering would exacerbate the incongruity of the appeal building's roofscape. Moreover, the antennae due to their overall height and bulk would be much more prominent than the slimmer roof-level features in the immediate streetscene such as television aerials and the flagpole at Henry Giles House.
15. The height and prominence of the appeal building's roofscape would mean that the antennae would be widely visible. Due to the gaps between them and the seasonal variation in their leaf cover, the trees present in Jesus Green would do little to soften the visual impacts of the proposal from vantage points within that open space. Similarly, as Carlyle House is in a much less prominent position than the appeal property, the effects of the proposed development would not be offset to any material degree by the removal of the apparatus at that former location.
16. For these reasons, the appeal proposal would read as an incongruous element, which would be a visually intrusive feature in the setting of the Listed Buildings and Central/Historic Core Conservation Area. It would also be

³ 4 to 10 Chesterton Road, No 2 Wentworth House, Chesterton Road and Victoria Bridge

a jarring and intrusive element within the Victoria and Castle Road Conservation Area.

17. Accordingly, these considerations lead me to the conclusion on this main issue that the siting and appearance of the proposal would cause harm to the significance of the Listed Buildings and the Central/Historic Core Conservation Area, and would also fail to preserve the character or appearance of the Castle and Victoria Road Conservation Area. The proposal would thus conflict with Policies 55, 56, 58 and 60 of the Local Plan. Insofar as they are relevant to the siting and appearance of the appeal proposal, and taken together, these policies seek to ensure that developments respond positively to existing features of historic and local importance, use materials and finishes sensitive to their context, reflect or successfully contrast with existing building forms and fit within the existing townscape.

Siting

18. The appeal proposal seeks to replace telecommunications apparatus removed as a result of building alterations at Carlyle House which is adjacent to the appeal site. Removing that apparatus has eroded mobile telecommunications coverage in the area. The proposed development would also provide enhanced coverage for the emergency services network.
19. The appellants have considered alternative sites for the proposal based on a reasonable search area. Some of these alternatives would require new freestanding masts within the Conservation Area, which, in terms of national policy would not be preferable to siting apparatus on existing structures or buildings (per the Framework paragraphs 119 and 121(c)). Other locations and buildings considered would not facilitate effective replacement coverage for that lost as a result of the removal of the Carlyle House apparatus.
20. Locating the apparatus on less prominent parts of the appeal building's roof has also been considered. However, other potential areas would be close to upper storeys of Carlyle House which are in residential use and such siting would be contrary to International Commission Guidelines for public exposure to such facilities. Still other locations on the appeal building's roof would be lower than the location chosen, with the outcome that signals relating to the proposed apparatus would be blocked or interfered with by the taller elements of the building.
21. Against this background, I consider that the appellants' approach to site selection has been robust and thorough, and that it therefore provides a reasonable basis for the chosen siting. Accordingly, I conclude on this main issue that the siting of the proposed development is justified by the necessary evidence. It follows that the approach taken is consistent with the Framework insofar as it expects evidence that the appellants have explored alternative sitings and Policy 84 of the Local Plan, which expects the design and location of telecommunications development to minimise its visual impact.

Heritage balance

22. The Framework anticipates that once a finding of harm to the significance of heritage assets has been reached that the magnitude of that impact should be assessed. In the current case, whilst the harm that the proposal would cause

to the significance of the above referenced heritage assets would be marked, it would nevertheless be at the less than substantial level. The Framework (at paragraph 205) is clear, however, that irrespective of the level of harm caused by a proposal great weight should be given to the conservation of designated heritage assets when considering the impacts of proposed developments. Moreover, the harm caused should be weighed against the public benefits of a proposal (per paragraph 208 of the Framework).

23. The Framework (at paragraph 118) acknowledges that advanced, high quality and reliable communications infrastructure is essential for economic growth and social wellbeing, and that planning decisions should support the expansion of electronic communications networks. Furthermore, according to the Framework (at paragraph 8) the social aspect of sustainable development seeks to support strong communities by amongst other things fostering safe places. In this context the proposed development's provision of an improved data-based telecommunications network both for general users and the emergency services help to foster safe spaces, and to promote economic activity and growth alongside social wellbeing. These would be significant public benefits, which in this case tip the balance in favour of the proposal when set against the great weight given to the harm that it would cause to the significance of designated heritage assets. These benefits also clearly outweigh the conflicts with the development plan that I have identified. In arriving at this view, I have also taken into account the thoroughness of the appellants' site search exercise which sought to minimise harmful impacts, and the compelling reasons given for discounting the locations that could have had a more limited effect on the significance of heritage assets.

24. I therefore conclude on this main issue that the harm that the proposal would cause to the significance of heritage assets is outweighed by its public benefits. Accordingly, I find that the proposal would be consistent with the Framework and Policy 61 of the Local Plan insofar as, and amongst other things, they require clear and convincing justification for any harm to designated heritage assets.

Other matters

25. As set out above, the appellants failed to notify the site owner of the proposal, and their submitted material does not therefore contain details of the outcome of any consultations with them. This falls short of the Framework expectations in terms of supporting evidence. However, the site owner has made representations on the proposal and I have taken these into account in my consideration of the appeal.

26. The site owner considers that the proposed development would inhibit the efficiency of photo voltaic panels that they intend to install at the site (Council reference: 23/03158/PRIOR), and reduce the amount of roof space that could be used to accommodate these. I have been provided with no plans of the proposed photo voltaic proposals, and neither has a substantive assessment of the potential effect on them of the appeal scheme been supplied. In any event, it would appear to be in the site owner's gift as to whether the apparatus subject to this appeal could be located on their building. For these reasons, it has not therefore been established that the proposed development

would be contrary to the agent of change principle as set out in the Framework.

27. The appeal building is apparently part of a Local Plan allocation that promotes residential use of the site – a designation that is seemingly due to be carried forward into an emerging plan. However, I have no substantive evidence before me to indicate that the proposed development would act as an insuperable obstacle to bringing forward such a use. In arriving at this view, I note that alterations including upwards extension of Carlyle House have received planning consent, and that the site owners of that property issued a notice to quit relating to the telecommunications apparatus previously located there to facilitate that redevelopment. Similar processes could equally apply to the appeal building should such an eventuality arise. Moreover, it would appear to be in the appeal building owner's gift whether or not to let the appellants site the apparatus as proposed.
28. For these reasons, none of these matters weighs materially against the appeal scheme in the overall planning balance.

Conditions

29. The Council suggests that conditions should be attached to any permission relating to the implementation of the scheme and specifying the approved plans. However, as the GDPO includes deemed conditions which cover these matters, it is not therefore necessary to impose these specifically in this case.

Conclusion

30. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should succeed.

G J Fort

INSPECTOR