The Planning Inspectorate

Appeal Decision

Site visit made on 24 January 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 April 2017

Appeal Ref: APP/X5990/W/16/3162918
55-59 Oxford Street, London W1D 2EQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by CTIL & Telefonica UK Ltd against the decision of City of Westminster Council.
- The application Ref 16/05215/FULL, dated 31 May 2016, was refused by notice dated 25 July 2016.
- The development proposed is installation of 9 no antenna inside a 'Replica' GRP extension to existing plant room, associated equipment cabinets, together with ancillary development thereto.

Decision

1. The appeal is allowed and planning permission is granted for installation of 9 no antenna inside a 'Replica' GRP extension to existing plant room, associated equipment cabinets, together with ancillary development thereto at 55-59 Oxford Street, London W1D 2EQ, in accordance with the terms of the application, Ref 16/05215/FULL, dated 31 May 2016, subject to the following conditions:

    1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

    2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing nos 100 RevB, 101 RevC; 200 RevE; 201 RevA; 300 RevA; 301 RevE; 302 RevB; 400 RevD.

    3) All new work to the outside of the building must match existing original in terms of the choice of material, method of construction and finished appearance. This applies unless differences are shown on the approved plans.

Procedural Matter

2. The City Council has adopted two sets of revisions to Westminster's City Plan: Strategic Policies (adopted 2013), which is the version referred to in the decision notice. They comprise a Basement and Mixed Use Revision (adopted 13 July 2016) and a Special Policy Areas and Policies Map Revision. The revisions were incorporated into the latest version of Westminster's City Plan (WCP) adopted on 9 November 2016. I am obliged to determine the appeal on the basis of the current development plan. The Council do not consider that the revisions affect this appeal or the policies quoted in the decision notice. The appellant has had the opportunity to comment on any relevant policies during the course of the appeal.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the existing building and the Soho Conservation Area.

Reasons

4. The appeal site is a five-storey early twentieth century building located on the corner of Oxford Street and Soho Street in the heart of central London. It is in retail use on the ground floor like most of the other premises in a predominantly commercial area. The site is also within the Soho Conservation Area (SCA) and the Council advises that an adopted supplementary planning document, the Soho and Chinatown Conservation Area Audit, identifies the appeal building as an unlisted building of merit.

5. The appellants advise that the proposal was necessitated by the imminent loss of a nearby site where the equipment was previously housed. A replacement site is necessary so that the joint operators, Telefonica UK Ltd and Vodafone Ltd, can continue to provide and improve 2G and 3G coverage and enable 4G coverage for the surrounding commercial area. A site selection process, which according to the appellants, follows guidance in the National Planning Policy Framework (the Framework) and the industry's Code of Best Practice, took place where various options and alternative sites were considered but found to be unsuitable.

6. There is an existing plant room about 2.3 metres high on the rooftop of the appeal building. The proposal is to install 9 antennas within a Glass Reinforced Plastic (GRP) shroud on top of the plant room. According to the submitted plans and the appellant's appeal statement, it would increase the height by some 1.8 metres, though the Council refer to a figure of 2 metres. The development also involves the installation of some additional cabinets on the western corner turret. Though they would be above the height of the parapet, they would be less visible than the extension to the plant room.

7. The Council considers the existing plant room to be an unsightly feature detracting from the appearance of the building. Whilst the existing structure does not enhance the building or the area, given that it is over 20 metres above ground level and set in slightly from the building edge, in the context of a busy London roofline, the eye is unlikely to be drawn to it. It is not dissimilar to other types of utilitarian infrastructure seen on top of many tall buildings. In any event, as that structure is in situ, the issue is whether the proposal by adding to its height and bulk would cause actual harm.

8. The building is located on a prominent corner but though relatively tall it is of a similar height to the retail store opposite and not significantly higher than other buildings in the area. In any case, the height in one sense helps to remove the proposal from the immediate street scene below. The development would be visible, if one directed one's eyes upwards and towards it, from certain vantage points along Oxford Street, Soho Street and the gardens of Soho Square. However, the current plant room is already visible from those positions. I do not consider that an increase in height of about 1.8 metres or the additional cabinets would have a substantial adverse effect on the building or views towards it.

9. The Council Officer's report refers to strategic views from Parliament Hill though the SCA leaflet, also supplied by the Council, cites a strategic view from Primrose Hill to the Palace of Westminster. However, within the context of a crowded London skyline, comprised of multiple styles and types of development, the change initiated by the proposal would not be easily detectable from those distances.

10. I have considered the appeal decision at 78-79 Newman Street, referred to by the Council.[1] I do not have full details or plans of that proposal and so cannot be sure of the extent of any parallels. However, whilst it also concerns a conservation area, it appears to relate to the installation of telecommunications structures at a new site rather than an addition to an existing plant room and associated equipment. I have, in any case, reached my own conclusions on the merits of the appeal before me.

11. Overall, I consider that the proposal would cause some limited harm, due to the increased height of the plant room and, to a lesser extent, the additional cabinets on the roof. Consequently, there would be some conflict with WCP policy S25 which recognises the importance of Westminster's extensive heritage assets, including conservation areas, and states in its reasoned justification that any change should not detract from the existing qualities.

12. It would also be contrary, to a degree, to saved policies DES 9 and DES 6 of the Unitary Development Plan (UDP)[2], though I note that DES 9 is introduced in the Council's appeal statement and not referred to in the decision notice. Essentially, DES 9 refers to the existing statutory duty[3] to preserve or enhance the character or appearance of conservation areas (CAs). DES 6 states that permission may be refused where roof level alterations, including the installation of telecommunications equipment, would adversely affect the architectural character of a building and views of it.

13. The Council also refers to conflict with Policies S28 of the WCP and DES 1 of the UDP which seek to secure exemplary standards of sustainable and inclusive urban design and architecture. It also cites its Supplementary Planning Guidance dating from 1996, 'Development and Demolition in Conservation Areas' (SPG), which advises that telecommunications equipment can have a serious adverse impact on the appearance of buildings in conservation areas. Such items, it urges, should be located to minimise their visual impact and be screened with sympathetically designed enclosures.

14. The proposal would use half-height antennas to minimise the height of the shroud. The appellants advise that there is no scope to reduce the height further without adversely affecting telecommunications coverage. They hold that the proposal and design is in accord with the Code of Best Practice on Mobile Phone Network Development, which has not been contested by the Council. The alternative, according to the appellants, would be that additional sites would be required, leading potentially to a proliferation of masts in an area of high demand. I find the appellant's evidence persuasive. In design terms, therefore, I consider that, given the technical constraints, there is no significant conflict with Policies S28 of the WCP, DES1 of the UDP or indeed the SPG.

[1] APP/X5990/A/13/2192968
[2] Adopted January 2007
[3] s.72(1) Planning (Listed Buildings and Conservation Areas) Act 1990

15. However, as I have identified some conflict with policies in WCP, it is necessary to consider other relevant material considerations. Paragraph 132 of the Framework requires me to give great weight to the conservation of designated heritage assets such as CAs. Though I have concluded that the development would cause some limited harm, I consider that, for the reasons already given, it would be 'less than substantial'. In accord with paragraph 134 of the Framework, I must weigh that harm against the public benefits of the proposal.

16. Paragraph 42 and 43 of the Framework recognise that advanced, high quality communications infrastructure is essential for sustainable economic growth. A recent Written Ministerial Statement[4] refers to the Government's commitment *'to ensuring there is sufficient capacity to meet the growing demand for mobile connectivity'.* The appellants submit that the proposed installation is necessary to replace the 3G coverage and capacity lost by the decommissioning of the existing site at the former Royal Mail buildings on Rathbone Place.

17. It would also facilitate the provision of improved 4G technologies in this area of Oxford Street and improve indoor 3G coverage. Two operators are sharing rather than duplicating infrastructure which is also in the proposal's favour. Alternative sites have been considered but none have been found suitable in the required area.

18. The appellant has also referred to a number appeal decisions including one at Highlever, 69 Quinton Avenue.[5] That site was also within a conservation area and concerned a building rooftop with an existing plant room. There was no increase in height, but there were alterations and additions.

19. The Inspector considered that conflict with the development plan was outweighed by public benefits and cited Government policy, as expressed in the Framework, in relation to telecommunications equipment and heritage assets. It seems to me that there are a number of similarities between that appeal and the case before me. The conclusions that I have drawn are consistent with that appeal decision. Other appeals, such as at Anlaby Road in Hull[6] where the Inspector decided that avoiding a diminution in coverage outweighed limited harm to a CA, follow a similar line of reasoning.

20. Whilst I have paid special attention to the desirability of preserving or enhancing the character or appearance of the conservation area, the above factors lead me to conclude that there is less than substantial harm to the character and appearance of the existing building and the SCA. Therefore, whilst there is some conflict with WCP and UDP policies, the less than substantial harm that I have identified is outweighed by the clear public benefits of the proposal in maintaining and improving vital communications infrastructure at an important location.

Conditions

21. A condition setting a time limit for the commencement of the development is a statutory requirement. I have also considered the conditions suggested by the Council modifying them if necessary. For certainty, a condition requiring the development to be carried out in accordance with the approved plans is appropriate. A condition regarding materials and finishes is necessary to

[4] Written Ministerial Statement 'Boosting Mobile Connectivity' made on 17 March 2016
[5] APP/K5600/W/16/3150290
[6] APP/V2004/A/11/2154903

protect the character and appearance of the host building and the conservation area.

22. I have not included a condition suggested by the council which essentially states that no other machinery or equipment should be put on the roof other than that shown on the approved drawings. It seems to me that aspect is already dealt with by the condition relating to approved plans and is, therefore, unnecessary.

Conclusion

23. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Jonathan Tudor

INSPECTOR