



Appeal Decision

Site visit made on 19 November 2019

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

an Inspector appointed by the Secretary of State

Decision date: 29 January 2020

Appeal Ref: APP/X5990/W/19/3235230

**Polytechnic of Central London, 18-22 Riding House Street,
London W1W 7BY**

- 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 EE Ltd and Hutchinson 3G UK Ltd against the decision of City of Westminster Council.
 - The application Ref: 19/00557/TELCOM, dated 15 January 2019, was refused by notice dated 8 March 2019.
 - The development proposed is installation of 12 antennas at roof level.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the Council's decision notice and the appeal form, as it more simply and appropriately describes the development than that in the application letter.
3. In the Council's decision notice, the third reason for refusal indicates that the proposal does not fall within the ambit of Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). The Council considers, with reference to Part A.1.(2)(f)(ii), that the proposal for 12 antennas would exceed the 3-antenna limit specified there. However, the requirement for prior approval, in this case, is akin to a pre-commencement condition attached to the grant of permission by Article 3(1) of the GPDO. Development which is constructed not in accordance with the terms or conditions of the permission would be at risk of enforcement action, irrespective of the outcome of this appeal. It is for the appellants to satisfy themselves on that issue. The prior approval procedure set out under Schedule 2, Part 16 makes no provision for any determination to be made as to whether the development would be permitted development. Consequently, it is outside my remit to decide that matter.
4. Given the above, as the principle of this type of development is already established under the relevant Part of the GPDO, my deliberations will be confined to whether or not to grant prior approval in relation to the siting and appearance of the development, as referred to in A.3.(4) of Schedule 2, Part 16, Class A of the GPDO.

5. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require that regard be had to the development plan. I have had regard to the policies of the development plan and any related guidance only in so far as they are a material consideration relevant to matters of siting and appearance.
6. As the appeal site is within a conservation area and within the proximity of a listed building, I have also had regard to s72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 and section 16 of the National Planning Policy Framework (the Framework)¹ which deals with 'Conserving and Enhancing the Historic Environment'.
7. Although the application and appeal form refer to the site as the Polytechnic of Central London, it was apparent on my site visit that it is now part of the University of Westminster, which is presumably why the Council refers to it as 'University' in its submissions and on the decision notice.

Main Issues

8. The main issues are the effect of the siting and appearance of the development upon:
 - the character and appearance of the host building and the East Marylebone Conservation Area (EMCA); and,
 - the setting of the nearby Grade I listed building at the Church of All Souls, Langham Place.

Reasons

Character and appearance

9. The appeal site is on the rooftop of a tower at 18-22 Riding House Street. The building, now part of the University of Westminster, was originally constructed in 1928-9, to designs by F.J. Wills, as an additional site for the Regent Street Polytechnic. The Survey of London² states that: *'The building is steel-framed and steel-windowed, with three main storeys above ground towards Little Titchfield Street, four more in the set back roof, and two basement levels. The plainer Riding House Street elevation originally had an open lightwell in the centre above ground floor level... In the 1970s the Inner London Education Authority undertook a complete refurbishment of the building on behalf of the Polytechnic of Central London... The main external change was the architects' insertion of a high staircase tower, in their forceful concrete idiom, within the lightwell towards Riding House Street....'* The building lies within the EMCA and is identified in the East Marylebone Conservation Area Audit (EMCAA)³, as an 'unlisted building of merit' which contributes to the character and appearance of the conservation area.
10. The EMCA has a dense urban character with a rich and diverse mix of building types, styles and ages. Although most buildings appear to be of a relatively large scale there is a mix of commercial and residential uses, such as shops, offices and warehouses, as well as mansion blocks and flats. Much

¹ February 2019

² Volume 52 pp 819-822

³ Adopted as Supplementary Planning Guidance on 17 March 2006

development appears to date from the late 19th and early 20th century and be predominantly classical in style.

11. The EMCAA advises that roof profiles contribute to the character and appearance of conservation areas and notes that *'telecommunications equipment and roof plant can have a negative impact on this.'*⁴ It also says that: *'Roof clutter, such as railings, antennae and satellite dishes can also have a significant and detrimental impact on the character of an area, affecting both short and long-distance views, and careful consideration should be given to the siting of such equipment to minimise its visual impact. All such equipment should be sited away from the front façade [sic] of buildings or other locations where it may be visually prominent.'*⁵
12. There is already telecommunications equipment on top of the flat roof of the 1970s tower element of the building, including 6 antennas. They would be replaced by 12 antennas mounted on a new braced steel grillage structure on top of the plant room, with two new transmission dishes and two relocated existing transmission dishes on support poles fixed to the framework.
13. Although many of the surrounding roads are narrow with 3 to 5 storey buildings, the height and brutalist architecture of the tower make it a prominent landmark, visible in medium and longer-range views from many surrounding streets, including Riding House Street itself, its junction with Great Titchfield Street, and from Middleton Place and Gosfield Street. Indeed, the view down Riding House Street towards the Church of All Souls on Langham Place, a view which encompasses the appeal site, is noted as an important 'local view' within the EMCAA.
14. While the appellants make the point that this is an existing telecommunications site, the proposal would significantly increase the number of antennas and associated equipment. The submitted drawings also indicate that, mounted on the new grillage structure, the new antennas would be higher than the existing antennas, and rise to some 42.80 metres above ground level. Therefore, the proposal would materially and noticeably increase visual clutter atop an already tall structure, harming the appearance of this 'unlisted building of merit'.
15. The potentially negative impact of roof clutter such as telecommunications equipment and antenna are specifically recognised in the EMCAA. While there appear to be some antenna on a tall building to the west of the appeal site, generally this type of equipment does not appear to be characteristic of the skyline in the EMCA. Given the prominence of the location and the material increase in the number and height of the antennas, their incongruity would be accentuated, and the proposal would not preserve or enhance the character and appearance of the EMCA.
16. Although the appellants assert that the *'scheme has been designed and positioned to assimilate with its surrounds'* and refer to the *'urban/commercial location'*, the greater accumulation of antennas, their closely grouped formations and increased height, albeit for technical reasons, offers limited support for that assertion.

⁴ Paragraph 4.50

⁵ Paragraph 4.56

17. Overall therefore, on balance, I conclude that the siting and appearance of the proposed development would harm the character and appearance of the host building and the EMCA.
18. Insofar as they are a material consideration, it follows that the proposal would be contrary to policies S25 and S28 of the Westminster City Plan (WCP)⁶ and policies DES1 and DES6 of the Council's Unitary Development Plan (UDP).⁷ Those policies seek to ensure that development respects and conserves Westminster's heritage assets and takes into account local views. Furthermore, that roof level alterations, including the installation of telecommunications equipment, should not adversely affect the character of a building or appear unsightly in longer private or public views from ground or upper levels.
19. I have identified harm to the significance of an 'unlisted building of merit' which is a non-designated heritage asset, but nonetheless has an architectural quality that contributes to the significance of the EMCA. I have also found harm to the character and appearance of the EMCA, which is a designated heritage asset. However, given that there are already existing antennas on the site and the proposal relates to one building in the conservation area, I consider that the level of harm to the EMCA caused by the additional antennas would, in the language of the Framework, be 'less than substantial'.⁸ I will return to that aspect in my planning balance and conclusion.

Setting of listed building

20. The Church of All Souls on Langham Place is a Grade I listed building, designed by John Nash, constructed of Bath stone and erected between 1822 and 1824. It was subsequently restored after Second World War bomb damage. The church's spire and portico are described in the Survey of London as '*...familiar the world over. A landmark in the West End and a vista-stopper at the top of Regent Street, they are amongst the deftest scenic improvisations of John Nash, whose bust overlooks Langham Place from the colonnade....*'⁹ Its Grade I listing is recognition of the special architectural and historic interest of the building, designed by a highly distinguished architect, and its importance as evidence of the historic development of this part of central London.
21. While the building is most prominent in views along Regent Street and from Portland Place, its peristyle encircled spire, a distinguishing feature of its neoclassical hybrid design, according to the list description, provides a visually striking termination to the western end of Riding House Street. As stated in the definition of 'significance' in relation to heritage assets, in the Glossary to the Framework: '*Significance derives not only from a heritage asset's physical presence but also from its setting.*' 'Setting' is defined in the Glossary as: '*The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.*'
22. Given the above, the view along Riding House Street towards the Church of All Souls clearly forms part of its setting and contributes towards the ability to

⁶ November 2016

⁷ Adopted January 2007

⁸ Paragraphs 193 and 196

⁹ Volume 52, p 563

appreciate its significance. The existing antennas atop the appeal building are already apparent in views along Riding House Street towards All Souls and have some negative effect. The appellants say, that the Church of All Souls is some 130 metres west and that the installation would be set back from the edge of the rooftop and higher than the spire. While I note those points, the view of the Church is foreshortened by the effect of perspective when looking towards it along Riding House Street. Similarly, the relative discrepancy in the heights of the respective buildings is lessened in visual terms in those longer views, while the set back appears relatively minor with several of the antenna close to the edge of the roof. Therefore, the additional visual clutter, resulting from 12 antenna at a high level, would appear more prominent against the skyline and detract from the setting of the Grade I listed building.

23. Consequently, I conclude that the siting and appearance of the proposed development would have a detrimental effect on the setting of the Grade I listed building at the Church of All Souls, Langham Place. Insofar as they are a material consideration, the proposal would conflict with policies S25 and S28 of the WCP and policies DS1 and DS10 of the UDP which, amongst other things, seek to ensure that development conserves heritage assets and does not adversely affect the immediate or wider setting of a listed building.
24. Again, given that the proposed development would affect one view, albeit an important one, towards the listed building which is already affected to some extent by existing infrastructure at the appeal site, I consider that the degree of harm would, in the terms of the Framework, be 'less than substantial'. I will discuss that finding further in my planning balance and conclusion.

Other Matters

25. The Council advised in its submissions that, during the course of the appeal, it had come to light that the appeal site is located within 'Protected Vista 4A.2 (Primrose Hill summit to the Palace of Westminster)'. Therefore, the Council wished to add the effect on that view to its reasons for refusal. However, I have not been provided with a copy of the relevant Secretary of State's direction, referred to in the Council's proposed additional reason for refusal, and, while limited extracts from various London Plan¹⁰ policies and the London View Management Framework are cited, full copies of the relevant documentation have not been supplied. Furthermore, an email sent by the Council to the appellants' agent¹¹ suggests that the necessary consultations have not been carried out.
26. Given those factors, while the 'protected vista' aspect is a significant material consideration, I do not have all the necessary assessment information, relevant guidance or policy, or confirmation that appropriate procedures have been followed, to make a decision on that point. However, as I am dismissing the appeal because of effects on the character and appearance of the host building and the EMCA, along with harm to the setting of a listed building, little would be gained by delaying a decision to seek clarification and greater detail regarding the 'protected vista' issue, as the outcome of the appeal would not, in this case, be altered.

¹⁰ March 2016

¹¹ Dated 25 September 2019

Planning Balance and Conclusion

27. Although I have identified an adverse effect on the building and harm to the EMCA and to the setting of a listed building, as stated above, the harm to designated heritage assets would be 'less than substantial'. Nonetheless, Framework paragraph 193 advises that: *'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...This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.'* Similarly, paragraph 194 says that: *'Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.'*
28. In circumstances where 'less than substantial harm' to designated heritage assets has been found, paragraph 196 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
29. The appellants advise that the proposal, upgrading the existing infrastructure, is to facilitate the roll-out of the 'next generation' of telecommunication services and mobile broadband. According to the appellants, the proposal is required to give coverage and capacity to the wider area *'following identification of a communications deficit in this cell location'*. The site would be shared between EE Ltd and Hutchinson 3G UK Ltd, the appellants, as well as with the Emergency Services Network (ESN) for the police, fire and ambulance services. Elsewhere the installation is referred to as *'4G (and 5G ready)'*.
30. Paragraph 116 of the Framework indicates that local planning authorities should not question the need for an electronic communications system. However, locational need can still be borne in mind in considering the proposal and when weighing harm to heritage assets against public benefits. While the appellants says *'this area suffers from poor access to 3G and 4G services to the detriment of local residents and businesses'*, the Council has provided information, available from public sources, which appears to indicate that current mobile coverage for voice and data services, provided by EE, is already good in the area.¹² I note that the appellants' appeal statement refers to concerns about capacity at peak times, but they have not commented on the information subsequently provided by the Council regarding existing coverage, although given the opportunity to do so.
31. The appellants advise that the proposal has *'sought to utilise an existing site with a design comparable to other similar installations in similar urban locations for the upgrade, in a less sensitive area of the CA, away from LB's'* and that the positioning to provide coverage for the area has been *'robustly considered.'* However, although the reference to the sequential approach is noted with the use of an operator's existing base station being the preferred option, limited evidence has been provided to show that any alternative locations have been considered. Rather, it appears that the appellants consider that the existing use of the site sets a sufficient precedent and that the proposed upgrade would have minimal effect. However, for the reasons already given above, I take a different view. Moreover, in this case, given the proximity of a Grade I listed building, clearly visible in views which encompass the appeal site in the visual

¹² Appendix 5 of the Council's Statement of Case

frame, I do not accept the appellants' contention that the site is in a less sensitive area of the CA, away from listed buildings.

32. It is acknowledged that section 10 of the Framework supports high quality communications and states that: *'Advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections.'*¹³ However, in this case the public benefits, including those referred to in the appellants' supporting 'Site Specific Supplementary Information', are expressed in relatively vague, general terms with a series of assertions lacking detailed supporting evidence. Moreover, the Council's evidence of apparently good existing coverage at this location has not been specifically contested by the appellants.
33. Overall therefore, while there are likely to be public benefits associated with the proposal, I am conscious that great weight should be given to any harm to designated heritage assets, even if the harm is defined as 'less than substantial harm'. Consequently, given the harm identified, particularly to the EMCA and to the setting of a Grade I listed building, I am not persuaded, on the basis of the evidence before me, that it is outweighed by the public benefits of the scheme.
34. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

JP Tudor

INSPECTOR

¹³ Paragraph 112