



Appeal Decision

Site visit made on 2 August 2020

by Paul Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 02 September 2020

Appeal Ref: APP/X5990/W/19/3243625

Park House, 123-125 Harley St, Marylebone, London W1G 6AY

- 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 MBNL (EE(UK) Ltd and H3G (UK) Ltd against the decision of City of Westminster Council.
 - The application Ref 19/05295/FULL, dated 8 July 2019, was refused by notice dated 13 August 2019.
 - The development proposed is the installation of 6 no. antennas and 4 no. equipment cabinets on the roof of the building, within 3 no. glass reinforced plastic (GRP) enclosures painted to match the existing brickwork finish of the building, and development ancillary thereto
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Decision

1. The appeal is dismissed.

Reasons

2. The main issues are firstly, whether the proposed antennae and associated cabinets and enclosures would preserve or enhance the character or appearance of the Harley Street Conservation Area; secondly, the effect of the proposed development on the architectural and historic interest of Nos 121 and 127-131 Harley Street, which are listed at Grade II* and Grade II respectively; and lastly, whether any harm caused is outweighed by the need to site the installation in the location proposed, having regard to the potential availability of alternative sites.
3. The heritage significance of the Harley Street Conservation area stems mainly from the tight-knit 18th century terraced houses which are of a consistent scale. Although many are now used for other purposes, the area retains a residential character. The appeal property consists of a 20th century replacement building of subordinate design which generally reflects the architectural style and proportions of the surrounding buildings but in a restrained and respectful way. At roof level, the property has a vertical brick 'mansard' at 6th floor level which is approximately level with the 5th floor dormers of the neighbouring property at No. 127.
4. A projecting cornice above the 4th floor is a defining element common to most buildings in the street. Many roofs above this line have been altered from the original hipped butterfly form and include dormers and mansards. These punctuate the street scene at high level. Where roof projections have been constructed near to the front elevations these are particularly conspicuous, such as at Nos. 122 and 130. In places, original brick chimneys and pots also

project above the buildings, though these are more easily seen in longer views along the street.

5. The proposed antennae enclosures would be of substantial size and would project well above the roofline. Whilst there are chimneys in Harley Street of a similar height, their function and heritage significance are clearly perceived and understood. By contrast, the painted GRP enclosures would appear significantly out of character. In terms of bulk, the highly visible, stark silhouettes of those proposed for the front elevation seen from north and south along Harley Street would distract attention and diminish the ability to appreciate the 18th century character of this part of Harley Street which lies at the heart of the conservation area. They would distract and draw the eye and also give undue additional prominence to a building which is recently constructed and is currently respectful in height and proportion to neighbouring listed buildings. The level of harm is likely to increase over time because however skilfully the paint is applied to match the existing brickwork, it would not have the same textural appearance and would not weather in the same way over the longer term, appearing increasingly discordant.
6. At the rear, there would be a much larger enclosure containing antennae and cabinets above the south western corner. This would be starkly visible above 8 floors, seen from buildings at the rear including the windows of properties in Devonshire Mews West. Whilst the host building is of deliberately understated architectural character, it is nevertheless of substantial bulk. According to the photographs supplied by the appellants, which I have no reason to doubt generally accord with the existing situation, the listed buildings on either side and other adjoining buildings at the rear possess significant heritage interest, including the variations made to them over many years. This is not easily seen by the public, which limits the extent to which the effect would be noticed. However there would be a moderate degree of less than substantial harm to the heritage significance of the conservation area arising at the rear that needs to be taken into account.
7. Turning to the effect on the listed buildings, the unsympathetic appearance, bulk and design of the proposed enclosures would detract from the setting and therefore heritage interest of the adjoining buildings, in the context of the overall street scene.
8. The level of overall harm would not approach 'substantial harm' in the terms used in the National Planning Policy Framework (NPPF) at paragraph 195. In that circumstance, paragraph 196 indicates that the harm should be weighed against the public benefits of the proposal. The need for electronic communications infrastructure is not in question. The appellants draw attention to the fact that existing EE and H3G antennae are subject to a Notice to Quit at the London Clinic on the Marylebone Road. There is therefore a need to at least maintain coverage with the prospect of enhanced 4G provision. The development and delivery of mobile digital communications infrastructure is a Government priority. This need consequently attracts substantial weight.
9. The use of a rooftop and sharing of equipment is encouraged by UDP policy SOC 9. However, the method of using prominently sited painted GRP in the blunt and unsympathetic manner proposed would signally fail to respect or recognise the heritage interest at the centre of the conservation area and would diminish the setting of adjacent nearby designated heritage assets.

10. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. Section 66 requires that special regard be given to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. Considerable importance and weight attach to the desirability of preserving the setting of a heritage asset. For the reasons outlined, it is concluded that the public benefits of the scheme as proposed are appreciably outweighed by the disadvantages.
11. Concluding on both main issues, the proposed development would conflict with the design quality and heritage protection aims of Westminster City Plan policies S25 and S28, and saved policies DES 1, DES 6, DES 9, DES 10 of the 2007 UDP.

Other matters

12. Concerns have been raised about potential effects on health. However, the appellant has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). In these circumstances, the NPPF advises that health safeguards are not something which a decision-maker should determine. No sufficiently authoritative evidence has been provided to indicate that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified.
13. Notwithstanding that this matter does not count against the proposal, the effect on heritage assets is determinative. The appeal should be dismissed.

Paul Jackson

INSPECTOR