



Appeal Decision

Site visit made on 25 August 2020

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 30 September 2020

Appeal Ref: APP/Y5420/C/19/3241989

Telecommunications site, Dukes Mews, London NR10 2QR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Cornerstone Telecommunications Infrastructure Limited against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 22 October 2019.
 - The breach of planning control as alleged in the notice is unauthorised 20 metre high Elara pole (19.74m to top dual stack antenna) and 3no. equipment cabinets and ancillary development.
 - The requirements of the notice are: 1. Remove the 20 metre high Elara pole (19.74m to top dual stack antenna) and 3no. equipment cabinets and ancillary development.
2. Remove all resultant debris.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under s.177(5) of the 1990 Act as amended for 20 metre high Elara pole (19.74m to top dual stack antenna) and 3no. equipment cabinets and ancillary development at Telecommunications site, Dukes Mews, London NR10 2QR, subject to the following condition:
 - 1) The development hereby permitted shall remain in accordance with the following approved plans: 03850 - CTIL - 100 Rev.B; 200 Rev.B; 201 Rev.B; 300 Rev.B; 301 Rev.B; 401 Rev.B; 402 Rev.B; 403 Rev.B; 404 Rev.B; 405 Rev.B; 406 Rev.B.

Preliminary matters

2. During the course of the appeal timetable the government published a document entitled 'Government response to the consultation on proposed reforms to permitted development rights to support the deployment of 5G and extend mobile coverage' (July 2020). The appellant requested a short time to comment on the contents of this document in relation to the appeal, and the Council were also afforded this opportunity. I have taken the responses from the main parties into consideration.

Application for costs

3. An application for costs was made by the Council of the London Borough of Haringey against Cornerstone Telecommunications Infrastructure Limited. This application is the subject of a separate Decision.

Ground (a)

Main Issue

4. The main issue is the effect of the development on setting of the listed building, and whether the character or appearance of the Muswell Hill Conservation Area is preserved or enhanced.

Reasons

Planning background

5. In 2017, prior approval was granted (ref: HGY/2017/1153) for the replacement of a previous 17m monopole with a 19.74m high dual stack antenna support pole and associated development. In 2018, a planning application (ref: HGY/2018/3084) was submitted retrospectively for a 20-metre-high Elara pole (19.74m to top dual stack antenna) with equipment cabinets and ancillary development. This was refused by the Council, and the subsequent appeal was dismissed (ref: APP/Y5420/W/19/3222650). The Council issued an enforcement notice against the unauthorised pole, which is now the subject of the current appeal.

Character and appearance

6. I have had regard to the statutory duties under the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the Act), at sections 16(2), 66(1) and 72(1). These require me to have special regard to the desirability of preserving the listed building or its setting, or any features of special architectural or historic interest which it possesses, and to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area when considering whether to grant planning permission.
7. The development is located in the Muswell Hill Conservation Area (CA). The CA comprises a mixture of building types and forms, including terraces of dwellings that contribute to the tight urban grain of the area. These are complemented by commercial buildings, churches and other uses, and by the open spaces that give relief from the more densely built areas.
8. Dukes Mews, where the appeal site is located, is a narrow lane located behind a busy commercial centre within the CA. Dukes Mews joins Dukes Avenue at a transitional point where distinctive red brick Edwardian dwellings give way to the more imposing commercial buildings surrounding the roundabout. At this junction is the grade II listed Muswell Hill Baptist Church, a striking red brick building whose highly decorative frontage faces onto Dukes Avenue. The side elevation, facing Dukes Mews, features decorative stone banding and delicate traceried windows within stone surrounds.
9. On the opposite side of Dukes Mews is the return elevation of a three storey brick building with a shop on the ground floor and what appear to be flats above. The corner is articulated by an attractive double height bay window feature with a pyramidal tiled roof. This side elevation is plainer than the

frontage but retains features such as the brick chimney stacks and a number of traditional windows with brick lintels. These buildings make a positive contribution to the significance of the CA.

10. The mast is set back from these historic buildings in a location that is strongly characterised by contemporary buildings. When viewed from the junction between Dukes Mews and Muswell Hill, the mast is seen in context with the modern developments of Ashmount Lodge in the foreground and Pinnacle Court in the background. From this vantage point, the modern character of the mast does not appear out of place.
11. The mast can clearly be seen from the Dukes Avenue junction and is thus intervisible with the listed church and the three storey building. For those travelling along Dukes Avenue, views of the mast are relatively brief, due to the narrowness of Dukes Mews. Nevertheless, although the mast is seen in the context of the trees behind it, and a lamppost in front, it is taller than these other features and so more dominant within the view.
12. Even though the mast appeared against a cloudy sky at the time of my visit, it drew the eye and formed a focal point at the end of Dukes Mews. Its pale finish would stand out even more noticeably against a clear blue sky. I have no doubt that the effect would be more obvious during the winter months, when the trees were not in leaf. Despite the separation distance between the installation and the historic buildings, the mast is a modern intrusion that conflicts with the character of the historic buildings and does not respond favourably to this historic context. These factors lead me to the conclusion that the mast harms the setting of the listed building and the significance of the CA as a whole, albeit that this harm is less than substantial.

The fallback

13. Nevertheless, I have had regard to the appellant's representations with regard to fallback positions. Crucially, the 2017 permission remains extant until 2022, and so a monopole of a comparable height and appearance could be erected on the site, were I to dismiss the appeal. It is the case that the unauthorised monopole, at around 324mm in diameter, is larger in diameter than would be the permitted pole, whose diameter would be approximately 240mm. However, given that the viewer needs to stand at some distance to view the appeal site in context with the historic buildings, I am not convinced that the visual effect of this increased dimension over such a distance is materially more harmful than the fallback development.
14. The Council argue that there is nothing to compel the appellant to implement the approved scheme. However, by the same token, there is little evidence to suggest that the appellant would not implement it if permission for the unauthorised pole was withheld. That being the case, I give this particular fallback position considerable weight.
15. I note also the Council's statement that the existing monopole is in a different location to that of the 2017 approved scheme. However, the appellant explains that the monopole is in the position as approved in 2017. It is in a different location to the previous mast but has been moved by a relatively small distance of around 3m within the fenced compound. There is little evidence before me to show that the location of the pole within the compound makes

any appreciable difference to the effect on the heritage assets, and so I can give little weight to this matter.

Other Matters

16. Interested parties have voiced concerns over the development, which I have taken into account. One respondent refers to a scheme for affordable housing that has planning permission but had been delayed for various reasons. Concern is raised that the mast could detrimentally affect the ability to deliver the affordable housing. However, no further details have been given, which limits the weight I can give this matter.
17. Reference is made to other existing masts in the area, and the need for the appeal mast is questioned. I note that the Council were satisfied by the need for the mast in assessing the 2017 scheme and this circumstance does not seem to have changed. On site I did not see any masts that were particularly close to the appeal site, and in any case, each development is to be judged on its own merits.
18. With regard to noise, I did not notice any sound coming from the mast whilst on my site visit. I note that the Council have not raised noise as an issue in their objections to the structure, and there is little evidence that formal complaints of noise nuisance have been made. There is little firm evidence to show that the development is harmful to the health or well-being of nearby residents. Issues of ownership and the decision to purchase properties in the vicinity are private matters that cannot have a bearing on my assessment of the planning matters in this case.

Conditions

19. I have imposed a condition specifying the approved plans to provide certainty for the parties. It also enables the Council to enforce against breach of condition should it be found that the development is not in accordance with the detail of the approved plans.

Conclusion

20. I have identified less than substantial harm to the heritage assets, and so some tension arises with Policy DM9 of the Haringey Development Management DPD, insofar as it seeks to support development that sustains and enhances the significance of heritage assets and their settings, Policy SP12 of the Haringey's Local Plan Strategic Policies, which similarly requires the conservation of the historic significance of heritage assets, their setting, and the wider historic environment, and Policy 7.8 of the London Plan, which seeks to conserve the significance of heritage assets.
21. However, I have given considerable weight to the fallback position whereby the 2017 prior approval permission remains extant and could be implemented at any time. As the appeal development is not materially more harmful to the heritage assets than the 2017 scheme, if implemented, overall, I am satisfied that the development results in the preservation of the character of the heritage assets. It thus accords with the overarching statutory duty as set out in the Act, which must be given considerable importance and weight, and with the National Planning Policy Framework (NPPF), which seeks to conserve the historic environment. That being the case, the withholding of planning permission would not be justified in this instance.

22. Therefore, the appeal on ground (a) succeeds, and as a result there is no need for me to go on to consider grounds (f) or (g). I direct that the enforcement notice be quashed.

Elaine Gray

INSPECTOR