
Appeal Decision

Site Visit made on 29 June 2021

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th July 2021

Appeal Ref: APP/X5990/W/21/3270370

St Martins Lane Hotel, St Martins Lane, Westminster, London WC2N 4HX

- 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 Mobile Broadband Network Limited against the decision of City of Westminster Council.
 - The application Ref 20/06243/TELCOM, dated 6 October 2020, was refused by notice dated 26 November 2020.
 - The development proposed the installation of 3no roofpods accommodating 6no antenna apertures (2no antenna apertures per roofpod), 1no pole-mounted transmission dish, 8no equipment cabinets, GRP shrouding, and ancillary development thereto.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4), require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.
3. The provisions of Part 1, Class A of the GPDO do not require regard to be had to the policies of the development plan. I have had regard to the policies of the development plan only in so far as they are a material consideration relevant to matters of siting and appearance.
4. With regard to the above, subsequent to the refusal of the application, the Council adopted a new City Plan 2019-2040. This has replaced the Unitary Development Plan (2007) (UDP) and the previous City Plan (2016). Policies S25 and S28 of the City Plan 2016 and Policies DES 1, DES 6, DES 9 and DES 10 of the UDP, cited in the reason for refusal, have therefore been superseded. The Council has advised that the relevant policies of the new City Plan are Policies 19, 38, 39 and 40. The appellant has had the opportunity to comment on these policies.
5. The appellant refers to the London Plan 2011, but this too has been superseded following the publication of the new London Plan on 2 March 2021. These superseded policies no longer have weight and I have determined this appeal under the current development plan, in so far as it is a material consideration.

Main Issue

6. The main issue is the effect of the proposed development on the character and appearance of the area, with particular regard to nearby listed buildings and the adjacent Trafalgar Square and Covent Garden Conservation Areas, and whether any harm caused is outweighed by any benefits of the proposal, including the need to site the installations in the location proposed having regard to the potential availability of alternative sites.

Reasons

7. As the application is for prior approval rather than planning permission, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) does not apply. The appeal site is not within a conservation area and so Section 72 of the Act also does not apply.
8. However, the National Planning Policy Framework (the Framework) is a material consideration. This sets out that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Great weight should be given to the conservation of designated heritage assets and any harm to a designated asset requires clear and convincing justification. Harm to the significance of a heritage asset can arise from development within its setting.

Character and appearance

9. The host building is a modern hotel on the east side of St Martin's Lane. Existing telecommunications apparatus on the roof of the host building is hidden by screening such that the roof of the building appears of a simple, uncluttered form in views from the surrounding streets.
10. However, one of the proposed installations would be on the north-west corner of the roof of the building. It would introduce a new element approximately 5.6 m high with a vertical emphasis and be a notable feature as shown in the appellant's photomontage. The installation would disrupt the lines of the roof and be at odds with the simple form and character of the building. The proposal would thus fail to contribute positively to the streetscape, although its effect would be localised. The other installations to the southern and eastern sides of the roof would be less noticeable from Bedfordbury and Mays Court and would have no significant impact on the streetscape of these routes.

Listed buildings

11. Due to its height, the host building is clearly visible in views along St Martin's Lane. It forms part of the surroundings in which the Grade II* listed Coliseum Theatre and the Grade II listed Nos 52 and 53 St Martin's Lane, The Salisbury Public House and the Duke of York's Theatre are experienced and is therefore within their setting.
12. The significance of The Coliseum Theatre lies in its architectural and historic interest, being London's largest theatre when built and considered one of the finest achievements of the eminent theatre designer, Frank Matcham. The main tower of theatre, surmounted by a globe, is an important element of its architectural composition and significance. Due a slight curve in St Martin's Lane, this tower forms a landmark focal point in views southwards along the street past the host building.

13. The proposed roofpod on the north-western corner of the building would not be directly in the line of sight of the tower of The Coliseum, but as a rooftop feature this roofpod would draw the eye and detract from the prominence of this important architectural feature of the listed building. Consequently, the siting and appearance of this roofpod would be harmful to the significance of the theatre and to the appreciation of that significance.
14. The proposed roofpod would also be seen in the context of Nos 52 and 53 St Martins Lane. The increased roof height would increase the dominance of the appeal building over this late 18th century building and thus be harmful to its architectural and historic interest and the appreciation of its significance.
15. The Salisbury Public House forms part of a block of flats and chambers dating from 1899 and is listed for its rich external and internal decoration. Given its distance from the host building and its being on the opposite side of St Martin's Lane, the proposed roofpod would not detract from the significance of the street level public house or its appreciation.
16. The Duke of York's Theatre has architectural and historic interest, being of a late classical style and a site for protests by suffragettes in 1913 and 1914. Due to the curve in St Martin's Lane, the theatre is not prominent in views along the street. The proposed roofpod on the north-west corner of the appeal building would therefore not impinge noticeably in these views of the theatre.
17. Mays Court connects St Martin's Lane to Bedfordbury between the host building and the rear of The Coliseum. It affords a view of the rear elevation of The Coliseum and a partial view of the façade of the Duke of York's Theatre. It is not clear whether the proposed installation on the south side of the building would be visible in this view, but even if it is, its limited height would not impinge on these views or draw the eye from either theatre. Consequently, the installation on the south side of the host building would not be harmful to the significance of The Coliseum Theatre and neither this installation nor that to the north-west would harm the significance of the Duke of York's Theatre.
18. A roofpod and equipment cabinets would be located at the rear of the building, facing Bedfordbury. Looking along this street the appeal building rises above The Coliseum and the installations would be visible. However, the roofpod would be sited in the middle of the rear roof section and the cabinets would be sited on a lower roof level. Consequently, neither would be unacceptably intrusive from street level. Furthermore, from this level they would not be seen in the context of the tower of The Coliseum Theatre and so would not be harmful to the theatre's significance.

Conservation areas

19. The host building occupies a gap between the Trafalgar Square Conservation Area (TSCA) to the south and west and the Covent Garden Conservation Area (CGCA) to the north and east. The TSCA encompasses Trafalgar Square and surrounding converging streets, including the southern end of St Martin's Lane. It is characterised principally by the great urban space of the Square and large buildings of the 19th and 20th centuries, many of them listed, with smaller scale commercial development such as that along St Martin's Lane. The CGCA is focused on the piazza of Covent Garden laid out by Inigo Jones in the 17th century with the surviving 17th and 18th century street pattern around.

20. The host building, whilst within the setting of both conservation areas, has a neutral effect on their character and appearance. The installations would be visible in views out of and into both conservation areas along St Martin's Lane and Bedfordbury but simply being visible from a conservation area does not itself necessarily result in harm. It has not been put to me that these views are particularly important to the character or appearance of either the TSCA or the CGCA. The installations would not detract from the principal attributes of either conservation area as identified above.
21. The harm I have identified above to the roofscape of St Martin's Lane would be localised. The siting and appearance of the proposal would therefore not be harmful to the character or the appearance of either the wider TSCA or CGCA.

Heritage balance

22. I consider the harm to the significance of listed buildings identified above to be less than substantial. In accordance with paragraph 196 of the Framework this harm should be weighed against the public benefits of the proposal.
23. The proposal is to ensure continued 3G and 4G coverage and to allow 5G coverage following the removal of an existing installation at 27b Floral Street for reasons outside the appellant's control. Without a replacement, there would be a gap in the network coverage. The Government supports the rollout of 5G and the Framework sets out that the provision of advanced, high quality and reliable communications infrastructure is essential to economic growth and social wellbeing.
24. Planning decisions should support the expansion of electronic communications networks, including 5G. The installations would be shared by EE UK Ltd and Hutchison 3G UK Limited. EE UK Ltd has been chosen to provide the new critical network for Britain's Emergency Services. The proposal would therefore have demonstrable social and economic benefits which weigh significantly in the proposal's favour.
25. I acknowledge that the siting of equipment is subject to technical constraints and I have no reason to doubt the appellant's contention that the height of the proposed antennas is the lowest which would provide the required level of coverage. It may therefore not be technically possible to reduce the impact of the proposed roofpod to the front elevation by resiting it further away from the edge of the roof or reducing its height.
26. The appellant has considered potential alternative sites for the installations but has discounted all of these as having inferior coverage and the majority on the basis of also being within either the TSCA or the CGCA. However, with the exception of 15 Maiden Lane, the appellant has not quantified the degree to which the coverage would be inferior. Without this, it is not clear to me whether the coverage from the other alternative sites considered would still be sufficient, notwithstanding that it would be inferior to some degree to that from the proposed scheme.
27. Given the extent to which the cell is within either of the conservation areas, finding a site outside these designated areas is understandably difficult. However, telecommunications equipment within conservation areas is not precluded in principle by the Framework nor, as confirmed by the Council, the relevant policies of the Westminster City Plan 2019-2040 (the City Plan).

28. I am not persuaded therefore that there is not an alternative site amongst those rejected by the appellant that would provide sufficient coverage and not cause the harm to designated heritage assets that I have found would arise from the siting and appearance of this proposal. I therefore consider that the public benefits of the proposal do not outweigh that harm, a matter to which I have to attach great weight. There is thus no clear and convincing justification for that harm.
29. The proposal would therefore be contrary to the design and heritage aims of Policies 19 (A), 38 (B), 39 (B) and (I) and 40 (A) and (D) of the City Plan but not Policy 39 (K) , insofar as they are a material consideration in the determination of this appeal, and the heritage policies of the Framework.

Other Matters

30. The appellant has referred to several other appeals which were allowed¹. Whilst noting the Inspectors' conclusions in those appeals, in particular the weight to be given to the benefits of the proposals, an assessment must be made on the site-specific considerations in each case. It has not been demonstrated that the proposals in any of these appeal decisions are directly comparable to the scheme before me in terms of the effect on an important element of the architectural composition of a Grade II* listed building and the less than persuasive conclusions of the alternative site assessment. I have therefore given them little weight in my decision.
31. I note the appellant's dissatisfaction with the Council's handling of the original application. However, this relates to the processing of the application, not its planning merits. I have therefore given this matter very little weight in my determination.
32. Representations have been made by interested parties to the effect that their rights under Article 1 of the First Protocol to the Human Rights Act 1998 would be violated if the appeal were to be allowed. However, as I have determined that the appeal should be dismissed, my decision would not lead to any violation.

Conclusion

33. For the reasons given above, and having regard to the other matters raised, the appeal is dismissed.

Martin Small

INSPECTOR

¹ APP/L1765/W/18/31975, APP/P4605/W/19/3241791, APP/Z5630/W/19/3221200, APP/X5210/W/17/3174680, APP/Q3305/W/18/3206555, APP/L1765/W/18/3197522, APP/M5450/W/17/3180345, APP/R5510/W/16/3143922, APP/V5570/W/20/3246770, APP/V5570/W/20/3251047