
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: 9th August 2021

Appeal Ref: APP/X5990/W/21/3269792

161-167 Oxford Street, Soho, Westminster, London, W1D 2JP

- 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 MBNL Limited against the decision of City of Westminster Council.
 - The application Ref 20/04368/TELCOM, dated 10 July 2020, was refused by notice dated 25 August 2020.
 - The development proposed is installation of 6No. antenna apertures mounted across 3No. steel support structures (approx. 27.5m AGL to top), 4No. 600mm diameter dishes mounted across 4No. support poles, and 8No. equipment cabinets all at roof-level, 1No. meter cabinet at ground-level, ancillary works 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 Schedule 2, Part 16, 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, S26 and S28 of the City Plan 2016 and saved Policies DES 1, DES 6, DES 9, DES 10 and DES 14 of the UDP, cited in the reasons for refusal, have therefore been superseded and so no longer have weight. The Council has advised that the relevant policies of the new City Plan are Policies 19, 38, 39, 40 and 43. The appellant has had the opportunity to comment on these policies.
5. The appellant has referred to Policies D2 and SI 6 of the Intend to Publish London Plan. This has been replaced by The London Plan 2021, published on

2 March 2021, but Policies D2 and SI 6 have been retained. The Council has also referred to Policy HC4 of The London Plan 2021. I have determined this appeal in the context of the current development plan, in so far as it is a material consideration.

6. A revised National Planning Policy Framework (the Framework) was published on 20 July 2021. I have determined this appeal in the context of the revised Framework, on which the parties have been given the opportunity to comment.

Main Issues

7. The main issues are:

- i) the effect of the proposal on the character and appearance of the host building and area, with particular regard to nearby listed buildings, the nearby Soho and East Marylebone Conservation Areas and the Protected Vista 4A.2;
- ii) the effect of the proposal on the safe and convenient use of the highway; and
- iii) whether any harm caused would be outweighed by any benefits of the proposal, including the need to site the installation in the location proposed having regard to the potential availability of alternative sites.

Reasons

Character and appearance

8. The host building is a large commercial building with retail use on the ground floor situated on the south side of Oxford Street, on the corner with Poland Street. The building is of a modern glass finish that has echoes of art deco in its streamlined design and appearance. The top storey is set back slightly with rooftop plant on top sited behind a louvred screen and a plant room in the south-west corner. The building has been refurbished in recent years with what the Council contends is a greatly improved roofscape.
9. The louvred screen hides the rooftop plant from street level views so that the clean lines of the building are maintained. The proposal would result in three pairs of antennas and associated equipment in the north-west, north-east and south-east corners of the host building. This would avoid a large cluster of antennas and their associated cabinets would be sited behind the existing louvred screen. However, the antennas would project approximately 3 m above the louvred screen and disrupt the clean lines of the roof. They would thus be at odds with the architectural integrity of the host building.
10. Furthermore, the appellant's photomontages demonstrate that in proximity to the building the antennas on the north side of the building would be clearly visible in views along Oxford Street. They would represent incongruous features at roof level in the street scene. The proposal would thus fail to contribute positively to the streetscape, although its effect would be very localised, thus limiting the harm. The siting and appearance of the proposal would thus be in limited conflict with the design aims of Policies 19 (A), 38 (A) and (B) and 40 (A) of Westminster's City Plan 2019-2040 and Policy SI 6 of the London Plan 2021 insofar as they are material to the consideration of this appeal.

Listed buildings

11. 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. However, the revised 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.
12. The host building is adjacent to the Grade II listed The Pantheon and opposite the Grade II* Nos 156-162 Oxford Street. Also on the opposite side of Oxford Street is the Grade II Nos 164-182 Oxford Street. The relationship of the host building to The Pantheon is clearly evident from Oxford Street and from the end of Winsley Street, whilst the building is visible in views of Nos 156-162 and Nos 164-182 along Oxford Street. The host building is therefore within the setting of all three listed buildings.
13. The significance of The Pantheon lies principally in its architectural interest with the use of a unique and innovative modular system for the construction of its stripped classical façade to Oxford Street. The use of black 'ebony' granite rather than artificial stone distinguishes this shop from other department stores of the interwar period and represents a prominent historic branch of a celebrated national chain. The façade is thus of particular importance.
14. The significance of Nos 156-162 and Nos 164-182 also lie principally in their architectural interest. The former is an early example of a steel-framed structure dating from 1906-08 whilst the latter dates from 1905-06 with 'Wrenaissance' details. The three buildings have group value forming a strong group that showcases the ingenuity of commercial architecture in the Edwardian and interwar periods.
15. Although the host building is higher than The Pantheon, with its streamlined design, lack of adornment and the set back of the top storey and louvred screening it relates reasonably comfortably to the adjacent listed building. The proposed installation on the north-west corner of the host building would have no direct effect on the construction or materials of the principal façade of The Pantheon. However, it would be visible in views of that façade to either side along Oxford Street and from the end of Winsley Street opposite.
16. The addition of a clearly visible vertical element to the rooftop of the host building would detract from the restrained appearance of both the host building and the important façade of the adjacent listed building. Moreover, the proposed installation would draw the eye and thus diminish the ability to appreciate the significance of The Pantheon.
17. However, Nos 156-162 and Nos 164-182 are on the opposite side of Oxford Street to the host building. The building is only seen in the context of these listed buildings in oblique views along Oxford Street. Consequently, the proposal would not be harmful to the significance of these listed buildings nor would it diminish the ability to appreciate that significance.

18. The siting and appearance of the proposal would be contrary to the heritage aims of Policies 38 (A) and (B), 39 (A), (B) and (I) and 40 (E) of Westminster's City Plan 2019-2040 insofar as they are a material consideration in this appeal. The proposal would also conflict with the policies of the Framework on conserving and enhancing the historic environment.

Conservation Areas

19. The host building is sited between the Soho Conservation Area (the SCA), the boundary of which runs along Poland Street to the east of the host building and Great Marlborough Street to the south, and the East Marylebone Conservation Area (the EMCA), the southern boundary of which runs along the middle of Oxford Street. As the appeal site is not within a conservation area Section 72 of the Act does not apply, but the policies of the revised Framework regarding designated heritage assets are a material consideration.
20. The SCA is characterised by the original 17th century layout with small scale 17th and 18th century houses dominating the inner parts of the Area, which is ringed and cut in two by larger Victorian development along Shaftesbury Avenue and Charing Cross Road. This has resulted in a mixed character of buildings. The EMCA is characterised by a typically 18th century street plan with main parallel north-south streets and secondary east-west streets, dominated by late 19th and early 20th century small scale and piecemeal redevelopment of the original 18th century buildings. The EMCA has a primarily flamboyant, mannered classical architectural style.
21. The host building is within the setting of both the SCA and the EMCA but its design is such that it makes a neutral contribution to their character and appearance. The installations would be visible in views out of and into both conservation areas 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 the appearance of either the SCA or the EMCA. The installations would not detract from the principal attributes of either conservation area as identified above.
22. The harm I have identified above to the roofscape of Oxford Street would be very localised. The siting and appearance of the proposal would therefore not be harmful to the character or the appearance of either the wider SCA or EMCA. The proposal would thus not conflict with Policy 39 (K) of the City Plan 2021 insofar as it is a material consideration in this appeal.

Protected Vista 4A.2

23. The host building lies within the panoramic view of central London from Primrose Hill. Within this view the Palace of Westminster has been identified by the Mayor of London as a Strategically-Important Landmark, the view to which from Primrose Hill is defined as Protected Vista 4A.2 in the London View Management Framework Supplementary Planning Guidance (the LVMF).
24. Policy HC4 of the London Plan 2021 sets out that a development in a Protected Vista that exceeds the threshold height of a Landmark Viewing Corridor should be refused. The threshold for the Landmark Viewing Corridor in Protected Vista 4A.2 is, from the Council's evidence, +53.284 m AOD. The host building with its louvred screening is approximately 1.4 m above that threshold so the top of the proposed antennas would project approximately 4 m above this plane.

25. However, from the photograph supplied by the Council and my own observations from Primrose Hill during my site visit, the host building is not prominent in the view towards the Palace of Westminster. Given the distance of the building from Primrose Hill and the limited height and slim profile of the proposed antennas relative to existing buildings in the Corridor the installations would barely be noticeable in this view. Consequently, I am satisfied that the proposal would not significantly detract from the view of the Palace of Westminster from Primrose Hill.
26. The proposal would therefore technically conflict with Policy 40 (F) of the City Plan 2019-2040 and Policy HC4 (A), (B) and (F) insofar as they are material considerations in this appeal, but as the harm would not be significant I give this conflict limited weight.

Highway safety and convenience

27. Although not cited as a reason for refusal, the Council has expressed concern that the siting of a cabinet on Poland Street would cause inconvenience to and be unsafe for pedestrians using the relatively narrow footway. The cabinet would result in additional clutter on the footway and a degree of obstruction. However, this would be for only a very short section of the footway and there would still be room for pedestrians to pass with the doors closed. Opening the doors for maintenance would further obstruct the footway but I have no evidence that this would be frequent or take a long period of time and that it would therefore cause particular inconvenience for users of the footway.
28. I therefore conclude that the proposal would result in very limited harm to the safe and convenient use of the footway. Accordingly, it would conflict with the public realm aims of Policy 43 (A) of the City Plan 2019-2040 insofar as it is material to the consideration of this appeal but I find that conflict to be limited.

Whether any harm is outweighed by other considerations

29. I consider the harm to the significance of The Pantheon identified above to be less than substantial. In accordance with paragraph 202 of the revised Framework, this harm should be weighed against the public benefits of the proposal.
30. The proposal is to ensure continued 2G, 3G and 4G coverage and to allow 5G coverage following the removal of an existing installation at 120 Oxford 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 revised Framework sets out that the provision of advanced, high quality and reliable communications infrastructure is essential to economic growth and social wellbeing.
31. 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 awarded a contract by the Home Office to provide the new Emergency Services Network. The proposal would therefore have demonstrable social and economic benefits which weigh significantly in the proposal's favour. It would also broadly comply with Policy D2 of The London Plan 2021 insofar as it is a material consideration.
32. I acknowledge that the siting of equipment is subject to technical constraints and that the cell area is restricted. I have no reason to doubt the appellant's

contention that the height of the proposal antennas is the minimum necessary to provide the required level of coverage. It may therefore not be technically possible to reduce the impact of the proposed installation in the north-west corner of the roof of the host building by resiting it elsewhere on the roof away from the north-west corner or by reducing its height.

33. The appellant has considered potential alternative sites for the installations but has discounted these for various reasons including being within a conservation area. The Council has not challenged the appellant's assessment of alternative sites. However, telecommunications equipment within conservation areas is not precluded in principle by the Framework nor the relevant policies of the City Plan 2019-2040.
34. It would not be appropriate for me to comment on the suitability of a particular alternative site in the absence of detailed site-specific proposals before me. However, I am not persuaded that there is not an alternative site amongst those rejected by the appellants that would provide sufficient coverage and not cause the harm to the designated heritage asset that I have found would arise from the siting and appearance of this proposal. I acknowledge that as permitted development the principle of the proposal is not an issue but I 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. Accordingly, the siting and appearance of the proposal would be contrary to the heritage aims of Policy 19 (A) of the City Plan 2019-2021 insofar as it is a material consideration in this appeal.

Other Matters

35. The appellant has referred to several other appeals for telecommunications apparatus, four of which were in conservation areas, including three near to listed buildings, and which were all allowed¹. Whilst noting the Inspectors' conclusions in those appeals, in particular the weight given to the benefits of the proposals, an assessment must be made on the site-specific considerations in each case.
36. 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 appearance and significance of a Grade II listed building. I have therefore given these other decisions little weight in my determination of this appeal.

Conclusion

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

Martin Small

INSPECTOR

¹ APP/C3430/A/12/2172974, APP/Q3305/W/18/3206555, APP/M5450/W/17/3180345, APP/L1765/W/18/31975, APP/R5510/W/16/3143922, APP/P4605/W/19/3241791, APP/N5090/W/20/3250662, APP/V5570/W/20/3251047