



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: 10th August 2021

Appeal Ref: APP/X5990/W/21/3270675

30 Buckingham Gate, London, SW1E 6NN

- 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 Ltd against the decision of City of Westminster Council.
- The application Ref 20/03848/FULL, dated 22 June 2020, was refused by notice dated 10 November 2020.
- The development proposed is installation of 6No. antenna apertures across 3No. steel support structures (approx. 35m AGL to top), 3No. 600mm diameter dishes across 3No. support poles, 8No. cabinets onto roof-top behind proposed screening, 1No. cabinet at ground-level, ancillary works thereto

Decision

1. The appeal is allowed and planning permission is granted for the installation of 6No. antenna apertures across 3No. steel support structures (approx. 35m AGL to top), 3No. 600mm diameter dishes across 3No. support poles, 8No. cabinets onto roof-top behind proposed screening, 1No. cabinet at ground-level, ancillary works thereto at 30 Buckingham Gate, London, SW1E 6NN in accordance with the terms of the application, Ref 20/03848/FULL, dated 22 June 2020, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved drawings and documents: 77629_GA plans – Site Location Drawing No 002 Rev C, Existing Site Plan No 100 Rev C, Existing Site Elevation No 150 Rev C, Max Configuration Site Plan No 215 Rev C and Maximum Configuration Elevation No 265 Rev C and Industry Site Specific Supplementary Information.
 - 3) Except for piling, excavation and demolition work, construction works which can be heard at the boundary of the site shall take place only between 08.00 and 18.00 Mondays to Fridays; only between 08.00 and 13.00 on Saturdays; and shall not take place at any time on Sundays or on Bank or Public Holidays. Piling, excavation and demolition work shall take place only between 08.00 and 18.00 Mondays to Fridays and not at any time on Saturdays, Sundays or on Bank or Public Holidays. Noisy work must not take place outside these hours unless otherwise agreed through a Control of Pollution Act 1974 section 61 prior consent in special circumstances.
 - 4) All new work to the outside of the building must match existing original work in terms of the choice of materials, method of construction and finished appearance unless otherwise shown on the approved drawings.

Procedural Matters

2. 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 saved Policies DES 1, DES 6 and DES 9 of the UDP, cited in the reason for refusal, have therefore been superseded and no longer have weight. The Council has advised that the relevant policies of the new City Plan are Policies 19, 38, 39 and 40. In addition, the London Plan 2021 was published on 2 March 2021. The main parties have had the opportunity to comment on these newly adopted / published policies and I have determined this appeal in the context of the current development plan.
3. 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 Issue

4. The main issue is the effect of the proposal on the character and appearance of the host building and the area, with particular regard to the Birdcage Walk Conservation Area, and whether any harm 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

5. The host building is within the Birdcage Walk Conservation Area (the Area). In assessing the effects of the proposal, I have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Area. The revised Framework 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.
6. The Area is characterised by predominantly small scale stock brick houses in Georgian and Queen Anne styles and contains some fine early 18th century buildings in Queen Anne's Gate. St James's Park provides a green edge and tranquil setting to the northern boundary of the Area. Buckingham Gate contains a range of building types from a number of architectural periods and in a range of uses, including Wellington Barracks.
7. The host building is located on the corner of Buckingham Gate and Wilfrid Street. It is approximately 28 m high with the upper storeys set back, creating a stepped effect. The roof design has been carefully considered to minimise its impact on the area with mechanical and electrical plant in hidden enclosures to ensure that they are not visible. Therefore, other than a hooped ladder providing access to the upper roof visible in views of the building from Buckingham Gate, the roof has a clean profile. The building makes a neutral contribution to the character and appearance of the Area.
8. The proposed antennas would be located in pairs on the northern, western and southern corners of the highest roof of the host building, with associated

cabinets sited on top of the next roof level down, with screening. The antennas would rise approximately 7 m above the top roof level, and with the site of Nos 25-28 Buckingham Gate awaiting redevelopment at the date of my site visit, the installations in the northern and western corners of the roof would be clearly visible from Buckingham Gate to the north-west, although this may change if and when this site redeveloped.

9. The installation in the northern corner would disrupt and be at odds with the clean lines of the roof. The vertical antennas 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 it would cause.
10. I therefore find that the proposal would result in limited harm to the character and appearance of the host building and of the Birdcage Walk Conservation Area. The proposal would therefore fail to preserve or enhance the character and appearance of the Area.
11. Accordingly, in this respect the proposal would not accord with Policies 38 (B), 39 (B) and (K) or 40 (A) and (D) of the City Plan 2019-2040. In combination and amongst other things, these policies require development to be sensitively designed, have regard to the character and appearance of an area and of the existing building and to conserve and enhance heritage assets, including conservation areas. The proposal would also fail to accord in this respect with Policy SI 6 of The London Plan 2021, to which the appellant refers, which supports the effective use of rooftops for mobile digital infrastructure provided that it is well-designed and suitably located.

Heritage balance

12. I consider that the harm to the Area would be less than substantial. This must therefore be weighed against the public benefits of the proposal in accordance with paragraph 202 of the revised Framework.
13. The proposal is to ensure continued 2G, 3G and 4G coverage and to allow 5G coverage following the removal of an existing installation at 105 Victoria 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.
14. 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.
15. I acknowledge that the cell area is restricted and that the siting of equipment is subject to technical constraints. I have no reason to doubt the appellant's contention that the height of the proposed antennas is the lowest height possible to provide the required level of coverage. It is therefore likely that it is not technically possible to reduce the impact of the proposed installation on

the northern corner of the roof of the host building by resiting it elsewhere on the roof away from the northern corner or by reducing its height.

16. The appellant has considered a significant number of potential alternative sites for the apparatus but has discounted these for various reasons; being adjacent to higher buildings; being of an unsuitable height; affecting the significance of a listed building; or the roof being used as a roof garden or for solar panels or being of an unconventional design. The rejected sites include 16 Palace Street as suggested by an interested party.
17. The Council has not challenged the appellant's assessment of alternative sites. I am satisfied that the assessment is sufficiently robust to demonstrate that it is unlikely that there is an alternative location that would meet the appellant's requirements as effectively but with materially less harm. This factor weighs in favour of the proposal.
18. Notwithstanding the great weight to be given to the conservation of designated heritage assets, taking into account the need for the installations and the demonstrated lack of suitable alternative sites, I conclude that the benefits of continued and potentially enhanced communications outweigh the limited harm to the character and appearance of the Area and provide clear and convincing justification for that harm in this case.
19. Accordingly, in this respect, the proposal would comply with Policy 19 (A) of the City Plan which supports telecommunications and digital infrastructure with the public benefits of such infrastructure being weighed against impacts on heritage assets. As a co-location for EE UK Ltd and Hutchison 3G UK Limited, the proposal would accord with Policy 19 (D). It would be in general conformity with Policy D2 of the London Plan 2021 to which the appellant draws my attention and which promotes infrastructure capacity.

Other Matters

Listed buildings

20. The host building is within the setting of the Grade II* listed No 20 Buckingham Gate and the Grade II listed No 22 Buckingham Gate and Westminster Chapel. These buildings are of architectural interest, with No 20 being an early work of the eminent architect Sir Reginald Blomfield. A particular feature of the Chapel is its tower with its brick polychromy.
21. In assessing the effects of the proposal I have a duty to have special regard to the desirability of preserving the setting of listed buildings. Harm to the significance of a heritage asset can arise from development within its setting. The policies of the Framework relating to designated heritage assets are again a material consideration.
22. The proposed installation on the northern corner of roof of the host building would only be seen in the context of Nos 20 and 22 in oblique views from Buckingham Gate to the north-west. Given this angled view of the facades of the listed buildings, their distance from the host building and the intervening tall building of Nos 23 and 24 the proposal would not be harmful to the significance of Nos 20 or 22 nor would it affect the ability to appreciate their significance.

23. The antennas would also be visible in views of the tower of Westminster Chapel along Buckingham Gate from the north-west and south-east. However, given the distance between the host building and the Chapel and the dominance of the tower in views from the south-east, the proposal would not be harmful to the significance of the Chapel or the appreciation of that significance.
24. I therefore find that the proposal would not be harmful to the significance of nearby listed buildings nor to the appreciation of that significance. Accordingly, the proposal would preserve the setting of these listed buildings.

Other considerations

25. The application attracted objections from interested parties, covering a range of matters in addition to the impact of the proposal on the character and appearance of the area. I am satisfied that the submitted drawings are sufficiently accurate and clear for me to determine this appeal.
26. I understand concerns about the potential effects of the proposed installation on health but 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 (ICNIRP). In these circumstances the Framework 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 in this case.
27. I note the detailed representations on behalf of the proprietor of the host building. Whether the roof would be able to support the proposed installation would be a Building Control matter and thus outside the scope of this appeal. Whilst access to the apparatus, were planning permission to be granted, might cause disturbance to the tenants of the top floor office this would be likely to be on an infrequent basis and only for a limited period. Neither the prevention of the potential installation of solar panels on the roof at a future date nor the proprietor's concerns over future tenancies of the ground floor relate to the planning merits of the proposal before me, on which I must determine this appeal.
28. I have no evidence before me that the proposal would give rise to security concerns for Buckingham Palace or Wellington Barracks. Whilst the proprietor may feel aggrieved that the applicant did not consult with them prior to the submission of the application the evidence before me is that they were notified of the submission and they have had the opportunity to comment on the proposal through the application and appeal processes. Consequently, the proprietor's interests have not been prejudiced.
29. The host building is within the protected view of St Paul's Cathedral from King Henry VIII's Mound in Richmond Park identified as Linear View 9A in the London View Management Framework Supplementary Planning Guidance. However, from the Council's evidence, the proposed installations would not project above the 'development plane' and would therefore not impact on this protected view. I have no reason to come to a different conclusion.

Conditions

30. In addition to the standard time limit for commencement, the Council has suggested conditions were planning permission to be granted. I have assessed these conditions against the tests in paragraph 56 of the revised Framework, taking into account the appellant's comments on the suggested conditions, and amended them slightly for precision and concision.
31. A condition requiring compliance with the approved drawings and documents is necessary in the interests of certainty. Restricting the hours of construction is necessary to protect the living conditions of the occupiers of nearby dwellings. A condition regarding materials, method of construction and finished appearance is necessary in the interests of the character and appearance of the host building and the Birdcage Walk Conservation Area.

Conclusion

32. I have found above that the proposal would not accord with the development plan taken as a whole. However, I find that the benefits of continued and potentially enhanced communications are a material consideration that indicate that a decision should be made other than in accordance with the development plan in this case.
33. For this reason, the appeal is allowed and planning permission is granted, subject to conditions.

Martin Small

INSPECTOR