



Appeal Decision

Site Visit made on 13 July 2021

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 January 2022

Appeal Ref: APP/X5990/W/20/3262972

Accurist House, 44 Baker Street, Westminster, London W1U 7AL

- 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: 20/03906/TELCOM, dated 24 June 2020, was refused by notice dated 4 August 2020.
 - The development proposed is removal of 4No. antennas, 1No. equipment cabinet and other existing apparatus; installation of 4No. upgraded antennas on steel support structure (approximately 33.70m AGL to top), 5No. equipment cabinets, ancillary works thereto.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of the removal of 4No. antennas, 1No. equipment cabinet and other existing apparatus; installation of 4No. upgraded antennas on steel support structure (approximately 33.70m AGL to top), 5No. equipment cabinets, ancillary works thereto, at Accurist House, 44 Baker Street, Westminster, London W1U 7AL, in accordance with the terms of the application, Ref: 20/03906/TELCOM, dated 24 June 2020 and the plans submitted with it, Master Drawing No: 916371_WMS004_50016_W0213_M006-Rev F, Drawing Nos: 002 Site Location Plan; 100-A Existing Site Plan; 100-B Existing Site Plan; 150-A Existing Site Elevation; 150-B Existing Site Elevation; 215-A Max Configuration Site Plan; 215-B Max Configuration Site Plan; 265-A Max Configuration Elevation; and 265-B Max Configuration Elevation.

Preliminary Matters

2. Different postcodes for the appeal site address are stated in the appellant's application form and the Council's decision notice. The appellant has confirmed that the correct postcode for the appeal site is W1U 7AL. I have used this in the heading and formal decision above.
3. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO 2015), 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.

4. The Council's reason for refusal specifically refers to the harmful effects of the proposed 'antennas and steel support structure'. No reference is made to any detrimental effects of the proposed equipment cabinets and ancillary works. From the information before me I have no reason to take a different view. Furthermore, the appellant highlights that the equipment housing is permitted under Class A(a) of the GPDO 2015 and does not need approval from the Local Planning Authority, which the Council has not challenged. Therefore, my considerations of the appeal will focus on the effects of the siting and appearance of the proposed antennas and steel support structure.

Planning Policy

5. The principle of development is established by the GPDO 2015 and the provisions of Schedule 2, Part 16, Class A of the GPDO 2015 do not require regard to be had to the development plan. Nevertheless, development plan policies and sections within the National Planning Policy Framework (the Framework) which relate to issues of siting and appearance are material considerations.
6. In this context, following the determination of the application and during the course of the appeal, the Westminster City Plan 2019 – 2040 (the WCP) was formally adopted in April 2021; the London Plan (the LP 2021) was formally adopted in March 2021; and a revised version of the Framework was published on 20 July 2021. The WCP replaces the Westminster City Plan 2016 and the City of Westminster Unitary Development Plan 2007; the LP 2021 replaces the London Plan 2016; and the revised Framework replaces the 2019 version. The main parties have been given the opportunity to comment on the implications of these changes.
7. The development plan policies submitted by the main parties to be relevant to the appeal include: Policies 14, 19, 38, 39, 40 and 43 of the WCP; and Policies D2, SI 6 and HC1 of the LP 2021. Amongst other things, these policies seek to support investment in digital infrastructure, information and telecommunications technology; to ensure that sufficient capacity of existing infrastructure exists; that the design of development is of a high quality and responds positively to its townscape context, including the public realm; and that development conserves the significance of heritage assets and their settings, including managing the cumulative impacts of incremental change.
8. Additionally, the Framework sections which are relevant to the appeal are 10. Supporting high quality communications infrastructure; 12. Achieving well-designed places; and 16. Conserving and enhancing the historic environment.
9. I have had regard to the policies of the development plan and the Framework only in so far as they are material considerations relevant to matters of siting and appearance.

Main Issues

10. The main issues are the effect of the siting and appearance of the proposed replacement installation on i) the appearance of Accurist House; and ii) the character and appearance of the area, having regard to the setting of nearby designated heritage assets.

Reasons

Accurist House

11. The appeal site relates to the rooftop of Accurist House which occupies a prominent position at the junction of Baker Street and Blandford Street. The building is a late-20th century redevelopment of the site, comprising a large, multi-storey, brick built structure with a flat roof upon which is a variety of service and telecommunications equipment.
12. There are contradictions in the Council's evidence as to the perceived quality and merit of Accurist House and its contribution to the character and appearance of the area. From the evidence before me and my observations on site, I am of the opinion that it is a contemporary structure of considerable scale and massing, plain design and limited palette of materials. In these respects, it is a sizeable and unremarkable building of minimal historic and architectural merit.

Character and appearance of the area and setting of nearby designated heritage assets

13. The area within which the site is located is densely developed and intrinsically urban. It is characterised by a mix of commercial, retail and residential uses and includes a variety of building ages, types and styles.
14. The Portman Estate Conservation Area (the CA) lies adjacent to Accurist House with the CA's boundary running along the north/ south axis of Broadstone Place. The Council's CA Audit advises that the CA encompasses the land laid out as part of the Portman Estate during the mid/late-18th to the early-19th century. The character and appearance of the CA mostly stems from its attractive, hierarchical and harmonious late-18th century layout. This includes a carefully planned, historic grid of streets and squares with buildings in principally residential use. Georgian terraces remain the dominant element in many of the principal streets; but more intimate mews developments are also present in the area. Towards the late-19th/early-20th century a grander scale was introduced to parts of the CA, including Baker Street¹.
15. Accurist House represents a large scale redevelopment on an amalgamated site which the Council's CA Audit confirms is 'not characteristic' of the area and is 'harmful' to the area's character and appearance². As such, Accurist House along with adjoining and some adjacent buildings have been purposely omitted from the CA. I have no reason to dispute this conclusion and consider that this excluded island of modern development detracts from the setting of the CA and, as such, makes a negative contribution to the CA's significance.
16. Accurist House is also sited adjacent to the Grade II listed building, 'Fire Station', which fronts onto Chiltern Street. The Fire Station, which is now a hotel and restaurant, dates from 1889 and was designed by the L.C.C. Architect's Department. It is constructed of red brick and stone dressings with a tiled roof in a Free Tudor-Gothic style.
17. The significance of the Fire Station is largely derived from its historic and architectural interests as an imposing 19th century building within the

¹ Section 3.1-3.3 Portman Estate Conservation Area Audit 2003.

² Section 3.41 Portman Estate Conservation Area Audit 2003.

townscape, the form and key architectural features of which denote its former use. Its historic fabric and pleasing elaborate aesthetic make important contributions in these regards. The historic built urban backdrop immediately to the north, east and south of the Fire Station provides a setting to the listed building which, on the whole, makes a positive contribution to its significance.

18. However, the modern development immediately to the west of the Fire Station has unsympathetically altered its built context and compromised this part of its setting. By virtue of its age, height and bulk, Accurist House as a built element within the setting of the Fire Station, makes a negative contribution to the listed building's significance.

The appeal proposal and its effects

19. The appeal proposal includes the upgrade of shared telecommunications apparatus to an existing telecommunications installation, in order to enhance existing services and introduce the provision of new services for customers on the shared networks.
20. The equipment which would be removed comprises four antennas currently located on the outer faces of the building's northern tower at the rear; one equipment cabinet; and other existing apparatus. These would be replaced with four upgraded antennas on a steel support structure on the roof of the northern tower; five equipment cabinets; and other small scale components required for the operation of the upgraded base station.

Accurist House

21. The proposed antennas and steel support structure would be an overtly modern and aesthetically rudimentary addition to Accurist House. Nevertheless, given the building's negligible merit and the presence of existing service and telecommunications equipment on its roof and rear elevation, some of which would be removed as part of the proposal, the replacement installation would not harmfully diminish the building's inherent character and appearance. Nor would it appear utterly incongruous in this context. Furthermore, the proposed antennas' fairly slender form and white/light grey finish would assist their assimilation into the backdrop of the sky when viewed from below.
22. The replacement installation would rise to approximately 5.1m above the roof level of the building's northern tower and be of greater bulk than the existing antennas. However, I am mindful that technical and operational constraints have dictated the scale, number and height of the proposed antennas, which the appellant contends are the minimum to ensure the efficient operation of the networks. The position and perpendicular form of the proposed antennas and steel support structure would reflect and continue the verticality of the tower as a feature of the building's rear elevation and would not markedly conflict with the predominantly horizontal emphasis of the building's basic design.
23. The high level of the proposed antennas and support structure would cause them to be generally more conspicuous than the existing antennas. Nonetheless, given the replacement installation's positioning at the rear of the building, it would not be noticeable in views from the principal public route of Baker Street. Nor would it be visible in glimpsed views from the southern end of Chiltern Street.

24. The proposed antennas and support structure would be more evident in views when travelling along Broadstone Place. However, this is a secondary thoroughfare and less travelled in comparison to the surrounding streets. Furthermore, given the northern tower's position, set back from the main rear building line, the presence of the replacement installation would only be perceptible from ground level along the middle section of this route.
25. The replacement installation would also be noticeable when viewed from properties to the east. However, it would be seen against a roofscape which is already punctuated by extensive service paraphernalia as well as against a wider redeveloped dense urban backdrop. As such, it would not constitute an alien feature on this particular building within the locale.
26. Drawing all of the above together, I conclude that the siting and appearance of the proposed replacement installation would not have a harmful effect on the appearance of Accurist House.

Character and appearance of the area and setting of nearby designated heritage assets

27. As the application is for prior approval rather than planning permission, section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) does not apply. Additionally, section 72 of the Act does not apply as the appeal building is not located within a conservation area.
28. However, 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. Paragraph 199 of the Framework advises that when considering the impact of a proposed development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have clear and convincing justification. In considering this main issue I have also had regard to the Historic England guidance cited by the Council³.
29. As outlined above, the building of Accurist House is not typical of the area. Moreover, as an element in close proximity to the designated heritage assets of the CA and the Fire Station, it already makes a negative contribution to and detracts from their setting. In doing so, it harms their significance.
30. The replacement installation would not interrupt or undermine any identified 'local views' within the CA⁴ and, given its size and form, would not visually compete with the supremacy of the Fire Station. Moreover, its roof-top position and physical separation from the designated heritage assets would mean that it would not substantively further affect how the CA as a whole or the Fire Station are experienced and appreciated.
31. Nevertheless, the introduction of such an explicitly modern and functional element to the roofscape of Accurist House, which would be conspicuous from Broadstone Place and nearby properties, would compound the building's negative effects on the setting of the adjacent designated heritage assets. As a

³ Historic England, Historic Environment Good Practice Advice in Planning: 3 (2nd Edition), 2017.

⁴ Section 3.52 Portman Estate Conservation Area Audit 2003.

consequence it would exacerbate the identified harm to the significance of the CA and the Fire Station.

32. Accordingly, I conclude that the siting and appearance of the proposed replacement installation would harm the character and appearance of the area and detract from the setting of nearby designated heritage assets and thereby harm their significance.

Public benefits and balance

33. With reference to Paragraphs 201 and 202 of the Framework, in finding harm to the significance of designated heritage assets, the magnitude of that harm should be assessed. Given the limited nature and extent of the development relative to the area and setting of the designated heritage assets as a whole, I find that the harm would be modest and certainly less than substantial. Under such circumstances, Paragraph 202 advises that this harm should be weighed against the public benefits of the proposal.
34. Paragraph 114 of the Framework advises that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning decisions should support the expansion of electronic communications networks, including 5G.
35. The appellant submits that the replacement installation and upgrade of the base station would fulfil an identified need by improving the provision of second, third, and fourth generation services (2G, 3G and 4G) and, notably, introducing a fifth generation services for the first time (5G) in this area of Westminster. This would result in higher mobile download speeds and more reliable, quicker mobile phone connections along with an increased network capacity.
36. On this basis, the proposal would deliver economic and social objectives as outlined in the Framework to a wide range of organisations and individuals. I am aware that the benefits which would flow from the proposal would principally be to customers of the two networks which would use the shared base station and I am aware that these have not been specifically quantified by the appellant. Nevertheless, they would still be of a nature which would be of tangible and meaningful benefit to the public at large, at a time when there has been a marked shift to home working practices and increased communication online.
37. I am aware that the appellant has not considered alternative sites. However, this requirement of the Framework is for a new mast or base station⁵, not for the replacement of an existing base station as with the appeal before me. Moreover, the sequential site selection process carried out by the appellant and the resultant proposal is in line with guidance contained within the Code of Best Practice on Mobile Network Development in England, 2016 (CoBP) and the Framework⁶. Indeed, having regard to the historic and architectural sensitivity of the adjacent buildings and the wider area, the proposed beneficial upgrade of an existing installation on a building of nominal merit would appear a judicious one.

⁵ Paragraph 117.

⁶ Paragraph 115.

38. Taking the above into account, I am satisfied that the significant public benefits which would accrue from the proposed replacement installation would sufficiently outweigh the harm I have found. On this basis, the harm is clearly and convincingly justified.

Other Matters

39. I have had regard to comments made by interested parties regarding the harmful effect of the replacement installation on views from adjacent properties. The loss of a view is not, of itself, a planning matter and it is a well-founded principle that the planning system does not exist to protect private interests. Moreover, I have found that the replacement installation would not harm the appearance of Accurist House and whilst it would harm the significance of nearby designated heritage assets, this would be outweighed by the resultant public benefits of the proposal.
40. I note the need to manage the cumulative impacts of incremental change and acknowledge that the presence of other telecommunications apparatus and/or poor development should not set a precedent or justify the acceptance of further harm. However, whilst differing in position and form to the existing antennas, it is evident that the proposal is a replacement and upgrade of an existing base station, which is an approach supported in the CoBP and Framework. Furthermore, I have determined the appeal proposal on its own merits.
41. The Council highlights that the existing coverage in the area is of the highest category for both indoor and outdoor availability and consequently there would be no loss of existing coverage or signal availability if the appeal scheme was not implemented. However, the Framework is clear that Local Planning Authorities must determine applications on planning grounds only and should not question the need for an electronic communications system⁷. Consequently, I give this matter little weight.
42. I note that the replacement installation would meet the guidelines laid down by the International Commission on Non-Ionizing Radiation Protection and, in this regard, it would comply with the guidance contained in the Framework and the Planning Practice Guidance.

Conditions

43. Any planning permission granted for, the 'removal of 4No. antennas, 1No. equipment cabinet and other existing apparatus; installation of 4No. upgraded antennas on steel support structure (approximately 33.70m AGL to top), 5No. equipment cabinets, ancillary works thereto, under Article 3(1) and Schedule 2, Part 16, Class A, is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2).
44. These specify that the development must, except to the extent that the Local Planning Authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin not later than the expiration of 5 years beginning with the date on which the Local Planning Authority received the application, and must be removed as soon as reasonably practicable after it is no longer required for electronic communications

⁷ Paragraph 118.

purposes and the land restored to its condition before the development took place.

Conclusion

45. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

F Cullen

INSPECTOR