



Appeal Decision

Site visit made on 16 December 2021

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2022

Appeal Ref: APP/U5360/C/21/3278704

Howl at the Moon, 178 Hoxton Street, Hackney, London, N1 5LH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Cornerstone against an enforcement notice issued by London Borough of Hackney.
 - The notice was issued on 10 June 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the installation of telecommunications equipment, namely the installation of six antennas and ancillary equipment at roof level.
 - The requirements of the notice are to:
 1. Remove all telecommunication antennas from the eastern, southern and western elevations - with ancillary development thereto - from the Property;
 2. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above;
 3. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (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 section 177(5) of the 1990 Act as amended for the development already carried out, that being the installation of telecommunications equipment, namely the installation of six antennas and ancillary equipment at roof level at Howl at the Moon, 178 Hoxton Street, Hackney, London, N1 5LH as shown on the plan attached to the notice and subject to the following condition:
 - i) The telecommunications equipment and associated equipment hereby permitted shall be removed within 150 days of the date of the failure to meet any one of the requirements set out in a) to e) below:
 - a) Within three months of the date of this decision a bespoke scheme for decorative wraps designed to match the base materials at the point of attachment for each of the six antennas shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - b) If within six months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within

the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

- c) If an appeal is made in pursuance of b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- d) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
- e) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issue

- 2. The main issue is the effect on the character or appearance of the area and the Hoxton Street Conservation Area (the Conservation Area).

Reasons

- 3. The designation report for the Conservation Area explains that the built environment of Hoxton Street encapsulates the changing role and character of the whole area of Hoxton over a period of several hundred years, initially as a fashionable suburb in the sixteenth to eighteenth centuries then as a shopping centre in the nineteenth century. The significance of the Conservation Area lies in that changing pattern and function of development that contributes to the interesting and varied building and roof lines, as well as the merit of individual buildings and use of traditional materials.
- 4. No 178 Hoxton Street is a three storey building with recent mansard roof extension, situated on the corner with Stanway Street. The ground floor of the building (facing Hoxton Street) sits forward of the upper storeys and is occupied by the Howl at the Moon public house. The main south and west upper elevations are constructed in stock brick and incorporate arched feature windows, decorative window headers, cornices and rendered parapet. The side elevation is finished in painted render with little detailing and limited fenestration, reflecting its service function.
- 5. Nevertheless, the main elevations combine to make a positive contribution to the Conservation Area, whereas a number of the nearby properties, within the building's setting, have a negative effect, most notably the one and a half storey scale modern retail development on the opposite side of the road. Although not a reason to make matters worse, the context in which the site is primarily viewed and experienced, is not as sensitive as other parts of the Conservation Area.
- 6. In August 2011 planning permission was granted for the erection of a replacement GRP chimney stack containing telecommunications antennas and the installation of two face mounted antennas on the west elevation. In granting that permission, the Council accepted that the development would not harm the existing building and would preserve the character and appearance of

the Conservation Area. Similar conclusions were drawn in granting planning permission in 2014 to upgrade the installation, including replacing one of the face mounted antennas with a larger face mounted unit. Additionally, the Council list a 2016 permission which included the replacement of existing wall mounted antennas in a new location and the replacement of two antennas within an existing GRP shroud.

7. In 2016 planning permission was also granted for the erection of a second floor roof extension to No 178 to create an additional storey for residential purposes. That permission has been implemented and thus forms part of the existing baseline. The appellant explains that all of the previously approved telecommunications equipment was removed in order to facilitate the works, and relocated onto scaffolding to ensure continued network coverage. The antennas were subsequently returned to the building thereafter. The west facing antennas are similarly positioned to those previously approved whilst the antennas previously located within a GRP chimney shroud are now wall mounted to the upper parts of the south and east elevations. Those six antennas along with connecting feeder cables (and casing) at mansard roof level are essentially the matters alleged in the notice.
8. Views of the antennas attached to the western elevation are largely localised because of the alignment of Hoxton Road, the recessed position of the upper storeys, as well as intervening features which serve to either screen or filter views of them. Where medium to longer distant views of the antennas are achieved, the effects are reduced by their scale and the visually busy townscape context in which they are located. Within such a busy commercial area, with numerous modern interventions, they do not appear unduly incongruous or disruptive to the street scene.
9. Views from within and through the Hoxton Trust Garden to the south are heavily filtered, by the mature trees contained therein, even during the winter months. Where the western and southern antennas are viewed together, the context/backdrop also includes a large scale block of flats situated outside the Conservation Area to the east.
10. Due to its largely blank façade and service function, the eastern side elevation is less sensitive to change. In closer views the antennas are clearly visible and can be seen in combination with those on the southern elevation. However, that view also contains a block of modern flats, modern housing and the aforementioned low-scale retail building. In longer views the eastern side antennas largely blend in with the building.
11. Therefore, given the immediate context and relatively localised visual impact, the effect on the Conservation Area taken as a whole is minor. Nevertheless, given their modern, utilitarian design and high level siting on public facing elevations, the antennas result in minor to moderate harm to the appearance of the building and the way in which the surviving historic elements of the architectural detailing and overall form of the building are experienced and appreciated. The cable routing is also quite robust in appearance, although the colour treatment does respond to the part of the building to which it is attached. Consequently, the effect of the alleged development is to diminish the extent to which the building makes a positive contribution to the significance of the Conservation Area.

12. The appellant has suggested that a condition could be imposed, if necessary, requiring a bespoke decorative wrap be created for each of the antennas to match the base materials of the building, at the point of attachment. Example photographs provided of other sites serve to illustrate how such a solution can help antennas blend in with the host building. Such an approach in this case would mitigate the harm to minor whist still forming part of the matters stated in the enforcement notice. It would also accord with paragraph 115 of the National Planning Policy Framework (NPPF) which states (albeit for new sites) that equipment should be sympathetically designed and camouflaged where appropriate.
13. Nevertheless, having regard to my duty under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, I find that the alleged development fails to preserve or enhance the character or appearance of the Conservation Area. It follows that I also find conflict with London Plan Policies D3 and HC1 and Hackney Local Plan 2020 (LP) Policy LP1, which state, amongst other things, that development must preserve or enhance the significance of the historic environment.
14. The Council's reason for issuing the enforcement notice also refers to conflict with London Plan Policy D1 but, as that primarily relates to capacity and planning for growth, I find limited relevance to the alleged development and no conflict.
15. The NPPF expects that great weight is given to the conservation of heritage assets irrespective of whether that harm is substantial or less than substantial¹. In this case, for the reasons explained, I find that the development leads to less than substantial harm to the Conservation Area taken as a whole. Should the aforementioned camouflage condition be imposed, that would reduce the harm to the low end of the spectrum of less than substantial harm.
16. In circumstances where a development leads to less than substantial harm to the significance of a designated heritage asset, the NPPF requires² that harm to be weighed against the public benefits the development might secure. That balancing approach is similarly applied in LP Policy LP3.
17. The NPPF states that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being and that decisions should support the expansion of electronic communications networks³. That is similarly recognised in the commentary of LP Policy LP11.
18. As the site provides 2G/3G/4G coverage and capacity for the Telefonica network and 4G coverage and capacity for the Vodafone network to a vibrant local centre, that amounts to a significant public benefit weighing in favour of the alleged development. Indeed, the Council does not dispute the public, social and economic benefits of mobile connectivity, its part in the role of the emergency services responses, the implications of COVID-19 and the greater demands imposed on the digital and technology industry.
19. Therefore, with the camouflage mitigation suggested by the appellant, I find that the public benefits secured by the alleged development outweigh the

¹ Paragraph 199

² Paragraph 202

³ Paragraph 114

reduced harm arising to the significance of the heritage asset (Hoxton Street Conservation Area), thereby complying with LP Policy LP3.

Other Matters

20. The Council refer to paragraph 115 of the NPPF which states that the number of electronic communication sites should be kept to a minimum and that the use of existing masts, buildings and other structures for new electronic communications capability should be encouraged. However, this is not a new site; the Council has previously approved the same number of antennas (six) on the building and the reason why four have had to be relocated from the GRP chimney is because of the permission granted by the Council for the mansard roof extension. I note the Council's concern that all of the antennas are now face mounted. However, the appellant has advised that the new roof design is structurally incapable of hosting a roof-based installation and no evidence is provided which disputes that position.
21. Even if the pre-existing installations were not shown on the mansard roof application details, the Council will have been aware of the telecommunications approvals granted at the site, and at least the western wall mounted antennas would have been seen in any site visit conducted. Moreover, paragraph 116.b) of the NPPF states that Councils should ensure that they have considered the possibility of the construction of new buildings or other structures interfering with broadcast and electronic communications services. London Plan Policy SI 6 also states that development proposals should take appropriate measures to avoid reducing mobile connectivity in surrounding areas. The Council's case does not therefore derive support from paragraph 115 of the NPPF.
22. Moreover, although the Council submit that an increase in service has not been demonstrated from pre-installation, that ignores that the site had already been in operation since 2012.
23. The Council further state that policies have varied significantly since previous approvals. However, it is not explained exactly what those changes are and how they should be applied to the alleged development. The reason for issuing the enforcement notice relates to character and appearance only and given the similarities of the alleged antennas on the western elevation with that previously approved, it is unclear why, for at least for those antennas, the Council's conclusions have now changed.
24. The Council's statement of case makes reference to service coverage and alternative site provision but the reason for issuing the enforcement notice does not cite telecommunications policies from its LP, London Plan or the NPPF.
25. The Council refer to coverage maps for Vodafone and O2 and suggest that the loss of the appeal site's antennas would not result in a significant loss of coverage. Notwithstanding that the classification is presumably based on the alleged antennas in place, paragraph 118 of the NPPF makes clear that Council's must determine applications on planning grounds only and should not question the need for an electronic communications system. Moreover, in a high density area such as this, coverage does not necessarily deliver capacity. In any case, the appellant has provided evidence that users would experience a high reduction in service experience without the existing installations.

Conditions

26. The camouflage condition is therefore imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation of the details before the development takes place. The condition will ensure that the development can be enforced against if its requirements are not met. No additional conditions are suggested by the Council and I consider none are necessary.

Conclusion

27. Whilst I have found that the proposal would conflict with London Plan Policies D3 and HC1 and LP Policy LP1, material considerations in this case indicate that the deemed planning application should be allowed, thereby justifying a decision not in accordance with the development plan.
28. For the reasons given above, the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice.
29. The appeal on grounds (f) and (g) do not therefore fall to be considered.

Richard S Jones

INSPECTOR