

Appeal Decision

Site Visit made on 8 June 2021

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st March 2022

Appeal Ref: APP/H5390/W/20/3260941

Cambridge House, Cambridge Grove, Hammersmith, London W6 0LE

- 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 against the decision of London Borough of Hammersmith and Fulham.
 - The application Ref: 2020/01561/TEL56, dated 10 June 2020, was refused by notice dated 5 August 2020.
 - The development proposed is described as: Proposed telecommunications rooftop installation upgrade and associated works.
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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 a telecommunications rooftop installation upgrade and associated works at land at Cambridge House, Cambridge Grove, Hammersmith, London W6 0LE in accordance with the terms of the application Ref: 2020/01561/TEL56, dated 10 June 2020, and the plans submitted with it, including drawing numbers:
 - 100911_HAF014_90056_W0198_M001 Issue A - 002 Site Location Plan;
 - 100911_HAF014_90056_W0198_M001 Issue A - 100 Existing Site Plan;
 - 100911_HAF014_90056_W0198_M001 Issue A - 150 Existing Elevation A;
 - 100911_HAF014_90056_W0198_M001 Issue A - 215 Max Configuration Site Plan; and
 - 100911_HAF014_90056_W0198_M001 Issue A - 265 Max Configuration Elevation.

Preliminary Matters

2. Although the appeal is made against the refusal of the Council to grant prior approval for the siting and appearance of the proposed development, as a result of the notification of the appeal, representations were received from an interested party acting on behalf of the owners of the building on which the development would be located.
3. Among other matters, these representations contended that the proposal falls outside the limitations set out in Part 16 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (hereinafter the GPDO). In *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250, the Court of Appeal held that 'on an application to an authority for a determination as to whether its "prior approval" is required, then the authority

is bound to consider and determine whether the development otherwise falls within the definitional scope of the particular class of permitted development’.

4. Notwithstanding that the matter of whether the proposed development fell within the definitional scope of Part 16 did not form part of the Council’s reason for refusal, in the light of the judgement in *New World Payphones*, it is, nonetheless, a matter that I must consider as part of the appeal. Consequently, in the first instance, the appeal turns on whether the proposal falls within the definition of permitted development in accordance with the terms of Part 16 of Schedule 2 of the GPDO.
5. In the event that the proposal does fall within the definition of permitted development, because this is an application for prior approval, the provisions of the GPDO 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. This appeal will be determined on the same basis.
6. The provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard be had to the development plan. Nevertheless, Policy DC10 of the Hammersmith and Fulham Local Plan 2018 is a material consideration as they relate to issues of siting and appearance of telecommunications apparatus. In particular, this expects building based telecommunications apparatus to be sited and designed in order to integrate successfully with the design of the existing building, and thereby minimise its impact on the external appearance of the building, and that it should also minimise the effect on the visual amenity, character or appearance of the surrounding area and the effect on conservation areas and listed buildings. Policy DC1 is a generic design policy and Policy DC8 seeks to preserve designated heritage assets.
7. Similarly, the National Planning Policy Framework (the Framework) is also a material consideration, and this includes sections on supporting high quality communications and the conservation of heritage assets. I have had regard to the policies of the development plan and the Framework only in so far as they are a material consideration relevant to matters of siting and appearance, and to telecommunications development.
8. On 20 July 2021 the Government published a revised version of the Framework. The parties were given the opportunity to comment on any implications that the revision to the Framework may have on their respective cases. The Council commented that some sections of the Framework referred to in their submissions have changed paragraph numbers in the new version. No further comments were received from the appellant. The provisions of the Framework in respect of considering the potential impacts on heritage assets and in respect of telecommunications are unchanged from the previous version.
9. As the proposal is in a conservation area, I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Main Issues

10. The main issues in this appeal are whether the proposed development would be permitted development in accordance with the terms of Article 3 and Schedule 2, Part 16, Class A of the GPDO, and the effect of the siting and appearance of

the proposed installation on the character and appearance of the area and the significance of designated heritage assets.

Reasons

Whether the proposed development would be permitted development

11. The appeal site is part of the roof top of a large building known as Cambridge House. The appeal site is the roof of a plant room located above what appears to be a stair and lift tower. From the submitted drawings, this roof is at a height of approximately 28.6 metres above ground level and is the highest part of the building. Cambridge House is located within the Bradmore Conservation Area.
12. The application form for Prior Approval describes the proposal as 'Proposed telecommunications rooftop installation upgrade and associated works'. From the submitted drawings, the proposal involves the installation of 6 new antennas on new steel support poles attached to the plant room and rising above the level of the roof. In addition, a number of small items of radio apparatus would be installed on the plant room roof. Several existing small antennas and their support poles belonging to different operators would remain in situ in this location.
13. Article 3(1) of the GPDO grants planning permission for the classes of development described as permitted development in Schedule 2 of the GPDO. Article 3(2) of the GPDO specifies that any permission granted by Article 3(1) is subject to any relevant exception, limitation or condition specified in Schedule 2.
14. To be "permitted development", the whole of any development must fall within the scope of a class in Schedule 2 of the GPDO, by falling within the relevant definition and satisfying any express restrictions as to "exceptions, conditions and limitations".
15. Class A of Part 16 of Schedule 2 to the GPDO sets out that development by or, on behalf of, an electronic communications code operator for the purpose of the operator's electronic communications network in, on, over or under land controlled by that operator, or in accordance with the electronic communications code, consisting of the installation, alteration, or replacement of any electronic communications apparatus is permitted development (Class A(a)). This is subject to a number of limitations set out in Paragraph A.1. of Part 16.
16. Paragraph A.1(4) of Part 16 sets out the circumstances where development is not permitted in respect of antennas and supporting structures installed, replaced, or altered on article 2(3) land. Article 2(3) land as defined by the GPDO includes land within conservation areas.
17. Paragraph A.1(4) states that development consisting of the installation, alteration or replacement of an antenna, a mast or any other apparatus which includes or is intended for the support of an antenna, or the replacement of an antenna or such apparatus by an antenna or apparatus which differs from that which is being replaced, is not permitted within a conservation area by Class A(a) unless it meets certain exceptions that are set out in Paragraph A.1(4)(a).
18. The Court of Appeal in *Mawbey, R (On the Application Of) & Others v Cornerstone Telecommunications Infrastructure Ltd.* [2019] EWCA Civ 1016 held that a 'mast' in this legislative context is an upright pole or lattice work

structure whose function is to support an antenna or aerial. It also held that a mast need not be “ground based” or of any particular “scale” or “design” to meet the definition. Notwithstanding that the proposed new support poles are clearly apparatus intended to support an antenna, they would also fall within the definition of a mast following the judgement in *Mawbey*. From the submitted drawings, the proposed new support poles and the proposed new antennas would both differ from those that they would replace.

19. Within conservation areas, the exception set out in Paragraph A.1(4)(a)(iv) of Part 16 requires that the antenna or apparatus is not a small cell system or a small antenna, and that the development is within the limitations specified in paragraphs A.1(1)(c)(ii), A.1(1)(d)(i)(bb) or A.1(2)(f). The proposal does not fall within the definition of a small cell system or small antenna set out in Paragraph A.4. of Part 16.
20. The interested party contends that the proposal does not fall within the limitations set out in paragraphs A.1(1)(c)(ii), A.1(1)(d)(i)(bb). However, these are not a stand-alone set of criteria and have to be read in their original context within the GPDO, i.e., Paragraphs A.1(1)(c)(ii) and A.1(1)(d)(i)(bb) relate to proposals for ground based apparatus, and Paragraph A.1(2)(f) relates to installations on buildings. As the replacement apparatus would be building based, paragraphs A.1(1)(c)(ii) and A.1(1)(d)(i)(bb) would not be applicable in this case and the relevant exception is that set out in paragraph A.1(2)(f).
21. This paragraph sets out that:

In the case of the installation of an antenna on electronic communications apparatus on a building on article 2(3) land—

(i) the size of any dish antenna to be installed would exceed 0.6 metres or the number of dish antenna which have been installed on the building since 21st August 2013 would exceed 3; or

(ii) the height of any antenna other than dish antenna to be installed would exceed 3 metres, or the number of such antennas which have been installed on the building since 21st August 2013 would exceed 3.

22. The appeal scheme does not propose the installation of any new dish antennas and although the new antennas would be larger than those to be replaced, they would not exceed the 3 metre limitation. The proposal would therefore fall within the limitations of paragraph A.1(2)(f).
23. It is not contended by the interested party that the proposal falls outside of the definitional scope of Part 16 in any other way, and from the evidence that has been provided, I conclude that, in this case, the proposal would fall within the relevant limitations set out in Part 16. Subject to prior approval being granted, the proposal would be within the definitional scope of permitted development set out in the GPDO.

The effect on the character and appearance of the area and the significance of designated heritage assets

24. Neither main party has provided more than a very cursory assessment of the proposal and its effect of the character and appearance of the area and on the designated heritage assets. Nor has either main party provided any detailed assessment of the character and appearance of the area or the contribution that

the setting of the listed buildings makes to their significance. I have been provided with a copy of the Bradmore Conservation Area Character Profile (2018 Update) (the CACP) and a copy of the List entries for the nearby listed buildings at The Church of St John the Evangelist, its associated vicarage and war memorial [List entries: 1286817, 1079824 and 1432477 respectively]; and Godolphin and Latymer School [List entry: 1286713]. The Church of St John the Evangelist is listed at Grade II* and the other buildings are listed Grade II.

25. The appeal site is located within the Bradmore Conservation Area which was initially designated in April 1989. The conservation area covers an extensive area primarily and is primarily residential in character with some small enclaves of commercial development and a number of community buildings. From the CACP and from my observations during the site visit, in so far as it is relevant to this appeal, the significance of the conservation area is primarily derived from its evidential value of the nineteenth century expansion of Hammersmith into a formerly rural area with new streets being created in the area that were intended for housing the growing number of lower middle class and middle class families. It is illustrative of the architectural style of the time, its evolution over the period the area was being developed, and the building materials and construction techniques used. It is also illustrative of the approach to the layout and planning of the new urban areas in this part of London.
26. The buildings in the area are generally two to four storeys in height with lower buildings being most prevalent. Terraced forms are most common, and the materials are generally brick with render and stucco elements. Slate is the dominant roofing material. Roofs are mainly pitched, although in some parts these roofs are partially concealed by cornice and parapet details.
27. Although there are a range of building ages and designs, common architectural features, and similar materials, combined with the network of streets forming perimeter blocks of similarly designed buildings gives the area a cohesive appearance.
28. A notable exception to this is the block containing the appeal site that is bounded by Glenthorne Road, Banim Street, Aldensley Road, and Iffley Road. The CACP identifies that this area consists mainly of the non-residential buildings and spaces. It is noted that the listed buildings forming the Godolphin and Latymer School together with the former Church of St John the Evangelist, former Vicarage, and the war memorial, which are now also part of the school complex, are of particular importance. The CACP also identifies that there are modern developments in this area including West London Free School and nearby housing.
29. Cambridge House, the building on which the appeal site is located is a slight anomaly in the area. The CACP sets out that this was built and occupied as a piano factory in the 1860s, which was later converted to a depository and furniture factory, and subsequently expanded and converted to an aircraft factory during World War One. It remained in this use during the interwar period and the Second World War. More recently it has been further refurbished, modernised, and converted to the present office use. This building is one of the tallest buildings in the conservation area.
30. The group of listed buildings that now forms Godolphin and Latimer School date from the mid nineteenth century and are constructed in brick with stone dressings in a Victorian Gothic style. From the CACP, the school was founded as

a charitable endeavour to provide education and was later taken on by a second charitable trust in the early twentieth century, at which time the original buildings were added to. The school went on to become a voluntary aided grammar school and the buildings were further added to, throughout the twentieth and into the twenty-first century. When the neighbouring church of St John the Evangelist became redundant in the early twenty-first century, it and its vicarage were incorporated into the school campus. The church predates the founding of the school by a few years and was originally built as the wider area was starting to become more urbanised.

31. From the evidence available, in so far as it is relevant to this appeal, the significance of the buildings is derived from the historical and evidential value of the importance of religion, education, and charitable works in the Victorian period, and the aesthetic value arising from the architecture of the buildings and the visual relationship between them. Together they form an attractive group of period buildings in the Gothic revival style.
32. The setting of the listed buildings has been altered over time, both by the addition of modern extensions to the school buildings but also by the redevelopment of part of Cambridge Grove to provide the mid-twentieth century buildings occupied by the West London Free School. These replaced terraced housing that is shown on the 1896 Ordnance Survey map. I also saw when I visited the site that a large site on Glenthorne Road, just to the south east of the church and which is shown on the modern Ordnance Survey map as a multi-storey car park, is being redeveloped for flats.
33. Whilst the Council officer's report sets out that there are concerns about the increased size and height of the proposed equipment being more prominent, the evidence adduced by the Council does not set out in any detail which aspects of the character and appearance of the area would be affected or in what way it considers that the development would be harmful to that character and appearance of the area, or to the setting of the heritage assets.
34. Although the appellant has produced an image that purports to be the Zone of Theoretical Visibility, this is not especially helpful as it is based on an oblique aerial photograph rather than a plan and does not show either the location of the appeal site, or the likely whole extent of the setting of the group of listed buildings. In any event it does not assess or convey the nature or magnitude of any potential effects.
35. From what I saw when I visited the site and the surrounding area, although the building on which the proposed equipment would be sited is tall, the closely spaced and densely built up nature of the streets that comprise the conservation area, together with the length and height of the host building, mean that views of the installation would only be possible from a limited number of viewpoints, from where the stairwell tower and roof top plant room which currently house telecommunications equipment are visible at present. These are parts of Banim Street and Iffley Road, part of Tabor Road, the south end of Brackenbury Road, and at the junction of Lamington Street, Atwood Road, and Bradmore Park Road.
36. From Banim Street the proposal would be largely seen in context with the modern buildings on the east side of the street. From Iffley Road the appeal site is visible across the open school playing fields, although this is at a distance and the views are occluded in places by tall trees on the boundaries of the

playing fields with both Iffley Road and Cambridge House. In the views from Tabor Street and Brackenbury Road, due to the position of the part of the building where the proposed antenna would be located, the views are quite distant which would reduce the perceived size of the antenna. From the junction of Lamington Street, Atwood Road, and Bradmore Park Road the installation would be visible briefly over the roof of the lower Quaker Meeting House, before being obscured again by two storey buildings.

37. The planning history provided by the Council indicates that there has been telecommunications equipment present on the building in various forms since the early 1990's. In all of the viewpoints mentioned above the present installation at the appeal site is visible, albeit at a high level. Nonetheless, the presence of telecommunications equipment on the building is a long established feature.
38. The CACP identifies three views of the Godolphin and Latymer School complex and the former church as key views within the conservation area, noted as Views 12, 13 and 14. I observed during my site visit that the proposal would not impinge on these key views. I also saw that views of the appeal site may be possible as a distant feature in View 16 identified in the CACP. However, due to the distance involved, the apparatus would appear as an extremely small component in this view and would not affect the focal points of the view, namely the railway bridge and church tower.
39. Case law has established that proposals must be judged according to their effect on a conservation area as a whole¹. Whilst the proposal would have small scale, localised, effects on parts of the conservation area, given the overall size of the conservation area, the limited number of locations from where the proposal would be visible, and the relatively minor alteration to the size of the antennas at an established base station site, the appeal proposal would not have any appreciable effect on the way in which the conservation area is experienced, or affect the ability to understand its significance. Overall, the effect on the conservation area would be a neutral one.
40. As set out above, the setting of the listed buildings has been altered over time by the introduction of newer buildings into it and the addition of new extensions to the historic school buildings. The effect of the proposal would primarily be on the contribution that the setting of the buildings makes to the aesthetic value of the group of buildings. I saw that within the school campus large, modern, buildings have been inserted into the curtilage that have a much greater effect on the manner in which the buildings are experienced than the rooftop installation on Cambridge House. The presence of these modern buildings, the built form of the area and the relative positions of the buildings results in there being few places where there is intervisibility between the appeal site and the listed buildings. There are parts of Iffley Road from where the current rooftop installation and the top of the church tower are present in the same view. Nonetheless, both are small components in a larger view that makes no particular contribution to the understanding or visual appreciation of the listed buildings. In this context I find that the effect of the proposal on the setting of the listed buildings would also be a neutral one.
41. The larger size of the proposed new antennas and their taller support poles will change the appearance of the installation on the building, and the contribution

¹ South Oxfordshire DC v SSE & J Donaldson [1991] CO/1440/89

that the building makes to the wider appearance of the area. However, it is important not to conflate change with harm, as the terms are not synonymous. The Council has not set out what aspects of the character and appearance of the area, or how the significance of the heritage assets, would be harmed by the siting and design of the proposed antennas. The Council suggest that the proposal would cause substantial harm to the heritage assets, however, substantial harm is a very high bar and the evidence provided by the Council does not bear this out. Nor does it demonstrate that less than substantial harm would occur.

42. I therefore find that the proposal would not cause harm to either the character and appearance of the conservation area or the setting of the nearby listed buildings and would thus preserve their significance. These are the key components that define the character and appearance of the area around the appeal site.
43. Consequently, I conclude that the siting and design of the proposal would not cause harm to the character and appearance of the area or the significance of the designated heritage assets.

Other Matters

44. Concerns have been raised by an interested party about potential effects on health. However, 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 Protection (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.

Conditions

45. The GPDO does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators contained within it. Paragraphs A.3(9), A.3(11) and A.2(2), of Schedule 2, Part 16, Class A of the GPDO set out 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 purposes, and the land restored to its condition before the development took place.

Conclusion

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

John Dowsett

INSPECTOR