



Appeal Decision

Site visit made on 23 February 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2022

Appeal Ref: APP/X5990/W/21/3284151

Bridgefield House, 219 Queensway, Paddington, London W2 5HR

- 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 (EE UK LTD & H3G UK LTD) against the decision of City of Westminster Council.
- The application Ref 21/02152/FULL, dated 31 March 2021, was refused by notice dated 2 July 2021.
- The development proposed is installation of 6No. antenna apertures across 3No. steel support structures (approx. 29.75m AGL to top), 4No. 600mm diameter dishes across 4No. support structures & 8No. cabinets all at rooftop level, 1No. Meter Cabinet at ground level plus ancillary works.

Decision

1. The appeal is allowed and planning permission is granted for the installation of 6No. antenna apertures across 3No. steel support structures (approx. 29.75m AGL to top), 4No. 600mm diameter dishes across 4No. support structures & 8No. cabinets all at rooftop level, 1No. Meter Cabinet at ground level plus ancillary works, in accordance with the terms of the application Ref 21/02152/FULL, dated 31 March 2021, subject to the following conditions:
 - 1) The development hereby permitted shall be begun not later than three years from the date of this permission.
 - 2) The development hereby permitted shall be carried out in accordance with the following drawing numbers: 590963-WMS509-77516-W0490-M003-C (100 Existing Site Plan), 1590963-WMS509-77516-W0490-M003-C (150-A Existing Site Elevation), 1590963-WMS509-77516-W0490-M003-C (150B Existing Site Elevation), 1590963-WMS509-77516-W0490-M003-C (150C Existing Site Elevation), 1590963-WMS509-77516-W0490-M003-C (150D Existing Site Elevation), 1590963-WMS509-77516-W0490-M003-C (215 Max Configuration Site Plan), 1590963-WMS509-77516-W0490-M003-C (265-A Max Configuration Site Elevation), 1590963-WMS509-77516-W0490-M003-C (265-B Max Configuration Site Elevation), 1590963-WMS509-77516-W0490-M003-C (265-C Max Configuration Site Elevation), and 1590963-WMS509-77516-W0490-M003-C (265-D Max Configuration Site Elevation)
 - 3) Piling, excavation and demolition work relating to the development hereby approved, shall take place between the hours of 08.00 and 18.00 Monday to Friday; and not at all on Saturdays, Sundays, and public holidays. All other work shall take place between the hours of

08.00 and 18.00 Monday to Friday; between 08.00 and 13.00 on Saturday; and not at all on Sundays and public holidays.

- 4) The EE and H3G power cable route recess to the front elevation of the building shall be enclosed with trunking flush with the front elevation which shall be coloured and permanently maintained to match the colour of the existing tiles to the existing front elevation.
- 5) The external facing of the cabinet to ground floor level on the front forecourt of the building shall be coloured and permanently maintained in a black colour.

Main Issues

2. The main issues are:

- the effect of the proposed development on the character and appearance of the building and the surrounding area, including the setting of the Grade II* listed Porchester Centre, the Queensway Conservation Area and the adjoining Westbourne and Bayswater Conservation Areas; and
- whether or not the harm identified to the building and significance of designated heritage assets would be outweighed by the proposal's public benefits.

Reasons

Character and appearance

3. The appeal site comprises an eight-storey apartment building located within a densely built-up area, close to Royal Oak and Bayswater underground stations. The building's frontage is clad in light coloured tiles and is characterised by evenly arranged windows that give it a consistent and uniform appearance. A tall, visually prominent chimney is located at the rear of the building's flat roof, as well as some more discreet plant apparatus. The building is adjoined by a large mansion block (Arthur Court), while the entrance to the Grade II* listed Porchester Centre (Porchester Centre) is located a short distance to the north east.
4. The appeal site is within the Queensway Conservation Area (QCA), a linear designation that encompasses Queensway and short sections of adjoining streets. Several stylish and uniform, brick-built mansion blocks line the street's length. The north of the QCA encompasses the Porchester Centre, an elaborate civic building of the 1920s which survives with little alteration. The heritage significance of the QCA is derived largely from the continuous commercial and residential frontage of Queensway, along with the aforementioned buildings.
5. The appeal building together with Arthur Court has a consistent building line, scale and massing. It has a modern frontage, that despite diverging from the period features (bay windows, brick exterior) of Arthur Court, displays a similar uniform arrangement of window openings.
6. Ralph Court, a mansion block on the opposite side of the street is built in the same style as Arthur Court and together with the appeal building forms a neat and consistent enclosure to the street. These buildings also frame the ornate pillared entrance to the Porchester Centre, which is positioned between them and forms the termination point to this part of Queensway when looking from

the south. Despite being much taller structures of greater mass, the clean and uninterrupted roof line and understated appearance of the appeal building, Arthur Court and Ralph Court, help to draw the eye to the ornate entrance of the Porchester Centre, when looking down Queensway. This relationship makes a positive contribution towards the setting of the listed building and therefore its significance.

7. Four of the proposed antenna apertures would be fixed on two tripods structures placed on the roof of the appeal building and close to its front edge. The components that make up the apertures would reach a height of around 6m and have a harsh, industrial appearance. Their scale would also be visually prominent when looking from Queensway to the south and east, Porchester Road and Porchester Square and from within the upper floors at Ralph Court. Dishes, routers and a handrail would also be placed along the roof's edge. These would be shorter, and less prominent; however, together with the apertures, they would add to a cluttered and incongruous appearance along the leading edge of the building that would harm its uncomplicated appearance and largely uninterrupted roofline.
8. The protruding apparatus would also cause a jarring and unacceptable effect on the combined roofline the appeal building shares with Arthur Court by visually breaking the roof edge. Consequently, the neat sense of enclosure and symmetry the frontage shares with Ralph Court opposite would be unacceptably disrupted.
9. Similarly, the proposal, particularly the tall apertures lining the roof's edge would unsettle the balanced way the appeal building frames the Porchester Centre. Moreover, the industrial and cluttered appearance of the proposed apparatus would be visually intrusive, when seen in context, with the architectural elegance of the Porchester Centre's entrance. These effects would primarily be experienced from medium and long-range views from the south along Queensway where the scale/appearance of the appeal building, and the Porchester Centre's entrance would be visible and experienced together. Therefore, the setting of the listed building, which encompasses the appeal building, would be unacceptably harmed.
10. For the above reasons, the proposed development would harm the character and appearance of the appeal building, while failing to preserve the character and appearance of the QCA and the significance of the Porchester Centre.
11. From longer range views around Queensway's junction with Westbourne Grove and further south, the framing of the Porchester Centre by the appeal building and Ralph Court opposite, becomes obscured by trees, street furniture and the scale of intervening buildings. The proposed telecommunications equipment running along the appeal building's roof line would be visible from those locations given their elevated position. However, it would be difficult to discern the apparatus in the context of the listed building due to the diminished field of vision and intervening townscape. Likewise, there would be limited combined views of the appeal building and the Porchester Centre from the east given the perpendicular relationship between their frontages from this vantage point. Additionally, at close quarters, the visibility of the rooftop apparatus would be significantly reduced by the massing of the appeal building and the angle of view.

12. A short distance from the rear of the appeal building is the adjoining Westbourne Conservation Area (WCA). It derives its significance, in great part, from the attractive rows of residential terraces which are rich in architectural detail.
13. From within the WCA, particularly the residential streets of Burdett Mews, Hatherley Grove and Newton Road, the appeal building's rear is seen in context with other secondary frontages and additions of neighbouring buildings. The tall chimney on the building's roof is also very prominent from those streets, as well as other plant and rooftop services nearby. From within the WCA, the rear perspective of the appeal building is of limited merit and does not particularly add or make a positive contribution to its significance. The proposed apparatus would be seen rising above the appeal building from within parts of the WCA, however, they would also be seen in context with adjacent secondary frontages of little townscape merit. In this context the proposal would not materially harm the setting of features within the WCA.
14. Further afield, and to the east of the appeal building is the Bayswater Conservation Area, an expansive designation which encompasses the streets to the immediate north of Hyde Park. The significance of the BCA is derived in part from the many rows of palatial residential terraces. From within the BCA, looking outward, the appeal building is seen through the gap in the Porchester Road frontage. This perspective is limited, and from here the building makes no architectural contribution to the significance of the BCA other than being consistent with the scale of surrounding buildings. Although the proposal would harm the appeal building, due to its separation distance and the presence of intervening buildings, it would not be clearly seen in context with the townscape features that define the BCA's significance.
15. The proposal includes a thin power cable that would extend the height of the building's front elevation. The Council has expressed concerns that the continuous nature of the cable would break the consistency of the tile cladding on the building's frontage. Yet, it would align and run alongside the edge of the building as well as the window casements which both stand marginally proud of the tile cladding. Moreover, the cable would be recessed within the cladding and finished to match, ensuring that it would not materially stand out or harm the appearance of the building. The specific details of the cable can be secured by conditions to ensure it maintains this appearance.
16. I have found that from several perspectives, the proposal would have a neutral or no effect on the character and appearance of surrounding heritage designations. However, this would not overcome the unacceptable harm the proposal would have upon the host building, the special qualities of the QCA from parts of the Queensway, Porchester Road and Porchester Square as well as the setting of the Porchester Centre.
17. Accordingly, the proposal would have an unacceptable effect on the character and appearance of the host building and surrounding area, while failing to preserve or enhance the character or appearance of nearby heritage designations. In doing so it would fail to accord with Policies 38, 39 and 40 of the City Plan 2019-2040 (April 2021) (the City Plan). These require amongst other things that proposals positively contribute towards Westminster's townscape and streetscape and ensure heritage assets and their settings are conserved and enhanced, in a manner appropriate to their significance.

Public benefits

18. Given my findings above, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight. Under such circumstances, paragraph 202 of the National Planning Policy Framework (2021) (the Framework) advises that this harm should be weighed against the public benefits of the proposal. Similarly, Policy 19 of the City Plan supports investment in digital and telecommunications infrastructure and those public benefits will be weighed against impacts on local character, heritage or the quality of the public realm.
19. The Government places a high priority on the provision of high quality communications. The National Planning Policy Framework (the Framework) at Paragraph 114 states, "Advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections". 5G technology is particularly important for providing faster mobile broadband in congested areas with a very high number of devices, while enabling Internet of Things (IoT) services and the Smart City Agenda¹.
20. In this instance, the proposed development would address a current shortfall in 2G, 3G, 4G and 5G telecommunication services in the surrounding area, following the removal of a base station at Tennyson House, 18-24 Westbourne Grove. The area surrounding the appeal site experiences a high level of footfall given its proximity to transport connections, whilst also supporting a high number of residential and commercial uses. Accordingly, I attach significant weight to the public benefit arising from re-establishing network services as well as the associated improvement of local service provision.
21. It is relevant to consider available evidence as to whether these benefits could be achieved by siting the telecommunications equipment elsewhere with lesser harm to the character and appearance of the area.
22. The appellant has explored options that would reduce the visual impact of the proposed apparatus by either face mounting the apertures on the building or moving them away from the edge of the roof. However, these options would result in potential exceedance of ICNIRP guidelines and interference with the signal distribution within the cell area respectively.
23. The use of alternative sites, including existing installations, buildings and other structures were explored within the cell search area. However, these would not be suitable for reasons that included a failure to replicate the network coverage previously provided at Tennyson House, buildings being too low in height, insufficient space on roofs and structural limitations. As for a ground-based installation, this option would not be viable considering the likely interference presented by the high concentration of tall buildings in the cell search area.
24. The Council has placed doubt on whether the proposal would improve the network coverage to designated economic growth centres nearby, given the distance from those locations. I have no technical evidence to substantiate this, but even if that were the case, it would nevertheless bring about replacement

¹ Pages 19-20, A councillor's guide to digital connectivity, Guidance, Local Government Association.

- network coverage and improved connectivity to the high concentration of residential and commercial uses within the cell area.
25. I note the provision in Policy 19 (c) of the Local Plan for new major commercial developments to be designed to incorporate telecommunication apparatus. The Council anticipates that new developments in the area would be designed in this way and become available to host telecommunications equipment. Whilst I don't doubt this, they have not provided any details of those schemes and whether they are within the search area. Therefore, I am unable to give any particular weight to this point, without knowing the location of these developments and whether or not they would be able to accommodate the necessary equipment to overcome the coverage shortfall in the area.
26. In light of the above it has been satisfactorily demonstrated that the use of potential suitable and available alternative local sites would be impracticable. Thus, particularly when factoring in the site/case circumstances to hand, the scheme's benefit of providing replacement and improved digital communications networks attracts significant weight.
27. I am mindful of the statutory duties that require special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas and of preserving or enhancing listed buildings, their settings or any special architectural or historic interest which they possess. I am also conscious that the Framework indicates that, when considering the impact of a proposal upon the significance of designated heritage assets, great weight should be given to the assets' conservation. This is irrespective of whether any identified harm to its significance is at a substantial or less than substantial level.
28. Notwithstanding this, I am content that the moderate level of less than substantial harm that I have identified to designated heritage assets would be outweighed by the significant public benefits that would be achieved by the proposal. Therefore, the proposal accords with the relevant heritage provisions of the Framework and with Policy 19 of the City Plan in so far as it requires the public benefits of proposals for new infrastructure to be weighed against impacts on local character and heritage assets.

Other Matters

29. A third party has sought assurance that there would be no harmful health effects as a result of the proposal. The appellant has provided a declaration to certify that the proposal has been designed to conform 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.

Planning Balance

30. I have found that the proposed development would have an unacceptable effect on the setting of the Porchester Centre, the character and appearance of the QCA, and the host building, resulting in a moderate level of less than substantial harm to the heritage significance of the QCA and the adjacent listed

building. I have also identified associated policy conflicts and therefore conflicts with the development plan when read as a whole.

31. However, I have also found that the proposal would deliver significant public benefits through the development of reinstated and improved digital communication networks which are essential for economic growth and social well-being. These public benefits, which are supported by the Framework, would outweigh the visual and heritage harms that I have identified. Thus, material considerations indicate that, in this instance, the proposal should be determined other than in accordance with the development plan.

Conditions

32. A list of suggested conditions has been provided by the Council. I have had regard to these, amending them where necessary for clarity and to ensure compliance with the tests set out in paragraph 55 of the Framework.
33. In addition to the standard commencement condition, I have attached a condition requiring the development to be carried out in accordance with the submitted plans to provide certainty. A condition limiting the construction hours is necessary to safeguard neighbouring living conditions, while a condition controlling the appearance of cabling and the ground-based cabinet are necessary to safeguard the area and appeal building's character.

Conclusion

34. For the reasons above, I conclude that the appeal should be allowed.

RE Jones

INSPECTOR