
Appeal Decision

Site visit made on 15 September 2022

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2022

Appeal Ref: APP/X5990/W/22/3291357

Telecommunications Site 98195/WMS049, Kensington Gardens Hotel, 104 Bayswater Road, London W2 3HL

- 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 Mobile Broadband Network Limited against the decision of City of Westminster Council.
 - The application Ref 21/04451/FULL, dated 29 June 2021, was refused by notice dated 18 August 2021.
 - The development proposed is the removal and replacement of 6no antennas on new support structures, internal upgrade of existing equipment room and associated ancillary works thereto.
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Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. The appeal site is located within Bayswater Conservation Area. It also fronts onto Kensington Gardens, a Grade I Registered Park and Garden, and lies outside but adjacent to the Royal Parks Conservation Area. With respect to any buildings in a Conservation Area, Section 72(1) of the Planning (Listed Buildings and Conservations Areas) Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the area. Although no statutory protection for the setting of a conservation area or park and gardens exists within the Act, paragraph 200 of the National Planning Policy Framework (the Framework) establishes the need to consider the impact of development on the setting of all designated heritage assets.
3. Both Historic England and the Gardens Trust were consulted on the proposal in respect of the effect on the Registered Park and Garden. They offered no comment on the proposal but expressly stated that this indicated neither approval or disapproval of it.

Main Issues

4. The main issues are the effect of the proposal on:
 - the character or appearance of the Bayswater Conservation Area;
 - the setting of designated heritage assets, notably the Grade I listed Kensington Gardens Registered Park and Garden and the Royal Parks Conservation Area.

Reasons

Appeal site and heritage assets

5. The appeal site comprises a large 9+ storey, flat-roofed hotel, which fronts onto the Bayswater Road and returns onto Portchester Terrace towards the southern edge of Bayswater Conservation Area (BCA). Immediately opposite the hotel on Bayswater Road lies the Grade I listed Kensington Gardens Registered Park and Garden (RPG) and the Royal Parks Conservation Area (RPCA).
6. The BCA has been developed through different phases since 19th century. Key qualities are its classical architecture, stuccoed terraces, planned streets, avenues and squares. The different phases of development within the CA further illustrate the substantial growth of this area of London and how it has evolved over time. For all these reasons, consistency and coherent form of build are features that underpin its character and appearance, and is of value to its significance and special interest.
7. Towards the southern edge of the CA, notably along Bayswater Road, there are examples of large mid to late 20th century buildings, which includes the appeal site. In my judgement, such buildings are generally consistent in balance, architectural features and detailing, and so reflect and complement the historic classical architecture of the CA.
8. The Grade I listed Kensington Gardens comprises an extensive pleasure garden and park (List Entry 1000340) which dates back to late 17th century, and to this day remains a relatively intact Georgian landscape including ornamental planting, formal walkways, listed buildings and monuments, and water features. During the Victorian and Edwardian period, the RPG became inextricably linked with Hyde Park and developed with facilities and the two landscapes comprise part of the RPCA. It is the historic interest, royal connections with the crown, landscaping and layout, historic built and planned features that underpin the significance of the RPG and RPCA as designated assets.
9. There is a strong visual connection between these designated heritage assets and the backdrop of trees and buildings that line Bayswater Road, including the appeal site. The juxtaposition between the open park landscapes and the tight urban grain that exists across and north beyond Bayswater Road contributes to the setting of and significance of the heritage assets.
10. While the appeal building is large, it expresses simple, consistently detailed elevations and is relatively unassuming within its context. The existing roof-level equipment, plant and commercial paraphernalia at the appeal site is starkly utilitarian. However, it is relatively discretely sited and unassuming meaning that it does not detract from the character and appearance of the CA as a whole, nor from the settings or significance of the RPG or RPCA as designated heritage assets.

Effects of proposal

11. The proposal would result in the erection of telecommunications equipment, including six antennas, with pairs individually attached to the top of a pole, with support structures and apparatus at the base. Each pole with paired antennas would be approximately 6m above in height. Above the central

raised roof area, there would also be additional associated railings extending across much of the frontage width and flank of the building, above the level of existing railings. Irrespective of whether the railings could be erected as permitted development, they are integral to the proposal. As part of the proposal, wall-mounted telecommunications equipment would be removed from the Bayswater Road/Portchester Terrace corner of the building. Nevertheless, the proposal would add to the existing level of telecommunication equipment and paraphernalia on the top of the building.

12. To the rear of a building on the roof of a projecting wing, there would two poles each with paired antennas, with associated structures and apparatus, and railings. Their height and positioning close to the edge of the roof, together with their exposed utilitarian appearance, would result in an unsightly encroachment above the roofline and into the sky. Looking up at the roof level of the hotel would not be a normal human action, and close to the hotel on Portchester Terrace, there would be no views of the telecommunications development due to the height of the hotel. However, the protruding skyline and utilitarian appearance of the telecommunication equipment and railings would stand out and would appear jarring to the eye further down the road along significant sections.
13. In these views, the telecommunications equipment and railings would appear visually isolated from the existing roof equipment and paraphernalia, and would attract attention from passers-by. The proposal would advance the proliferation of starkly utilitarian equipment and accretions on the appeal site building, that would draw the eye and undermine, albeit in a small way, the attractive cohesion and consistency that is fundamental to the CA's character and appearance. Such an adverse effect would be localised but nevertheless, it would still fail to preserve the character and appearance of the BCA and harm its special interest as a whole. Accordingly, the proposed development would not preserve the character and appearance of the BCA in conflict with the requirement of s72(1) of the Planning (listed Buildings and Conservation Area) Act 1990 (the Act).
14. In respect of the RPG and RPCA, the equipment would be positioned some distance back from Bayswater Road limiting views from closer confines and the presence of street trees would also restrict views from further afield. Therefore, the proposal would not appear intrusive and be part of the existing background of equipment and paraphernalia. Owing to the localised impacts, the wider effect on the settings of the RPG and RPCA would quickly dissipate, causing no harm to their significance as designated heritage assets.
15. The rear most positioned telecommunications equipment, including the two poles and four antennas, would be positioned a substantial distance back from the frontage such that views would be non-existent or severely restricted from the listed gardens and RPCA. Looking down Portchester Terrace towards the listed gardens, the telecommunications equipment on the rear of the building would not be within any line of view directed at the gardens. Consequently, there would be no effect on the setting of the listed gardens or that of the RPCA from Portchester Terrace.
16. For all these reasons, the proposed development would harm the character and appearance of the BCA, taken as whole, in conflict with s72(1) of the Act.

Heritage and planning balance

17. This harm to the significance of the BCA, as a whole, would be small but it would equate to less than substantial in terms of the Framework. In accordance with paragraph 202 of the Framework, the harm should be weighed against the public benefits of the proposed development.
18. The proposal is part of the appellant's continuous efforts to improve the existing 3G and 4G network and to introducing 5G technology to cater for current and future customer demands. In urban areas, a dense network of base stations is required to ensure adequate signal, including within buildings, and the proposed antennas are necessary to create the power and capacity that the 5G frequency demands. The surrounding area has a high footfall and demand for telecommunication services, including from emergency services. Paragraph 114 of the Framework states planning decisions should support the expansion of electronic communications network, including next generation mobile technology.
19. Set against this public benefit, the proposed development would fail to preserve the character and appearance of the CA. The greater technical demands of 5G technology have more exacting technical positional and design requirements. However, the submitted technical evidence sets out general considerations relating to the siting of equipment and antennas. On this building, the Bayswater Road frontage equipment and antennas would be well set back from the edge of the building in contrast to that at the rear where there is no evidence, specific to the proposal, to justify the intrusive siting. Therefore, the public benefits associated with the proposal would not outweigh the considerable importance and weight that even less than substantial harm to a designated heritage asset carries.
20. Telecommunications development is supported by Policies 1 and 19 of the Westminster City Plan (CP) 2019 - 2040 (April 2021) and Policy S1 of the London Plan 2021. However, the proposal would harm the character and appearance of the BCA in conflict with Policies 38, 39 and 40 of the CP, which collectively and amongst other matters, requires development to be of exemplary high standards of design, positively contribute to its townscape and streetscape, conserve or enhance the character and appearance of the CA and be sensitively designed, having regard to the prevailing scale, heights, character, architectural quality and degree of uniformity in the surrounding townscape. As public benefits do not outweigh the harm I have identified, conflict arises with the historic environment policies of the Framework and the statutory test of the section 72(1) of the Act has not been met. Conflicts would be overriding leading to conflict with the development plan, taken as a whole. There would be no material considerations that indicate that the appeal be determined other than in accordance with the development plan.

Conclusion

21. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathon Parsons

INSPECTOR