



Appeal Decision

Site visit made on 11 October 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th October 2023

Appeal Ref: APP/V5570/W/23/3320674

24 Leonard Street, Islington, London EC2A 4BY

- 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 (EE Ltd and H3G UK Ltd) against the decision of the Council of the London Borough of Islington.
 - The application Ref P2023/0516/FUL, dated 20 February 2023, was refused by notice dated 17 April 2023.
 - The development is the retention of existing temporary antennas, dishes and equipment cabinets at roof level and development ancillary thereto.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's assessment of the proposal refers to the 2011 adopted Islington's Core Strategy and the 2013 adopted Islington's Local Plan: Development Management Policies. These have been superseded by the Islington Local Plan Strategic and Development Management Policies, adopted in September 2023 (the LP). The main parties have been given the opportunity to comment on the adoption of the LP.
3. The principle of development is established by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). The provisions of the GPDO require the local planning authority to assess the proposal solely based on its siting and appearance, taking account of any representations received. I have determined the appeal on the same basis. The provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. I have nevertheless had regard to the policies of the development plan and the National Planning Policy Framework 2023 (the Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.

Main Issues

4. The main issues are:
 - the effect of the siting and appearance of the development on the character and appearance of the area, with reference to the nearby Bunhill Fields and Finsbury Square Conservation Area; and

- if there is any harm, whether this would be outweighed by the need for the installation to be sited in this location, having regard to the potential availability of alternative sites.

Reasons

Character and Appearance

5. The appeal site is the roof of an apartment building located adjacent to the Bunhill Fields and Finsbury Square Conservation Area (the CA). Although there are buildings of different ages apparent, the area has a cohesive character of Edwardian grandeur and Victorian commercialism which relates well to the spaces and streets because of their scale, materials, and ornament. The significance of the CA derives in part from these characteristics and the evidence they provide of the development of the area at the turn of the century.
6. The site also lies close to the Whitefield's Tabernacle building and its adjacent Sunday School building which sit at the junction of Tabernacle Street and Leonard Street and within the CA. Although not listed, the buildings make a positive contribution to the character and appearance of the CA through their well-preserved Victorian Gothic architecture and historical associations with the original Tabernacle. Adjacent to the site and occupying a prominent corner position within the CA is Galaxy House, which the Council identifies as a locally listed building. These locally important buildings provide townscape value and indicate the historic pattern of the development of the area.
7. The 2002 Bunhill Fields/Finsbury Square Conservation Area Design Guidelines (the Design Guidelines) states that, for the 'Tabernacle Street, Epworth Street and other side streets' location, plant and roof structures should be set back to be invisible from the street. The 2017 Urban Design Guide Supplementary Planning Document (the SPD) confirms that particular care needs to be taken with mobile phone/telecommunication masts to ensure their size, height and positioning does not dominate the surrounding public realm. Where it will not have a detrimental impact on performance, they should be located where they are largely obscured from the surrounding public realm and do not impact adversely upon the skyline from longer views.
8. The development is visible from within the CA and in the context of the Tabernacle buildings and Galaxy House. This includes views south along Tabernacle Street and west along Leonard Street where the development is seen above the top of these locally important buildings. Given their location, height and uncompromisingly modern and utilitarian appearance, the antennas and associated equipment are visible against the skyline and are dominant and discordant in this location.
9. For the reasons given, I conclude that the siting and appearance of the development has a harmful effect on the character and appearance of the area, with reference to the nearby CA. Consequently, there is harm to the significance of the CA, notwithstanding the time limited nature of the development.
10. Insofar as they are a material consideration, the development conflicts with Policies D1, D4 and HC1 of the 2021 London Plan and Policies PLAN1 and DH1 of the LP which deal with, amongst other matters, design and character and

preserving or enhancing the historic environment. The development also conflicts with Policy ST3 of the LP which only allows for telecommunications equipment where they are sited and designed to minimise their visual impact and do not have a detrimental effect upon the character or appearance of the building or area. There would also be conflict with the guidance in the SPD as summarised above.

11. The harm to the CA would be less than substantial, stemming from the height and appearance of the development and its particular location. Even so, less than substantial harm does not equate to a less than substantial planning objection, especially where national policy expectations for conserving such assets have not been met. In such circumstances, Paragraph 202 of the Framework requires the harm to be weighed against the public benefits of the proposal.
12. Paragraph 114 of the Framework states that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being and planning decisions should support the expansion of electronic communications networks. This includes next generation mobile technology (such as 5G) and full fibre broadband connections.
13. The installation is currently in-situ. It is described by the appellant as a temporary emergency electronic communications installation. It was installed under provisions of the GPDO¹ which permit the stationing and operation of moveable electronic communications apparatus for a period of 18 months in an emergency. The situation arose as the building which previously housed the operational equipment was to be demolished and redeveloped. The planning permission² lapsed without the building being demolished and replaced and it now appears to be partly re-occupied, although the appellant identifies that a further planning application³ was submitted in July 2022.
14. The 18 month emergency period ran from July 2021 and expired in January 2023. The appellant's rationale behind the proposal is to retain the antennas, dishes, equipment cabinets and ancillary development for a period of nine months. This is to prevent disruption to network users or loss of communications services on the two mobile networks while a permanent site is deployed. The appeal scheme would therefore contribute towards the Framework's objective of supporting high quality communications infrastructure for two mobile networks.
15. I note that EE has been awarded a contract by the Home Office to provide the new Emergency Services Network (ESN) that is to replace the current Airwave system used by the emergency services. The appellant states that the appeal site will form part of that network in due course. However, given that the appeal scheme is to retain the installation for a temporary period and as no timescales have been provided about when the ESN will come on stream, I am not persuaded about the role that the appeal scheme would play in this.
16. Nevertheless, I recognise the importance of good, fast, reliable, and cost-effective telecommunications infrastructure. The public benefits have all been

¹ Class A(b) of Part 16 of the GPDO

² Council of the London Borough of Hackney reference 2017/4694

³ Council of the London Borough of Hackney reference 2022/1680

given due regard in my assessment and attract moderate weight in favour of the development.

17. However, heritage assets such as conservation areas are an irreplaceable resource and should be conserved in a manner appropriate to their significance. In my judgement, the public benefits would not represent a clear and convincing justification for the harm to the CA and would not outweigh the great weight that should be attached to the asset's conservation, as set out in paragraphs 200 and 199 of the Framework respectively.

Alternative Sites

18. Paragraph 115 of the Framework states that the number of communications masts and sites for such installations should be kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion. It encourages the use of existing masts, buildings, and other structures. The Framework goes on to state that applications for electronic communications development should be supported by the necessary evidence to justify the proposed development.
19. The equipment has been placed as low as operationally possible while still meeting the International Commission on Non-Ionizing Radiation Protection standard. I also appreciate that the antennas need to be located towards the edges of the roof to avoid any restrictions to their radio signals and if they were located more centrally on the roof then taller, heavier structures would be required. There is a limit to how far an operator can reasonably be expected to go to demonstrate no other less intrusive or harmful sites are available. However, from the information before me, I am not satisfied that all alternative, potentially less harmful options have reasonably been explored and therefore that no more suitable sites are available. Therefore, whilst I recognise the need to identify a suitable site within this area, I am not convinced that less visually harmful alternatives have been properly explored.

Other Matters

20. The appellant has drawn attention to appeal decisions⁴, including one where harm was identified to a conservation area, but the public benefits were found to outweigh this. However, I do not have full details of these cases, and so cannot be certain that they are directly analogous to the appeal proposal.
21. The representations submitted raise several concerns including a loss of privacy to flats during maintenance due to the location of roof terraces and skylights. However, as I have found the development to be unacceptable for other reasons, it is not necessary for me to explore these matters further.

Conclusion

22. For the above reasons, having had regard to all matters raised, I conclude that the appeal should be dismissed.

F Wilkinson

INSPECTOR

⁴ References APP/N5090/W/20/3250662; APP/X5210/W/20/3254104