



Appeal Decisions

Site visit made on 17 December 2023

by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 December 2023

Appeal A Ref: APP/X5990/W/23/3224186

Bayswater ATE, Moscow Road, Westminster, London W2 4LH

- 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 Cellnex against the decision of City of Westminster Council.
 - The application Ref 22/08499/FULL, dated 13 December 2022, was refused by notice dated 23 February 2023.
 - The development proposed is described as '*Installation of Electronic Communications Apparatus at Rooftop at Bayswater ATE, Moscow Road, Westminster, London, W2 4LH*'.
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Appeal B Ref: APP/X5990/W/23/3327993

Bayswater ATE, Moscow Road, Westminster, London W2 4LH

- 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 Cellnex against the decision of City of Westminster Council.
 - The application Ref 23/03872/FULL, dated 9 June 2023, was refused by notice dated 20 July 2023.
 - The development proposed is described on the application form as '*There are 6No. antenna mean height change from 29.0m to 32.0m to be relocated on support pole, 2No. antenna mean height change from 29.0m to 31.6m to be relocated on existing antenna support poles, 1No. antenna mean height to be relocated on proposed z-bracket with pole, 2No. antenna at 32.2m mean to be installed on existing antenna support poles and 1No. antenna at 36.6m mean to be installed on proposed z-bracket with pole. Ancillary works: - Feeder cable works, and refreshment works within the existing rooftop equipment cabinets*'.
 - The development proposed is described on the appeal form as '*Installation of radio apparatus at Bayswater ATE and ancillary works*'.
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for *Installation of Electronic Communications Apparatus at Rooftop at Bayswater ATE, Moscow Road, Westminster, London, W2 4LH* at Bayswater ATE, Moscow Road, Westminster, London W2 4LH in accordance with the terms of the application, Ref 22/08499/FULL, dated 13 December 2022, subject to the conditions set out in Appendix A.

Appeal B

2. The appeal is allowed and planning permission is granted for *Installation of radio apparatus at Bayswater ATE and ancillary works* at Bayswater ATE, Moscow Road, Westminster, London W2 4LH in accordance with the terms of

the application, Ref 23/03872/FULL, dated 9 June 2023, subject to the conditions set out in Appendix B.

Procedural Matters

3. This decision letter deals with two appeals: labelled above as Appeal A and B respectively. They relate to the same site. I have dealt with both appeals in this single document, although cognisant with the fact that Appeal A had three reasons for refusal and Appeal B one. Where necessary I have identified such matters separately, although in relation to heritage matters given the similarities it is unnecessary for me to repeat the assessment and conclusion for both schemes on that matter.

Main Issues

4. The main issues for both appeals are:
 - (i) *The effect of the proposals on the Bayswater Conservation Area and nearby heritage assets including the Grade I listed building known as the Greek Cathedral of Aghia Sophia and Presbytery.*
5. And for Appeal A:
 - (ii) *Whether or not the proposal demonstrates that the exposure resulting from the proposal would not exceed International Commission guidelines on non-ionising radiation protection.*

Reasons

Heritage assets

6. The appeal building is a large purpose built brick faced property dating from the earlier 20th century and constructed as a telephone exchange. The building, and parts of its roof, is visible in long views from Moscow Road, Palace Court and Princes Mews, with some views of the rear also available from Ilchester Gardens, in addition to numerous views from surrounding properties.
7. I saw during my site inspection that this part of the Conservation Area is characterised by tall terraced like buildings on the northern edge of Moscow Road. Whilst there would be views of the roof of the appeal building from some distance away, these are and would continue to be appreciated within the context of the roofscape of the wider area. In this respect, I saw that a number of roofs both within and near to the conservation area are not uniform in height, appearance or character. Indeed, many benefitted from TV aerials, roof extensions, parapets or mansards. The significance of the conservation area derives in part from this richness of diversity within the roofscape.
8. To the immediate east side of the site is the Grade I listed building of the Greek Cathedral of Aghia Sophia and Presbytery. Completed around 1880 it is designed in a neo-Byzantine style with a Greek cross plan, faced in yellow brick and red brick banding and with a skyline dominated by the dome with gilded cross. The townscape surrounding the application building is principally mid or later 19th Century in date, with the terrace of properties to the north being grade 2 listed. The significance of the listed buildings derives principally from their architectural and historic interest, being buildings dating from the late 19th Century when this part of London was emerging.

9. When viewed within the wider street scene, I saw that these listed buildings could easily be read separately from the appeal site and it was clear that the functional use of the automatic telephone exchange building which would host the appeal schemes is not a domestic or public building in the same way that the terraced properties to the north or the Cathedral are.
10. The proposal would represent a utilitarian addition to what is a building in utilitarian use as a telephone exchange. Whilst the proposals would result in a change to the roof at the appeal building, this would not equate to a negative or harmful addition to the building. Moreover, I find that the changes sought would, at the very least, preserve the character of this part of the Bayswater Conservation Area and of the Conservation Area as a whole. For similar reasons, I find that the proposal would, at the very least, preserve the setting of nearby designated heritage assets including the Grade I listed building near to the appeal site. I find this, even giving considerable importance and weight to the desirability of conserving heritage assets.
11. I note that the main parties suggest that the proposal would result in 'less than substantial harm' to the nearby designated heritage assets and that Paragraph 208 of the *National Planning Policy Framework* (the Framework)¹ would therefore be engaged, thus requiring the less than substantial harm to be weighed against the public benefits. The public benefits are listed within the Appellant's evidence, and include supporting the provision of fast internet and telecommunication connections in this location. Whilst I have not found that there would be any harm to heritage assets in this case, for the avoidance of doubt, had I agreed with the main parties on this point, I would have found that the benefits in this instance outweighed the less than substantial harm considered by the main parties.
12. The Council's Statement of Case indicates 'less than substantial harm' to the setting of Kensington Gardens and the Royal Parks Conservation Area. The Council have failed to articulate how the setting of that conservation area would be affected here. It is not listed within the reasons for refusal nor referred to in any great detail within the Officer Report. Given that Hyde Park is located a short distance away to the south of the appeal site, with a number of intervening buildings between that and the appeal site, I do not find that the proposal would harm the setting of that conservation area.
13. Accordingly, I therefore conclude that the proposals would accord with Policies 38 and 39 of the City Plan 2019-2040 (adopted April 2021), as supported by Supplementary Planning Documents *Repairs and Alterations to Listed Buildings* and *Development and Demolition in Conservation Areas*, which, amongst other aims, seek to ensure that development optimises the positive role of the historic environment in Westminster's townscape. The proposals would also accord with the heritage related policies of the Framework, which include Chapter 16.

Non-ionising radiation protection (Appeal A)

14. 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 Appendix B. In these circumstances, the Framework advises that health safeguards are not

¹ December 2023 revision, Paragraph 202 in the September 2023 version

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.

15. Accordingly, I find that the proposal would comply with Paragraph 122 of the Framework, which seeks such information to be provided. (Previously Paragraph 117 of the Framework September 2023 version).

Conditions

16. The Council have suggested three identical conditions in relation to each appeal. I have considered these in light of the national Planning Practice Guidance and Paragraph 56 of the Framework.
17. A condition requiring the development to be commenced within three years is not suggested, but should be imposed for the avoidance of doubt and to provide certainty.
18. A condition relating to being carried out in accordance with the submitted drawings is necessary and reasonable to provide certainty. However the wording suggested by the Local Planning Authority is unhelpful and does not provide clarity as to which drawings. I have therefore imposed conditions which refer to the submitted drawings.
19. A condition restricting building work hours is reasonable and necessary in order to protect the living conditions of nearby occupiers during the implementation period of the permissions. However, the wording suggested by the Council is imprecise, ambiguous and onerous (for example no definition for noisy work is given). Again, I impose conditions which meet these aspects of Paragraph 56 of the Framework.
20. Lastly a condition has been suggested that the antennae and supporting structures shall be white in colour. However, no reasoning has been given for this. I do not consider that this is reasonable to impose in this case, given that different colours could be less visually prominent within the skyline. Moreover, given my findings in respect of the acceptability of the proposal I do not consider that a condition controlling the colour of the apparatus is necessary in this case.

Conclusion

21. For the reasons given above, I conclude that both appeals should be allowed.

C Parker

INSPECTOR

Appendix A

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 168854-00-004-ML003 Rev 3, 168854-06-000-MD028 REV28, 168854-06-002-MD028 REV28, 168854-06-002-MD028 REV28, 168854-06-103-MD028 REV 28, 168854-06-153-MD028 REV 28, 168854-06-153-MD028 REV28, 168854-06-153-MD028 REV28, and 168854-06-157-MD028 REV28.
- 3) Any construction works or deliveries shall only take place only between 08:00 and 18:00 on Monday to Friday, 08:00 and 13:00 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays

Appendix B

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 168854-00-004-ML005 Rev 5
 - 168854-22-120-MD026 – Site Plan Existing – Rev 26
 - 168854-22-120-MD026 – Site Plan Proposed – Rev 26
 - *168854-22-120-MD026 – Site Plan Proposed TEF Built – Rev*
 - 168854-22-121-MD026 – Equipment Plan Proposed – Rev 26
 - 168854-22-170-MD026 – North West Elevation Existing TEF Rev 26
 - 168854-22-170-MD026 – North West Elevation Proposed TEF Rev 26
 - 168854-22-170-MD026 – South East Elevation Existing Rev 26
 - 168854-22-170-MD026 – South East Elevation Proposed Rev 26
 - 168854-22-171-MD026 – Antenna Plan Proposed TEF Rev 26
- 3) Any construction works or deliveries shall only take place only between 08:00 and 18:00 on Monday to Friday, 08:00 and 13:00 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.

***** END OF CONDITIONS *****