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## Appeal Decisions

Site visit made on 7 April 2016

**by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 11 May 2016**

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### **Appeal A: APP/X5210/F/15/3136697**

#### **85 Gower Street, London WC1E 6HJ**

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by CTIL and Telefonica UK Ltd against a listed building enforcement notice issued by the Council of the London Borough of Camden.
- The notice was issued on 17 September 2015.
- The contravention of listed building control alleged in the notice is:
  1. The erection of two micro cell antennas to the front elevation of the property between the ground and first floor level of the property.
  2. The erection of associated cables and conduit fitted to the front elevation of the property between basement and first floor level adjacent to the rainwater goods.
- The requirements of the notice are: Remove the unauthorised antennas, conduit and cables from the front elevation and repair and make good where necessary in materials which match those adjacent.
- The period for compliance with the requirements is one month.
- The appeal is made on the grounds set out in section 39(1) (c), (e) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the listed building enforcement notice is upheld with variation.**

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### **Appeal B: APP/X5210/W/15/3133081**

#### **85 Gower Street, London WC1E 6HJ**

- 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 CTIL and Telefonica UK Ltd against the decision of the Council of the London Borough of Camden.
- The application Ref 2014/7792/P, dated 18 December 2014, was refused by notice dated 8 July 2015.
- The development proposed is described as "retention of 2 no. microcell antennas".

**Summary of Decision: The appeal is dismissed.**

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### **Appeal C APP/X5210/Y/15/3133069**

#### **85 Gower Street, London WC1E 6HJ**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by CTIL and Telefonica UK Ltd against the decision of the Council of the London Borough of Camden.
- The application Ref 2015/0071/L dated 18 December 2014, was refused by notice dated 8 July 2015.
- The works proposed are described as "retention of 2 no. microcell antennas".

**Summary of Decision: The appeal is dismissed.**

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## **Procedural matters and background**

1. The development or works subject of the 3 appeals are substantially the same and can be summarised as the erection of 2 microcell antenna and associated cables. It appears that the structures may have been on the building for some years but there is no record of planning permission or listed building consent. The installation came to the attention of the Council following an application to upgrade the microcell station, adding a third unit on the front facade<sup>1</sup>. Subsequently applications were made for the 2 existing units and these were refused in July 2015 (Appeals B and C).
2. Consequently the Council served a listed building enforcement notice (LBEN) and this is the subject of Appeal A. Because the appeals concern the same works or development I consider them in tandem in my decision. The starting point for Appeal B is the development plan but Appeals A and C are assessed in accordance with the duties in the PLBCA<sup>2</sup> Act. In all cases other material considerations can be relevant.
3. The appellant objected to the final comments made by the Council saying that these raised new matters. Following correspondence which culminated in the appellant agreeing that, if following a review at senior level within the Planning Inspectorate, the Council's full final comments were accepted, he would accept that decision. The evidence before me includes the Council's final comments and the appellant's comments thereon. In these circumstances I am satisfied that neither party has been prejudiced.
4. No 85 Gower Street forms the end of a terrace of houses (Nos 51-85) constructed in 1786-1787. The terrace was listed in 1969 at Grade II and is remarkably uniform. Its classical sobriety is only lightened by the ornate stucco entrances. Each house, including that at No. 85, is subordinate to the overall composition and in this case there is little variation between the houses in the long terrace. Its significance is as a quintessential example of the building plans and layout that followed the London Building Acts of the 18<sup>th</sup> century and the standardised approach to planned estate development.
5. The appeal site is within the Bloomsbury Conservation Area (the CA) which in turn is characterised by similar terraces laid out in landscaped squares and an interrelated grid of streets. Another important element is the large number of institutions including university and other academic buildings, the hospital and the British Museum. These are also integral to the character of Gower Street.

## **Appeal A (LBEN) ground (c)**

6. This ground of appeal is that the works enforced against do not constitute a breach of listed building consent because the alterations do not affect its character as a building of special architectural and historical interest. Under this ground, the merits of the alleged works are not relevant, thus the question before me is whether the works undertaken materially affect, either negatively or positively, the special architectural or historic interest of the listed building.
7. The 2 microcell boxes are about 248mm square and have been erected, firstly between two first floor windows and secondly below the raised band that visually separates the ground and first floors. The apparatus has been painted

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<sup>1</sup> These applications for listed building consent and planning permission were refused by the Council

<sup>2</sup> S16(2) and S72(1) of the Planning (Listed Buildings and conservation areas) Act 1990 (as amended)

so that it matches the colour of the blackened London stock bricks. The associated cables run along the fascia and then are enclosed in a conduit which is located adjacent to the down-pipe.

8. In the light of the above, the appellant says that the installation does not have a material effect on the listed building and relies on *Burroughs Day*<sup>3</sup>. In that case it was found that it was necessary to take into account, amongst other matters whether or not the external appearance would be materially affected and this depended in part on the degree of visibility. Moreover the judgment held that materiality must in every case take into account the nature of the particular buildings which it is proposed to alter, such as whether it is listed, and that it must be judged in the context of the building as a whole and on the facts of the case.
9. I find that the facts in this case are not comparable to the circumstances in *Burroughs Day* because the alterations that have occurred are on the principal front elevation and thus are clearly highly visible 'to the man in the street'. The installation is not concerned with replication or reinstating historic detailing or adding features that are common to the listed terrace. The microcells appear to be unique elements within the listed terrace.
10. I have already noted that the listed terrace is remarkably uniform and in these circumstances, irrespective of painting, any alteration to the principal elevation does, as a matter of fact, materially alter the external appearance. In these circumstances I conclude firstly that the works are development, and secondly, that they materially affect the special architectural or historic interest of the listed building. In coming to this finding I have taken account of the appeal decisions relied upon by the appellant but do not find the circumstances comparable because the architectural context is materially different.
11. Consequently the appeal on LBEN ground (c) does not succeed.

### **Appeal A (LBEN) ground (e), Appeal B and Appeal C**

#### **Main issues**

12. The main issues in these appeals are the effect of the works or development on the special interest of the host building and the character and appearance of Bloomsbury Conservation Area (the CA).

#### **Reasons**

##### *Appeal A Ground (e)*

13. I have already concluded that the installation has a material effect on the appearance of the listed building; under this ground it is necessary to consider whether that effect preserves the building, its setting or any features of special architectural or historic interest which it possesses. There is a similar requirement to consider the effect on the character and/or appearance of the CA.
14. The appellant says that the installation is small and well camouflaged and moreover it is less conspicuous than items, such as street signs, door buzzers,

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<sup>3</sup> *Burroughs Day v Bristol City Council* [1996] 1 PLR 78

- and alarm boxes found on other buildings in Gower Street. In comparison to these he says, the antenna boxes are innocuous.
15. But the antenna are an alien feature attached to the front of the listed building and because of the strict formal composition and symmetry such clutter is particularly incongruous in this high quality setting. From the evidence before me, it also appears that the appellant seeks to add to that clutter in order to meet the changing demands of the telecommunications network.
  16. I acknowledge that there are various signs and other installations attached to neighbouring buildings within the terrace. Some of these may predate the listing and I understand that others may also be the subject of enforcement action. I further note that some of the items referred to by the appellant appear to be on unlisted buildings. But from what I saw and have read it appears that these features, including street names, blue plaques and hotel name plates, are related to each host building or location and thus there may be a demonstrable justification for the items.
  17. In contrast I have little before me that suggests that this installation is related to the host building. There does not appear to be a functional association and the location appears to have been chosen because it is convenient and technically feasible. There is no evidence that there was a formal site selection process other than a broad statement that microcells are required in the general area to boost the existing macrocell. This, the appellant says, is necessary to ensure that there is a quality telecommunication service in an area identified as having a high demand. Whilst I do not doubt that this may be the case in the general area, it has not been demonstrated that the microcells must be attached to the front façade of the host listed building.
  18. I have no doubt that the service provided by the microcells is a public benefit that should be given some weight. I further acknowledge that the National Planning Policy Framework (the Framework) says that the development of high speed broadband technology and other communications networks plays a vital role in enhancing the provision of local community facilities and services. But the Framework also says that applications must be supported by necessary evidence to justify the proposed development. But, it has not been demonstrated that this particular building or even the listed terrace as a whole is the only viable location. Hence I find that this benefit does not overcome the less than substantial harm (as defined in the Framework) that results from the clutter on the front façade of the listed host building.
  19. In this respect I note that the *Code for Best Practice on Mobile Network Development in England* says that listed buildings and their settings should be regarded as sensitive locations and in such circumstances operators should reduce any adverse impacts and where appropriate “operators may be able to avoid a specific site (e.g. a Listed Building)” In the absence of any evidence of a site selection process I am not convinced that it is necessary to locate the microcells on this listed building.
  20. The Framework says that heritage assets are an irreplaceable resource and that they should be conserved in a manner appropriate to their significance. Whilst the harm that arises is less than substantial, the addition of clutter is harmful to the sobriety of the listed terrace and this undermines its significance. Nonetheless, I consider that in terms of the wider conservation

area the scale of the works are such that the effect on character and appearance of the CA is neutral.

21. Policy CS14 of the *London Borough of Camden Local Development Framework Core Strategy* (CCS) seeks, amongst other matters, to ensure that development respects local context and character. Policy DP24 of the *London Borough of Camden Local Development Framework Development Policies* (CDP) Core Strategy has a similar aim. CDP Policy DP25 (Conserving Camden's heritage) says that development that causes harm to listed buildings should not be permitted. These policies predate but are consistent with the Framework and thus should be given full weight. They are material considerations that also weigh against the grant of listed building consent.
22. I therefore conclude that the effect of the works does not preserve the host building or its features of special architectural or historic interest and is contrary to national and local policy aimed at the protection of listed buildings. In these circumstances the appeal on ground (e) fails.

#### *Appeal C*

23. For similar reasons I find that that the effect of the works fails to preserve the host building or its features of special architectural or historic interest and accordingly Appeal C also fails.

#### *Appeal B*

24. I have already found that the development fails to respect the local context and character and harms the listed building thereby conflicting with the policies set out above.
25. The appellant says that the Council took insufficient account of the support for mobile broadband in the London Infrastructure Delivery Plan 2050 and should have made reference to telecommunications policies in the development plan and the Framework. I accept that this may be the case but there is nothing in the development plan or the Framework that says that matters of telecommunications should be given greater priority than the conservation of heritage assets. As I have noted above there is no evidence that an alternative site could not provide the same benefits to the telecommunications network.
26. In these circumstances and in the light of S66(1) of the PLBCA Act I see no reason to give less weight to the policies relied upon by the Council. For these reasons Appeal B also fails.

#### **Appeal A (LBEN) ground (h)**

27. The LBEN has a compliance period of 1 month. This would be sufficient in order to physically remove the apparatus, the associated cabling and make good any damage.
28. However I acknowledge that there is undisputed evidence that the installation is providing a good service to the public who live and work in the locality. I also accept that there are public service obligations to customers who are dependent on the broadband facilities routed through the 2 microcells.
29. In these circumstances, the appellant would need to research and secure an alternative site, obtain the landowner's agreement and obtain the necessary

permissions, prior to the removal of the existing apparatus. This process is likely to take several months and consequently I consider the compliance period is unreasonably short.

30. Accordingly, in order that the alternative site selection process can be undertaken before the decommissioning of the current microcells, I conclude that a reasonable period for compliance would be 6 months and I shall vary the listed building enforcement notice accordingly prior to upholding it. The appeal under ground (h) succeeds to that extent.

### **Conclusions**

31. The appellant has raised other matters including the length of time it took the Council to assess the applications, and whether or not the Council has acted in accordance with its adopted enforcement protocol. Whilst I do not doubt that these are matters that concern the appellant these procedural considerations do not go to the heart of the issues in these appeals and do not alter my conclusions. Nor do I consider that the lack of objection by Historic England determinative because the consideration of the merits is a matter delegated to the Council.

32. For the reasons I have given above, Appeals A, B and C do not succeed.

### **Decisions**

#### **Appeal A: APP/X5210/F/15/3136697**

33. It is directed that the period for compliance with the requirements of the listed building enforcement notice be varied by deleting the words "one month" in Section 5 and replacing with the words "six months".
34. Subject to this variation, the appeal is dismissed and the listed building enforcement notice is upheld.

#### **Appeal B: APP/X5210/W/15/3133081**

35. The appeal is dismissed.

#### **Appeal C APP/X5210/Y/15/3133069**

36. The appeal is dismissed.

*Sukie Tamplin*

INSPECTOR