



Appeal Decisions

Site visit made on 5 August 2020

by Chris Hoult BA(Hons) BPhil MRTPI

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

Decision date: 25 September 2020

Appeal Ref: APP/X5210/C/20/3244837 (Appeal A) **Southfleet, Malden Road, London NW5 4DD**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act").
 - The appeal is made by Cornerstone against an enforcement notice issued by the Council of the London Borough of Camden.
 - The enforcement notice, numbered EN18/0080, was issued on 4 December 2019.
 - The breach of planning control as alleged in the notice is the installation of communications antennae with associated fixings and cabling on the roof of the residential building as shown on Plan 1 attached to this notice.
 - The requirements of the notice are: (1) completely remove the communications antennae along with associated cabling from the roof of the building as shown on Plan 1; (2) make good the roof following completion of the above works.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the 1990 Act.
-

Appeal Ref: APP/X5210/W/20/3254104 (Appeal B) **Southfleet, Belsize Park, Camden, London NW5 4DH**

- 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 Cornerstone and Telefonica UK Ltd and Vodafone Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref 2020/0147/P, dated 20 December 2019, was refused by notice dated 17 April 2020.
 - The development proposed is described as "removal of 6 No. antennas, installation of 12 No. upgraded antennas, 2 No. 600mm satellite dish, 1 No. 600mm dish (*sic*), and 6 No. equipment cabinets all behind proposed GRP shroud on building rooftop plus ancillary works".
-

Decision (Appeal A)

1. The appeal is allowed and the enforcement notice is quashed.

Decision (Appeal B)

2. The appeal is allowed and planning permission is granted for the removal of 6 No. antennas and installation of 12 No. upgraded antennas, 2 No. 600mm satellite dish, 1 No. 300mm dish and 5 No. equipment cabinets plus relocation of 1 No. equipment cabinet all behind a proposed GRP shroud on the building rooftop plus ancillary works at Southfleet, Malden Road, London NW5 4DD in accordance with the terms of the application, Ref 2020/0147/P, dated 20 December 2019, and the plans submitted with it, subject to the following conditions:

- 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: Lease Drawing (ref. 101 Issue A); Proposed Site Plan (ref. 201 Issue A); Proposed Site Elevation (North East)(ref. 301 Issue A); Proposed East Elevation (ref. 302 Issue E); Proposed West Elevation (ref. 304 Issue D); Proposed South East Elevation (ref. 306 Issue D); TEF Antenna Plan (Proposed) (ref. 400 Issue A); VF Antenna Plan (ref. 401 Issue A); and Equipment Layout Plan (ref. 402 Issue A).
- 3) The development hereby permitted shall be fully enclosed within a glass-reinforced plastic (GRP) shroud, as outlined in drawing ref. 402 Issue A, the details of which shall have been submitted for the written approval of the local planning authority prior to the installation of the equipment hereby permitted.
- 4) The equipment and shroud hereby permitted shall be removed from the building at such time as it is no longer required for electronic communications purposes and the building shall be restored to its condition before the development took place or to any other condition as may be agreed in writing with the local planning authority in accordance with a timetable that shall have been agreed in writing with the local planning authority.

Appeal A – Preliminary Matters

3. The appellants explain that the development enforced against is an “interim” installation of telecoms equipment pending the installation of a wider range of equipment that is the subject of Appeal B. It was installed in the belief that it benefitted from permitted development rights. Plans accompanying this appeal show the equipment already installed as “existing” and the wider range of equipment as “proposed”.

Appeal A – Matters Concerning The Notice

4. The notice alleges the installation of “communications antennae” without specifying in any more detail what these comprise. A reference to “Plan 1” in the allegation is to a plan which identifies the location of the equipment but not the details. The planning officer’s report refers to a total of six antennae, with various associated cabling and fixings, arranged in three sets of two facing broadly NE, SE and W. These arrangements conform to what I saw on my visit but there were also three sets of three tall poles placed alongside the antennae. From my observations and reading the plans, I have taken them to be the mountings for the further antennae which it is proposed to install. For purposes of the notice, I have taken them to be a constituent part of the “antennae along with associated fixings and cabling”, part therefore of the alleged breach and falling within the scope of its requirements.

Appeal B – Preliminary Matters

5. The site address for the appeal is as on the application form. However, in my decision, I use the more accurate address as shown on the heading for Appeal A including the postcode.

6. The details of the proposal are as set out in the above heading. However, on reading the evidence, it is clear that the reference to "1 No. 600mm dish" is a misprint and should read "1 No. 300mm dish". This is reflected in the wording of my decision. The appellants also point out that the reference to "installation...of 6 No. equipment cabinets" should more accurately read "installation...of 5 No. equipment cabinets and relocation of 1 No. equipment cabinet" and this is also reflected in the wording of my decision.
7. The evidence submitted by the appellants relates both to the apparatus already installed and to the proposed additional apparatus and needs to be read as a whole across both appeals. This is especially so in the case of plans. Plans are submitted in support of the appeals on grounds (a), (b) and (c) of Appeal A and are also separately submitted as Appendix 2 of the appellants' appeal statement for that appeal. A further set of plans is submitted in respect of this appeal. Some plans show the proposed layout without the GRP enclosure while others include it. It would appear that some plans supersede others.
8. The most up-to-date version of the plans appears to be those submitted as Appendix 2 of Appeal A. The proposed site plan matches that submitted as an application plan in respect of Appeal B while other plans show the layout of the equipment in greater detail, based on that plan. These appear to supersede the "proposed" plans submitted in the appeals on grounds (a), (b) and (c) of Appeal A. It is unclear whether, at the application stage, the Council considered these more detailed layout plans. Nevertheless, they do not appear to amend the proposal and the Council has been able to consider them in so far as they form part of the plans relating to the appeal against its notice (Appeal A). I therefore take them in to account in dealing with this appeal.

Appeal A – Ground (b) and (c) Appeals

9. I deal with the appeals on these grounds together as the appellants' case is the same in relation to each of them. The appellants are of the view that the installation constitutes permitted development. In my view that relates to an appeal on ground (c), that the matters enforced against (the installation of the antennae) do not constitute a breach of planning control. It is plain that the antennae have been installed as a matter of fact.
10. It is necessary to examine the provisions of the up-to-date consolidated Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO"). Class A of Part 16 of Schedule 2 defines what may be described as permitted development for electronic communications code operators as granted under Article 3(1) of the Order. The appellant company, which is a joint venture company between Vodafone Ltd and Telefonica UK Ltd, is a code operator for purposes of the GPDO.
11. The equipment is mounted on a building and the appellant explains that it falls within the limitations set out in A.1 as regards its height relative to the height of the building, the number of antennae and code operators and the purpose and cumulative volume of its housing. In terms of its dimensions, no other potential conflict with or exceedance of the conditions and limitations of this Class is identified. The issue between the parties concerns: (a) the condition set out at A.2(1)(a) that *"the effect of the development on the external appearance of the building is minimised, so far as is practicable..."*; and (b) whether the development falls within the scope of conditions A.2(3) and A.3(4) as regards a prior requirement for *"a determination as to whether the prior*

approval of the [local planning] authority will be required as to the siting and appearance of the development”. My reasoning focuses on these provisions.

12. My understanding of the Council’s case is as follows. The Council argues that the antennae have not been installed so as to minimise their effect on the external appearance of the building, so far as is practicable. A prior approval application should have been submitted prior to their installation to establish matters of siting and appearance, to demonstrate that requirement, and this has not been done. Therefore, permitted development rights do not apply.
13. If that is so, the Council’s reasoning is in my view misplaced. It refers to conditions A.2(1)(a) and A.3(3). I note in passing that the reference to A.3(3) is incorrect as that concerns a requirement to consult the Civil Aviation Authority in the event of development in the vicinity of an aerodrome. However, even had the Council referred to the correct condition, A.3(4), its reasoning is still misplaced as that refers back to “development described in paragraph A.2(3)”. It is necessary therefore to ask whether the installation falls within the scope of that paragraph.
14. The condition concerns Class A development in various circumstances. The installation is not on Article 2(3) land nor is it within a Site of Special Scientific Interest. Paragraph 3(c) refers to “unprotected land” but concerns masts, public call boxes and radio equipment housing, not antennae. A radio equipment cabinet is included in the installation but this is ancillary to its primary element, which comprises the six antennae. Since the installation is not therefore development to which A.3(2) applies, there is no requirement for it to be the subject of a prior approval application.
15. Accordingly, the lack of a prior approval application does not invalidate permitted development rights. Put another way, the Council cannot argue, because a prior approval application was not submitted, the appellants cannot for that reason benefit from permitted development rights. Nevertheless, the Council could still maintain that it has not been demonstrated in some other way that the apparatus’s effect on the external appearance of the building has not been minimised. I turn to the evidence in relation to this requirement.
16. I should start by drawing attention to the qualification that that should be “as far as is practicable”. It is plain from the evidence that alternative siting and positioning of the antennae were the subject of discussions between the parties. These are referred to by the appellants in relation to this appeal and are also detailed in the appellants’ evidence for Appeal B. I have sympathy with the appellants’ view that it should be for the Council to demonstrate a failure to meet this requirement, since it has taken unilateral action to issue a notice. This is all the more so as, for the reasons given, I am of the view that the development did not need to be the subject of a prior approval application.
17. Nevertheless, the appellants go on to assess the functional requirements of the apparatus, with regard to the available space and the focus of the demand for mobile phone coverage in the locality. I find their arguments about the height of the apparatus relative to the height of the building unhelpful. They have chosen as a reference point the access tower at the junction of Malden Road and Marsden Street which is somewhat distant from its location and does not read together with it. That said, the overall scale of the building is such that accommodating antennae at a height of 4.28m above the roofline should be

possible without them necessarily appearing visually dominant. That height is the minimum, the appellants say, that allows compliance with ICNIRP¹.

18. The appellants go on to assess a number of options for reducing the visual impact of the antennae – reduction in height; mounting them horizontally; setting them back from the front edge of the roof; tilting the antennae away from the road frontage; spacing them more evenly along the roof; and moving them down to the building's front elevation and painting them to match the colour of the brickwork. In all these cases, there are impracticalities that render them unrealistic as options to pursue. Under the ground (f) appeal, they explore the option of encasing the antennae in glass-reinforced plastic in the event that I find against them on both the ground (c) and ground (a) appeals. That has now become a key component of the proposal subject of Appeal B.
19. For its part, the Council refers to discussions held with the appellants which examined the options referred to above. It is not clear from their evidence when this was but my reading of it is that it was after the apparatus was installed but before the notice was issued. The Council's account of these discussions was that the appellants were unwilling to implement any part of them, other than a minor reduction in height. Nevertheless, and whether or not the practicalities of the various options formed part of the discussions, it seems to me that they have been persuasively rehearsed in the appellants' evidence. The discussions are referenced in the Council's comments on the ground (a) appeal. In its comments on the ground (c) appeal, the Council does not address the "as far as is practical" qualification that must apply to any consideration of alternatives as regards siting and appearance.
20. The Council refers me to the Crown House appeal decision². I refer to it in the context of the appeal on this ground because it refers to a search of alternative sites. However, while that is undeniably a matter for consideration in any ground (a) or s78 appeal, it is misplaced in the context of the appeal on this ground. The GPDO confers development rights for telecoms apparatus on buildings by reference to measurable factors such as size, height etc. While the additional "as far as is practical" filter requires a more qualitative judgement, if the relevant criteria are met, those rights must apply. For purposes of condition A.2(1)(a), it is not necessary to demonstrate a lack of harm, merely, that any harmful effects are minimised so far as is practical. Whether the apparatus could be sited less harmfully on another building or site is not relevant to these considerations.
21. Accordingly, and for the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed. In these circumstances the appeals on grounds (a), (f) and (g) as set out in s174(2) of the 1990 Act, and the application for planning permission deemed to have been made under s177(5) of the 1990 Act, do not need to be considered.

Appeal B – Background and Main Issues

22. The proposal comprises a grouping of six sets of two antennae positioned broadly in groups of three sets each along the front-facing and rear-facing parts of the roof, together with two satellite dishes located alongside the front-

¹ International Commission on Non-Ionizing Radiation Protection – see footnote 8 to the appellants' final comments document for Appeal A

² Appeal decisions refs. APP/X5210/C/18/3199851 and APP/X5210/C/18/3201008 – Land at Crown House, 265-267 Kentish Town Road, London NW5 2TP

facing antennae and various cabinets and other ancillary apparatus. It is proposed to screen the whole assembly on all four sides within a single glass-reinforced plastic (GRP) enclosure which will have the appearance of a box measuring around 7m x 7m x 4.9m in height. The appellants explain that GRP can be manufactured to mimic a range of materials such as brickwork and give examples of its use to replicate, for example, chimney stacks in either brick or stone. In appearance the enclosure could mimic that of the towers at the junction of Malden Road and Marsden Street and at the building's northern end.

23. The building has long elevations to both Marsden Street and Malden Road. The apparatus would be located on its roof on the Malden Road frontage just north of the junction with Rhyl Street. It would be a prominent feature in views from within the complex, from the internal courtyard. However, the Council's main concerns are about public views along Malden Road. The facing houses on that road are within the designated West Kentish Town Conservation Area ("the CA") and Rhyl Street extends to the east within the CA.
24. In the light of this, the main issues are: (a) the effect of the proposal on the character and appearance of the area; (b) whether the proposal would preserve or enhance the character or appearance of the CA; and (c) whether any harm identified is outweighed by the public benefits of the proposal.

Character and appearance

25. Southfleet is a housing complex of substantial scale. Roughly V-shaped, the blocks of up to seven storeys in height fronting Marsden Street and Malden Road enclose an internal courtyard, parking area and community space, with further subsidiary blocks and rows of low-rise housing. Its architecture is self-consciously modern and austere, in dark-coloured blue brickwork, with references to Brutalist design, such as in the lift tower, raised walkways connecting different blocks, large expanses of brickwork and projecting balconies to the Malden Road frontage.
26. I noted on my visit that, while the elevation to Marsden Street steps back in the upper storeys, contrastingly, on the Malden Road frontage, the upper levels increasingly project forwards as the building gains in height. On that frontage, there is a discernible rhythm to the pattern of the fenestration and arrangement of projecting walls and balconies, and accompanying recesses. The overall impression gained, however, is of a more random distribution of features, drawing the eye in and adding visual interest. However, the increasing projection of the dwelling units and associated balconies heightens their visual presence and climaxes at the roofline, rendering it a prominent and irregular skyline feature in views from street level.
27. The scale and severity of the building makes it a visually arresting and dominant feature along Malden Road but the effect is softened considerably by the presence of mature trees which have been planted within the ground-level front gardens, or else have been incorporated in their design. In views along Malden Road, these provide a strong filter to views of the building's frontage when the trees are in leaf, as they were at the time of my visit, although that effect would be less marked in winter. There are however significant gaps between trees that allow for a more full-on view and appreciation of the building's presence in the street scene. The access tower has been designed to be a landmark feature at the apex of the "V" but a lack of maintenance of elements of its fabric at an upper level detract from its appearance.

28. The antennae currently in place are a prominent skyline feature above roof level as viewed across a significant gap in the trees looking SW along Malden Road and are particularly prominent in views from along Rhyl Street, which I deal with in more detail in relation to the second main issue. Where they are viewed in association with the trees, they are just visible above the tree canopies and do not register so prominently, although their prominence would increase in the absence of leaves in the winter. At present, unenclosed, they are of a lightweight appearance but undoubtedly add visual clutter to the roofscape, which would significantly increase under the proposals.
29. That said, on closer inspection of the upper parts of the building, it is evident that there already is in place maintenance equipment and other paraphernalia. This takes the form, mainly, of a handrail which runs along the whole of the building's length but I also observed on occasion safety grilles to maintenance ladders. On the Marsden Street frontage, these features are more apparent and are viewed along with a plethora of satellite dishes associated with the residential units themselves. There is therefore some degree of visual clutter already in place lending to the building a more utilitarian appearance than initial impressions might convey.
30. The proposed enclosure would be an altogether more substantial structure and would plainly be visible, looking SW, as a prominent skyline feature. In my view, it has the potential to appear top-heavy and incongruous. It would mimic the access tower and a similar less prominent plant tower at the northern end of the Malden Road frontage. However, they are largely free-standing elements of the overall complex, recognisably functional in form. In spite of that, it would not be uncommon for a tall building to have items of enclosed services equipment on its roof. I accept that the GRP enclosure could match the appearance of the building's brickwork and simplify the arrangements. It would avoid undue visual clutter and be of simple angular form, blending with and as part of the current roofline, its towers and projections. In long views of the frontage, it would read together and along with the towers to north and south.
31. Accordingly, I conclude that, whereas the proposal has the potential to harm the character and appearance of the area by virtue of an appearance of visual clutter at roof level, that can be successfully minimised and mitigated by the proposed GRP enclosure. In the light of this, I conclude that no harm would arise on the first main issue I have identified. The Council cites Policy D1 of the Camden Local Plan 2017, which is a general policy promoting high-quality design – the proposal would comply with points (a), (e) and (m) in particular.
32. I am referred also to chapters 2 and 5 of the Camden Planning Guidance Supplementary Planning Document. While they contain useful general guidance in relation to design and roof extensions to residential buildings, there is little specifically regarding the challenges posed by telecoms equipment, other than a brief reference to building services equipment whose siting, it is said, should be considered as part of the overall design. It seems to me that the appellants have sought to comply with this requirement. No other policies or guidance are referred to. Paragraphs 112-116 of the National Planning Policy Framework ("the NPPF") deal with telecoms development. Paragraph 113 favours the use of existing buildings for new telecoms capability and says that equipment should be sympathetically designed and camouflaged where appropriate and I consider that the appellants have sought to meet this requirement.

Effect on CA

33. The CA comprises the sequence of mainly quiet residential streets running east of Malden Road, which include the continuation of Marsden Street and Rhyl Street, on which is located the prominent and imposing traditional school building of Rhyl Primary School. It is characterised by terraces of mid-19thC dwellings in a late Georgian style. It is for the most part a neighbourhood on an intimate scale and views of the appeal site frontage to Malden Road, including the currently installed apparatus, can be obtained from a lengthy stretch of Rhyl Street, including outside the school. These are views out of the CA, of features which have the potential to affect the character of the CA.
34. I observed on my visit that the apparatus is a notably prominent feature at skyline level in these views. Given that it is a long view at distance, it is readily visible above the trees even when in leaf. The appellants have assessed the impact on the CA and a photograph of the view of the site from Rhyl Street is included in their evidence at Figure 15 of their appeal statement for this appeal. The Google Earth image of the view does not reflect the impact as I saw it, largely owing to the wide-angle lens used, which significantly downplays background features. That said, it is evident from this photograph that the trees play no part in screening or filtering views of it. Viewed from along this street, the top-heavy appearance of the enclosure, sitting above the projections and recesses of the main part of the elevation, would be apparent.
35. I acknowledge that the building's modernity would be evident in these views and that the enclosure would be designed to appear as part of it and to blend in with its overall fabric and I bear in mind its height relative to the overall height of the building. Nevertheless, it would not be viewed in conjunction with the building's other two tall features, given that it is a view of only a relatively narrow section of the Malden Road frontage and so it would register as a "standalone" feature. In my view, its sheer presence as a bulky skyline feature in these views, which are views from within the CA, would render it an intrusive element of the CA's setting and impact unduly on its quiet residential character. For these reasons, I conclude that it would cause harm to the aim of preserving its character. It would fail to accord with criterion (e) of Local Plan Policy D2 as development which fails to comply with this requirement.

Public benefits

36. The NPPF makes clear the Government's support for the roll-out of high quality and reliable communications infrastructure, and the appellants' evidence includes a number of publications which reinforce the general need for good and reliable mobile phone and broadband coverage and connectivity. Such a need is even more apparent, the appellants go on to say, at a time of enforced physical separation between people during the coronavirus pandemic, a state of affairs which seems likely to continue for the foreseeable future. The Government's support for telecoms infrastructure is inextricably linked to its economic recovery and growth agenda. When the extent of people's use and expectations of communications services is taken into account, ensuring adequate coverage at all levels must be considered a driver for both economic and social good, as paragraph 112 of the NPPF indicates.
37. The appellants say that the apparatus is to operate as a base station in order to improve their communications coverage and mobile capacity in the surrounding area. Paragraph 116 of the NPPF indicates that it is not for

planning authorities to question the need for electronic communications systems. The appellants explain that Vodafone not having an existing base station in the locality is causing parts of Haverstock and Kentish Town to receive an inadequate level of service provision. This is supported by evidence of coverage plots. That of Telefonica is said to be below optimum. The proposal would, it is said, improve coverage and capacity for both operators. None of this evidence is challenged by the Council.

38. It therefore follows that both the general and the local desirability of ensuring an adequacy of coverage and capacity must weigh in the balance as significant public benefits of the proposal and I cannot agree with the Council's characterisation of them as "modest". I have identified harm to the character of the CA. The CA is a designated heritage asset and views along Rhyl Street towards a building to which, as I have indicated, the eye is drawn, has an effect upon its significance as such an asset, as a mainly quiet, intimate residential neighbourhood of traditional 19thC dwellings. That the apparatus and its enclosure would intrude into such views causes harm to its significance. However, bearing in mind the provisions of paragraphs 195 and 196 of the NPPF, the harm must be regarded as less than substantial. Accordingly, I am required in any event to weigh them against the public benefits of the proposal.
39. When such a balancing exercise is undertaken, on the harm to the CA and in any wider sense, the public benefits of the proposal must outweigh any identified harm. I bear in mind that the NPPF favours building-mounted telecoms apparatus where that is appropriate. The appellants have considered a range of options for minimising the visual presence of the antennae on the building. In their evidence, they give details of a number of alternative sites on which to site the equipment and which were considered, and the reasons why they were discounted. These assessments are not challenged by the Council and I have no reason to disagree with the appellants' findings.
40. As regards the Crown House appeals, these concerned unenclosed antennae on the roof of a commercial building, with which a more direct comparison with the presently installed apparatus could be made. However, the Council accords weight to them as decisions made for similar development in a similar policy context. That said, there were, as I observed, significant differences in the circumstances of that building and those of Southfleet. The latter is on an altogether larger scale and is set back behind sizeable front gardens and mature trees. Crown House by contrast is a more modest three-storey building located at the back edge of the footway in a busy town centre setting, upon which the antennae as proposed, with no intervening vegetation, would have had an appreciably more dominant presence in the street scene. Accordingly, in the circumstances of the appeal site, I give little weight to these decisions.

Other matters

41. Both appeals have attracted third party representations. For the most part, they raise general objection to both the antennae as installed and as proposed, raising issues which I have dealt with in my reasoning. Health concerns are also raised briefly, but no detailed or specific comments are made. The proposals are ICNIRP compliant and the relevant certification requirements have been met. In the circumstances, the NPPF advises that health safeguards are not something which a decision-maker should determine.

Conclusions

42. Accordingly, for the reasons given above, I conclude that the appeal should be allowed.

Conditions

43. Neither party has furnished me with conditions which I might impose should I be minded to allow either the ground (a) appeal for Appeal A or Appeal B. Aside from the statutory standard time condition, I consider it necessary and reasonable to impose three conditions. A plans condition is required in the interests of clarity and precision and I base the approved plans on those submitted as Appendix 2 of Appeal A, for the reasons set out in paragraphs 7 and 8 above. I include those plans showing the proposed E, W and SE elevations for completeness even though they do not show the proposed GRP enclosure. It is nevertheless also necessary to require that the equipment be enclosed in a GRP shroud, whose details should be agreed with the Council, to give effect to that aspect of the development.
44. Given the visibility of the development, and its effect on the character of the CA, I also impose a requirement that it be removed from the building when no longer required for operational purposes. I follow the wording of the standard condition in the GPDO relating to this requirement as applied to Part 16 Class A development, with modification in so far as I require a timetable for removal to be the subject of the Council's prior approval, in the interests of clarity.

C M Hoult

INSPECTOR