



Appeal Decision

Site visit made on 9 November 2021

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: Thursday 3 March 2022

Appeal Ref: APP/X5210/W/21/3279455

Matilda Apartments, 4 Earnshaw Street, London WC2H 8AJ

- 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 (UK) Ltd and H3G (UK) Ltd) against the decision of the Council of the London Borough of Camden.
 - The application Ref 2020/5822/P, dated 15 December 2020, was refused by notice dated 8 February 2021.
 - The development proposed is the installation of 6 no. antenna apertures, 2 no. transmission dishes and 8 no. equipment cabinets on the roof of the building and development ancillary thereto.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council refused to grant prior approval for the development. However, an interested party responding to both the original application and the appeal has raised a concern that the proposal requires planning permission and does not benefit from permitted development rights. Their reason being that the effect of conditions attached to the planning permission¹ for the building on which it is proposed to install the development restricted those rights. The main parties' views were sought on this particular issue and I have taken those comments received into account in reaching my decision.
3. The Council validated and determined the application, and Part 16 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) does not expressly provide for a local planning authority to refuse prior approval on the basis that the development does not comply with a relevant condition, limitation or restriction.
4. Nevertheless, it is necessary for me to determine whether the proposed development complies with the relevant conditions and limitations set out in the GPDO before considering the merits of the proposal. In reaching this finding I am mindful of the *New World Payphones*² judgement which found that a decision maker is bound to consider and determine whether a development falls within the scope of permitted development.

¹ 2005/0259/P.

² *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250.

Main Issues

5. Consequently, the main issues raised by this appeal is whether or not the development is permitted development under the terms of the GPDO and, if it is, the effect the siting and appearance of the development would have on the character and appearance of the area including the significance of designated heritage assets.

Reasons

Whether permitted development

6. Article 3(4) of the GPDO states that "Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order."
7. Conditions attached to the planning permission for the host building which are relevant to this case are:
 8. No meter boxes, flues, vents, pipes, satellite dishes or other attachments not shown on the approved drawings shall be fixed or installed on the external faces of the building without the prior written consent of the local planning authority.
 10. No plant, ventilation, air conditioning, extraction or other such equipment shall be provided other than where specified on the plans without the prior written consent of the local planning authority.
8. The conditions do not explicitly state that planning permission is required but they do require the prior written consent of the Council for certain attachments and equipment, even if they do not specify a mechanism for seeking to obtain such consent. There is no suggestion that any form of prior written consent has been given by the Council for this proposal.
9. Although neither condition explicitly refers to the GPDO, their meaning is clear from straightforward reading of each that they prevent certain attachments and equipment from being installed unless the prior written consent of the Council has been given. I therefore consider that both conditions do, as a matter of fact, restrict development including the exercise of permitted development rights. It follows that as the implementation of any attachments and equipment has not had the Council's prior written consent that the effect of both of those conditions is that Article 3(4) of the GPDO is engaged with the consequence that planning permission is not granted by the GPDO.
10. I have considered whether the application for prior approval could itself be considered as being in effect seeking the prior written consent of the Council. However, the operation of the conditions mean that the development is not permitted by the GPDO and therefore the mechanism for seeking whether prior approval is required, and consequently whether or not approved, is not engaged in the first place. In reaching these conclusions I have had regard to the *Dunnett Investments Ltd* judgement³. Although in that case the condition in contention was more explicit in both reference to the GPDO and requirement for obtaining planning consent, I do not consider that the absence of those

³ *Dunnett Investments Ltd v SSCLG & East Dorset DC* [2017] EWCA Civ 192.

explicit terms or phrases in the two conditions considered above renders them incapable of limiting the application of the permitted development right.

11. There is no suggestion that any parts of the proposal were shown on the approved drawings or specified on the plans of the host building when it was granted planning permission. Although the conditions each cite specific types of paraphernalia they seek to control, they also include the general term plant and specify satellite dishes. The proposed transmission dishes would be broadly similar to satellite dishes. The antennae, equipment cabinets and ancillary development proposed would in one way or another fall under the descriptions of 'plant', 'other attachments' or 'other such equipment'. In any event it would not be reasonable to expect such conditions to list every conceivable type or function of attachment or apparatus. I am satisfied, therefore, that the particular elements of the proposed development would be restricted by the conditions.
12. Reference has been made to a previous prior approval application on the same building for a different telecommunications development by a different applicant being withdrawn under similar circumstances and a planning application subsequently made. However, I only have very limited information in this regard and this has not had a bearing on my decision which I have determined on the basis of the information before me in respect of this particular case.
13. I recognise that this situation will no doubt be disappointing for the appellant as the issue of whether or not the development was permitted development was not an issue of contention between them and the Council, nor did it form part of the Council's reason for refusal. However, that does not preclude me from reaching the conclusion I have based on the evidence before me.

Siting and appearance

14. The issue of any effects of the development's siting and appearance which formed the Council's reason for refusing the prior approval application do not, therefore, fall to be considered as part of this appeal and it is not necessary or appropriate for me to consider the prior approval matters or the merits of the appeal in that respect.

Conclusion

15. In order to benefit from any planning permission granted by Article 3 of the GPDO 2015, the development must not be contrary to any condition on an existing planning permission. Here, conditions 8 and 10 attached to planning permission 2005/0259/P restrict such development by requiring the prior written consent of the local planning authority for various attachments, plant and other equipment.
16. For the above reasons, the development is not permitted by the GPDO and the appeal is dismissed.

Geoff Underwood

INSPECTOR