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## Appeal Decision

Site visit made on 24 October 2016

by **G J Fort BA PGDip LLM MCD MRTPI**

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

Decision date: 10 November 2016

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**Appeal Ref: APP/X5990/W/16/3153324**

**The Church of Saint Saviour, Warwick Avenue, Maida Vale, London W9 2PT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by CTIL against the decision of City of Westminster Council.
  - The application Ref 16/01663/TELCOM, dated 24 February 2016, was refused by notice dated 20 April 2016.
  - The development proposed is 6 No. antennas and 4 No. Cabinets: 6 antennas to be located within the existing GRP spire. 4 equipment cabinets to be positioned on the lower roof behind the parapet wall. Cabinets 1300x700x1700 RBS 6102, 600x600x1415 jsc, 600x600x2000mm flatpack frame (2 units)
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### Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 16 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of 6 No. antennas and 4 No. Cabinets: 6 antennas to be located within the existing GRP spire. 4 equipment cabinets to be positioned on the lower roof behind the parapet wall. Cabinets 1300x700x1700 RBS 6102, 600x600x1415 jsc, 600x600x2000mm flatpack frame (2 units) at The Church of Saint Saviour, Warwick Avenue, Maida Vale, London W9 2PT in accordance with the terms of the application Ref 16/01663/TELCOM, dated 24 February 2016, and the plans submitted with it.

### Procedural matters

2. Various postcodes for the appeal property were given on the application and appeal documents. The appellant confirmed that the postcode given in the banner heading above is the correct one. I note concerns regarding the effects this mistake may have had on the effectiveness of the consultation at both application and appeal stage. However, because the rest of the address is correct and there has been a substantial volume of representations indicating that local residents were aware of the location, I conclude that this error has caused no prejudice to any party. Consequently, I consider that the erroneous postcode used in previous documents constitutes neither a reason to refuse the proposed development nor to find the appeal documents invalid.
  3. In July 2016, following the determination of the application that led to this appeal a consolidated version of Westminster's City Plan: Strategic Policies (the
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City Plan) was adopted by the Council. However, Policies S25 and S28, which were referred to in the reasons for refusal are unchanged from the version adopted in 2013. Thus I consider that no prejudice would occur to any party by my assessment of the appeal on the basis of the consolidated version of the City Plan.

### **Background and Main Issue**

4. This appeal concerns a proposed telecommunications development that was refused prior approval by the Council under Schedule 2, Part 16 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). The GPDO, within certain limits, grants permission for development of telecommunications equipment, subject to a prior approval procedure. The GPDO makes it clear that the relevant issues to consider when determining applications for prior approval of this type of development are the siting and appearance of the proposed development. As a consequence, I consider the main issue to be whether the siting and appearance of the proposed development would preserve or enhance the character and appearance of the Maida Vale Conservation Area.

### **Reasons**

5. Located at a focal point within a crossroads, across the road from Warwick Avenue underground station, the appeal building is a tall and imposing brick faced structure, which the Council describe as an example of brutalist architecture. Part of a complex of brick-faced buildings including residential uses orientated around a courtyard to the rear of the church, and a nursery in its lower floors, the church has a tall and elegant spire of hexagonal plan form that is widely visible from surrounding streets. Whilst the brutal planar forms of the walls create an imposing presence within the streetscene, the impression of bulk is relieved by gaps, which at parapet level allow glimpses through to the church's high level windows. Although not a listed building, the church's scale, presence and strong architectural form mean that it contributes considerably to the townscape of the Maida Vale Conservation Area and thus its significance.
6. The proposed antennae would be mounted within the church's spire. However, the proposed cabinets would be located behind the parapet wall on the church's lower roof, tucked in to a substantial degree from the sides of the parapet wall, and below the level of its coping. These cabinets would be connected via cabling, within cable trays that would run along this flat element of the roof and up the elevation of the spire with an existing service door, which would be reduced in height to allow a waterproof cable entry gland to be installed above it.
7. I note that a previous appeal for a telecoms scheme at the site was dismissed<sup>1</sup>. However, the proposed development in that case was substantially different to the details I have before me in this appeal. That previous scheme included proposals to replace only one of the spire's panels with glass reinforced plastic (GRP), and the proposed cabinet actually exceeded the height of the lower roof's parapet. In the current case, the appellant indicates that the spire is now entirely clad in GRP, and the cabinets would all be under the level of the existing parapet.

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<sup>1</sup> APP/X5990/A/02/110237

8. Due to the very limited scale of the proposed cabinets and their siting behind and beneath the level of the parapet, they would not be widely visible from public viewpoints of the church. If anything, in oblique views of the gap between the parapets which faces Warwick Avenue the merest glimpse could be ascertained of the very edges of the cabinets. In these views too it may be possible to see dim reflections of portions of the cabinets in the church's high-level windows. However, these would clearly be very limited visual effects. Thus the proposed cabinets would not interfere to any significant degree with the relationship of solid to void of its parapet walls and the gaps within them, or the architectural integrity of these strong planar forms.
9. In terms of the proposed alterations to the spire, I noted that the existing door is discreetly located between tall brick buttress-like projections which extend upwards along the spire to either side. These elements, plus intervening buildings and mature street trees screen the door to a considerable degree from most public views. Moreover, it is clear where glimpses can be caught, that the door imparts a more functional character much more in keeping with a building's rear elevation. Within this context the proposals for alteration of the door would again be minor in nature and not out of character with the more functional appearance of the lower part of this elevation of the spire.
10. At my site visit I was able to view the site from the windows, terraces and the courtyard of residential properties to the rear of the church. Whilst alterations to the door would be prominent in some of the views from upper floors of these residential properties, other paraphernalia more common to the rear aspects of buildings were also visible including access ladders, drainage pipes and satellite dishes. In some cases parts of the cabinets would be visible, and the related proposed safety notices. However, due to their discreet scale, the surrounding utilitarian and functional context of this aspect of the church roof, and, at upper floors, the availability of wider views beyond the rear of the church lead me to the view that the proposed development would look neither visually incongruous nor dominant from these viewpoints.
11. Consequently, I consider that no harm would occur to the character or appearance of the church as a result of the proposed development and neither would it fail to preserve or enhance the character or appearance, or cause harm to the significance of Maida Vale Conservation Area. Neither would the siting or appearance of the proposed development cause any material harm to the outlook of the occupiers of adjacent residential property. For these reasons, the siting and appearance of the proposed development would be acceptable in planning terms, and I consider that the requirements of the GPDO are met in these regards.
12. Moreover, the proposal would not conflict with Policies S25 and S28 of the City Plan; or Policies DES1, DES6, DES9 and paragraphs 10.108 to 10.128 of the Westminster Unitary Development Plan (adopted January 2007). Taken together, and amongst other things, these policies seek to ensure that new development respects the character, urban grain and scale of existing buildings, avoids visually intrusive roof alterations, and avoids harm to the character or appearance of conservation areas. For these reasons too the proposed development would not fail to preserve the character or appearance of the conservation area and thus would meet the requirements of section 72 (1) of the Planning (Listed Buildings & Conservation Areas) Act 1990.

## **Other Matters**

13. I am aware of concerns with regard to the potential health effects of the proposed development. However, I am conscious of the National Planning Policy Framework (the Framework), which states, at paragraph 46 that planning decision-takers “must determine applications on planning grounds. They should not seek to... determine health safeguards if the proposal meets International Commission guidelines for public exposure.” I have been supplied with a certificate of compliance with the guidelines laid down by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). This is evidence that the installation would meet these guidelines, and thus it is not necessary for me to consider the health aspects of the proposal any further. Furthermore, no substantiated evidence has been supplied to me to suggest that the ICNIRP guidelines would not be met. Whilst I note the references to studies and cases from continental Europe and wider, I am not persuaded that these provide substantive evidence that would weigh heavily against the policy of the Framework in this regard. Furthermore, anxieties about perceived risks in this regard are not a consideration on which I place much weight in the overall planning balance.
14. I have been referred to several other appeal decisions. However, in the absence of specific case numbers, or copies of the decision letters, the dates, surrounding contexts and nature of the proposals in these cases are not before me. As a consequence, I attach only limited weight to them in my assessment of this appeal. In any event each proposal needs to be considered on its own planning merits.
15. I have considered whether the proposed development would constitute a breach of the human rights of adjacent occupiers, particularly in relation to Article 8 and Article 1 of the First Protocol of the European Convention as enshrined into UK law by the Human Rights Act 1998. I have detected that no visual harm would arise as a result of the proposed development. Whilst the cabinets and antennae will need to be installed and following that serviced from time to time, this would not result in such a significant amount of activity as to cause an interference with the Article 8 and Article 1 Rights, in terms of privacy. Thus, taken together with my conclusions on the ICNIRP certificate in terms of the health effects of the proposed development, I discern that no interference with the Article 8 or Article 1 First Protocol Rights would occur as a result of the appeal scheme.
16. I note that proposals for flower baskets on the listed building across the road were discouraged by the Council, and I am aware of the comment that, in the light of this, allowing the proposed development would be inequitable. However, the church is not a listed building, and the proposed development would not cause harmful effects to its character or to that of the wider conservation area. As a consequence, I consider that granting permission in this case would not be inequitable, and, in any event each proposal needs to be considered on its own planning merits.
17. I have no substantive evidence before me which would suggest that the structural integrity of the spire would be undermined by the installation of the antennae. Consequently, I attach this matter only very limited weight in the overall planning balance.

18. Other sites may be available for such development, but I have not been supplied with any possible alternatives, and for the reasons given above I consider that the siting and appearance of the proposed development would avoid harmful effects to its surroundings. As a consequence, I attach only very limited weight to the possibility of using an alternative site.
19. Whilst the current mobile phone network in the area may meet the needs of some of the respondents, I am once again mindful of the Framework in this regard which states that planning decision-takers should not seek to "question the need for the telecommunications system". What is more, the Supporting Technical Information submitted by the appellant clearly shows the gains in 3G coverage in the immediately surrounding area that the proposed development would secure.
20. I am aware of concerns regarding the consultation process in respect of the proposed development; however, these are essentially procedural matters that have not been particularly determinative in the assessment of the planning merits of the case. In any event, I consider that the volume of responses submitted in respect of the appeal demonstrates that interested parties have had an adequate opportunity to comment at this stage of the planning process.

### **Conditions**

21. I was supplied with a list of conditions by the Council and suggestions for conditions from other respondents. However, the GPDO does not provide specific authority for me to attach conditions, and thus I am unable to do so in this case. However, the GPDO attaches standard conditions to development of this nature given in Schedule 2, Part 16 paragraph A.2, which are that:
- Development is permitted subject to the condition that any antenna or supporting apparatus, radio equipment housing or development ancillary to radio housing constructed, installed, altered or replaced on a building in accordance with that permission is, so far as is practicable, sited so as to minimise its effect on the external appearance of the building;
  - Development is permitted subject to the condition that any apparatus or structure provided in accordance with that permission is removed from the land, building or structure on which it is situated... as soon as reasonably practicable after it is no longer required for electronic communications purposes, and such land, building or structure is restored to its condition before the development took place, or to any other condition as may be agreed in writing between the local planning authority and the developer.

### **Conclusion**

22. The siting and appearance of the proposed development would not fail to preserve the character or appearance of the conservation area, and would not harm its significance. Thus for the reasons given above, and having regard to all other matters raised I conclude that the appeal should succeed.

*G J Fort*

INSPECTOR