

Appeal Decision

Site visit made on 11 October 2016

by Mr J P Sargent BA(Hons) MA MRTPI

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

Decision date: 24 October 2016

Appeal Ref: APP/J3720/C/16/3145441

8 Kenilworth Road, Lighthorne Heath, Leamington Spa, Warwickshire CV33 9TH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr DGG Jones against an enforcement notice issued by Stratford on Avon District Council.
 - The notice was issued on 26 January 2016.
 - The breach of planning control as alleged in the notice is the erection of a mast (in the approximate position marked X on the Plan attached to the notice).
 - The requirement of the notice is to remove the mast from the Land.
 - The period for compliance with the requirement is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) & (f) of the Act as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended is also to be considered.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the erection of a mast on land at 8 Kenilworth Road, Lighthorne Heath, Leamington Spa, Warwickshire CV33 9TH referred to in the notice, subject to the following condition:
 - 1) Within 3 months of the date of this permission the mast subject of the 2013 Lawful Development Certificate shall be demolished and removed from the site.

Ground (a) appeal and deemed planning application

Main Issue

2. The main issue in this case is the effect of the development on the character and appearance of the area.

Reasons

3. 8 Kenilworth Road is a dwelling on a cul-de-sac within an estate of houses. To the side of No 8, and forming part of its curtilage, is a large area (the side garden) on which there is a copse of mature trees.
 4. Amateur radio has been operated from the property for many years. In 1991 planning permission was granted for a 12m high mast in the side garden near to the eastern boundary, and in 2013 a Certificate of Lawfulness was granted
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for a 20m high mast in approximately the same position. In my decision the mast subject of the 2013 Certificate shall be called the original mast.

5. The mast now before me is also 20m in height and is located more centrally in the side garden. It comprises an 18m lattice tower with a 2m sector antennae on top, and a number of items of apparatus are attached to both. It is intended this would replace the original mast. Indeed the original mast had been partially taken down when I visited and it was accepted that, if I allowed this appeal, there could be a condition to require its total removal.
6. I acknowledge the mast subject of the notice, with its galvanised metal finish and its attached apparatus, has a relatively industrial and utilitarian appearance. I also appreciate it is slightly more substantial than the original mast. However, from the roads and houses immediately around the site the boundary fencing and the trees mean that while this structure, located near to the middle of the side garden, can be seen to a limited degree it is not unduly prominent. I accept I visited when the trees were more or less in full leaf, but the dense network of branches in the canopy over the side garden means I consider the visual impact from these viewpoints should not change materially in the winter months. At that time of year the mast may be more visible than the original when looking along the cul-de-sac, but I anticipate any limited effect that may result from this is likely to be offset by it being less visible when seen from the properties to the east.
7. From further afield, to the south on the recreation area and in Cromwell Place or to the north and west on Marston Avenue, the mast can be seen projecting through the canopy of the trees. However, it is fair to assume that, although now part demolished, the original mast would have had a similar impact as it too no doubt extended above the canopy and had some technical apparatus attached. The relationship of the mast before me to the copse is not exactly the same as that of the original mast, as it is more centrally sited and so among the crowns of different trees, but to my mind this difference is marginal and does not cause a material change in the structure's impact. Therefore, compared to the effect of the lawful original mast, I consider the mast subject of this current appeal does not harm the character or appearance of the area, or compromise the role played by the trees as a distinctive landscape feature.
8. While the Council expressed concern about the cumulative impact of 2 very tall masts on the land, in the light of the agreed condition that is not now to occur as the original mast would be removed within 3 months¹. It was also said the mast could be used commercially, but the notice does not relate to a material change of use and I have no basis to assume that would happen.
9. As well as the condition requiring the removal of the original mast, other conditions were suggested concerning painting the mast and landscaping, but I consider these would not have an appreciable effect on the structure's impact.

¹ The Council also referred to a whip aerial on the site but that was not present when I visited.

10. Accordingly, I conclude that the development does not detract unacceptably from the character and appearance of the area, and so is not contrary to Policies CS.5 and CS.9 in the Council's recently adopted Core Strategy.

Ground (f) appeal

11. Given my findings in relation to the ground (a) appeal I take no further action with regard to the appeal under ground (f).

J P Sargent

INSPECTOR