
Appeal Decision

Site visit made on 6 December 2016

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

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

Decision date: 13 February 2017

Appeal Ref: APP/N5090/W/16/3157831

The Ridgeway, opposite Hammers Lane, Mill Hill, London NW7 1AQ

- 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 Limited against the decision of the Council of the London Borough of Barnet.
 - The application Ref 16/0629/FUL, dated 29 January 2016, was refused by notice dated 24 March 2016.
 - The development proposed is the installation of a new 10m high column supporting internally shrouded antennas, 1no cabinet and ancillary work thereto.
-

Decision

1. The appeal is allowed and planning permission is granted for the installation of a new 10m high column supporting internally shrouded antennas, 1no cabinet and ancillary work thereto at The Ridgeway, opposite Hammers Lane, Mill Hill, London NW7 1AQ in accordance with the terms of the application, Ref 16/0629/FUL, dated 29 January 2016, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 100 A, 201 B and 301 B.
 - 3) Prior to the column and cabinet being installed details of their colour and external finish are to be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
 - 4) The development hereby permitted shall be carried out in accordance with the recommendations and Tree Protection Plan contained in the BS5837 Arboricultural Impact Assessment report, reference 02534Rv3, dated August 2016.

Preliminary Matters

2. The Council have indicated that following the submission of an Arboricultural Impact Assessment (AIA) as part of the appellants' appeal documentation that they no longer wish to defend their third reason for refusal that there was insufficient information provided to determine the proposal's effects on adjacent trees.
 3. The effect on trees is not a concern raised by interested parties. In light of the AIA's conclusions that the development would not negatively impact on the
-

trees subject to a Tree Protection Plan and particular working methods and foundation designs being implemented I therefore accept that this matter could be addressed by way of a planning condition.

4. Since the appeal was made the provisions of the Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2016 came into effect on 24 November 2016. This has the effect that permitted development rights for certain communications equipment have changed. This includes that the installation of a mast whose height, excluding any antenna, would not exceed 20m above ground level on land within a Conservation Area (along with other designated land) would be permitted development, albeit subject to prior approval arrangements.
5. The appellants have addressed this issue in their further comments and the Council have been given the opportunity to make comments on the matter. Whilst this does not affect the need for planning permission for the appeal proposal which was submitted before these changes came into effect it is a consideration which I deal with below.

Main Issues

6. The main issues raised by this appeal are:
 - i) whether the proposal constitutes inappropriate development within the Green Belt;
 - ii) the proposal's effect on the openness of the Green Belt;
 - iii) the proposal's effect on the significance of designated heritage assets, and;
 - iv) if it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

7. The proposed column would be located within a grassed highway verge set just back from a footway. The appellants' statement describes the mast as a slimline replica telegraph pole. An associated cabinet would be set at the back of the verge adjacent to a low stone wall with a close boarded timber fence above. The mast would be flanked by existing, large, mature trees.

Whether inappropriate development

8. The National Planning Policy Framework (the Framework) regards the construction of new buildings (which includes any structure or erection) as inappropriate in Green Belt. The proposed development would not fall into any of the categories of development which paragraphs 89 and 90 of the Framework consider as exceptions and therefore the proposal would be inappropriate development in the Green Belt.
9. Barnet's Local Plan (Development Management Policies) Development Plan Document, 2012 (DMP) Policy DM15 accords with this approach considering new buildings in the Green Belt as being inappropriate unless there are very special circumstances. Barnet's Local Plan (Core Strategy) Development Plan Document, 2012 (CS) Policies CS1 and CS7 seek to protect the Green Belt.

Openness

10. The Framework identifies the openness of Green Belts as one of their essential characteristics. The appeal site itself does not contain any structures between the two mature trees which flank the mast location. The openness of the site and its wider context is restricted to a degree as a result of the various items of street furniture in the vicinity and the site's back drop of a close boarded timber fence atop a wall behind which are a range of buildings.
11. The proposal would include the erection of a tall mast and an equipment cabinet which would nevertheless reduce, and consequently harm, the site's openness and that of the Green Belt. However, this harm to openness would be limited as a result of the small footprint and overall small scale of the proposal. DMP Policy DM15 states that the Council will refuse development which does not maintain openness, except in very special circumstances.

Designated heritage assets

12. The site is located within a prominent location opposite Hammers Lane within Mill Hill Conservation Area. The Conservation Area covers an expansive area and derives much of its character, and hence significance, from the distinctive village scale groups of buildings interspersed with large scale educational and institutional complexes of buildings and their open and landscaped settings, many of which are focused along The Ridgeway.
13. The adopted Mill Hill Conservation Area Character Appraisal Statement, 2008 (CAS) identifies the prominence of the site's situation and identifies green spaces which define road junctions as 'village greens'. This includes the junction of The Ridgeway and Hammers Lane opposite the site which provides "...a visual and community focus for the area". The map which accompanies the CAS identifies views across this junction, including those towards the appeal site from the south, as 'Linear Views'.
14. Furthermore, there is a picturesque group of grade II listed buildings on the west side of Hammers Lane comprising Hilltop, Linden, Vincett, Norah and Ridge Cottages as well as the separately listed Murray House. These derive some of their significance from the attractive townscape setting formed by the arrangement of buildings, trees and open areas around the 'village green' junction. I have paid special regard and attention to the desirability of preserving these assets' significance.
15. The location is consequently a particularly sensitive one. The tall vertical form of the mast would appear as an incongruous element in this townscape as would the equipment cabinet although to a lesser degree as a result of its proximity to the wall and fence backdrop to the site.
16. However, the mast would be seen and experienced in the presence of a number of other tall, vertical features in form of telegraph poles and street lights in the wider vicinity and close to the appeal site. It would appear less intrusive in this context rather than leading to a harmful cumulative effect with existing street furniture. Mature trees on either side of the proposed mast, a large tree on the traffic island opposite and others farther along the road would all further reduce the mast's prominence and visibility especially when in leaf, particularly from the east and west along The Ridgeway. The mast's height relative to those tall flanking trees would assist with reducing its visual impact.

Along with the design of the mast broadly replicating a telegraph pole, these aspects would reduce the intrusive effects of the proposal on the significance of those designated heritage assets.

17. Nevertheless, the proposal would harm the significance of the designated heritage assets, albeit that the level of harm would be limited, and it would consequently be contrary to DMP Policies DM06 and DM18 and CS Policy CS5. This harmful effect would be less than substantial given the limited effect it would have on the conservation area and listed buildings' setting. However, notwithstanding the limited nature of the harm it is something to which I have given considerable importance and weight to and the Framework requires such less than substantial harm to be weighed against the public benefits of the proposal.
18. The public benefits of the scheme include those to economic growth of supporting advanced, high quality communications infrastructure and improving network coverage in the area as illustrated in the appellants' Supporting Technical Information. The Framework recognises the vital role that communications networks play in enhancing provision of local community facilities and services. I consider that these public benefits would outweigh the less than substantial harm to the heritage assets' significance.

Other considerations and Green Belt balance

19. Interested parties have raised concerns about potential effects on health, particularly that of children in nearby dwellings and schools. However, the appellants have provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). In these circumstances, the Framework advises that health safeguards are not something which a decision-maker should determine. No evidence has been provided to indicate that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified in this case.
20. The appellants have investigated opportunities to share an existing mast nearby and have investigated whether alternative sites, including those on buildings in the vicinity, would have provided an appropriate location. I have been presented with no substantive evidence to lead me to question the conclusions of this exercise and that the area of search is constrained. As such this would meet the requirements of criterion iii. of DMP Policy DM18. I have also been given no reason to doubt that there are extensive areas of Green Belt in the vicinity such that it could prove challenging to obtain the coverage required without situating a mast somewhere within the surrounding Green Belt. These are aspects which weigh in favour of the proposal.
21. The appellants have pointed out a 'fallback' position that a similar development would now be considered as permitted development in light of the changes to the General Permitted Development Order. This would mean that a proposal of the same dimensions would in all likelihood not now require planning permission, albeit that prior approval would be needed. Given this similarity I consider that there is a greater than theoretical possibility of such a fallback approach being taken should the appeal proposal not proceed and it is one to which I can give considerable weight.

22. In light of the Council's objections in relation to designated heritage assets I consider it likely that similar concerns relating to siting and appearance would arise in the case of such a notional prior approval application. However, the key difference in such a potential fallback situation is that the principle of the development would not be a consideration. Therefore the issue of whether or not the proposal represents inappropriate development in the Green Belt, and the substantial weight any Green Belt harm would carry, would not arise in such a situation.
23. As I have identified that the less than substantial harm to heritage assets would be outweighed by the proposal's public benefits I consider that such a fallback would be a realistic possibility which would avoid Green Belt harm by reason of inappropriateness. Along with the benefits of the proposal, this and other considerations would clearly outweigh the Green Belt and other harm which in this particular case amounts to the very special circumstances necessary to justify the development.
24. As very special circumstances exist the proposal would avoid conflict with DMP Policy DM15. These circumstances are also material considerations which indicate that a decision not in full accordance with DMP Policies DM06 and DM18 and CS Policies CS1, CS5 and CS7 should be taken.

Conditions

25. It is necessary to specify the approved plans as this provides certainty. In order to ensure that the development does not harm the adjoining trees it is necessary that it follows the AIA's conclusions and the Tree Protection Plan. The plans simply refer to the mast being painted brown whereas the appellants' statement describes a replica telegraph pole appearance which could be different. Consequently, in order to ensure that such a replica appearance is achieved to comply with the camouflage, colouring and design requirements of criteria iv. and v. of DMP Policy DM18 it is necessary for details of the colour and external finish to be approved.

Conclusion

26. For the above reasons, and having had regard to all other matters raised, the appeal is therefore allowed.

Geoff Underwood

INSPECTOR