The Planning Inspectorate

Appeal Decision

Site visit made on 27 February 2017

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 13 March 2017

Appeal Ref : APP/Q1445/C/16/3152392
Land at 75 Old Shoreham Road, Hove, BN3 7BX.

- 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 appeal is made by Vodafone UK Ltd against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 12 May 2016.
- The breach of planning control as alleged in the notice is without planning permission the retention of a 34 metre high telecommunications tower, 4 no. antennas and 2 no. equipment cabinets.
- The requirements of the notice are to remove from the land the 34 metre high telecommunications tower, the 4 antennas, two ancillary cabinets and all associated apparatus.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

1. Since my site visit I am advised that the development the subject of the notice has been removed. I shall nevertheless determine the appeal based on the unauthorised development as it existed at the time of issue of the notice.

2. Some reference is made by the Appellant to an alleged lack of service of the notice on interested parties but there is no ground (e) appeal before me and therefore I do not address this issue in this decision. The Appellant also complains about a dismissive attitude by the Council and issue of the notice without adequate opportunity to discuss alternative options. These are not grounds of appeal that are within my remit.

Ground (a) appeal and deemed application

Main Issue

3. The main issue in the determination of this appeal is the effect of the development on the character and appearance of the surrounding area and whether any harm caused is outweighed by the need to site the installation at the appeal site having regard to the availability, or otherwise of alternative options.

4. The appeal site is located in a commercial loading space and close to a busy main road. The surrounding area is a mixture of commercial and residential buildings.

5. The telecommunications mast and equipment were erected in September 2015 with the benefit of permitted development rights. These rights were temporary to enable emergency provision and the six month period for emergency installations lapsed in March 2016.

6. The development plan includes saved policies in the Brighton and Hove Local Plan (the Local Plan). The plan reflects the National Planning Policy Framework (the Framework) in supporting high quality telecommunications development and requiring assessment of development on planning grounds. Policy QD23 of the Local Plan provides that telecommunication development will be permitted where listed criteria are met. These criteria include no serious adverse effect on the character or appearance of the area.

7. I agree with the views of neighbours that the mast is a substantial structure and appears bulky and excessively tall in the setting of low rise residential and commercial properties in the locality. It is considerably taller than nearby street furniture and road signs. It is readily visible from Old Shoreham Road, nearby residential streets and further afield. It is unduly prominent and out of keeping in its setting.

8. The Council does not dispute the need for the installation and on the evidence before me nor do I. I note that the installation was intended as temporary and that efforts to establish a replacement permanent base station have taken time. Since the submission of the grounds of appeal the Council advises that a permanent site at The Droveway has received permission. There is therefore no need to site the installation at the appeal site as an alternative location exists.

9. I conclude that the development causes undue harm to the character and appearance of the surrounding area and does not accord with the development plan. This harm is not outweighed by the need to site the installation at the appeal site having regard to the availability of an alternative option.

10. Concerns by local people about the impact of the development on house prices are not relevant to the appeal before me. I also note their concerns about issues including the attraction of birds, safety and health matters but none of these issues lead me to alter my conclusions on the main issue.

11. For the reasons given I conclude that the appeal on ground (a) should not succeed. I refuse to grant planning permission on the deemed application.

Ground (g) appeal

12. This ground of appeal is that the period for compliance falls short of what reasonably should be allowed.

13. The period for compliance set out in the notice is 3 months. The Appellant argues that this is too short a period to secure a permanent replacement site that will fit into an established network and that a 12 -18 months would be an appropriate period. But a replacement site has been secured and the development removed.

14. In balancing the need to remove the identified harm and the interests of the Appellant in maintaining adequate coverage I consider that the three months is adequate.

15. Consequently, the appeal on ground (g) does not succeed.

Formal Decision

16. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S.Prail

Inspector