



Appeal Decision

Site visit made on 18 July 2017

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 17 August 2017

Appeal Ref: APP/Y3425/W/17/3171074

Baswich Lane, Stafford, Staffordshire ST17 0BY

- 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, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by EE Ltd and Hutchinson 3G UK Ltd against the decision of Stafford Borough Council.
 - The application Ref 16/24619/PTEL, dated 26 July 2016, was refused by notice dated 14 September 2016.
 - The development proposed is telecommunications installation upgrade and associated works.
-

Decision

1. The appeal is allowed and approval is granted under the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of a telecommunications installation upgrade and associated works at land at Baswich Lane, Stafford, Staffordshire ST17 0BY in accordance with the terms of the application Ref 16/24619/PTEL, dated 26 July 2016, and the plans submitted with it.

Procedural Matters

2. I have taken the description of development provided in the application letter.
3. I have been referred to a previous appeal for telecommunications equipment at the site,¹ which I have taken into account in my consideration of this appeal.
4. The Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO) enables certain types of development to take place without the need for a specific planning permission, provided certain criteria are met. Provisions exist under Schedule 2, Part 16, Class A for the replacement of electronic communications apparatus, subject to certain limitations.
5. Paragraph A.3. of the GPDO sets out the procedure for prior approval under Class A, and A.3.(8) provides that development must not begin before the expiry of a period of 56 days beginning with the date on which the local planning authority received the application in accordance with sub-paragraph (5) without the local planning authority notifying the applicant, in writing, that

¹ APP/Y3425/A/13/2209747 dated 11 February 2014

such approval is given or refused. Sub-paragraph (5) details the information that should accompany the application. The appellant claims that 56 days had expired before the notification was received. I have considered this matter in the reasoning below.

Main Issues

6. The main issues are: (i) Whether planning permission is deemed to have been granted by reason of the timing of the Council's decision and; (ii) if planning permission is not deemed to have been granted, whether the siting and visual appearance effect of the development is such as to require refusal of prior approval.

Reasons

Timing of the Council's Decision

7. The application was made on 26 July 2016 and the Council received it on 28 July 2016. Therefore, the 56 expiry date was 21 September 2016. The Council posted the decision on its website at 11:08 on 19 September 2016 which, it is argued, means the letter would have been in the postal collection on that day. Nonetheless, the appellant maintains the decision was not received.
8. Paragraph A.3.(8) is clear that the local planning authority must notify the appellant in writing. Posting on the website is not sufficient. However, S7 of the Interpretation Act 1978 states that, "*Where an Act authorises or requires any document to be served by post... then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post*".
9. Hence, if the Council can provide evidence that the notice was posted with enough time to allow for 'the ordinary course of post', notice may be deemed to have been given. The Council's evidence in relation to the proof of posting is somewhat limited and is based solely on its custom and practice of posting the decision on the day it was uploaded to the website. However, in the absence of evidence of any 'contrary intention', I am satisfied that, on the balance of probabilities, the Council did issue the decision in time for it to be received by 21 September 2016. Consequently, planning permission is not deemed to have been granted.

Siting and Visual Appearance

10. The application sought approval for the siting and appearance of telecommunications equipment consisting of a pole of total height 17.5m, incorporating antennae housed in a shroud at the top of the pole and a small dish receiver at a height of 12m. An additional cabinet would be required, which would measure 1.2m by 0.4m by 1m high. The equipment would be finished in grey.
11. The development would replace an existing pole of total height 14.7m. It would be sited south of the existing pole in between a bus shelter and four existing cabinets, which would be retained. The local area is primarily residential, although the mast would be sited in front of a convenience store, and would be

close to the listed Holy Trinity Church and church hall, and its associated car parking area.

12. The pole would be in a different location to the existing pole and it would be higher. Although it would be marginally wider, it would still have a relatively slim profile. The development would be visible from Baswich Lane, but it would be seen in the context of the bus shelter and street lighting and would not be overly prominent. The pole would be screened in views from the store by a mature deciduous tree, which would still provide an element of screening when not in leaf. I appreciate local concerns about the replacement pole, especially its greater height. However, the height increase would not be excessive and overall it would not have a materially greater impact in the wider area than the existing pole.
13. The cabinet would be relatively modest in size and would be located between the existing cabinets and the bus stop, at the back of the footway. It would not be obtrusive in this location, as it would be screened to a certain extent by the bus stop and would integrate with other street furniture in the vicinity.
14. There is a listed Church, located to the north-west of the site. The development would be separated from the building by the car park, and the Church and its grounds are at a higher level than the road. Due to the topography and the intervening car park, I am satisfied that the development would not adversely affect the setting or significance of the designated heritage asset.
15. I conclude on this matter, that the siting and visual appearance effect of the development would not require refusal of prior approval. The development would meet the objectives of saved Policy N1 of the Plan for Stafford, insofar as it relates to siting and appearance.

Conditions

16. The development is subject to the standard conditions set out in A.2 and A.3 of the GPDO. These include the implementation within five years and the removal of the structure/apparatus when it is no longer required for electronic telecommunications purposes. I have not imposed the Council's suggested condition requiring the mast to be painted as the GPDO does not provide any specific authority for imposing additional conditions.

Conclusion

17. For the reasons given above, the appeal is allowed.

Debbie Moore

Inspector