
Appeal Decision

Site visit made on 12 December 2017

by JP Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 06 February 2018

Appeal Ref: APP/P1615/W/17/3181147

Corse Garage, Gloucester Road, Corse, Gloucestershire GL19 3RD

- 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 Vodafone Limited against the decision of Forest of Dean District Council.
 - The application Ref P1731/16/TE, dated 8 December 2016, was refused by notice dated 30 January 2017.
 - The development proposed is installation of a 15m monopole with 1no. 300mm dish, 3no. equipment cabinets, along with ancillary development.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The principle of this type of development is already established under Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The local planning authority is required to assess the proposal solely in relation to matters of siting and appearance. I have determined this appeal on the same basis.

Main Issues

3. The main issues are the effect of the siting and appearance of the proposed development on:
 - protected species, with particular regard to amphibians including great crested newts (GCN); and,
 - the character and appearance of the area, with particular regard to the setting of the Staunton and Corse Conservation Area (CA).

Reasons

Protected species

4. The appeal site is located to the rear of a commercial/light industrial site accessed off Gloucester Road (A417), which is occupied by a car repair garage and an optical products manufacturer. The telecommunications pole and associated apparatus would be sited on a relatively small rectangular area of

- hardstanding and bare ground at the north western corner of the site. It would be adjacent to open fields and mature trees with a pond to the immediate east.
5. At the time that the Council determined the application, it was not satisfied that the development could be carried out without harm to protected species. Given the proposed works would be adjacent to a pond with connected woodland, hedgerows and grassland, it considered that an ecological assessment was required to consider the impact on potential amphibian habitats, including for great crested newts, along with appropriate mitigation, if required.
 6. A Preliminary Ecological Appraisal (PEA)¹ and a Great Crested Newt Mitigation Plan (GCNMP)² have been submitted by the appellant with the appeal documentation. The PEA and the associated Habitat Suitability Index (HSI) findings concluded that the development proposals could present a risk to GCN. They observe that the pond adjacent to the site provides a suitable habitat for common amphibians and GCN and that the site itself contains a small area of suitable terrestrial habitat for amphibian foraging, commuting and refuge.
 7. Other ponds are identified in the area and it is said that a suitable terrestrial habitat for GCN is present between the ponds and the development site, with few barriers to movement. Therefore, that would enable connectivity between breeding ponds and potential construction areas within the development site. The GCNMP states that GCN '*could be impacted by the works, directly by machine/building activities (in their terrestrial phase) or by causing barriers to their dispersal*'. It says that the proposed development could result in their injury or death.
 8. The GCNMP, and the original PEA, recommended surveys to establish the presence or otherwise of GCN. If present, further surveys would be required to establish population size and inform an appropriate European Protected Species Licence (EPSL) application. Instead of carrying out the recommended surveys in advance, the appellant relies on the proposed 'worst case scenario' mitigation plan within the GCNMP.
 9. However, the GCNMP still recommends that, before any development begins, surveys will need to be undertaken on the five ponds located within 250m of the site, to establish if any GCN have been present. If so, full newt surveys would be required to determine population size class, which would be necessary for the EPSL, which is required to work in proximity to GCN or their habitat. The GCNMP advised that surveys needed to be undertaken between the 15 April and 30 June with the full newt surveys between mid-April and mid-May. It referred to GCN status being determined during the 2017 survey season.
 10. It does not appear that the survey work recommended within the GCNMP has been carried out. Given that the PEA was the result of an initial survey at the end of March 2017 and PEA and GCNMP reports were produced in April 2017, like the Council, it is not apparent to me why the surveys do not appear to have been undertaken. The GCNMP refers to the need for the appellant to organise access to off-site ponds before any survey visit. The appellant submits that it may not be readily practicable to undertake further surveys to

¹ April 2017 prepared by ArbTech Consulting Ltd

² April 2017 prepared by ArbTech Consulting Ltd

establish the presence of GCN in the area. However, given that GCNMP advises that if the initial survey results indicated GCN presence, full newt surveys would, in any case, be required for the EPSL, I am not persuaded by that limited explanation.

11. The relevant guidance in ODPM Circular 06/2005 states, in paragraph 99, that *'it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision'*.
12. Therefore, where a reasonable possibility of protected species being present and affected by the development has been established, as confirmed in the PEA and GCNMP, the clear advice is, that the surveys should be carried out before planning permission is granted. According to the ODPM Circular, surveys should only be required by condition in exceptional circumstances. Whilst that may be acceptable if, for example, recent surveys for protected species have already been undertaken and the condition relates to final checks just before construction, that is not the case here. Such surveys are essential to enable the decision maker to determine not only whether the proposal would have an adverse effect on any protected species but, if so, whether the harmful effects could be sufficiently overcome by any proposed mitigation measures.
13. If GCN presence was confirmed in those surveys, a range mitigation measures were proposed including the creation of a receptor site outside the development area, newt fencing, ecological supervision and daily morning visual site inspections. However, whilst the appellant advises that it agrees to the creation of the new receptor site, no evidence has been presented to confirm that the appellant has control over the land required to provide that site or that there is agreement with any relevant landowner. Therefore, there does not appear to be any certainty that a central tenet of the proposed mitigation plan could be implemented. Even if a Grampian condition was imposed, it would not resolve the lack of appropriate survey evidence to enable a fully informed assessment of whether the proposed mitigation measures would be appropriate or sufficient.
14. Therefore, I conclude that there is insufficient survey evidence to conclude that the siting of the development would avoid potential harm to protected species. Moreover, that no exceptional circumstances exist to justify making the necessary surveys and any appropriate mitigation the subject of a condition. Consequently, the proposal would not comply with Policy CSP.1 of the Council's Core Strategy (CS)³ or Policies AP 4 and AP 7 of the emerging Allocations Plan Submission Draft (AP)⁴ which, amongst other things, require that the design and construction of new development preserves and enhances the environment, including protected species and habitats. It would also fail to accord with similar aims within section 7 of the National Planning Policy Framework (the Framework).⁵
15. The Council advises that the emerging AP has made significant progress towards adoption, with Main Modifications being consulted upon. Policies relevant to this proposal also appear to be broadly consistent with the

³ Adopted 23rd February 2012

⁴ August 2015

⁵ March 2012

Framework. The Inspector's final report is yet to be published but given its progress I give the AP moderate weight so far as it is relevant to determination of a prior approval application.

Character and appearance and the setting of the CA

16. The appeal site is also located adjacent to the boundary of the CA. It also falls within a more extensive area defined as a 'Locally Valued Landscape', identified in Policy AP 96 of the emerging AP, which provides the setting for the former Chartist settlement of Snigs End. Strong protection is afforded by statute⁶, and great weight attributed by the Framework⁷, to the conservation of designated heritage assets, which include conservation areas and their settings.
17. It is understood that the proposed design was modified in the course of the application process to the telegraph design which is the subject of this appeal. The appellant submits that the design relates better to other telegraph poles and transmission columns present in the local landscape. Indeed, I observed a number of telegraph poles along Gloucester Road (A417) and in the surrounding landscape, both within and outside the CA.
18. The monopole and associated apparatus would be sited to the rear of an existing commercial/light industrial site, well away from the road. Whilst the pole would be visible from the site entrance, it would require a conscious effort to look towards it, along an extended driveway, over 100 metres away. Two trees would be removed to the rear of the site but the telegraph-style pole, although taller, would still be framed against a backdrop of trees and vegetation.
19. Views from other surrounding roads would be more distant and a slim telegraph pole structure, although higher than some other poles, would not appear particularly prominent or necessarily draw the eye in the context of the wider rural landscape. I have also take account of closer views that may occur from the network of public rights of way in the area.
20. My attention has been drawn by the appellant to an allowed appeal decision relating to Leeds Road⁸, which also concerned a proposal for a monopole adjacent to a conservation area. In that scheme the pole was some 17.5 metres high. Although all cases are judged on their individual merits and I do not have comprehensive details of that proposal, it does confirm that the simple fact of proximity to a conservation area does not, of itself, preclude such development. Some specific harm to the significance of the designated heritage asset or its setting would need to be identified to warrant refusal. Even then if the harm is less than substantial, it can be outweighed by public benefits.⁹
21. The CA Character Appraisal (the CA Appraisal)¹⁰ refers to the attempt to establish a Chartist Community know as Snigs End straddling the boundary of Staunton and Corse in 1847/48. Although the site would be adjacent to the CA, the appraisal comments that the hedges alongside the roads screen views. Many of the Chartist Cottages survive and have been listed and the CA

⁶ s72(1) Planning (Listed Buildings and Conservation Areas) Act 1990

⁷ Paragraph 132

⁸ APP/N4720/W/16/3154393

⁹ Paragraph 134 National Planning Policy Framework

¹⁰ Snigs End (Staunton Corse) Conservation Area and Character Appraisal (Adopted 20 September 2000)

Appraisal says: *'The most striking feature is the survival of much of the original layout of the plots themselves, in rows, crescents and blocks.'*

22. A number of Chartist Cottages do remain along School Lane, to the south of the appeal site with their characteristic long narrow plots and at other locations. Although the Council have not expressed concern about the effect on individual listed buildings, many within the CA, that matter has been raised by some local residents. Whilst the pole would be visible, I consider that it would be sufficiently separated from nearby listed buildings to avoid any adverse effect on them or their settings. Nor do I find that the pole and associated equipment would have a harmful effect on the significant features of the CA, such as its layout, identified in the CA Appraisal.
23. The above factors lead me to conclude that, although relatively tall, the siting and appearance of a slender telegraph-style pole would not have an adverse effect on character and appearance of the area, including the setting of the CA and the characteristics which contribute towards its significance. Neither would it have a harmful effect on the wider Locally Valued Landscape.
24. Therefore, the proposal would not breach Policy CSP.1 of the CS or emerging Policies AP 4, AP 5 and AP 96 of the AP. Those policies require, amongst other things, that proposals should consider their effect on landscape, take account of local character, history and local styles and not cause detriment to the setting or conservation of the CA. Policy AP 7 of the emerging AP is concerned with biodiversity and is not directly applicable to issues of character and appearance.

Planning Balance and Conclusion

25. It is acknowledged that alternative sites in the area were considered but found to be inappropriate for various reasons, including proximity to residential dwellings, limited screening and inferior coverage. It is also recognised that the principle of such development is established and that paragraph 42 of the Framework offers positive support to the provision of high quality communications infrastructure and acknowledges its essential contribution to sustainable economic growth. Those factors weigh in favour of the proposal.
26. I have also found that there would be no discernible harm to the character and appearance of the area, including the Locally Valued Landscape and the setting of the CA.
27. However, statute¹¹, as reflected in national and local policy and guidance, including the emerging AP, requires that biodiversity is conserved and European Protected Species are safeguarded. ODPM Circular 06/2005 provides clear advice that the presence or otherwise of protected species should be established before planning permission is granted. In the absence of any exceptional circumstances, it would not be appropriate to circumvent the normal survey requirements by means of a condition. The lack of survey information is unsatisfactory, given that its results would normally help to inform any proposed mitigation plan. There is also doubt about the provision of the receptor site, given that it is outside the appeal site and no evidence has been provided of agreement for its use.

¹¹ ss40 and 41 Natural Environment and Rural Communities Act 2006 and regulation 53 Conservation of Habitats and Species Regulations 2010

28. Overall therefore, in the particular circumstances of this appeal, the potential adverse effect of the proposal on protected species, with particular regard to amphibians including GCN, outweighs the public benefits offered by an improved telecommunications infrastructure.
29. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

JP Tudor

INSPECTOR