
Appeal Decision

Site visit made on 30 January 2018

by H Porter BA(Hons) PGDip IHBC

an Inspector appointed by the Secretary of State

Decision date: 01 March 2018

Appeal Ref: APP/Q3305/W/17/3185165

Highways , Land off Bath Road, Adjacent Grange Road, Frome BA11 2HG

- 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 Vodafone Limited against the decision of Mendip District LPA.
 - The application Ref 2017/1163/TEL, dated 24 April 2017, was refused by notice dated 11 July 2017.
 - The development proposed is the installation of a 15m replica telegraph pole, 2no. equipment cabinets, along with ancillary works as amended by Drawings received on the 01/06/2017.
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Decision

1. The appeal is dismissed.

Procedural matters

2. For clarity, the description of development in the banner heading above comes from the LPA's description on their Decision Notice. The revised description was agreed by the main parties on the basis of amended plans.
3. The appeal follows a decision by the LPA not to grant approval for the siting and appearance of the development, which would otherwise be permitted Under Class A of Part 16 of Schedule 2 of the General Permitted Development Order (GPDO) 2015 (GPDO).
4. The appellant contends that the LPA failed to follow the correct process as established in Part 16, paragraph A.3(8) of the GPDO, notably sub-paragraph (b)(ii), which stipulates that the LPA should give written notice that prior approval is required. Rather, in issuing a notice that prior approval was refused, the procedural failing indicates that the works should lawfully proceed under the prior approval provisions for permitted development works. The wording of paragraph A.3 of Part 16 suggests a two-stage process: firstly, to establish whether prior approval is required and secondly, if it is, a decision on whether such approval is given or refused¹. There is no form of words given for what 'written notice' should take.
5. In this case, the LPA received a valid application for prior notification on 26 April 2017 and issued a notice to refuse prior approval on 11 July 2017. However, in the intervening period there was written correspondence between

¹ Part 16 Paragraph A.3 (8)

the parties. It is evident there was an email exchange on 6 June 2017, within the 56 day period, in which agreement was given to extend the period of time for the determination of the prior approval application to 11 July 2017 and to change the description of development. This, to my mind, qualifies as a suitable form of written notice that prior approval was required and satisfactorily allowed for a longer period for making the decision².

6. I note the two appeal decisions in the London Borough of Bromley (APP/G5180/A/11/2163897 and APP/G5180/X/07/2041881) cited by the LPA and accept the Appellant's point that in different cases, different Inspectors could well have reached a different conclusion. In support of an alternative approach, the Appellant has pointed me to previous Inspectors' decisions where procedural failings were found.
7. In Appeal Ref: APP/Z1510/W/17/3182840, the LPA refused prior approval three days after receipt of a valid application and at no point in the intervening time did they give written notice that prior approval was required. In that instance, the Inspector was presented with no evidence of any other written source that could be taken as notification confirming that prior approval was required; thereby an essential stage in the process was skipped. Under Appeal Ref: APP/B6855/C/08/2088145, the Inspector concluded that the appellants did not receive a decision in the manner required within a period of 56 days from the date of the receipt of the application. The same situation is not before me, as it is clear that the statutory 56-day period had been extended and a decision was given within the revised timescale. I therefore do not consider that the previous Inspectors' decisions cited by the Appellant are directly comparable to this appeal.
8. In this instance, I do not consider that the LPA's handling of the prior approval application indicates that the development should lawfully proceed under the prior approval provisions for permitted development works.

Main Issues

9. The main issues are the effect of the siting and appearance of the proposal on the character and appearance of the area; and whether any harm would be outweighed by the need to site the installation in the location proposed, having regard to the potential availability of alternative sites.

Reasons

Character and appearance

10. The proposal relates to the installation of a 15-metre mast designed as a replica telegraph pole, and two equipment cabinets. I note that the LPA has raised no concerns relating to the proposed ground base equipment cabinets; I have no reason to come to a different view. I have therefore focused my attention on the visual effect of the proposed mast, in terms of its siting and appearance.
11. The proposed equipment would be positioned on the back edge of the pavement, on the splayed corner of a grassed and embanked finger of land that extends along the northwest side of Bath Road, a busy main thoroughfare into and out of Frome. Away from Bath Road are quieter, residential routes including Grange Road and Northcote Close; these are fronted by domestically-

² GPDO Article 7 c)

scaled dwellings, which characterise the attractively suburban context. The variety of utilitarian street furniture in the vicinity adds some degree of verticality. However, the trees populating the embankment are the tallest natural features, reaching up to 13 metres in height and providing a verdant backcloth to views along Bath Road.

12. Due to the siting of the proposed mast, it would be partially obscured by the backdrop of trees when viewed from the northwest or southeast. However, the photomontages submitted illustrate that, even when the surrounding trees are in full leaf, the proposal would still appear conspicuously tall. Owing to the slight topographic decline towards the southwest, the excessive height would be particularly noticeable when seen on approach from the north as well as from Grange Road, and the closer context of the suburban streets around it. During the winter months, when the tree canopies would be reduced, the mast would stand out further and appear as a highly prominent and obtrusive piece of street furniture. In addition to it being seen from a number of surrounding residential properties.
13. The National Planning Policy Framework (the Framework) advises that where new sites are required, equipment should be sympathetically designed and camouflaged where appropriate. While in all other respects, the proposed mast would appear as a standard, uncluttered monopole, it would nevertheless exceed the height of the tallest nearby street furniture by a significant margin, and be some two metres above the trees. Even taking into account the attempts to disguise it as a telegraph pole, the proposed mast, which is not close to any built or natural heritage assets, would stand out as an incongruous and dominant feature within the surrounding streetscape and would harmfully detract from the character and appearance of the area.
14. The proposal would therefore be contrary to Policies DP1 and DP7 Mendip District Local Plan 2006-2029 Part 1: Strategies and Policies, December 2014, which, amongst other things, require all development proposals to contribute to the maintenance and enhancement of local identity and distinctiveness and to be of a scale and form appropriate to the local context.

Need

15. The Framework contains a clear expression that advanced, high quality communications infrastructure is essential for sustainable economic growth and in this respect there is encouragement to local planning authorities to support the expansion of electronic communications networks, including telecommunications. The proposal mast would facilitate improved 4G coverage and provide a reliable service in the current network gap. The LPA does not dispute the need to improve network coverage in the area, nor is there any contention of the substantial benefits to mobile connectivity and the network. I see no reason to take a different stance.
16. The Framework recommends at paragraph 43 that existing masts, buildings and other structures should be used, unless the need for a new site has been justified. The Appellant has set out a number of alternative sites that were considered as part of the site selection process, and the reasons why they were not pursued. However, whilst the LPA accepts that consideration has been given to alternative sites for an additional mast serving the network, it does not find that due consideration has been given to the construction of a new mast on a less sensitive site.

17. Frome Town Football Club was one site that was discounted by the Appellant due to its location outside the search area, which would not achieve coverage improvements. However, in their Final Comments, the Appellant states that they would be 'happy to continue discussions with the landowner in question as a potential back-up to the subject site'. This casts some doubt over whether this site would indeed be a feasible option, and whether it would offer potential to facilitate network upgrades. I appreciate that the individual networks would be working in their own, and their customers', best interests and that it was Telefonica, not Vodafone, who sought to identify a back-up option for consideration should the appeal proposal fail. However, even though competition between different operators should not be prevented, there is also a requirement to keep installations to a minimum. There would be clear benefits to mast sharing in avoiding a proliferation of separate installations and I can see no compelling reason why a mast sharing opportunity does not exist in this instance.
18. The Frome Community Hospital site was also discounted, as the construction 'does not lend itself well to accommodating a rooftop telecommunications site'. However, there is no persuasive evidence to indicate how such a conclusion was arrived at. While recognising that a ground-based mast at the same location was not even considered at survey stage, I find the analysis of the potential of a roof-top or ground-based mast at this location to be too vague and generalised to eliminate it at this stage as an alternative option.
19. While recognising the difficulties in finding a suitable site, based on the evidence available to me, I consider that suitable alternative means of providing coverage have not been fully explored and that there remains a possibility that the use of alternative, less harmful locations may merit further discussion. This runs contrary to paragraph 45 of the Framework, which requires evidence that the possibility of erecting antennas on existing buildings, masts or other structures has been explored.
20. The Appeal decision at Earby Cricket Club Ref: APP/E2340/W/17/3176499, the Inspector applied less weight to the availability of other site options as there were already found to be 'no materially harmful effects'. In the Twickenham Road Appeal Ref: APP/L5810/W/17/3178357, the Inspector likewise concluded that the proposal would not cause material harm to designated heritage assets and that any 'perceived harm' would be outweighed by public benefit. However, this is not the situation before me, where I have identified there would be significant material harm to the character and appearance of the area as a result of the proposed siting and appearance. The Inspector in the Telefonica Appeal decision Ref: APP/J1353/W/17/3183040 was satisfied that alternative options have been satisfactorily explored; however, I am not fully convinced that there are no potential alternative sites available, which weighs against the proposal.

Other matters

21. I am conscious that the proposal has attracted widespread opposition locally and that objections were raised in respect of the harmful effect on the living conditions of nearby residents, with regards to overbearing impact. However, due to the topography, trees, boundary features and the intervening distances, I do not consider that the proposal would result in any significant overbearing impact and therefore harm to the living conditions of occupants of nearby

houses. A lack of harm in this regard however, does not alter my findings in respect of harm to the character and appearance of the area.

22. Concern has been raised about the possible effect of the proposal on health. While noting these concerns, the appellant has provided the requisite 'ICNIRP Declaration'. Demonstrably, therefore, the proposed installation would satisfy the International Commission on Non-Ionising Radiation protection guidelines and in accordance with paragraph 46 of the Framework, I have given such concerns very little weight in deciding the appeal.

Conclusions

23. There would be economic and social benefits associated with upgrading the existing infrastructure and against a wider objective of improving the communications network, these are aspects that weigh in favour of the development. On the other hand, I am in no doubt that the proposal would be harmful to the character and appearance of the area and would conflict with the development plan. Furthermore, I am currently unconvinced that the appeal site is the least harmful location available through which coverage benefits could be facilitated, and this weighs against the proposal.
24. Taking all matters into consideration, including the Government objective to improve mobile connectivity and to deliver required network improvements, I conclude that the appeal should be dismissed.

H Porter

INSPECTOR