



Appeal Decision

Site visit made on 18 June 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2019

Appeal Ref: APP/T0355/W/18/3219292

Site to the east of Lordland's Farm, Hawthorn Lane, Winkfield Street, Windsor RG42 6HN

- 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 Mr Roger Wilson of Ratesu Limited against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 18/03002, dated 16 October 2018, was refused by notice dated 14 December 2018.
 - The development proposed is a radio mast, antennae and shelter cabin.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies.
 - The effect on the openness of the Green Belt.
 - The effect of the proposal on the character and appearance of the area including trees.
 - The effect of the proposal on bats.
 - The effect of the proposal on health, and;
 - If inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, whether this amounts to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate Development

3. The definition of the term 'building' under section 336 of the Town and Country Planning Act 1990 includes any structure or erection. This definition would encompass telecommunications equipment such as the appeal proposal. As such, it is more appropriate to consider the proposal as a building in relation to

local and national policy, rather than as an engineering operation as the appellant suggests.

4. Saved policy GB1 of the Royal Borough of Windsor and Maidenhead Local Plan (incorporating alterations) June 2003 (LP) indicates that development for new buildings in the Green Belt is limited to specified exceptions unless there are very special circumstances. Policy GB2(a) of the LP indicates that permission will not be granted for new development if it would have a greater impact on the openness of the Green Belt or the purposes of including land in it, than the existing development on the site.
5. Even though the LP was adopted some time ago, this approach is broadly in line with that set out in section 13 of the National Planning Policy Framework (the Framework). It is my duty to determine the scheme in accordance with the development plan unless material considerations indicate otherwise. However, given that policies GB1 and GB2(a) predate the Framework, where there are differences with the listed exceptions in paragraph 145 of the Framework, the Framework attracts greater weight. I further note that policies SP1 and SP5 of the emerging Borough Local Plan 2013-2033 Submission Version (BLP) accord more closely to the Framework policy, in light of the stage of preparation of the plan, they attract moderate weight.
6. The appellant accepts that the proposed development would not fall within the exceptions listed in policy GB1 of the LP, or the Framework. It follows therefore, that the proposal constitutes inappropriate development in the Green Belt.

Openness

7. The site is in the corner of a field, with the surrounding agricultural land largely devoid of built form, into which it is proposed to introduce a shelter cabin and mast. The flat roofed cabin would be single storey with a moderate footprint of approximately 15sqm. Although comprising a lattice structure with a small footprint, the proposed mast would be approximately 30 metres in height and therefore, significantly taller than the surrounding trees. In addition, the antennae mounted horizontally on top of the mast would measure approximately 21.6m x 9.8m. These elements of the proposal would result in the development being particularly conspicuous, and visible from a considerable distance away.
8. The appellant indicates that the proposal would be a temporary development for 10 years, following which it is likely that technological advances would render the infrastructure unnecessary. He argues that this, together with the proposed camouflaging of the equipment would assist in reducing the harm to openness to an extent. However, camouflaging the structure would not reduce its physical presence and 10 years is a significant amount of time.
9. The appellant has suggested that a condition could be imposed to limit the time period further to 7 years. Although this would further limit the extent of harm to openness it would not overcome the harm to the Green Belt that I have identified.
10. For the above reasons, the development would result in a significantly adverse visual impact upon the openness of the Green Belt.

Character and appearance

11. Hawthorn Lane has a rural character predominantly comprising arable fields bounded by hedgerows and intermittent woodland. The appeal site is at a corner of a field with mature hedgerows and trees along the boundary which contribute positively to the rural character and appearance of the area. The tall, utilitarian mast with the particularly prominent horizontal antennae protruding significantly over the established tree line, would be a discordant addition to the surrounding natural landscape.
12. Furthermore, given the height of the mast, the adverse effect would be seen from surrounding lanes and footpaths. Although when viewed from a distance, the nearby mature trees would partially shield the lower portion of the mast and the cabinet, the prominent horizontal antennae would be seen against the skyline. In addition, glimpses of the cabinet and base of the mast would be possible from the nearby public rights of way along Hawthorn Lane and Ashmore Lane. Moreover, the limited screening would be reduced in winter months when the trees are not in leaf. The proposed painting and landscaping of the mast in order to camouflage the structure would not sufficiently mitigate its physical presence.
13. In the absence of a tree survey, the Council's Tree Officer has identified that there are five large oak trees growing close to the development, whose roots and canopy could be potentially affected by the proposal. At my site visit I observed the presence of mature oak trees in the boundary hedgerows adjacent to the public footpaths close to the appeal site. Little evidence has been provided by the appellant to substantiate his view that the development would not be harmful to the health of the trees. On that basis, I have little assurance that the development would not cause harm to the long term retention of trees that contribute positively to the character and appearance of the area. In such circumstances, it would not be appropriate to use a condition as the appellant suggests, as the location of the development would be fixed without establishing whether appropriate prevention of harm and mitigation would be possible.
14. Accordingly, the proposal would result in unacceptable harm to the character and appearance of the area contrary to saved policies DG1 and N6 of the LP. The former is a general design policy that seeks, amongst other matters, that development should not harm the character of the surrounding area. Policy N6 requires relevant development proposals to provide a tree survey to demonstrate that suitable trees will be protected and retained with the supporting text specifically referring to the retention of existing trees alongside footpath routes. Whilst the Council has also referred to emerging policies SP2, SP3 and NR2 of the BLP in the decision notice, I find that these are generally consistent with the corresponding relevant policies in the adopted LP.

Protected species

15. The appeal site is undeveloped and is surrounded by mature hedgerows and trees. The ancient woodland Fernygrove Copse and Lordlands Wood are near the site. They comprise of lowland mixed deciduous woodland, which are designated as a Priority Habitat in the UK Biodiversity Action Plan. They are also designated as Local Wildlife Sites which are non-statutory sites of significant value for the conservation of wildlife. These combine to make the appeal site part of a suitable habitat to support bats, all of which are European protected species. In the absence of specific evidence, there is no certainty as

to the likely impact the introduction of the telecommunications mast and equipment might have on the ability of bats to navigate the surrounding habitat.

16. It follows that it is similarly uncertain whether appropriate safeguards to mitigate harm are necessary, and if so, whether they can be suitably secured. This is not a matter that can be appropriately made the subject of a condition, as the principle of the development would have already been permitted. To do otherwise would conflict with advice in Circular 06/2005 Biodiversity and Geological Conservation whereby the presence of protected species and the extent that they may be affected should be established before any planning permission is granted.
17. I therefore conclude that it has not been demonstrated that the proposed development would have no materially harmful effects on a protected species. Consequently, the proposal would be contrary to policy NR3 of the BLP. In recognition of the stage of preparation and absence of notable unresolved objections to this policy, it attracts moderate weight. Policy NR3 includes an objective to safeguard protected species from harm arising from new development. In addition, the proposal would conflict with advice in paragraphs 170 and 175 of the Framework.

Health

18. The appellant has provided a report¹ to show that the proposed equipment has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). In these circumstances, paragraph 116 of the Framework advises that health safeguards are not something which a decision-maker should determine. No sufficiently authoritative 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. On this basis I do not find that the proposal would result in harm to health that would conflict with local or national policies.

Other considerations

19. The proposal would be used to facilitate superfast telecommunications on financial trading between the USA and Asia and the London Stock Exchange. The appellant asserts that improved communication would encourage traders world-wide to increase their activity in London, which in turn would potentially benefit the general UK economy. In addition, there would be temporary economic benefit associated with designing and constructing the development, and some modest increase in staffing associated with the data centre in Slough.
20. Paragraph 112 of the Framework advises that advanced, high quality and reliable communications infrastructure is essential for economic growth. Even so, the benefits directly arising from the construction of the development and its subsequent oversight are modest in scale. Furthermore, there is limited evidence quantifying the likely scale of economic benefit to the general UK economy which reduces the overall weight I can attribute to this benefit. On this basis, the economic benefits arising from the proposal receive moderate weight.

¹ RF Exposure Assessment Report, Herman Laboratories 11 February 2019

21. The technical requirements of the proposed equipment necessitate a location within close range of the target site on the Slough Industrial Estate, an ability to receive unimpeded radio signals from the USA and, in light of the low-level radio signals, an area where the chances of radio interference are minimised. The appellant contends that these constraints, in addition to considerations of electricity supply, land use rights and accessibility, means that all potential alternative sites would be located within the Green Belt. Reference is made to a review of other sites that show the appeal site is the one that best meets the necessary criteria. However, the evidence submitted does not specify which other sites were under consideration, nor on what basis they were discounted.
22. On the evidence before me, I am not certain that a rigorous assessment of alternative sites has been undertaken to show that no sites materially less harmful to the openness of the Green Belt exist. On this basis, the lack of alternative sites to the appeal proposal attracts limited weight.
23. I am referred to policy TEL1 in the LP and emerging policy IF8 of the BLP both of which broadly support telecommunication development subject to the consideration of various criteria. The appellant refers to the absence of harm in relation to several environmental considerations. Nevertheless, the absence of harm in relation to those matters does not count in favour of the proposal as these would be required to be satisfied in any event. Therefore, this is a neutral factor in the overall Green Belt balance.

Green Belt balancing exercise

24. Paragraph 144 of the Framework advises that substantial weight should be given to any harm to the Green Belt. Moreover, very special circumstances to allow inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. In this case, the proposal amounts to inappropriate development, and moderate harm would also be caused to the openness of the Green Belt. These factors attract substantial weight.
25. In addition, the harm that would result to the character and appearance of the area, and the likely harm to protected species are matters of considerable weight. Whilst other considerations advanced by the appellant have been taken into account, these accrue moderate weight. Accordingly, I find that the other considerations in this case do not clearly outweigh the harm identified. Consequently, the very special circumstances necessary to justify the development do not exist.
26. Therefore, the proposal would amount to inappropriate development in the Green Belt and would cause harm to openness. It would therefore be contrary to policies GB1 and GB2(a) of the LP whose principal objective is to protect the Green Belt from inappropriate development.

Conclusion

27. For the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector