



Appeal Decision

Site visit made on 9 March 2020

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2020

Appeal Ref: APP/V4630/W/19/3242500

Rear of Anchor Inn, Chester Road, Brownhills WS8 6DP

- 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 MBNL (EE UK Ltd and H3G UK Ltd) against the decision of Walsall Council.
 - The application Ref 19/0404, dated 12 March 2019, was refused by notice dated 7 June 2019.
 - The development proposed is the replacement of an existing 14.7 m monopole with a 20.0 m high slimline lattice mast supporting 6 no antenna apertures, together with the installation of 8 no ground-based equipment cabinets.
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Decision

1. The appeal is dismissed.

Main Issues

2. The appeal site is located within the Green Belt and so the main issues are:
 - whether the proposal represents inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the 'Framework') and development plan policy; and
 - the effect on the character and appearance of the adjacent canal and wider area; and
 - the effect of the proposal on trees and hedges; and
 - whether appropriate consultation has been carried out; and
 - if the development would be inappropriate, whether the harm by reason of inappropriateness and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether inappropriate development in the Green Belt

3. Policy GB1 of the Walsall Site Allocation Document 2019 (SAD) states that in the Green Belt relevant policies of the Walsall Unitary Development Plan 2005 (UDP) and the Framework will apply. SAD policy GB1 and paragraphs 3.2 to 3.5 of the UDP state that the Green Belt will be safeguarded and inappropriate development will not be allowed unless justified by very special circumstances.

These policies are broadly consistent with the Framework's provisions in respect of Green Belt.

4. The Framework defines the construction of new buildings as inappropriate development in the Green Belt, although a number of exceptions are listed under paragraph 145. The Council contend that the proposed mast and cabinets would not represent buildings, however section 336 of the Town and Country Planning Act 1990 defines the term "building" to mean any structure or erection. As such, it is necessary to consider whether the proposal falls within the categories of new building which are defined in the Framework as not inappropriate development in the Green Belt.
5. Under paragraph 145 d) of the Framework, the replacement of a building is defined as being not inappropriate development provided the new building is in the same use and not materially larger than the one it replaces. The proposal would represent a replacement of existing structures of the same use, but the proposed mast would be markedly higher and wider than the monopole. Also, the proposal would result in an increase in the number of cabinets and the overall ground coverage of development compared to the existing situation. For these reasons, the proposal would be materially larger than the existing structures and so it would fall outside the definition as set out under paragraph 145 d) of the Framework. No case has been submitted that claims the proposal falls within any of the other exceptions set out under paragraph 145.
6. The appellant contends that the proposal would have no effect on the openness of the Green Belt and the purposes of Green Belt policy and so the proposal would not be inappropriate development in the Green Belt. Such tests are referred to in the Framework but relate to specific types of development as set out in paragraph 146 a) to f). The proposal fails to fall within any of the types of development as set out under paragraph 146.
7. In any case, the proposal would result in the loss of spatial openness through the introduction of a higher and wider mast and an increase ground coverage compared to the existing situation. Also, by being taller and wider, the proposed mast would be more visible than the existing monopole when looking from Chester Road over and to the side of the Anchor Inn, from the pub car park, from the canal and from the houses on the opposite canal bank. While the mast would be a lattice framework rather than a solid structure, it would still lead to a visual loss of openness due to its height and bulk relative to the monopole. The proposal would not affect the adjacent fields, but nevertheless would lead to the loss of the site's spatial and visual openness. As such, it would conflict with the purpose of Green Belt policy to check unrestricted sprawl of large built-up areas and to safeguard the countryside from encroachment.
8. The appellant points out that the existing development was granted planning permission and so argues that the principle of a telecommunications equipment development on the site has already been established. However, this permission was granted some time ago and I have no details of the factors that were taken into account in arriving at that decision. In any case, the appeal proposal needs to be assessed on its own merits against current Green Belt planning policies.
9. For the above reasons, the proposal fails to comply with any of the exceptions set out under paragraphs 145 or 146 of the Framework and therefore would

represent inappropriate development in the Green Belt. Under the terms of SAD policy GB1, paragraphs 3.2 to 3.5 of the UDP and the Framework, the development should not be allowed except in very special circumstances.

Character and appearance of the canal and wider area

10. The site lies on the edge of open fields, close to the Anchor Inn car park and on top of a bank that leads down to the canal. Residential properties on the edge of the built up area lie on the opposite side of the canal, however the adjoining fields and trees on the bank give the area a semi-rural feel.
11. The existing monopole and cabinets have a limited effect on the character of the area as they are screened by the nearby trees on the canal-side bank. However, the proposed mast would be markedly taller than the existing monopole so its upper element would be above the nearby trees. Furthermore, the group of antenna apertures at the top of the mast would add to the bulk of the structure at its highest point.
12. The appellant's photo montages do not show how the proposal would affect the canal and towpath. From my visit, it would appear the uppermost part of the mast would be seen when approaching the site along the canal, particularly during times of leaf-fall when the screening effect of the nearby trees would be reduced. Whilst only a limited stretch would be affected by the proposal, the mast would appear as an unduly prominent and incongruous structure in the semi-rural context of the canal.
13. Furthermore, the mast would be seen from the adjacent car park and public house, from residential properties on the opposite side of the canal and from a few places on Chester Road close to the Anchor Inn. Such views would be from built-up areas but would be towards the tree belt and open countryside. The prominent and utilitarian appearance of the mast would detract from the semi-rural context of the site provided by the trees and open fields.
14. By reason of their height and positioning, the proposed cabinets would not be obvious from off the site and would have a negligible effect on the character of the area. Also, the impact of the development could be reduced by being finished in neutral colours. Even so, these factors fail to fully overcome or override the harm that would be caused by the mast to the attractiveness of the canal and wider area by reason of visual prominence and incongruity.
15. For the reasons outlined above, I conclude that the development would cause harm to the character and appearance of the canal and wider area. As such, and in this regard, it would be contrary to policies ENV32 and ENV38 of the UDP, policy ENV2 and ENV4 of the Black Country Core Strategy 2011 (BCCS), policy EN4 of the SAD and policy DW3 of the Designing Walsall Supplementary Planning Document for Urban Design 2013. These all aim, amongst other things, to ensure that development integrates appropriately with the canal network and to ensure development takes account of its surroundings.

Consultation

16. Paragraph 115 of the Framework states that applications for electronic communications development should be supported by the outcome of consultations with organisations with an interest in the proposed development, in particular with the relevant body where a mast is to be installed near a school. Millfield Primary School lies on the opposite side of the canal and has

not been consulted on the proposal. The Council state the school ground would lie about 100 metres from the proposed mast, although it is noted that buildings, vegetation and the canal would lie in between. Given the separation distance and intervening features, I consider the proposed development would not be near a school and so the consultation requirement as set out in the Framework does not apply.

17. For the above reasons, I conclude that an appropriate level of consultation has been carried out. Consequently, and in this regard, the proposal complies with the Framework. UDP policy ENV38 is referred to in the refusal reason but makes no relevant reference to consultation requirements.

Trees and hedges

18. A number of trees and other vegetation lie close to the site. As part of the appeal, the appellant has submitted an aboricultural impact assessment that states that no trees and limited hedgerow will need to be removed to allow the development to be carried out. Moreover, the assessment sets out measures to protect the nearby trees from damage during demolition and construction works. The Council has raised no comments on the assessment and I have no reason to dispute its conclusions and tree protection measures.
19. As such, I conclude the development would not cause harm to nearby trees and hedges. Consequently, and in this regard, the proposal would be in accordance with policies GP2 and ENV18 of the UDP, policy ENV1 of the BCCS and the Conserving Walsall's Natural Environment Supplementary Planning Document 2013. These all aim, amongst other things, to preserve trees and ensure their protection during construction works. UDP policy ENV7, BCCS policies ENV2 and ENV3 as well as policy EN1 of the SAD are all referred to in the refusal reason relating to this issue but contain no relevant provisions.

Other considerations

20. The 2 appeal decisions¹ referred to me by the appellant relate to developments in different parts of the country and outside of the Green Belt. As significantly different planning policies are relevant to this appeal, the referred to decisions have no effect on my assessment of the current proposal.
21. The development would be acceptable in terms of highway safety and would cause no harm to features of nature conservation or historic interest. Also, it would have no effect on the living conditions of occupiers of nearby properties or on the water quality of the canal. However, acceptability in these regards is a neutral factor that does not weigh in support of the proposal.
22. The appellant states that elements of the proposal could be carried out lawfully under permitted development rights, although no specific alternative scheme has been submitted as a fallback position to the appeal proposal. In any case, from the evidence provided, it would appear likely that any permitted development rights scheme would cause less harm to the openness of the Green Belt compared to the appeal proposal. As such, I attach only limited weight to the fallback position in my assessment of this appeal.
23. The proposal would represent the shared re-use of an existing base station and so it would accord with paragraph 113 of the Framework which seeks to

¹ Appeal reference numbers APP/Q3305/W/18/3206555 and APP/L1765/W/18/3197522

minimise the number of electronic communication sites. However, no evidence has been provided that demonstrates there are no alternative sites outside of the Green Belt capable of accommodating a development that addresses the service requirements. In the absence of such evidence, I attach moderate weight to the benefit that the proposal minimises the number of base stations.

24. The Council do not contest the appellant's claims that the development would improve the coverage and quality of telecommunications in the area. Various government documents highlight the economic and social importance of high quality digital connectivity and paragraph 112 of the Framework states that planning decisions should support the expansion of electronic communications networks. Consequently, I attach significant weight to the economic and social benefits of the proposal.

Green Belt balance

25. The appeal scheme represents inappropriate development in the Green Belt, which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Such circumstances only exist where the harm by reason of any inappropriateness and any other harm is clearly outweighed by other considerations. Government policy dictates that, in carrying out the balancing exercise, substantial weight is to be given to any harm caused to the Green Belt.
26. As well as harm by reason of inappropriateness, the development would cause a loss of spatial and visual openness, thereby adversely impacting on one of the essential characteristics of the Green Belt. Also, the proposal would harm the character and appearance of the canal and wider area, to which I attach moderate weight. The development would cause no harm to trees and appropriate consultation on the proposal has been carried out, however these are neutral factors that fail to address or override the identified harm.
27. Whilst attaching significant weight to the economic and social benefits of the proposal, I conclude that these and all other considerations would not clearly outweigh the totality of harm the development would cause to the Green Belt and the other harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. As such, the development conflicts with the paragraphs 3.2 to 3.5 and policy GP2 of the UDP, policy GB1 of the SAD and the Framework which all aim, amongst other things, to maintain the Green Belt and its openness and to resist inappropriate development in it unless very special circumstances exist. UDP policy ENV7, BCCS policies ENV1 and ENV3 and policy EN1 of the SAD and are all referred to in the Council's reason for refusal but contain no provisions relating to the Green Belt and preserving its openness.

Conclusion

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

Jonathan Edwards

INSPECTOR