
Appeal Decision

Site visit made on 3 March 2020

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Appeal Ref: APP/X1355/C/19/3237884

Land at Nevilles Cross Bank, Durham DH1 4JN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by MBNL (EE & H3G) & ESN (Emergency Services Network) against an enforcement notice issued by Durham County Council.
 - The enforcement notice was issued on 4 September 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the operational development consisting of erection of a 22m high mast and equipment.
 - The requirements of the notice are: 1. Permanently remove the telecommunications mast and associated infrastructure from the land. 2. Restore the land to the previous condition.
 - The period for compliance with the requirements is 12 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld, and the deemed planning permission is refused.

The notice

2. The appellant questions the validity of the enforcement notice (EN). The first paragraph of the EN states that it has been issued because it appears to the Council that there has been a breach of planning control under paragraph (a) of s171A of the 1990 Act. In paragraph 3.1.7 of their statement of case, the appellant agrees that this reference is correct.
3. However, they state that the EN relates to works that could be carried out under permitted development rights as prescribed by the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) under Schedule 2, Part 16, Class A. However, there is no dispute between the parties that the temporary period allowed by the GPDO has expired.
4. That being the case, the EN at paragraph 3 makes it clear that the Council consider the breach to be operational development that is unauthorised because it does not have planning permission. Nevertheless, the appellant contends that the EN should have referred specifically to s55 of the 1990 Act, which sets out the meaning of development, and not just to the Act in general.

5. The EN, through the reference to paragraph (a) of s171A and the description of the breach of planning control, satisfies the requirements of s173(1). I have not been made aware of any duty on the part of the Council to make a specific reference to s55 and I therefore consider that the EN is valid.

The appeal on ground (a) and the deemed planning application

Main Issues

6. In recommending enforcement action, neither the planning officer's report nor the EN make specific reference to the effect of the development on the living conditions of residents. However, I have taken into account the representations from residents on this matter, and I note that it is also alluded to in the Council's statement of case. As a result, I have taken this matter into consideration.
7. Therefore, the main issues are:
- Whether the development amounts to inappropriate development in the Green Belt;
 - The effect on the openness and purposes of the Green Belt;
 - The effect on the character and appearance of the surrounding area, including the Area of High Landscape Value (AHLV);
 - The effect on the living conditions of nearby residents, with particular regard to outlook; and
 - If harm arises from there being inappropriate development in the Green Belt, and any other harm, whether this is clearly outweighed by other considerations so as to amount to very special circumstances.

Reasons

8. The appeal site is located just off a small access road from the A690, behind a number of residential properties. The mast that is the subject of the appeal was erected on a temporary basis to replace another mast in the area that had reached the end of its lifespan. It was intended to be in place for a temporary period whilst planning permission was sought for a permanent site elsewhere.
9. As noted above, telecommunications masts may be erected using permitted development rights for a limited period. Although the Council extended this period to exceed 24 months to allow the appellant time to gain planning permission for a new permanent mast, this has not yet been achieved.

Whether or not inappropriate development

10. Section 13 of the National Planning Policy Framework (NPPF) attaches great importance to Green Belts. New buildings are generally found to be inappropriate in the Green Belt, although paragraph 145 of the NPPF sets out a number of exceptions. Policy E1 of the City of Durham Local Plan (LP) similarly aims to protect the Green Belt.
11. The erection of the mast does not fall within the exceptions listed as not inappropriate in the NPPF. It therefore amounts to inappropriate development which is, by definition, harmful.

The effect of the development on the Green Belt

12. NPPF paragraph 133 states that the 'the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence'. In this case, the appellant seeks a temporary permission for the mast for 12 months whilst an alternative site is built and integrated into the network. To that extent, the development would not have an effect on the permanent openness of the land. However, temporary development can still be inappropriate in the Green Belt.
13. The courts have held that the openness of the Green Belt has a spatial aspect as well as a visual aspect. In addition to the mast, the associated infrastructure comprises a number of cabinets situated at its base. These are small in scale, and whilst they do therefore occupy space in the Green Belt, I am satisfied that their overall impact on openness is minimal. There is little evidence to show that they are conspicuous in views other than at close range to the development, and so their effect on visual amenity is also limited.
14. The mast itself stands at a height of approximately 22m. It comprises a tall slender monopole supported by metal struts at the base, and a number of wires attached to secure it in place. None of these elements are significant in terms of their volume.
15. However, the pole is clearly visible in the surrounding area, with the antennae and dish at the top making it more conspicuous when seen from longer views. It is therefore clearly a form of development that encroaches into the landscape and extends the built form of the settlement, thus conflicting with the purposes of the Green Belt.

The effect on the character and appearance of the surrounding area and the AHLV

16. In addition to the Green Belt designation, the appeal site is located in an AHLV. LP Policy E10 seeks to resist development that would have an unacceptable adverse impact on the landscape quality or appearance of the AHLV. Development should respect the character of its landscape setting in terms of its siting, design, scale, materials, landscaping, protection of existing landscape features and relationship with nearby buildings.
17. With regard to telecommunications, LP Policy U1 provides that planning permission will be granted where the benefits arising from the development would outweigh any environmental damage. Amongst the factors to be considered is the relationship between the design of the equipment and the site and its surroundings.
18. The appeal site sits on the edge of the Durham conurbation, at a point where the built-up edge of the city gives way to more open areas of agricultural land to the south and predominantly to the west. From Neville's Cross Bank, adjacent to the site, the mast is largely obscured by tree cover. Similarly from Broom Lane, any views towards the mast are experienced in the context of the heavy vegetation lining the road, the street lamps, and the backdrop of trees and buildings beyond the site.
19. However, the mast is more clearly visible in views as one approaches the bottom of Neville's Cross Bank along the A690 towards Durham. From this approach, the mast appears amongst trees, the street lamps and the modern

buildings behind the appeal site. The mast is clearly taller than the lamps, making it substantially more prominent in these views.

20. From the position of the roundabout on this approach, the aspect opens up and the mast is seen in conjunction with the adjacent open fields. Here, its pleasant landscape backdrop becomes significantly more apparent. Within this context, the mast appears at odds with its rural surroundings. It extends the built envelope of the settlement at a point where there is a notable visible transition into the open countryside. At this closer range, its height and top-heavy appearance are incongruous with the surrounding natural elements, and the domestic scale of the adjacent buildings. The development therefore has a harmful effect on the character and appearance of the surrounding area, and the visual amenity of the Green Belt.

Living conditions

21. In their statement of case, the Council refer to the impact of the proposal on the residents at Hawthorn Edge, which is the nearest residence to the mast location. The Council state, and the appellant does not dispute, that a number of habitable rooms within the dwelling look towards the site. The mast also sits within the outlook from the outdoor garden space at the property.
22. As noted above, the mast does not have sufficient volume or bulk to entirely block the outlook from the dwelling, or cause overshadowing. Nonetheless, due to its height and proximity, it represents a significant visual intrusion where none previously existed. It is a constant presence in views from inside the house, and from the garden area. As the recreational outdoor space available at the property is limited, the effect on residents using this space is all the more significant. I therefore conclude that the development has an unacceptably harmful impact on the living conditions of nearby residents, contrary to LP Policy U1, insofar as it requires telecommunications developments to have an acceptable relationship to their surroundings, and the NPPF, which requires a high standard of amenity for existing users.

Other considerations

23. The NPPF, at paragraph 112, states that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Paragraph 115 directs that applications should be supported by the necessary evidence to justify the proposed development. For a new mast or base station, evidence is required to show that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure. In addition, LP Policy U1 provides that telecommunications developments within statutory designated areas will only be permitted where there are no alternative suitable sites available and there is a proven national need for the development.
24. The appellant states that the installation is essential for the operator to bring optimum telecommunications and mobile broadband services to the area, and also to give coverage to the Emergency Services Network. Whilst there can be no doubt of these general needs in the area, specific information relating to need in this particular location, such as a signal map, is lacking. From the planning history, it is clear that a number of potential sites for a permanent mast have been identified and the relevant applications submitted. However, none of these have yet resulted in permission for the permanent mast.

25. I note that the cell search area is constrained by a number of different factors. However, beyond the statement of case, the appellant has produced little substantive technical evidence to support their case. Few details have been produced of the search process being undertaken to find a permanent site. For example, no schedule of discounted sites or potential sites under investigation has been made available. Similarly, no details have been submitted to show that the possibility of situating antennas on existing structures has been explored and discounted, as required by the NPPF.

Balance and conclusion on ground (a)

26. I have found that the development constitutes inappropriate development in the Green Belt, and that its effect on the purposes of the Green Belt, the character and appearance of the AHLV and the living conditions of neighbours is harmful. It is therefore necessary to consider whether very special circumstances apply that would outweigh the harm I have identified.
27. Whilst a compelling necessity for the retention of the development for 12 months would weigh strongly in its favour, I am not convinced that the available evidence demonstrates this necessity. I appreciate that the harm identified would exist for a finite period. Nevertheless, bearing in mind the force of Green Belt policy in particular, and the harm to living conditions that would persist for the duration of that time, I am not convinced that very special circumstances have been demonstrated in this case. The development thus unacceptably conflicts with LP Policies E1, U1, E10, and the NPPF.
28. The appeal on ground (a) thus fails and the deemed planning permission is refused.

The appeal on ground (g)

29. The appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. The appellant considers that 12 weeks is insufficient time for the requirements to be carried out, and that six months should be allowed.
30. However, they have not specified why six months should be necessary to carry out the work. As noted above, the mast comprises a tall pole with supports, and the cabinets are relatively compact and small. It does not seem to me that it should be particularly complex or time consuming to dismantle them and remove them from the site. In the absence of convincing evidence to the contrary, I find that 12 weeks is a reasonable timeframe in which to carry out the requirements of the EN. The appeal on ground (g) therefore fails.

Overall conclusion

31. The appeal is dismissed and the enforcement notice is upheld.

Elaine Gray

INSPECTOR