
Appeal Decision

Site visit made on 4 August 2020

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 August 2020

Appeal Ref: APP/J1535/W/20/3249641

Land at Tile Hill Farm, adj. A121, Waltham Abbey EN9 3QN

- 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 EE Ltd & Hutchinson 3G UK Ltd against the decision of Epping Forest District Council.
 - The application Ref EPF/1669/19, dated 2 July 2019, was refused by notice dated 7 January 2020.
 - The development proposed is to upgrade to existing Telecoms site with a 25 metre high CF31 lattice tower on a new 6.8 x 6.8 x 1.0 metre concrete base with associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Different addresses have been used on the application form, appeal form, and decision notice. I have adopted the address from the appeal form, which most accurately describes the location of the site.
3. The appellant has stated that the appeal has been made in relation to a 'rev D' set of drawings. The Council has stated that the correct drawing set is 'rev A'. 'Rev A' are the drawings that have been referenced on the decision notice. The appellant has not formally requested that the 'rev D' drawings be submitted as part of the appeal process. I have therefore determined the appeal on the basis of the 'rev A' drawings.
4. The Epping Forest District Local Plan Submission Version 2017 (the emerging LP) is currently under examination and is likely to be the subject of further modifications and as such carries limited weight. The Council have acknowledged that emerging Policy GB4 of the emerging LP was referred to within the first reason for refusal in error and it should have been emerging Policy DM4. I have reflected this in my decision.
5. The Council have referenced Policy U6 of the Epping Forest District Local Plan, January 1998 (the LP), and emerging Policy DM5 of the emerging LP in relation to the Green Belt reason for refusal. However, these policies do not relate to the Green Belt. They are, though, relevant to the effect of telecommunications masts on the character and appearance of the area and the effect of the proposal with regard to trees. I have therefore assessed the proposed development and its effect on trees and the consequential effect on the character and appearance of the area in relation to these policies. I also note that the Council have also referenced Policy ST1 of the Local Plan Alterations,

July 2006 (the Alterations) in relation to the Green Belt reason for refusal, but this Policy is in relation to high trip generating development, such that it is not relevant to the appeal proposal.

Main Issues

6. The main issues are:

- whether the proposal would be inappropriate development in the Green Belt;
- the effect of the proposal on the openness of the Green Belt, and the effect on the character and appearance of the area, in particular in relation to trees; and
- whether any 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' required to justify the proposal.

Reasons

7. It is proposed to erect a 5G telecommunications mast and associated ground level compound and cabinets on land adjacent to an existing telecommunications mast. The appellant states that the ground level compound and cabinets do not form part of the proposal because they are permitted development. However, it is reasonable to assume that these would only be constructed as part of the proposed works as they are intrinsically connected to the functioning of the proposed mast. They would not be built if the mast were not built, and equally the mast would not be built without the ground level works. I have therefore considered the cumulative effect of the proposed mast and ground level works.
8. The existing mast is approximately 20 m high and constructed of one, slender monopole. The proposed mast would be approximately 25 m high and constructed of a bulky latticework steel structure. It is unclear from the submitted drawings and description of development if the existing mast would be retained or demolished as part of the proposed works. However, the appellant's written submissions indicate that the intention would be to demolish the existing mast and all of the existing associated ground level infrastructure apart from the fence, a meter cabinet, and the concrete bases. The demolition of the existing mast and relevant ground level infrastructure could be controlled by condition and I have therefore assessed the proposal on this basis.

Inappropriate development

9. A 'building' is defined in The Town and Country Planning Act 1990 (as amended) as including any structure or erection. The proposal is therefore for a building. It is not for an 'engineering operation' because the proposal would not change the physical nature of the land. The construction of new buildings should be regarded as inappropriate in the Green Belt other than in respect to a limited range of specified exceptions, as set out in Paragraphs 145 and 146 of the National Planning Policy Framework (the Framework).
10. One exception, as set out at part d) to Paragraph 145 of the Framework, is the replacement of a building, provided the new building is in the same use and not

materially larger than the one it replaces. The proposal is for a mast that would be around 5 m taller than the existing mast and substantially more bulky along its length. It would therefore be materially larger than the mast it would replace. It would not, therefore, meet this exception. I have found no reason to believe that the appeal scheme would meet any of the other exception criteria of either Paragraphs 145 or 146 of the Framework. Accordingly, the proposal would be inappropriate development in the Green Belt in the terms of the Framework. This is reflected in emerging Policy DM4 of the emerging LP.

Openness, and character and appearance

11. The site is within a dense area of woodland and the trees within the woodland are protected by a Tree Preservation Order (TPO). The existing mast is largely masked by the existing trees, although the highest elements do appear above the tree line. The additional height of the proposed mast would all be above the tree line. The greater bulk of the proposed mast would also be clearly perceived above the tree line. The proposal would therefore harm the spatial openness of the Green Belt. The site is not readily visible from either short or long views due to the surrounding trees, but the existing mast is intermittently visible from various points along the A121 road, and from long distance views. The proposal would therefore also harm the visual openness of the Green Belt. I find that this harm to openness would be moderate.
12. In addition, construction of the proposed mast and ancillary ground level works would likely involve felling trees. An Arboricultural Impact Assessment (AIA) has been provided in this regard. However, this relates to the 'rev D' version of the proposal and not to the 'rev A' proposal that forms the basis of my assessment of this appeal. The AIA does not, therefore, provide any assessment in relation to the proposed tree loss from the appeal proposal. It does, however, confirm that there are 3 Category A trees that have root protection areas where the mast and associated works are proposed, and which may, therefore, be affected by the proposal.
13. Because the site is located so close to the edge of the wood, alongside open farmland, the potential loss of trees would be likely to increase any effect of the proposal on visual openness of the Green Belt by opening up views of the site. The loss of trees from the wooded area of the site and surroundings would also likely harm the character and appearance of the area, which is largely derived from the dense existing woodland. In the absence of an assessment of which, and how many, trees would be lost, it has not been demonstrated if any harm caused would be acceptable.
14. This cannot be conditioned because the degree of tree loss could determine whether the proposal would have an acceptable effect on the character and appearance of the area, and the degree of harm it would have on the openness of the Green Belt. The degree of loss could also determine whether replacement planting and a landscaping strategy could adequately mitigate any harmful effects in these regards. A condition to control the colour of the proposed mast could possibly partially mitigate its visual effect, but this would not be able to entirely, or likely even significantly, camouflage the mast. It would therefore not overcome the principle of the additional bulk and mass proposed.
15. Consequently, it has not been demonstrated that the proposal would not harm the character and appearance of the area as a result of the effect on trees, and

the proposal therefore fails to comply with the relevant parts of Policies LL10 and U6 of the LP, which, amongst other criteria, require the adequate retention of trees and that telecommunications masts do not seriously harm the character and appearance of the area. It also fails to comply with the relevant parts of emerging Policy DM5 of the emerging LP which, amongst other criteria, requires development to retain and where possible enhance green infrastructure including trees. The proposal fails to comply with the relevant parts of Paragraph 170 of the Framework which, amongst other criteria, recognises the intrinsic character and beauty of the countryside and trees.

Other Considerations and Planning Balance

16. Paragraph 144 of the Framework indicates that substantial weight should be given to the harm to the Green Belt that I have identified. I also place significant weight on the potential harm to the character and appearance of the area as a result of the potential effect on trees, particularly as this relates to trees the subject of a TPO and the associated potential increase of any Green Belt harm.
17. I am mindful that Paragraph 112 of the Framework supports the expansion of 5G electronic communication networks. Paragraph 113 of the Framework states that the use of existing masts is encouraged. Although in a slightly different location, the proposed mast would be adjacent to the location of the existing mast. The proposal is therefore, in essence, for the re-use of an existing electronic communications network site. It would also be a shared base station between H3G and EE, as well as the Emergency Services Network. All these factors weigh in favour of the proposal.
18. The appellant states that the proposed height is the minimum necessary to provide adequate coverage and that the existing area is lacking in 5G connectivity. However, no technical information on cell and radio coverage has been provided to justify the necessity of the mast, its proposed height, or to help frame an understanding of what alternative locations should be assessed. The need for a mast of the proposed height in the proposed location has, therefore, not been adequately established and I place limited weight on this factor.
19. Overall, I find that the other considerations in this case do not clearly outweigh the moderate harm to the Green Belt. Consequently, the 'very special circumstances' necessary to justify the development do not exist. The proposal therefore fails to comply with Paragraph 143 of the Framework. It also fails to comply with the relevant parts of Policies GB2A and GB7A of the Alterations which, amongst other criteria, resist development that would not preserve the openness of the Green Belt and that would be conspicuous from within or beyond the Green Belt.

Other Matters

20. The proposed development is sited within the Epping Forest Special Area of Conservation (the SAC). This is a European site. There is the potential that the proposal would result in tree loss within the SAC. Using the precautionary principle, I therefore conclude that the proposed development has the potential to have significant effects on the integrity of the SAC. Had the proposal been acceptable in planning terms, it would have been necessary for me to have undertaken an Appropriate Assessment (AA) as the competent authority.

However, the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an AA is only necessary where the competent authority is minded to approve planning permission, so I have not undertaken an AA.

21. I note the other concerns raised locally, in particular the potential effects of the development on health. However, a Declaration of Conformity with the International Commission on Non-Ionizing Radiation Protection (ICNIRP) Public Exposure Guidelines has been submitted, demonstrating compliance with Paragraph 115 of the Framework. I am directed by Paragraph 116 of the Framework not to set health safeguards different from the ICNIRP Public Exposure Guidelines and the proposal is acceptable in this regard.

Conclusion

22. For the reasons above, I conclude that the appeal be dismissed.

O S Woodward

INSPECTOR