



Appeal Decisions

Site visit made on 18 November 2020

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2020

Appeal A: APP/A1910/C/20/3256772

Appeal B: APP/A1910/C/20/3256773

Land at Leighton Buzzard Road, Hemel Hempstead, Hertfordshire HP1 1BS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Telefónica UK Limited and Appeal B by Cornerstone against an enforcement notice issued by Dacorum Borough Council.
- The enforcement notice was issued on 4 June 2020.
- The breach of planning control as alleged in the notice is: *Without planning permission, the siting of a telecommunications mast, associated equipment and base.*
- The requirements of the notice are:
 - Step 1: Remove telecommunications mast, associated equipment and base and all resulting materials from the land.
 - Step 2: Restore the land to its condition before the development took place.
- The period for compliance with the requirements is 4 months.
- Both appeals are proceeding on the grounds set out in section 174(2)(a), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought under ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made, under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the erection of a telecommunications mast, associated equipment and base on land at Leighton Buzzard Road, Hemel Hempstead, Hertfordshire HP1 1BS referred to in the notice, subject to the following condition:
 - 1) The telecommunications mast and associated equipment hereby approved shall be totally dismantled and permanently removed from the site within 12 months of the date of this permission and the land restored to its former condition.

Background

2. Telefónica UK Ltd and Vodafone Ltd have supplied the local area with a mobile network coverage from a base station on the roof of Hamilton House, 111 Marlowes, in the centre of Hemel Hempstead close to the appeal site.
3. Following notice to quit Hamilton House, as the building was being refurbished, a temporary base station was deployed at the appeal site as an

emergency installation for a period not exceeding 18 months under permitted development rights (PD) under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the 'GPDO').

4. The emergency base station that was installed, and which I saw on my visit, comprises a 24 metre high lightweight lattice mast, with 3 antennas, 2 dishes and 2 equipment cabinets all within a fenced compound and ancillary works. The mast was sited on top of a base of what looked like concrete slabs. The base station was intended for a temporary 18 months while a replacement site and permanent solution was found. The parties agree that the 18 month temporary expired in April 2020.
5. The appellants submitted a Prior Approval application¹ for a permanent telecommunications base station on the roof of Joseph Maitland House, 35 Marlowes, located close to the appeal site. On 26 May 2020 the Council confirmed that 'prior approval is not required', hence allowing a new replacement base station at the nearby Joseph Maitland House.
6. The appellants also submitted a planning application² at the end of March 2020 to retain the temporary telecommunications base station at the appeal site for a further 2 years, to allow time to negotiate rights for occupation and to build and commission the replacement base station on the roof of Joseph Maitland House. This temporary planning application was refused on 26 May 2020.
7. Following refusal of planning permission, on 4 June 2020 the Council issued an enforcement notice against the temporary base station at the appeal site, requiring its removal within 4 months.

The Appeal on Ground (e)

8. An appeal on ground (e) is that copies of the notice were not served as required by s172 of the Act – that is, on the owner(s) and occupier(s) of the land to which it relates; and on any other person having an interest in the land, being an interest which, in the opinion of the Council, is materially affected by the notice. It is a legal ground of appeal and the onus is on the appellants to make their case on the balance of probability.
9. The appellants contend that only Telefónica UK Ltd was served directly with a copy of the enforcement notice and Cornerstone³ were not notified via direct correspondence as they should have been. Whilst the agent has now forwarded relevant copies of the notice to the relevant parties, they assert that this is not sufficient for the Council to fulfil the criteria required by s172(2) and question the validity of the notice. Furthermore, the agent states that Telefónica UK Ltd did not bring the matter to the attention of Cornerstone.
10. The Council did Land Registry and highway checks to reveal that the Homes and Communities Agency were landowner, and Hertfordshire County Council had an interest in the land as the mast was located on highway that is

¹ LPA ref: 20/00833/TEL

² LPA ref: 20/00803/FUL

³ Cornerstone Telecommunications Infrastructure Ltd

maintainable at public expense. The notice was served on both of them. From previous correspondence with the agent, the Council was under the impression that the agent was representing Telefónica UK Ltd only.

11. I note that the covering letter submitted to accompany the planning application explains that Telefónica UK Ltd has entered into an agreement with Vodafone Ltd to jointly operate and manage a single network grid across the UK. These arrangements are overseen by Cornerstone, which is a joint venture company owned by Telefónica UK Ltd and Vodafone Ltd. This indicates to me a close relationship and connection between the two companies and appellants.
12. The enforcement notice was served on "Cornerstone and Telefónica UK Ltd" at an address at 260 Bath Road, Slough SL1 4DX. This address is the same one that the appellants gave on the planning application form, submitted for the 2 year retention of the mast at the appeal site. Furthermore, the address both appellants have given on the appeal form is also 260 Bath Road.
13. Therefore, a copy of the enforcement notice was served at the address currently used and given by both appellants, even if the notice was not served at Cornerstone's registered office. I find the Council's use of this address was not unreasonable in light of recent communications. The fact that Telefónica UK Ltd failed to bring the matter to Cornerstone's attention is a private matter between Telefónica UK Ltd and Cornerstone.
14. I find that on the balance of probability the notice was served as required by s172 of the Act. In any event, s176(5) provides that failure to serve the notice as required may be disregarded if the appellant or person required to be served with a copy of the notice has not been substantially prejudiced. Both Cornerstone and Telefónica UK Ltd have appealed the enforcement notice jointly and therefore neither party has been substantially prejudiced.
15. The appeal on ground (e) therefore fails.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

16. The main issues in this case are:-
 - The effect of the appeal development on the character and appearance of the area, and
 - The effect of the appeal development on the setting of the Hemel Hempstead Water Gardens, a Grade II Registered Park and Garden.

Reasons

Character and appearance

17. The appeal mast is located on a wide grassed highway verge on the eastern side of Leighton Buzzard Road, a main vehicular thoroughfare in and around the town. The mast is also adjacent to a junction of pavements and a traffic light controlled pedestrian crossing that links the residential properties on the western side of Leighton Buzzard Road to the town centre. By the mast and pedestrian crossing, the route cuts through a hedge that helps screen the surface and multi storey car parks of Water Gardens (south) and Water

Gardens (north) respectively. Bridge Street straddles the River Grade that runs through the centre of the Water Gardens, a Grade II Registered Park and Garden, and continues into the town centre.

18. Despite the electricity cabinets near the traffic light crossing, the verge is relatively uncluttered with street furniture, and street lamps are slimline with a simple bent flat head.
19. There are some trees along Leighton Buzzard Road and a few in the adjacent Water Gardens. Whilst they provide some short lived screening on the distance approaches along the road, there are none on the verge in the immediate vicinity of the mast. As such the mast occupies an open and prominent location on the wide verge, read principally against the sky from various viewpoints. It is highly visible to those living in the houses opposite, to passing traffic on this main route and to pedestrians walking past and those waiting at the pedestrian crossing.
20. Despite the see-through lattice structure, the mast has an excessive bulk due to its triangular tower construction and the large concentric slab on which the mast is placed with metal fencing around. Furthermore the black electricity cabling that runs up the mast and the three antenna and dishes spaced out at the top viewed against the sky compound this. As a result, the lattice tower construction is wider and more noticeable than most monopole masts and detracts from the relatively uncluttered street scene.
21. I appreciate that the mast was an emergency temporary installation, unlike the masts cited in the various appeal decisions submitted as examples, and its design reflects its necessity and function. And telecommunication installations are more common features these days. Nonetheless this lattice tower mast appears unduly makeshift, especially with the metal security fencing around it and the overgrown grass. Furthermore, with the lattice tower approximately twice the height of nearby street lamps and being silhouetted against the sky, it appears as an unduly discordant vertical spikey intrusion. And this visual intrusion continues when seen from public vantage points around, including from the adjacent Water Gardens.
22. For the reasons above I find this temporary lattice mast construction unacceptably harms the character and appearance of the area. Accordingly it conflicts with Core Strategy Policy CS12, which seeks to ensure that development is designed to integrate with the street scape in which they are sited.

Setting of Grade II Registered Park and Garden

23. The mast is immediately adjacent to the Civic Water Gardens. Being a grade II Registered Park and Garden they are a designated heritage asset to which great weight should be given to its conservation, in accordance with paragraph 193 of the Framework.
24. The gardens were designed by Geoffrey Jellicoe in the 1950s, who was a foremost landscape architect and planner who master planned Hemel Hempstead New Town as a 'city in a park'. An integral component of this was the linear Water Gardens running over 600 metres in length north south with the River Gade flowing through. It was intended as a place for pleasure and relaxation. It is attractively landscaped with canals, weirs, bridges, viewing

platforms and associated planting by Jellicoe's wife. Their significance derives from them being a rare and intact example of a town centre water garden created during the post-war renewal and new town development. They are experienced from within and out as there is no solid boundary to them.

25. Waterhouse Street runs parallel to the gardens on its eastern side and is another main thoroughfare linking to the town centre, from which the gardens can be enjoyed. Bridge Street forms a central crossing over the gardens, complemented on either side by pedestrian footbridges. Bridge Street provides vehicular access to the car park entrances, and pedestrian access to the traffic light crossing on Leighton Buzzard Road. Approaching the car parks and crossing on Bridge Street, the mast is clearly visible, although a tree provides partial screening for a short while.
26. The Council advises that since the gardens have been restored they are used more. Whilst I visited during a national lockdown, I saw on my visit that the gardens were well maintained and in good use by people of all ages sitting and walking and were obviously appreciated. I found the gardens provide a landscaped heart to the town centre, offering peace and tranquillity despite their proximity to both the town centre and Leighton Buzzard Road.
27. There are various sustained views and designed vistas of the Water Gardens from Waterhouse Street and Moor End Road at the southern end. From here the appeal mast is clearly visible against the sky. Whilst there are lampposts along Waterhouse Street, an expected feature of a highway, their uniformity and low slimline design does not detract. However, the appeal mast, with its lattice tower and the spaced out antennae at twice the height of the average lamppost viewed against the sky, are visible in the designed longer vistas. They are an unwelcome and incongruous visual intrusion that detracts from the attractive designed landscape and is harmful to the setting of the designated heritage asset.
28. The Code of Best Practice on Mobile Network Development (November 2016) advises that for proposals which affect designated heritage assets, operators should seek a meeting at the earliest possible stage with the local planning authority's conservation officer and where appropriate Historic England. I understand this did not happen when the mast was installed as an emergency. Notwithstanding this, the Code advises that account should be taken of the visual impact of the proposals on the significance of the site and its setting. For the reasons above I find the mast is harmful to the setting of the registered Water Gardens.
29. The harm would nonetheless be less than substantial. In such circumstances, paragraph 196 of the National Planning Policy Framework ('the Framework') advises that the harm that would be caused should be weighed against the public benefits of the proposal.
30. Retention of the temporary base station is required until such times as a permanent solution can be implemented, in order to maintain network coverage and capacity whilst also supplying 4G services in the Hemel Hempstead Town Centre area, the residential area beyond this to the north, west and east, and the Hemel Hempstead General Hospital following the decommissioning of the previous base station site that was located on Hamilton House, Marlowes, Hemel Hempstead.

31. Paragraph 116 of the Framework requires that decisions are made on planning grounds only and paragraph 114 states that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. The reliance on telecommunications has been tested and heightened during the current Covid-19 pandemic with the whole country subject to lockdowns and various restrictions. This has meant people have been being advised to work remotely from home wherever possible; education at schools, colleges and universities has depended more on on-line teaching and learning; there has been increased dependency for shopping and medical and other appointments. There has also been increased use and dependency on accessing and using mobile devices for social interaction and staying connected with friends and family, especially important for those who have been shielding or who are self-isolating.
32. The government's advice⁴ during the pandemic recognises that "Now, more than ever, the country is reliant on fixed line and mobile communications networks. And as a result, telecommunications has therefore been included as one of the critical sectors in new government regulations and legislation in response to dealing with the COVID-19 outbreak."
33. The appellant has been granted Prior Approval for a replacement base station on the roof of Joseph Maitland House, but the site is not yet ready and will take more than the 4 months given in the enforcement notice. I understand the replacement site is being progressed under an Electronic Communications Code Agreement via the courts. However, I have not been furnished with any substantial evidence as to why a replacement base station was not secured in advance of the temporary consent expiring, which the appellant would have been well aware of. Nor has the appellant submitted any substantive evidence or timeline to explain any delays in getting the replacement base station up and operating at Joseph Maitland House to indicate why a substantially longer period of 24 months is needed. Nonetheless, I have no evidence to raise doubt in my mind that the replacement base station site will not be forthcoming or to doubt that the appellants have every intention of bringing the development to fruition.
34. Due to the unprecedented times we are currently in and the heightened use and dependency on telecommunications, I consider it would not be in the public interest to see the coverage in the town centre disrupted until a replacement facility is brought into operation.
35. Whilst there would be some conflict with Core Strategy Policy CS27, which seeks to protect and conserve the integrity, setting and distinctiveness of designated heritage assets, I find that retaining the base station in its current position for a short-term period, while the approved alternative base station site is made operational, amounts to a public benefit of sufficient weight to outweigh the temporary harm to the heritage asset of the Water Gardens.

Conditions

36. The Council has suggested one condition that would require the appeal development to be totally dismantled and permanently removed from the site within 6 months.

⁴ Department for Digital, Culture, Media and Sport published guidance April 2020

37. Any conditions would have to meet the statutory tests and be necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects as required by the Framework and the Planning Practice Guidance.
38. The enforcement notice has a compliance period of 4 months, but the notice would not have come into effect for 56 days (2 months). The Council explain that this was done purposely to give the appellants the 6 months they said they needed when the matter was being discussed between the parties.
39. In their Final Comments, submitted at the end of October, the appellants state that whilst 24 months would be the ideal time period for the planning permission, it is 'potentially feasible to achieve a replacement in 12-18 months.'
40. The appellants' Prior Approval for the replacement site was granted on 26 May 2020, which is almost 6 months ago. Unlike the usual suspension of time whilst an appeal is determined, I have no reason to believe that the appellant has not continued in the interim to progress the various necessary requirements and processes to get the replacement site operational, and which they say they have every intention of doing.
41. However, I concur with the Council that the existing 18 months granted for the temporary emergency installation and the 2 years wanted by the appellants would amount to over 3 and a half years for an inappropriate design of telecommunications mast being sited in a prominent location harming the character and appearance of the area and the setting of the designated Water Gardens. This is too long.
42. To that end, I consider a condition granting a 12 month time period meets what the appellants say would be feasible and strikes a proportionate and reasonable balance between the public benefits and the harm caused.

Conclusion

43. Overall I find there is harm to the character and appearance of the area, as well as to the setting of the Grade II Registered Water Gardens. Whilst therefore there would be policy conflict with Core Strategy Policies CS12 and CS27, I find the public benefits of retaining the temporary mast for a further 12 months to ensure continued network coverage and capacity until the replacement site is operational, outweighs both these harms.
44. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted with conditions.
45. The appeal on ground (g) - that the period specified for compliance with the notice falls short of what is reasonable - does not therefore need to be considered.

K Stephens
INSPECTOR