



Appeal Decision

Site visit made on 18 November 2020

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2021

Appeal Ref: APP/V2255/W/20/3252066

Grass verge on south-east side of Highview Road adjacent to Minster Methodist Church at the junction with Wards Hill Road, Minster-on-Sea, ME12 2LL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by EE Ltd and Hutchinson 3G UK Ltd against Swale Borough Council.
 - The application Ref 19/502937/FUL, was dated 5 June 2019.
 - The development proposed is upgrade of existing telecoms site including installation of phase 7 monopole with wraparound cabinet at base and associated works.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The description of the location of the proposed installation is given on the application form as "SW on Highview Road". This is not a particularly accurate indication of the location. I have therefore amended it to 'Grass verge on south-east side of Highview Road adjacent to Minster Methodist Church at the junction with Wards Hill Road'.
3. Although the appeal was made on 6 May 2020, against the council's failure to give notice of the decision within the prescribed period, the council subsequently issued a decision notice dated 13 May 2020. This notice purported to give the following reasons for refusal:
 - 1) The replacement monopole tower and equipment cabinets, by reason of site coverage, cumulative visual impact, height, scale, bulk, materials and prominent location would result in incongruous and harmful overdevelopment of the site to the detriment of visual amenity of the area. As such, contrary to para 113 of the National Planning Policy Framework (NPPF) and policies CP4 and DM14 of the Swale Borough Local Plan (2017)
 - 2) The replacement monopole tower and proposed 'EE Cabinets' due to their bulk, scale and proximity to the vehicle crossing of No 1 Highview Road would interfere with visibility to the north of the access to the detriment of pedestrian and highway safety. As a result the development would be detrimental to the free flow of traffic and would adversely compromise highway safety contrary to Policy DM6 and DM14 of the Swale Borough Local Plan 2017

Main Issues

4. There are 2 main issues in this case: i) the visual effect of the proposal on the street scene and surrounding area, balancing any adverse effect against the need for modern telecommunications development; and ii) the effect on pedestrian and highway safety.

Reasons

The visual effect of the proposal on the street scene and surrounding area

5. As can be seen from the text of the council's first reason for objecting to the proposal, it considers that the development would be contrary to Policies CP4 and DM14 of the Swale Borough Local Plan 2017 (SBLP). Policy CP4: *All development proposals will be of a high quality design that is appropriate to its surroundings*, and specifically item 8: *'Be appropriate to the context in respect of materials, scale, height and massing'*. Policy DM14 stipulates that development should: *"Cause no significant harm to amenity and other sensitive uses and areas"*.
6. The appeal site is alongside the position of the existing installation (the existing monopole to be removed), within an established telecommunication cell. It is to upgrade the existing cell with new equipment to facilitate 5G coverage. At ground level, moving in a south-westerly direction, 1 'pogona' cabinet and the phase 5 monopole would be removed, followed by the retention of the 'draw pit' and 'nec' cabinet and the removal of 2 smaller cabinets. Next, 'side by side 3900A cabinets' would be removed and replaced with a 'mk5 link ac cabinet' and 3 'H3G cabinets'. There is then, further to the south-west, the site of the proposed phase 7 monopole with wraparound cabinet at its base, followed by 2 proposed 'EE cabinets'.
7. Leaving aside for a minute the phase 7 monopole, at ground level there would be a general moving of cabinets to the south-west. There would be slightly more, mostly larger in size, replacement cabinets than the existing cabinets. The proposed cabinets would be sited in the grass verge, as are the existing. As far as the impact of the cabinets is concerned, they are more noticeable for the fact that they are separate elements spread along a length of verge beside the footway. In this regard, I consider that they would only be a little more obtrusive than the existing equipment, and would not be an unacceptable element in the street scene.
8. The proposed phase 7 monopole would be considerably different to the existing monopole. The existing monopole has a height of 12m, whereas the proposed new pole would have a height of 20m. In addition, unsurprisingly, the diameter of the proposed pole is larger; I have not had a figure for this quoted, but since the 'wrap around cabinet' has a width of 0.6m, I take it that the pole diameter would be a little less. This diameter may be enough to impinge so much on peoples consciousness, that they instinctively look up to see the top. In addition, the monopole is proposed to be sited further to the south-west than the existing, where it would be seen against the lower, flat roofed, part of the church, rather than the part with the much higher pitched roof.
9. For some local people, it may well be the case that simple antipathy to the development would mean that every time it was in view, they would take in the totality of the cabinets and the monopole and their view of the immediate area

would be harmed as a result. However, for perhaps the majority, the eyes would remain concentrated on near ground level; familiarity would leave them with no imperative to look at what is above. I therefore conclude that the paraphernalia of boxes and the pole itself would undoubtedly be more intrusive in the street scene than the existing installation. However, for the most part it would become a familiar feature that becomes accepted, and does no real harm to peoples appreciation of the immediate street scene. There would be some who may even see the equipment as beneficial in providing a good telecommunications service.

10. This last point leads me to the National Planning Policy Framework (the Framework) which has an emphasis on sustainable development. The Framework has 3 overarching objectives: including the economic and social objectives which the appeal proposal would help to achieve. Framework paragraph 112 emphasises that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being; and planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology, which play a vital role in enhancing the provision of a range of local community facilities and services.
11. Framework paragraph 113 includes the statement *"the number of radio and electronic communications masts, and the sites for such installations, should be kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion. Where new sites are required (such as for new 5G networks, or for connected transport and smart city applications), equipment should be sympathetically designed and camouflaged where appropriate"*.
12. In the present case, the network sharing operators have an existing installation that serves a particular 'cell'. The selection of the site was previously recognised by the grant of planning permission as a suitable choice given all the requirements that must be met. During my site visit I was able to appreciate from the topography, the obvious advantage that this location has in terms of providing a service to as wide an area as possible. The upgrade installation with 5G also needs to be at the height sufficient to clear International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines and thus there is no scope to lower the height of the array.
13. In the context of good modern telecommunications being essential for economic growth and social wellbeing, in addition to the current provision of commercial communications services, I note that the new Emergency Services Network (ESN) utilises EE equipment and thus this installation would also be compatible with the Police, Fire and Ambulance Services. The appellants contend that the provision of the communication service for the ESN is part of a network of national importance. There has been no contradiction of this statement. Furthermore, the appellants state that the proposal results from a site selection process that followed a sequential approach; upgrading the existing facility is the most sequentially preferable option.
14. My attention has been drawn to government Policy in relation to the 5G network that is detailed in the 'Future Telecoms Infrastructure Review' document as published by the Department for Digital, Culture, Media & Sport (DCMS). In the Forward to this document the DCMS Minister states the

following: *"We want to ensure that the UK has the strongest conditions in place to secure the investment we need. To do this, as we move from a part fibre, part copper roll out to a full fibre and 5G roll out, we will make sure that competition and innovation can thrive. This means regulation that is limited to where it is necessary, and provides the longer-term stability and predictability that investors need"*.

15. In coming to my conclusions on this issue, I have to make a judgement about the visual effect of the proposal on the street scene and surrounding area, and balance any adverse effect against the very strong government policy to enable advanced, high quality and reliable communications infrastructure to be provided.
16. As far as the visual effect is concerned, at paragraph 9 above I concluded that the proposed monopole and its paraphernalia would undoubtedly be more intrusive in the street scene and that different people may well react differently to it, once it became an established feature. Certainly the visual effect would be concentrated mainly on the local street scene, rather than the wider surrounding area. Quite clearly, the adverse visual effect that the proposal would bring, and its non-conformity with the local plan policies that the council mentions, does amount to an objection of some weight.
17. Set against this, SBLP Policy CP6 'Community facilities and services to meet local needs' is highly supportive of the delivery of timely infrastructure, bearing in mind that Statement 6 'Definition of infrastructure' of the local plan puts telecommunications firmly within the ambit of this policy. Also of substantial weight are the policies of the Framework that I have referred to earlier. These, and the strong policy statement in the government's document 'Future Telecoms Infrastructure Review', make clear the importance of ensuring the UK has the telecoms infrastructure to meet the growing demands of consumers and businesses and promotes the benefits of connectivity across the UK. The appeal proposal is to enable 5G services to be introduced within the existing cell: there has been no suggestion of an alternative way or location to achieve this. In my judgement, the need to provide this upgrade, which is at the heart of the latest advance in speed and quality of mobile service, must over-ride the disadvantage of its greater impact on the street scene.

Pedestrian and highway safety.

18. The second issue relates to the concern that the new monopole tower and proposed 'EE Cabinets', due to their bulk, scale and proximity to the vehicle crossing of No 1 Highview Road, would interfere with visibility to the north of the access, to the detriment of pedestrian and highway safety. This is a concern shared by Kent County Council highways department. The location of the proposed equipment would be closer to the dropped kerb and vehicle crossover of that dwelling than the existing; exacerbated by the added bulk of the monopole's wraparound cabinet at ground level.
19. Highview Road is part of an area primarily residential in nature. It is not a major road that carries heavy traffic, but nevertheless I consider that the proximity of the proposed monopole, with its wraparound cabinet and the 2 'EE' cabinets, would have an adverse impact on the sightlines for vehicles egressing No.1 to an extent that should be avoided if possible.

20. I sought the views of the appellants on conditions that would require the exact position of the monopole and cabinets to be agreed with the council prior to commencement of the development. This was because, if the equipment were placed nearer to the position of the existing monopole, sightlines would be considerably improved (it would also take the monopole into a position alongside the higher part off the church, thus reducing its impact of the street scene to a degree). However, apart from a response that the cabinets should not form part of the planning application process or this appeal as they are Permitted Development (without Prior Approval), I have not had a response to the indication that I gave of the pre-commencement condition that I had in mind - that notwithstanding the submitted details, the precise position of the monopole and cabinets be submitted to and approved by the council. This in spite of reminders sent by the case officer. I take the view that the cabinets are quite clearly part of the totality of the appeal proposal, and their effect on the street scene and on highway safety should be taken into account. In any event, conditions can be imposed on a planning application that remove permitted development rights, where this can be justified by meeting the tests set out in paragraph 55 of the Framework.

Other matters

21. A matter has been raised in representations from Minster-on-Sea Parish Council on the basis of public safety, and from the householder at No.1 Highview Road, which is immediately to the south-west of the Methodist Church, on the basis of personal safety and breach of ICNIRP guidelines. Framework paragraph 116 directs local planning authorities to determine applications on planning grounds only and, in particular, to avoid setting health safeguards different from the ICNIRP guidelines for public exposure. The appeal documentation includes a certificate of compliance with the international guidelines; no detailed explanation has been given to indicate that the certificate has not been properly authenticated. Therefore, the fears expressed are mis-conceived as objections on planning grounds.

Conclusions

22. I conclude that the effect of the replacement monopole and associated equipment on the character and appearance of the street scene and surrounding area would be reasonably limited. This limited harm, which SBLP Policies CP4 and DM14 seek to avoid, is outweighed by the national policy and SBLP Policy CP6, which place considerable emphasis on providing and maintaining high quality and reliable communications infrastructure.
23. However, the proposal before me would have an adverse impact on the sightlines for vehicles egressing No.1 and thereby affect pedestrian and highway safety to an extent that should be avoided if possible. Since I believe that this harmful effect could be avoided, as explained in paragraphs 20 above, I consider that the appeal proposal is unsatisfactory as it stands, and I cannot impose a pre-commencement condition without the agreement of the appellants. The degree to which harm would arise to pedestrian and highway safety, which I believe could be avoided, justifies the dismissal of the appeal.

Terrence Kemmann-Lane

INSPECTOR