



Appeal Decision

Site Visit made on 15 February 2021

by Mr Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th February 2021

Appeal Ref: APP/T0355/W/20/3263204

Telecommunications Mast at Legoland Roundabout, Winkfield Road, Windsor SL4 4AY

- 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 (UK) Ltd & H3G (UK) Ltd against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref 20/00052, dated 9 January 2020, was refused by notice dated 12 June 2020.
 - The development proposed is replacement of the existing column with a 20m street works column with 9no. antennas and additional equipment cabinets and ancillary development.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The emerging Borough Local Plan 2013-2033 (Submission Version, 2017) (the EBLP) has reached examination stage. However, it is my understanding that the examination process is continuing. Given that the content of its policies may yet change prior to formal adoption, the EBLP is at a stage that attracts limited weight. I shall consider the appeal on this basis.

Main Issues

3. The main issues are:
 - Whether or not the proposal would be inappropriate development in the Green Belt;
 - The effect upon the openness of the Green Belt;
 - The effect upon the character and appearance of the area, including consideration of the effect upon adjacent trees; and
 - If the proposal would be inappropriate development, whether or not 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 necessary to justify it.

Reasons

Whether inappropriate development

4. The National Planning Policy Framework (February 2019) (the Framework) specifies that the construction of new buildings in the Green Belt shall be

regarded as inappropriate development unless one of several stated exceptions apply. The term 'building' is defined under Section 336 of the Town and Country Planning Act 1990 to include any structure or erection. The proposed street works column with antennas (the new pole) should thus be regarded as a building for the purposes of assessment against the Framework's Green Belt provisions.

5. The exceptions to new buildings being regarded as inappropriate include the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. In this case, the new pole would be materially larger than the existing column to be replaced (the existing pole). Thus, whilst a tight grouping of not dissimilarly sized equipment cabinets is intended (when compared to the existing cabinets to be replaced), the Framework's replacement building exception does not apply to the proposal when considered as a whole.
6. For the avoidance of doubt, the proposal would not constitute engineering operations for the purposes of assessment against the Framework's Green Belt provisions. Indeed, an engineering operation would typically involve works leading to a change in the physical nature of the land affected. The proposal would not meet any of the Framework's inappropriate development exceptions, nor any of the development types considered appropriate within the Green Belt as set out under saved Policy GB1 of the Royal Borough of Windsor and Maidenhead Local Plan (adopted June 2003) (the Local Plan).
7. For the above reasons, the proposal would be inappropriate development in the Green Belt and conflicts with saved Policies GB1 and TEL1 of the Local Plan and with the Framework in so far as these policies affirm that inappropriate development is, by definition, harmful to the Green Belt and that planning permission for telecommunications development will only be granted within the Green Belt where there is no conflict with Green Belt policies.

Openness

8. Whilst the new pole is intended as a replacement, it would not, when compared to the existing pole, occupy the same or a directly comparable location. Indeed, unlike the existing pole, it would be set away from a roundabout surrounded by existing street lighting infrastructure. The new pole would instead occupy a detached location relative to the roundabout and would be sited within an area of grassed verge that is wide and does not accommodate street lighting.
9. Winkfield Road (the road) is served by a pedestrian footway that runs its north-western side, from where direct views of the new pole would be readily obtainable. Whilst the new pole would be of relatively slimline design and the proposed cabinets would be tightly grouped in proximity to its root foundation base, the proposal would lead to a loss of Green Belt openness in a visual sense. This is most particularly due to the new pole's intended height, siting and clear visibility from the road.
10. For the above reasons, the proposal would cause harm to the openness of the Green Belt. The proposal conflicts with saved Policies GB2 and TEL1 of the Local Plan and with the Framework in so far as these policies set out that permission will not be granted for the replacement of existing buildings within the Green Belt if it would have a greater impact on the openness of the Green

Belt, and confirm that the essential characteristics of Green Belts are their openness and their permanence.

Character and appearance

11. The appeal site is situated within a designated Area of Special Landscape Importance and occupies part of a grassed verge situated to the south-eastern side of the road. Notwithstanding the immediate presence of the highway, the site's surroundings are often well-planted and semi-rural in their character and appearance.
12. Even when noting the site's often heavily vegetated surroundings, the new pole would be clearly visible from a range of different locations along the road. Where observable from longer-range vantage points, the new pole would typically be experienced in the context of the roundabout and associated street lighting columns already in place. Nevertheless, the new pole, however coloured, would appear as an imposing and urbanising addition when experienced from the road at close quarters. This is most particularly due to its height and intended detached positioning relative to both the roundabout and the existing pole. Furthermore, the nearest street lighting column to the site is located to the opposite side of the road and distinctly closer to the roundabout.
13. The intended equipment cabinets, being tightly grouped to the new pole's base and in proximity to existing road signage, would appear as ancillary and low-key additions and would thus have a negligible effect upon the area's character and appearance. Indeed, the impact of their proposed introduction must also be considered in the context of the intended removal of an existing grouping of cabinets that, albeit alternatively positioned, is not vastly dissimilar in its size and makeup.
14. I am satisfied, having visited the site, that opportunities would exist to erect the new pole without causing damage to any existing close-by tree specimen. Indeed, the submitted Arboricultural Report (May 2020) indicates that the intended excavations to the edge of root protection areas would be acceptable and that any pruning or crown-raising to facilitate access would be minor and acceptable. I have no clear reason to disagree and note that the implementation of a tree protection method statement (or similar) could be secured via condition in the event the appeal be successful.
15. I am also content that there would be sufficient separation to ensure that any potential for future conflict to occur between existing trees/planting (once fully matured) and the new pole would be minimal. Furthermore, a planning condition could reasonably be imposed to secure full details of any new underground cabling intended to be installed. Indeed, the proposal would not be realistically anticipated to have an adverse or significant effect upon any nearby Site of Special Scientific Interest or Special Area of Conservation. The proposal satisfactorily accords with the requirements of saved Policies N6 and DG1 of the Local Plan in so far as these policies guard against the loss of important features which contribute to the character of the surrounding area.
16. However, for the above reasons, the proposal (more specifically, the new pole) would cause some limited harm to the character and appearance of the area. The proposal conflicts with saved Policies TEL1 and N1 of the Local Plan in so far as these policies require proposed development to be sited and designed so

as to minimise obtrusiveness, and set out that proposals that would adversely affect both long distance and local views within Areas of Special Landscape Importance will be resisted.

Very special circumstances

17. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework also indicates that substantial weight should be given to any harm identified to the Green Belt.
18. The scheme is focussed upon upgrading existing equipment and no additional pole/mast is proposed. Such an approach is promoted by the Framework and the proposal would support the continued efficient operation of digital communication networks. Indeed, I have no clear reason to doubt that the intended 20m height is required to ensure that surrounding tree cover is fully cleared and that a full level of service would not be compromised.
19. As set out in the Framework, advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being and planning decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections. The scheme would support high quality communications and digital connectivity for local businesses and residents, as well as for transient users, by facilitating increased capacity and by providing 5G coverage for multiple nationwide networks, which would include the Emergency Services Network.
20. However, whilst I acknowledge that separation from the existing pole would allow for the new pole to be erected and become operational before the existing equipment is decommissioned, it has not been clearly demonstrated that the new pole must be sited in the precise exposed position that is intended. Indeed, the extent of separation is not insignificant and it has not been clearly demonstrated that potential alternative positions for the new pole (closer to the existing pole, for example) have been thoroughly explored, considered and discounted with good reason. This is an important factor in gauging the level of weight to attach to the scheme's benefits in the context of determining whether or not very special circumstances apply.
21. For the avoidance of doubt, it would not be appropriate to impose a planning condition related to a potential repositioning of the new pole. Indeed, such an amendment would be likely to result in a materially different scheme. In the interests of fairness to all parties with a potential interest in the outcome of this appeal, I must arrive at a determination based on the plans submitted to and considered by the Council at planning application stage.
22. For the reasons given above, whilst I attach considerable weight to the economic and social benefits brought about by improved digital communications networks, the scheme's benefits would not outweigh the substantial harm identified to the Green Belt (including harm derived from loss of openness), in addition to the limited degree of harm I have identified would be caused to the character and appearance of the area, so as to amount to the very special circumstances necessary to justify the proposal. The scheme conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conclusion

23. For the above reasons, the appeal is dismissed.

Andrew Smith

INSPECTOR