
Appeal Decisions

Site visit made on 2 December 2020

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 April 2021

Appeal A: APP/Y2620/C/20/3249563

Cley Automatic Telephone Exchange, Hall Lane, Wiveton, NR25 7TG

- 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 Act").
- The appeal is made by Arqiva Limited against an enforcement notice issued by the North Norfolk District Council.
- The enforcement notice was issued on 6 March 2020.
- The breach of planning control as alleged in the notice is the erection of a 15 metre telecommunications monopole with attached transmission dish and 3 antenna and the siting of a ground based equipment cabinet.
- The requirements of the notice are: Permanently remove the 15 metre high telephone communications monopole with attached transmission dish, 3 antenna and the ground based equipment cabinet.
- The period for compliance with the notice is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B: APP/Y2620/W/20/3246615

Cley Automatic Telephone Exchange, Hall Lane, Wiveton, NR25 7TG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 ("the Act") against a refusal to grant planning permission.
- The appeal is made by Arqiva Limited against the decision of the North Norfolk District Council.
- The application Ref. PF/19/0856, dated 20 May 2019, was refused by notice dated 9 January 2020.
- The development proposed is Retention of an electronic communications base station without removing the existing 12.5m high monopole mast and attached transmission dish.

Summary of Decision: The appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.

Application for Costs

1. An application for costs was made by the appellant against the Council. This is subject of a separate Decision.

Background and Preliminary Matters

2. Appeals A and B relate to the installation of mobile telecommunications equipment on land located at the Cley telephone exchange building at Hall Lane, Wiveton.
3. The main parties agree that the development subject of the enforcement notice in Appeal A comprises a 15 metre high telecommunications monopole mast with 3 attached antennas and a ground based equipment cabinet. The appellant refers to this equipment collectively as the "CTIL base station" and for clarity I will also adopt the same description. It does not however include a transmission dish¹ as alleged in the notice. I concur with the parties that no prejudice to either of them would arise if I were to correct the notice by deleting reference to the transmission dish in the notice. I will therefore do so.
4. The appeal on ground (a)/deemed planning application in Appeal A seeks planning permission for the alleged breach, that being the CTIL base station equipment to the rear of the ATE. In Appeal B planning permission is sought for all of the proposed CTIL base station equipment (additional to the existing 12.5m high BT mast which already benefits from planning permission) as detailed in the plans submitted with planning application PF/19/0856.
5. In both appeals the CTIL base station needs to be considered cumulatively in the context of the existing BT mast. For the sake of clarity and to avoid duplicity I will therefore deal with these two appeals together.
6. The Council adopted its Landscape Character Assessment SPD and Landscape Sensitivity Assessment SPD on 1 February 2021 which I have taken into account in reaching my decision.

APPEAL A – ground (c)

7. An appeal on ground (c) is that the development described at Section 3 of the (corrected) notice does not constitute a breach of planning control. The burden of proof lies with the appellant and the test of the evidence is on the balance of probabilities. In this regard the appellant's case is that the development benefits from the planning permission granted by Article 3(1) and Schedule 2, Part 16, Class A of the GPDO² referred to more generally as "permitted development".
8. Part 16, Class A.(a) permits development, by or on behalf of an electronic communications code operator, consisting of "*the installation, alteration or replacement of any electronic communications apparatus*" subject, when required, to prior approval [A.3(4)] by the local planning authority of siting and appearance. Unless otherwise agreed in writing by a local planning authority, development for which prior approval is granted must be carried out "*in accordance with the details submitted with the application*" [(A.3(9))].
9. It is significant to note that "installation", "alteration" or "replacement" define the different types and nature of proposed developments. That this is the case is evident in the way that Class A treats them differently. For example, "installation" of apparatus is treated differently to "alteration or replacement" in

¹ The transmission dish is attached to an older 12.5m high BT mast retained on site

² Town & Country Planning (General Permitted Development) (England) Order 2015

- A.1(a) to (d)³ such that different criteria apply in relation to heights. Furthermore, in respect of siting and appearance, it would be impossible for a decision-maker to properly understand the effects of proposed development requiring prior approval if the application did not make clear whether it was for replacement of existing apparatus, or installation of additional apparatus.
10. The appellant's prior approval application (PA/17/00681) was for the removal of the existing BT monopole and its replacement with the CTIL base station, incorporating a new 15m high monopole. There can be no doubt therefore that the development within Class A.(a) for which prior approval was sought and granted was for "*replacement*" apparatus. The GPDO planning permission for replacement apparatus thus crystallised on the Council's grant of prior approval on 28 June 2017. No variation of the prior approval has since been agreed with the Council.
 11. The CTIL base station was erected and is operational. However, due to the subsequent discovery of locational/technical difficulties of operating the BT transmission dish on the new CTIL monopole, the BT mast and its attached dish have also remained in place and in operation on site. A subsequent planning application, subject of Appeal B, to retain the CTIL base station (in addition to the BT apparatus) was refused on 9 January 2020, and the enforcement notice then issued on 6 March 2020; approximately two years after the BT mast should have been removed in accordance with the details of the prior approval.
 12. I acknowledge that planning conditions cannot require completion of a development in its entirety, and that for operational reasons there may necessarily be a brief delay between the provision of new apparatus and the subsequent removal of any apparatus it replaces. However, that is not the case here given the considerable period of time that has elapsed since the BT mast should have been removed, along with the appellant's clear efforts to retain the CTIL base station in addition to the continued siting and operation of the BT apparatus.
 13. As such, albeit not the appellant's original intention before commencing works, I find as a matter of fact and degree that the development carried out has been the installation of additional apparatus, rather than being replacement apparatus. Consequently, the CTIL base station is not permitted development because it is not replacement development in accordance with the details of the prior approval.
 14. Since the development is not permitted development, and does not benefit from any other planning permission, I conclude that it constitutes a breach of planning control and the appeal on this ground must therefore fail.
 15. The appellant's arguments that the Council inappropriately imposed unenforceable conditions on the prior approval does not alter my conclusion given that, for the reasons I have set out above, the development carried out is not "*replacement*" development as approved, but rather it is development which does not benefit from any planning permission.
 16. The appeal on ground (c) therefore fails.

³ "Development not permitted: ground-based apparatus"

APPEAL A - ground (a), and Appeal B

Main Issues

17. The main issue is the effect of the CTIL base station on the character and appearance of the area with particular regard to the Glaven Valley Conservation Area (GVCA), the setting of the Wiveton Conservation Area (WCA), and the Norfolk Coast Area of Outstanding Natural Beauty (AONB).

Reasons

18. The site lies within the Norfolk Coast AONB towards the northern edge of the village of Wiveton, within the GVCA and adjacent the WCA, both being designated heritage assets. As such, I am mindful that statute⁴ requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. Paragraph 184 of the Framework⁵ states that such heritage assets should be conserved in a manner appropriate to their significance. Framework paragraph 172 also provides that great weight should be given to conserving and enhancing the landscape and scenic beauty in AONBs. The site also lies within an area⁶ of character identified in the North Norfolk Landscape Character Assessment (2018).
19. During my visit to the appeal site and the surrounding area I saw that the monopole, with flush fitting antennas, is of a slim and unfussy design. Existing hedgerows, tall mature trees and the exchange building provide considerable levels of screening around the site, such that from the closest public viewpoints the visible elements are limited to the top part of the monopole and its antennas, seen in addition to the top section of the smaller 12.5m high BT mast. Further away from the masts there is either less or no visibility due to relative distances and/or changes in landscape levels, trees, and hedgerows.
20. Notwithstanding the limited visibility previously described, telecommunication equipment (the BT mast) has formed an established feature of this site and the wider area for a considerable period of time. Consequently, while I accept there is an increase in the amount of such development, the additional appearance in some views of the CTIL mast results in a relatively minor change to the established landscape and the character and appearance of the area.
21. Taking account of all these factors I consider that the CTIL mast makes only a limited adverse alteration, and resulting limited harm, to the character and appearance of the surrounding landscape, the Conservation Areas, and the defined special qualities⁷ of the AONB. In terms of the heritage assets the harm would be towards the bottom of the scale of 'less than substantial harm' as set out at paragraph 196 of the Framework. Consequently, this harm should be weighed against any public benefits of the proposal.
22. The Council argues that the development has not been justified or evidenced in terms of the local residents and business needs, and other locations for the proposed development have been suggested by local residents. However, Framework paragraph 116 advises that local authorities should not question the need for an electronic communications system. Moreover, it is clear from

⁴ s72(1) Planning (Listed Buildings and Conservation Areas) Act 1990

⁵ National Planning Policy Framework (2019)

⁶ Rolling Heath and Arable Landscape, and Blakeney, Salthouse and Kelling Landscape

⁷ Settlement character and sense of remoteness, tranquillity, and wildness

the appellant's evidence that there is a need for improved coverage in this area, and there is no substantive evidence before me to the contrary. It is also clear from the submissions that the appellant has investigated and discounted a number of alternative sites and locations for various reasons, including financial viability. There is no substantive evidence before me to counter the appellant's evidence. I also agree with the main parties that cutting back of the tall mature pines located opposite the appeal site would not be an appropriate alternative solution given the significantly greater level of harm that would result to the character and appearance of the landscape, Conservation Areas and the AONB.

23. Although it does not form one of the Council's objections to the development I note the third party concerns from those living closer to the site regarding harm to their outlook. However, the use of the site for such equipment is already an established feature as I have set out above. As such, the additional impact on outlook of this second mast, in combination with the BT mast, is also limited. Overall, I find that it does not result in any significant increase in harm to the outlook of nearby occupiers.

Planning Balance

24. The previously identified limited harm to the character and appearance of the landscape and the AONB, and the less than substantial harm to the Conservation Areas, results in some conflict with Policies EN1, EN2 and EN8 of the North Norfolk Core Strategy (2008) (CS). However, Government policy, as set out in the Framework, robustly supports the provision of high quality telecommunications infrastructure, which is seen as essential for sustainable economic growth and for enhanced provision of local community facilities and services. This therefore weighs in favour of the proposal.
25. Against the lack of suitable alternative locations and the limited visual harm previously identified, I consider that the significant public benefits that accrue from improved telecommunications coverage in the area outweigh the identified harm. As such the development accords with the requirements of CS Policy CT4 and the Development Plan as a whole. The appeals will therefore be allowed.

Conditions

26. I agree with the parties that the CTIL and BT masts would better assimilate into the landscape if they were of the agreed matching colour (Van Dyke brown). While the BT mast does not form part of the development requiring planning permission I understand that BT has agreed to adopt the matching colour. I will therefore impose a condition that requires the retention of the CTIL mast and antennas in the agreed Van Dyke brown.
27. I see no reason to impose a condition requiring further landscaping given the substantial screening that already exists. Such a condition is not necessary to make the development acceptable.

Conclusion

28. For the reasons given above, I conclude that the appeal on ground (a)/deemed planning application in Appeal A succeeds. I shall grant planning permission for the development as described in the (corrected) notice. The appeals on

grounds (f) and (g) do not therefore fall to be considered. For the same reasons Appeal B also succeeds.

Formal Decisions

Appeal A:

29. It is directed that the enforcement notice is corrected: in Section 3 by deleting the words "transmission dish and", and in Section 5(i) by deleting the words "transmission dish".
30. Subject to the correction 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 Act for the development already carried out, namely the erection of a 15 metre telecommunications monopole with attached 3 antenna and the siting of a ground based equipment cabinet at land as shown on the plan attached to the notice and subject to the following condition:
 - 1) Within 3 months from the date of this permission the CTIL mast and antennas shall be colour finished in Van Dyke brown.

Appeal B:

31. The appeal is allowed and planning permission is granted for an electronic communications base station without removing the existing 12.5m high monopole mast and attached transmission dish in accordance with the terms of the application Ref. PF/19/0856, dated 20 May 2019, and the plans submitted with it, and subject to the following condition:
 - 1) Within 3 months from the date of this permission the CTIL mast and antennas shall be colour finished in Van Dyke brown.

Thomas Shields

INSPECTOR