



Appeal Decision

Site Visit made on 30 June 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2021

Appeal Ref: APP/B0230/W/20/3265408

Chantry Primary School, Tomlinson Avenue, Luton LU4 0QP

- 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 MBNL (EE Limited & H3G UK Limited) against the decision of Luton Borough Council.
 - The application Ref 20/00840/FUL, dated 15 July 2020, was refused by notice dated 11 September 2020.
 - The development proposed is replacement of existing 15M lattice tower with a 20M lattice mast, including 12 x antenna and 6 x equipment cabinets.
-

Decision

1. The appeal is allowed and planning permission is granted for replacement of existing 15M lattice tower with a 20M lattice mast, including 12 x antenna and 6 x equipment cabinets at Chantry Primary School, Tomlinson Avenue, Luton LU4 0QP in accordance with the terms of the application, Ref 20/00840/FUL, dated 15 July 2020, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 002 Site location Plan; 100 Existing Site Plan; 150 Existing Elevation; 215 Max Configuration Site Plan; and 265 Max Configuration Elevation A (all with Masterplan Series drawing number 721941_LTN030_91883_LU0268_M001 ISSUE B).
 - 3) The external materials to be used in the construction of the development hereby permitted shall be the same colour, texture and design as the external materials of the existing mast which it will replace.

Preliminary Matters

2. The description in the banner heading and my decision above is taken from the Council's decision notice. It has been agreed by the appellant in its appeal submissions as more accurately describing the appeal proposal than the original description given in the application. I have determined the appeal accordingly.
3. On 20 July 2021 a revised National Planning Policy Framework was issued. The main parties were given the opportunity to comment on the implications of the resulting changes for this appeal. I have considered these as far as they are material to the outcome of the appeal. The references to the National Planning Policy Framework, including paragraph numbers, made within the decision are to this revised version, hereafter referred to as 'the Framework'.

Main Issues

4. The main issues are the effect of the proposed development on the character and appearance of the area and on the living conditions of occupiers of nearby properties, with regard to outlook, and whether any harm caused is outweighed by the need to site the installation in the location proposed, having regard to the potential availability of alternative sites.

Reasons

5. The appeal site is an existing established telecommunications installation located within the grounds of Chantry Primary School. Development immediately adjacent to the installation consists of largely low rise school buildings, with a single tower like building close to the appeal site. The existing mast is, however, the highest structure in the area with a total height of approximately 16.5 metres when taking into consideration the height of the antennas above the mast. It is highly visible when travelling northwards along Tomlinson Avenue and from some sections of other surrounding streets. It is also visible in views from residential properties opposite the school frontage and from the rear of properties on Radnor Road, Beadlow Road and Wedgewood Road.
6. The proposal incorporates the replacement of the existing lattice tower with a new 20 metre high lattice mast and associated equipment to facilitate 5G coverage. The existing tower and antennas are utilitarian in appearance and are not an attractive feature of the existing street scene. The proposal would, overall, be approximately 3.5 metres taller and, with its wider upper section, would appear more obtrusive and would further increase the prominence of the telecommunications equipment. This includes views of the mast as seen from surrounding properties, particularly those opposite on Tomlinson Avenue and on Beadlow Road and Wedgewood Road. The effect that the existing equipment has on the immediate surroundings would be exacerbated to some degree.
7. The proposal would be an evidently larger structure than the one it would replace, highly prominent in some surrounding views, but in others some screening would be provided by virtue of intervening features, including vertical elements of street lighting columns, telegraph poles and trees. Moreover, the mast would not be a solid structure, its lattice form would allow light and glimpses of views of the sky through the mast, in this respect, and due to separation distances between the appeal site and surrounding properties, the proposal would not impinge on the outlook from these properties to such a degree as to result in unacceptable harm to the living conditions of the occupiers.
8. Overall, and notwithstanding my finding in relation to the effect on living conditions, whilst localised in the way described above, the increased prominence that the proposal would give to telecommunications equipment in this location would result in a moderate degree of harm to the character and appearance of the area. Thus, it would conflict with Policies LLP1, LLP25 and LLP35 of the Luton Local Plan 2017 (LP) which require amongst other matters that development should enhance the character of the area. The proposal would also conflict with the Framework in this respect.

Planning Balance

9. There would be harm to the character and appearance of the area in conflict with LP policies. Significant weight is given to this conflict and to the conflict with the design policies of the Framework. However, the harm to the character and appearance of the area would be limited for the reasons set out above.
10. These effects must be weighed against the need for the proposal to be in this location. The appeal scheme would be located at, and contained within the confines of, the site of an existing telecommunications tower. The appeal scheme is a joint venture between two providers who would share the apparatus. Evidence has been submitted in support of the scheme which sets out the aim to uphold and enhance the expansion of electronic communications networks in line with policies in the Framework.
11. As this is an existing site the appellant has not advanced any alternatives. However, I am satisfied that this approach is consistent with paragraph 117 of the Framework which seeks to keep installations to a minimum by using existing sites and sharing apparatus whilst providing better mobile coverage. As the existing structure would be replaced there would be no overall increase in the number of masts or sites as a result of this proposal. All of these matters are positive factors of public benefit which attract significant weight.
12. Given my findings above with regards to the effect of the proposal on character and appearance and living conditions, I am satisfied that the moderately harmful effect of the more prominent replacement mast would be outweighed by the public benefits of the efficient operation of the mobile networks and the provision of reasonable capacity for future delivery of 5G.
13. Accordingly, I find that material considerations indicate that the appeal should be determined other than in accordance with the development plan in this case.

Conditions

14. The conditions are based on those suggested by the Council. Where necessary I have amended the wording of the suggested conditions, in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance.
15. Planning permission is granted subject to the standard three year time limit condition. In the interest of certainty, it is necessary that the development shall be carried out in accordance with the approved plans. In the interest of the character and appearance of the area a condition is imposed in relation to the external finishes of the mast.
16. The Council suggested a condition to control the level of noise generated from the proposal in order to protect the amenity of the surrounding area. However, very little evidence is provided as to why the proposal would be likely to result in harmful levels of noise, or that if there was harm in this regard that it would be so significant that permission should be refused without the condition. In these circumstances it has not been demonstrated that such a condition would be necessary.

Conclusion

17. For the reasons given above the appeal is allowed.

S Tudhope

INSPECTOR