

Appeal Decision

Site visit made on 7 September 2021

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th September 2021

Appeal Ref: APP/V1505/W/20/3265475

Nether Mayne, Kingswood, Basildon SS16 5AT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order).
 - The appeal is made by MBNL against the decision of Basildon Borough Council.
 - The application Ref 20/01344/TEL, dated 21 October 2020, was refused by notice dated 4 December 2020.
 - The development proposed is described as 'Proposed Telecommunications upgrade. Proposed 20.0m AGL Phase 7 monopole c/w wraparound cabinet at base and associated ancillary works.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The provisions of Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) of the Order require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.
3. The principle of development is established by the Order and the provisions of Schedule 2, Part 16, Class A of the Order do not require regard to be had to the development plan. I have had regard to the policies of the development plan and the National Planning Policy Framework (Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.

Main Issue

4. The main issue is the effect of the siting and appearance of the proposal on the character and appearance of the area.

Reasons

5. The Council determined that prior approval was required for the siting and appearance of the proposed development and refused to grant such approval. The appeal site comprises a highway greensward and is prominently located on Nether Mayne, immediately to the south of its junction with Cherrydown West. To the south of the site is a pedestrian footbridge, beyond which is an existing
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- telecommunications installation comprising a 12.5m monopole and four cabinets. Permission has been granted to replace this installation with a 20m monopole and cabinets of essentially the same design as the appeal proposal (application ref 19/00868/TFULL).
6. The appealed application is clear that the proposal is not to replace the existing installation¹ and it is clear from the officer report that the Council considered the application on that basis. The appellant's statement says that the existing installation would be replaced and removed.
 7. The Procedural Guide² is clear that the appeal process should not be used to evolve schemes and that amendments should be considered only exceptionally having regard to the Wheatcroft principles. In this case, the cumulative effect of the existing and proposed telecommunications equipment was a concern of the Council. Were I to take into account the evolved scheme with the existing installation removed, it also would deprive those who should have been consulted on the change the opportunity of such consultation. Nor does the Order provide specific authority for a condition or other mechanism to be used to secure the removal of the existing installation or to prevent the implementation of application ref 19/00868/TFULL.
 8. Nether Mayne is a broad, straight and well used road. The junction with Cherrydown West is open and the appeal site is conspicuous in short and medium range public views. While the site has a backdrop of planting, the proposed monopole would be considerably taller than the planting, the footbridge and the streetlighting columns. As such, it would present a stark, dominant and incongruous feature which would be highly visible over an extensive stretch of the street scene.
 9. Consequently, I find that the siting and appearance of the appeal proposal would have a significantly harmful effect on the character and appearance of the area. The proposal would, therefore, conflict with Policy BAS BE20 of the Basildon District Local Plan Saved Policies (LP) insofar as it requires the siting and external appearance of telecommunications apparatus to not have a significantly detrimental visual impact on the landscape or townscape as a result of excessive prominence. The policy goes on to set out the technical and operational requirements to be taken into account where there is conflict with the environmental test. These include the possibility of sharing and the availability of alternative sites.
 10. Although the scale and appearance of the scheme approved under application ref 19/00868/TFULL would be similar to the appeal proposal, it would occupy a less prominent location. It would have a closer visual association with the footbridge, be better (although not entirely) screened by taller planting and would not adjoin an open highway junction. Consequently, I consider that the earlier approval does not provide a robust justification for the current proposal. The characteristics of the two sites are materially different and, as such, I consider that the proposal cannot be regarded as an upgrade of an existing site as contended in the appellant's review of the sequential approach to site selection (appellant's statement paragraph 3.14).

¹ Application form question 4 and last paragraph of page 1 of the covering letter dated 20 October 2020.

² Procedural Guide Planning appeals – England February 2021

11. The appellant contends that the earlier approval cannot be implemented because it is not on adopted highways land. However, no information has been provided on the ownership of the land or any efforts to secure control over the land to carry out the installation. Therefore, it has not been adequately demonstrated that a new site is required, contrary to the second part of LP Policy BAS BE20 as well as paragraph 117 of the Framework.
12. The appellant has explained that the proposal is intended to facilitate 5G coverage and would be shared with the Emergency Services Network. These aims are firmly supported by Government policy in section 10 of the Framework as well as the Future Telecoms Infrastructure Review. LP Policy BAS BE20 also broadly supports telecommunications development subject to the criteria considered above.
13. I recognise that the appeal proposal would be a shared facility and that it seeks to bring forward optimum telecommunications and mobile services. I also acknowledge that pre-application consultation with the Council has taken place. However, the appeal proposal would potentially add substantially to the amount of equipment in the area and limited information has been provided to show that the existing facility could not be reused or replaced. Nor has it been adequately demonstrated that the proposal could not be located at an alternative location where it would be less harmful, even if such a location does not currently accommodate telecommunications equipment. Limited information has been provided on the need for the proposal, which is described as providing an optimum solution, rather than filling a gap in the coverage of the network.
14. Consequently, I find that the significant harm to the character and appearance of the area outweighs the benefits of the proposal in this case, notwithstanding the national and local policy support for telecommunications development.

Conclusion

15. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR