



Appeal Decision

Site visit made on 4 August 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2021

Appeal Ref: APP/C1950/W/21/3273698

Cromer Hyde Farm, Marford Road, Lemsford, Welwyn Garden City, Hatfield AL8 7XD

- 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 appeal is made by Zayo Group UK Limited against the decision of Welwyn Hatfield Borough Council.
 - The application Ref 6/2020/2689/PN15, dated 14 October 2020, was refused by notice dated 10 December 2020.
 - The development proposed is the creation of a secure compound area and the installation of 1no. telecommunications equipment container, a small electric meter cabinet and generator.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('GPDO') for the creation of a secure compound area and the installation of 1no. telecommunications equipment container, a small electric meter cabinet and generator, in accordance with the terms of the application Ref 6/2020/2689/PN15, dated 14 October 2020, and the plans and drawings submitted with it and subject to the conditions set out under Paragraphs A.2 and A.3 of Schedule 2, Part 16, Class A of the GPDO.

Preliminary Matters

2. The appellant's application form does not include a description of the development. Therefore, for the purposes of my Decision I have based this on the description provided on the Council's decision.
3. The principle of development is established by the GPDO. The prior approval provisions do not require regard to be had to the development plan. I have therefore only had regard to the policies of the development plan in so far as they are material to the matters for which prior approval is sought
4. Since the application was determined, a revised version of the National Planning Policy Framework, 2021 ('the Framework, 2021') has been released. The main parties have been consulted on this and I have taken this into account where relevant to my Decision.

5. The GPDO requires the local planning authority to have regard to the Framework, 2021 so far as relevant to the subject matter of the prior approval. My determination of this appeal has been made on the same basis.

Background and main issue

6. Schedule 2, Part 16, Class A of the GPDO, permits: 'Development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network in, on, over or under land controlled by that operator or in accordance with the electronic communications code, consisting of— (a) the installation, alteration or replacement of any electronic communications apparatus, (b) the use of land in an emergency for a period not exceeding 18 months to station and operate moveable electronic communications apparatus required for the replacement of unserviceable electronic communications apparatus, including the provision of moveable structures on the land for the purposes of that use, or (c) development ancillary to radio equipment housing'. In this case the appellant argues that the extent of the proposal falls under categories (a) and (c).
7. However, the Council's first reason for refusal of the application alleges that the proposal does not comply with limitation A.1 (9) (a) of Schedule 2, Part 16, Class A of the GPDO. This states that: 'Development consisting of the installation, alteration or replacement of radio equipment housing is not permitted by Class A(a) if— (a) the development is not ancillary to the use of any other electronic communications apparatus'. The second reason for refusal relates to siting and appearance. Against this background the main issues are:
 - i) Whether the proposed development is permitted development having regard to Paragraph A.1 (9) (a) of Schedule 2, Part 16, Class A of the GPDO 2015; and,
 - ii) If the proposed development is permitted development, whether its siting and appearance would be acceptable having regard to the character and appearance of the area.

Reasons

Permitted development

8. The appellant is a designated operator under the Electronic Communications Code and is constructing a new fibre optic network route from Dublin to London which will connect to other international networks. There is an existing long-haul fibre optic network which is laid within Marford Road ('B653') approximately 500m to the north of the appeal site. The appeal site extends to the B653, as shown on drawing P1912-RO-002-GA-302.
9. As part of its wider network expansion, the appellant has acquired a fibre duct within this network. The development subject to this appeal comprises an In-Line Amplifier (ILA) site which would support and power the optical amplifier equipment needed to transmit signals along the new fibre route thereby enabling telecoms services to be provided to customers.
10. Amongst other things Schedule 2, Part 16, Class A of the GPDO, permits development 'under' land controlled by that operator or in accordance with the electronic communications code. The proposed ILA compound would be

connected to the existing network along the B653 via below ground cables utilising land controlled by the appellant.

11. In this case the main parties have considered the proposal under Paragraph A.1 (9) of Schedule 2, Part 16, Class A of the GPDO. This relates to 'Development consisting of the installation, alteration or replacement of radio equipment housing'. I have not been referred to any requirement under this or any other part of Schedule 2, Part 16, Class A of the GPDO, for prior approval applications to include details of below ground infrastructure. Nor have I been referred to anything specific within the GPDO which supports the Council's suggestion, that for development to be ancillary to the use of other electronic communications apparatus, this needs to be on the same site.
12. For the above reasons, the proposal would functionally support the existing long-haul fibre optic route along the B653 and links physically to this via below ground infrastructure. Accordingly, the proposal would be ancillary to the use of other electronic communications apparatus and therefore accords with Paragraph A.1 (9) (a) of Schedule 2, Part 16, Class A of the GPDO. On this basis and given that there is nothing to suggest that the proposal fails any of the other conditions, limitations and restrictions of Schedule 2, Part 16, Class A of the GPDO, the proposal is permitted development.

Siting and appearance

13. The character of the surrounding area is rural, largely open and consists of arable fields and pockets of woodlands. The site is located within the landscape character area of De Havilland Plain which is characterised by an extensive level topography, large arable landscape and agricultural land with isolated farms.
14. The appeal site forms part of a yard within an established farmstead. This area is hard surfaced, largely enclosed by a cluster of buildings and used for circulation and storage. Therefore, this makes no significant contribution to the landscape character of the area.
15. The proposal would occupy part of the yard and is to comprise a compound, secured with fencing about 2.4m in height. The compound would house telecommunications equipment, the main element of this being a unit measuring about 8.62m in length, by 3.42m in width, by 3.17m in height. The roof of this unit would be fitted with slender antenna and lightening finials. Other smaller equipment within the compound includes an electric meter cabinet and a generator.
16. Despite being of a functional design, the proposed compound and telecommunications equipment would be located close to the existing built development near the site. Moreover, the scale and massing of the proposal would be modest relative to the existing buildings which are in a range of sizes and generally of a utilitarian appearance. The proposed development would also be finished in shades of dark green to match some of the existing built development.
17. In addition, the combination of new hedge planting and the permeable nature of the proposed wire mesh fencing along the perimeter of the compound would soften its appearance and provide some screening of the telecommunications

equipment. These, and the above design considerations would enable the proposal to assimilate with its surroundings.

18. In terms of siting, the location has been selected due to its proximity to the route of the existing fibre optic network along B653. Moreover, this location is largely screened by the extent of the existing buildings. I have noted the Council's concerns about the future removal of the existing buildings and the effects of this on the visibility of the proposed development. However, there is nothing to suggest that these would be removed, and, in any event, I have based my decision on the current situation.
19. For the above reasons, the proposal has been sympathetically designed with sufficient screening and its siting and appearance would not unacceptably detract from the character and appearance of the area. In the absence of harm, I, find no conflict with Policies, D1, D2, RA10, R21 of the Welwyn Hatfield District Plan 2005 insofar as these are material to matters of siting and appearance.

Conditions

20. Planning permission granted for the proposed development under Schedule 2, Part 16, Class A of the GPDO is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2), which specify that the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin not later than the expiration of 5 years beginning with the date on which the local planning authority received the application, and must be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.

Conclusion

21. For the reasons given above, I conclude that the appeal should be allowed, and prior approval should be granted.

M Aqbal
INSPECTOR