
Appeal Decision

Site visit made on 25 October 2021

by B.S.Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 November 2021

Appeal Ref: APP/P4225/C/21/3276461
39 Wilton Road, Heywood, OL10 1AS

- 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 appeal is made by Mr Paul Horrox against an enforcement notice issued by Rochdale Metropolitan Borough Council.
 - The enforcement notice was issued on 27 May 2021.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission operational development comprising the installation of an amateur radio aerial attached to a lawful radio mast.
 - The requirements of the notice are:- Either (A) (i). remove the unauthorised amateur radio aerial in its entirety; and (ii) remove all materials and items resulting from compliance with requirement (i) from the land; OR (B) (i) remove the unauthorised amateur radio aerial and install the amateur radio aerial in strict accordance with the plans approved under planning permission reference ref: 18/01411/HOUS; and (ii) remove all materials and items resulting from compliance with requirement (i) from the land.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) & (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. 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 1990 Act as amended for the development already carried out, namely the installation of an amateur radio aerial attached to a lawful radio mast on land at 39 Wilton Road, Heywood, OL10 1AS referred to in the notice.

Application for costs

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

Background

3. In January 2018, the Council granted a Lawful Development Certificate for an existing telescopic mast in the rear garden of the appeal property (ref: 17/01196/CPE). In April 2019, permission was granted for the installation of an amateur radio aerial to be fixed to the lawful mast (ref: 18/01411/HOUS). The aerial that was installed, and which is the subject of the notice, differs in size from that which was approved.

The appeal on ground (b)

4. The measurements of the aerial submitted by the appellant in his statement differ from those provided by the Council in its reasons for issuing the enforcement notice. Because of the height of the aerial, around eaves level in the dwelling, it was not possible during my site visit for the parties to accurately measure its width with any degree of confidence.
5. However, whilst there may be some inaccuracy in the measurements of the aerial in question within the *reasons* for issuing the notice, there is no doubt that the alleged *breach* of planning control, simply described in the notice as 'the installation of an amateur radio aerial', has occurred as a matter of fact. On this basis, the appeal on ground (b) must fail.

The appeal on ground (c)

6. The appellant submits that the change from the permitted aerial is an operation which does not materially affect the external appearance of the 'building' (the aerial) and therefore, in accordance with S.55(2)(a)(ii) of The Act, does not involve development. However, there is no evidence that an aerial of the permitted design and size was erected in the first place, such that a further operation resulting in the extended form of the present aerial could have been said to have been carried out.
7. In the alternative, the appellant submits that the aerial complies with the 2019 permission in that the difference between that which was approved and that which now exists is *de minimis*. However, I note that condition no.2 of the 2019 planning permission lists the approved drawings and stipulates that "the development shall be carried out in complete accordance with these drawings hereby approved". The appellant's own figures show that, by comparison with the approved aerial, the present aerial is some 28% wider and 250% greater by volume. I cannot see how such a variation could be described as minimal. Whether this variation is acceptable or not is a matter for ground (a). The appeal on ground (c) fails.

The appeal on ground (a) and the deemed application

8. The appeal property is the central one of three terraced houses which have rear gardens which back onto a large playing field. As indicated above, the mast itself is lawful and permission has been granted for an aerial of substantial size. Therefore, the main issues are the impact of the additional size of the aerial, compared to that which was approved, on the living conditions of neighbouring residents and on the character of the area.
9. The aerial as erected is of essentially the same design and construction as that which was permitted. It is a very light weight structure in which the 6 radial arms of the aerial are slender and are joined by thin wires. Whilst the radial arms are longer than permitted and there is an additional wire linking them, the aerial appears to me to be contained within the width of the appellant's rear garden. Although it is measurably larger than permitted, the present aerial does not appear to me to have an unduly more harmful impact on the outlook from the two adjacent dwellings and nor does it appear significantly more overbearing than that which was approved.

10. I reach a similar conclusion in respect of the impact on the character of the area, even though the aerial is visible from Greenfield Court, the playing field to the rear and from a number of nearby dwellings.
11. Therefore, I see no undue conflict with Policies SO3, DM1 and P3 of the adopted Rochdale Core Strategy, which seek high standards of design and consideration for the amenity of residents.
12. For the reasons given above, I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.

B.S. Rogers

Inspector