



Appeal Decision

Site visit made on 3 November 2021

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th November 2021

Appeal Ref: APP/M3835/W/21/3272207

Ham Road, north of junction with Ham Way, Worthing, West Sussex BN11 2QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and 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 MBNL on behalf of EE (UK) Ltd & H3G (UK) Ltd against the decision of Worthing Borough Council.
 - The application Ref AWDM/1283/20, dated 6 August 2020, was refused by notice dated 1 October 2020.
 - The development proposed is the installation of a 20 metre phase 8 pole with wrap around cabinet built around the base, new equipment cabinets and ancillary development thereto.
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Decision

1. The appeal is allowed and 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) (the 'Order') for the installation of a 20 metre phase 8 pole with wrap around cabinet built around the base, new equipment cabinets and ancillary development thereto at Ham Road, north of junction with Ham Way, Worthing, West Sussex BN11 2QD in accordance with the terms of the application, AWDM/1283/20, dated 6 August 2020, and the amended plans submitted with the appeal.

Preliminary Matters

2. The provisions of the Order require the local planning authority to assess the proposed development based solely on its siting and appearance, taking into account any representations received¹. My determination of this appeal has been made on the same basis.
3. The principle of development is established by the Order. The provisions of the Order do not require regard to be had to the development plan. I have therefore only had regard to the policies of the development plan and the National Planning Policy Framework (the 'Framework') in so far as they are material considerations relevant to matters of siting and appearance.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4)

4. The appellant has submitted amended plans with the appeal. These are the same as those submitted with the application, other than denoting that the existing telecommunications mast would be removed. As this would result in a reduction of masts on the site, and is in any case a conditional requirement once the existing installation becomes redundant, I consider that it would not prejudice any party with an interest in the development. I have therefore taken the amended plans into account.
5. There is an error in the reason for refusal where the word 'not' has been omitted from the last sentence. This has been recognised as a typographical error by the appellant. I have interpreted the reason for refusal in its corrected form rather than as written on the decision notice.

Main Issue

6. The main issue is the effect of the siting and appearance of the proposed installation on the character and appearance of the area and the living conditions of neighbouring occupants.

Reasons

7. Ham Road is a busy distributor serving the eastern part of Worthing. The road rises to the north as it crosses a railway line via an overbridge. The vicinity of the site is characterised by mainly residential properties with a church to the south west. Immediately alongside the site is a vacant area of land on which permission has been granted for residential development. East Worthing train station lies to the north west.
8. At 20m in height, the proposed replacement mast would be considerably taller than either the existing 12.5m mast on the site or the 8m lighting columns along Ham Road. It would also be sited at a slightly higher elevation than the existing mast because of the rising nature of the road. It would therefore be more prominent in views along the road and would be seen from further afield.
9. However, the increase in height is dictated by the intention to upgrade two networks to 5G technology. This technology uses higher frequency transmissions, which have a lower range and a greater sensitivity to obstructions within the area of signal coverage. The need for higher masts to enable the upgrade of existing networks to 5G technology has been recognised by the Government through permitted development rights which enable taller masts. The Council has not challenged the need for the mast to be 20m in height in order for it to function properly as part of the 5G network in this location. Having regard to the appellant's evidence, I am satisfied that it is the minimum height necessary to deliver the network requirements.
10. Other than for its height, the proposed mast would be of a similar design and colour to the existing mast, as would be the equipment cabinets when compared to the existing cabinets. A single monopole design is preferable to other designs for telecommunication masts, for example a lattice structure, as it reflects more closely the design of other street furniture in the vicinity, such as the lighting columns. The proposed light grey colour would be preferable to a darker colour in this location because the upper part of the mast would be viewed mainly against the sky.
11. The proposal would replace an existing mast. The opportunity for an alternative location is therefore limited, given the restrictions imposed by the two

established telecommunications cellular networks of which it would form part. The appellant has carried out a search for alternative sites within the constraints of the existing networks, at both application² and appeal³ stages, but has not identified any preferable locations. A location in the industrial estate to the north of the railway line as suggested by the Council has been ruled out as being technically unviable because it would be in a different 5G cell. I have no evidence to disprove that would be the case and therefore accept this to be a limitation of the network.

12. Permission has been granted for a residential development on land adjacent to the site, although at the time of my site visit it had not commenced. I have not been provided with details of that development, other than an extract from a plan of the nearest unit to the proposed installation in the appellant's statement of case. While the proposed mast would be more visible from the adjacent site because of its height, its position would be more oblique when compared to the existing mast in views from the only side facing window in the nearest permitted building, and therefore less directly visible to that property. Based on the limited information available, I consider that the proposed installation would not have a significantly greater impact on the living conditions of future occupiers than the existing installation.
13. Government policy as set out in paragraph 114 of the Framework is that planning decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G). This policy recognises the benefits that such technology brings, in terms of supporting economic growth and social well-being in an increasingly digital world.
14. The principle of development including a mast up to 20m in height is established by the permitted development right in the Order, and consideration of its siting and appearance needs to be viewed in that context. In this case, while the increased height of the mast would have a greater impact on the character and appearance of the area, its height is the minimum required to deliver 5G technology. The appearance of the mast as a single monopole painted light grey is preferable to other mast designs, and comparable to the design of the existing mast. I am satisfied that there are no preferable sites available for its siting given the constraints imposed by the established cellular networks. It would not impinge on the living conditions of future neighbouring occupants to any significantly greater extent than the existing installation.
15. Having regard to all these matters, I conclude that the installation is the least intrusive that can be achieved within the technical limitations of 5G technology, and that any harm arising from the additional visual prominence of the mast is outweighed by the benefits accruing from the provision of advanced, high quality and reliable communications infrastructure. In that context, I consider that the proposed installation would comply with Policy 16 of the Worthing Core Strategy 2011, which requires new development to demonstrate good design that takes account of local physical and environmental characteristics.

² Supplementary Information Sheet, MBNL V2 14.05.18

³ Planning Appeal Statement, Mono Consultants, March 2021

Other Matters

16. Concern has been raised in representations about the potential effect of microwave radiation on human health. Paragraph 118 of the Framework advises that local planning authorities, and by implication other decision makers, should not seek to set health safeguards different from the International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines for public exposure. The appellant has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by ICNIRP. For this reason, the potential effect on health is not a determining issue in this case.
17. One of the proposed cabinets is referred to as a 'Huawei' equipment cabinet. Following the decision by the Government to ban the use of Huawei equipment from 5G networks, the operators will need to review the manufacture of equipment for the installation. However, only the cabinet forms part of the application, not the equipment within it, and therefore I consider the reference to Huawei is not material to my decision.

Conditions

18. Planning permission granted for development under Article 3(1) and Schedule 2, Part 16, Class A of the Order is subject to conditions set out in sections A.2 and A.3 which specify that the development must begin not later than the expiration of 5 years beginning with the date on which the approval was given and, unless agreed otherwise in writing by the local planning authority, be carried out in accordance with the details submitted with the application as subsequently amended as part of this appeal, and 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.
19. The Council has suggested 3 conditions. There is no provision for imposing additional or different conditions on Part 16, Class A development under the terms of the Order. However, the deemed conditions cover the intentions of those suggested by the Council, albeit with different wording.

Conclusion

20. For the reasons given above I conclude that the appeal should be allowed.

Guy Davies

INSPECTOR