



Appeal Decision

Site visit made on 15 June 2021

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th December 2021

Appeal Ref: APP/N5660/W/20/3258562

296 Brixton Road, Angel Town, Lambeth, London SW9 6AG

- 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 & Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by EE Ltd & Hutchison 3G UK Ltd against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 20/01859/G24, dated 31 May 2020, was refused by notice dated 21 July 2020.
 - The development proposed is described on the application form as 'proposed telecommunications Rooftop installation upgrade and associated works'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. As an electronic communications code operator, the appellants benefit from deemed planning permission for telecommunications development under Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) as amended, subject to the exclusions set out in paragraph A.1 and the conditions set out in paragraphs A.2 and A.3 including prior approval by the local planning authority by assessing the proposed development solely on the basis of its siting and appearance, taking into account any representations received.
3. On 22 September 2021 a new Local Plan for Lambeth was adopted by the Council. However, as the appellants have had an opportunity to comment on this matter, I am satisfied that they have also not been prejudiced in this regard. In any event the provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard be had to the development plan. I have had regard to the relevant policies of the adopted Lambeth Local Plan, relevant policies of the London Plan and the National Planning Policy Framework (the Framework) only in so far as they are a material consideration relevant to the main issues below.
4. Since the determination of the original application the London Plan 2021 (a Replacement Plan) has been published by the Mayor of London. This London Plan replaces all previous versions and, therefore, the London Plan 2016 policy that is referred to within one of the refusal reasons is no longer in force. The draft new London Plan (2019) and policies within it are referred to within the Council's submissions. One policy from the London Plan 2016 is cited within the first refusal reason. However, given the nature of the refusal reasons and the

main issues, I consider that on this occasion the publication of the new London Plan does not directly change the assessment of this appeal.

5. On 20 July 2021 a revised version of the National Planning Policy Framework (the Framework) was published. However, given the nature of the refusal reasons and the main issues, on this occasion I consider that the publication of the revised Framework does not directly alter the assessment of this appeal.
6. The Council have described the development as 'application for prior approval in relation to telecommunications rooftop installation upgrade and associated works'. I note that the appellants have also utilised this description on their appeal form. I consider that this revision provides an accurate description of the proposal and I have therefore determined the appeal on this basis.

Background and Main Issues

7. In their second reason for refusal the Council state that it had not been demonstrated that the proposal would accord with the conditions set by paragraphs A.1(2)(e)(ii)(aa) and A.1(2)(f)(ii). As a result, they do not appear to have been satisfied that the proposal would be permitted development.
8. In light of the above, the main issues are:
 - whether the proposed development would be permitted development (PD) under Article 3(1) and Schedule 2, Part 16, Class A of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended); and
 - if so, whether prior approval would be required in accordance with the conditions set out in Paragraph A.2 of the GPDO.

Reasons

Whether permitted development

9. In their second reason for refusal the Council have stated that the lack of submitted existing and proposed elevation plans showing the proposal from Brixton Road and Thornton Street Lack means that it fails to comply with conditions A.1(2)(e)(ii)(aa) and A.1(2)(f)(ii) of Class A, Part 16 of Schedule 2 of the GPDO.
10. Both parties agree that the appeal building is on article 2(3) land. According to the submitted plans the building currently has approximately 7 existing antennae. The proposal would install around 4 new antennae whilst replacing 3 of the existing ones. Consequently, the total number of antennae on the building would be circa 8. Therefore, the proposal would result in the presence on the building of more than 5 antenna systems in conflict with condition A.1(2)(e)(ii)(aa).
11. Additionally, according to the evidence, 6 of the antennae on the roof of the building have been installed since 21 August 2013. However, the submitted plans do not indicate what the height of these proposed antennae would be. As a result, I have insufficient information before me to determine whether the proposal would comply with condition A.1(2)(f)(ii).

12. I note that the appellants have cited condition A.1(4)(a)(iv) stating that the proposal would therefore be permitted development subject to the conditions set by paragraph A.3 i.e. the prior approval process. However, the appellants then go on to state that condition A.1(2) (f) is the most pertinent in this case and the appellants' statement clearly also describes the proposal as seeking to provide 'antennae and associated infrastructure'. I concur that the proposal is for the installation of antennae and associated infrastructure and therefore I consider condition A.1(4)(a)(iv) to not be applicable in this case.
13. Consequently, the proposal's conflict with condition A.1(2)(e)(ii)(aa) and failure to comply with condition A.1(2)(f)(ii) leads me to conclude that based on the evidence before me, the proposal would not satisfy the requirements of Article 3(1) and Schedule 2, Part 16, Class A of the GPDO, and therefore is not development permitted by it.

Whether prior approval required

14. Given my conclusion that the proposal would not be development permitted under Class A of the GPDO, there is no need for me to consider whether prior approval would be required, as it would not alter the outcome of the appeal.

Conclusion

15. For the reasons given and based upon the evidence before me, I conclude that the proposal is not permitted development under Article 3(1) and Schedule 2, Part 16, Class A of the GPDO. Consequently, it is development for which an application for planning permission would be required. This would be a matter for the local planning authority to consider in the first instance and cannot be addressed through prior approval provisions set out under paragraph A.3.
16. The appeal is, therefore, dismissed.

C Coyne

INSPECTOR