
Appeal Decision

Site visit made on 25 November 2021

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 February 2022

Appeal Ref: APP/X4725/C/21/3275793

5 Kingsley Avenue, Crofton, Wakefield, West Yorkshire WF4 1RN

- 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 Stephen Allanson against an enforcement notice issued by City of Wakefield Metropolitan District Council.
 - The enforcement notice is dated 7 May 2021.
 - The breach of planning control as alleged in the notice is: without planning permission, development comprising the erection of a radio antenna on the land within the Green Belt.
 - The requirements of the notice are: remove the radio antenna from the land.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. The appeal has been made on grounds (c) and (d) only. These are legal grounds and so the planning merits of the case, for example, Green Belt matters and effects on living conditions, cannot be considered. On each ground, the onus is on the appellant to make out their case to the standard of the balance of probabilities.

The appeal on ground (c)

3. The appeal on ground (c) is that there has not been a breach of planning control.
4. The subject of the enforcement notice is a radio antenna located in the rear garden of the property at No 5. The appellant's case is that the mast, known as a Clarke Scam 12, is a fully portable and impermanent structure that cannot be classed as operational development for planning purposes.
5. Development comprises the carrying out of building, engineering, mining or other operations in, on, over or under land. It was held in *Parkes v SSE [1979] 1 All ER 21172* that operational development comprises activities which result in some physical alteration to the land, which has some degree of permanence to the land itself. S336(1) of the 1990 Act defines a 'building' as including any structure or erection and any part of a building, but not plant or machinery

- comprised within a building. The courts have identified three primary factors¹ as decisive of what constitutes a building, which are size, permanence and physical attachment. No one factor is decisive.
6. Within the planning contravention notice (PCN) answers given on 11 November 2018, the appellant confirms that the mast is 6m in height when retracted and reaches 10m when in use. Answer 4.(7) suggests that the mast is at its full height for two hours out of 24 hours. On my site visit, I saw that the upper part of the antenna resembles the spokes of an upturned umbrella and is of a substantial breadth. Taking all these factors into account, the mast is of significant size, even in its retracted form.
 7. I have had regard to Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which relates to the provision within the curtilage of a dwellinghouse of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse. Such structures are subject to height restrictions. As the mast exceeds 3m in height in its retracted form, it falls outside the limits of permitted development under Class E.
 8. The appellant argues that the mast is not permanent and can be moved easily. The submitted specification shows that three people are needed to erect the mast on site. The appellant states that he would be able to move it around himself, but gives little further information as to how the structure would be dismantled and how long it would take. I am therefore unable to be certain of how easy it would be to remove the mast. In terms of intention, although he states that it is a temporary use, the evidence would suggest that the appellant intends for the mast to remain indefinitely on the land.
 9. The mast structure needs to be guyed for safety reasons. The PCN answers of 11 November 2018 confirm that the guy wires are always attached to the mast. This appears to contradict the appellant's statement in his final comments that the mast can operate quite easily without the need for the guy wires.
 10. Previously, in response to the Council's concerns, the appellant had fixed the guy wires into concrete in buckets, which sat on the ground held by their own weight. However, the Council's photograph dated October 2019 shows that one guy wire, at least, had been fixed back into the ground. Even if the concrete buckets were still in use as anchors, they are heavy items that would sit in place under their own substantial weight would. In my view, this would be sufficient to amount to a permanent fixing in place.
 11. The appellant has submitted, at his Ref 4, a photograph of a mast standing on its tripod, but this does not represent the structure as installed, with its additional antennae and guy wires. Therefore, taking into account the overall size of the unauthorised mast and its attachments, its fixing to the ground and the intent to keep it in place indefinitely, I am satisfied that the structure amounts to operational development. As it exceeds the height limit, it cannot be treated as permitted development, and so it requires planning permission.
 12. The appeal on ground (c) fails.

¹ Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd [1949] 1QB 385, endorsed by the Court of Appeal Skerritts of Nottingham Ltd v SSETR (No.2) [2000] 2 PLR 102.

The appeal on ground (d)

13. The appeal on ground (d) is that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.
14. I have found above that the mast is operational development for which planning permission is needed. For such development, the time limit for enforcement action is four years from the date of substantial completion. The notice is dated 7 May 2021, and so for the appeal to succeed on ground (d), the appellant needs to show that works for the erection of the mast were substantially complete by 7 May 2017.
15. The appellant states that the structure has been on his land since 2015. It is clear from the evidence that a mast in some form has been present since then. However, it is the mast in its completed form, with the enlarged upper section and the permanent addition of the guy wires that is the subject of the enforcement notice.
16. I note that the Council visited the site in 2015 and again in 2016, but took no action over the mast due to the lack of permanent fixture to the ground. However, by 27 July 2017, the mast top had changed to the upside down umbrella arrangement and the guy wires were in place. The Council received complaints that the mast was never moved and was rarely retracted.
17. From the above, it is evident that the mast has gone through a number of different iterations. However, I am satisfied that the structure that is the subject of the notice was substantially complete and in place by July 2017, which is within the material four year period.
18. The appeal on ground (d) therefore fails.

Other Matters

19. The appellant refers to the benefits to his well being of his hobby, the cost of the equipment, and the fact that he and family members have spent a long time achieving the correct qualifications and licenses. He also states that he has endeavoured to choose equipment that will have a lower visual impact. However, these matters go more to the planning merits of the development and cannot be taken into consideration under the grounds of appeal above.

Conclusion

20. For the reasons above, the appeal is dismissed and the enforcement notice is upheld.

Elaine Gray

INSPECTOR