



## Appeal Decision

Site visit made on 25 April 2022

by **C Dillon BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 18 May 2022**

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**Appeal Ref: APP/C2741/W/22/3290687**

**Broad Highway, Wheldrake, York YO19 6BU**

- 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 CK Hutchison Networks (UK) Ltd against the decision of City of York Council.
  - The application Ref 21/02110/TCMAS, dated 12 September 2021, was refused by notice dated 18 November 2021.
  - The development proposed is described as a 16.0m Phase 8 Monopole with wraparound cabinet at base and associated ancillary works.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The main parties have confirmed that an amendment to the description of development was agreed during the determination period following a reduction in the proposed height of the mast from 18 metres to 16 metres. The refused plans reflect this reduced height, and as no parties interests have been prejudiced the appeal proceeds on that basis.
3. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), under Article 3(1) and Schedule 2, Part 16, Class A require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. However, the reason for refusal cited by the Council in its decision notice is based on its assessment that the appeal proposal does not constitute permitted development in the first instance. Consequently, it does not extend to the siting and appearance of the appeal proposal.

### Main Issues

4. The main issues are:
  - whether or not the appeal proposal constitutes permitted development; and if so
  - whether or not the siting and appearance of the appeal proposal is appropriate, with particular regard to the character and appearance of the area.

## Reasons

### *Permitted development*

5. In *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250, the Court of Appeal held that the authority is bound to consider and determine whether the development otherwise falls within the definitional scope of the particular class of permitted development. Subsequently, in *R (oao Smolas) v Herefordshire Council* [2021] EWHC 1663 (Admin) it was held that the Council did not act unlawfully in deciding that the proposed development would fall outside the scope of the relevant part of the GPDO, and so prior approval should be refused for the proposed development.
6. The Council has maintained that this appeal site falls within 3km of the perimeter of the Elvington airstrip. Mapping to demonstrate that fact has been submitted to this appeal. In this case, there is no doubt that the appellant should have consulted with the Civil Aviation Authority, the Secretary of State for Defence or the aerodrome operator, as appropriate, prior to submitting their application for prior approval. However, this did not occur at the point it should have. The appellant sought to address that matter during the determination period. However, the reasons for the failure to meet that specific requirement of Part 16, Class A, Condition A.3(2) of the GPDO in the first instance are irrelevant as this procedure does not allow any discretion to accept the retrospective remedial action taken.
7. I have no cause to disagree with the Council's assessment that the appeal proposal would meet all other relevant requirements of the GPDO. Nonetheless, the Council had notified the appellant of its determination within the statutory period from the date when it received the application. Prior approval could not be granted because the correct consultation had not been carried out by the appellant.
8. Therefore, the particular appeal proposal does not constitute permitted development by virtue of Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

### *Siting and appearance*

9. In *R (oao Smolas) v Herefordshire Council* [2021] EWHC 1663 (Admin) it was found that there was no purpose in going on to consider whether to grant prior approval for siting, design and external appearance at a later date when an application does not fall within the scope of permitted development. The circumstances of the appeal before me are not distinguishable from this established principle. For this reason therefore, it is unnecessary and inappropriate for me to proceed to determine whether or not the siting and appearance of the appeal proposal is appropriate.

## Conclusion

10. For the reasons given above, I conclude that the appeal should be dismissed.

*C Dillon*

INSPECTOR