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# Appeal Decision

Site visit made on 24 June 2022

**by Robin Buchanan BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 July 2022**

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**Appeal Ref: APP/K3605/W/21/3284031**

**Corner of Bridge Road and Arnison Road, Bridge Road, East Molesey  
KT8 9HY (Easting 514980, Northing 168108)**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 (EE (UK) Ltd & H3G (UK) Ltd) against the decision of Elmbridge Borough Council.
  - The application Ref 2021/2187, dated 17 June 2021, was refused by notice dated 11 August 2021.
  - The development proposed is for installation of a 20 metre high monopole supporting 12no. antennas and 2no. 600mm dishes along with development ancillary thereto.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. This is an application for prior approval. The provisions of the Order require the local planning authority to assess the proposal having regard to its siting and appearance, taking into account any representations received. I have determined the appeal on this same basis.
3. The appellant states that the equipment cabinets shown in the appeal plans are permitted development<sup>1</sup> so do not require prior approval. Despite discrepancies between the wording of the description of development used in the application and appeal forms, as it appears in the banner heading above, and in the Council's decision notice and its reason for refusal, the Council's officer report and appeal statement did not object to the cabinets. I have, therefore, considered the appeal on the basis that the matter in dispute between the main parties is the monopole supporting the antennas and dishes.
4. The principle of the development is established by the Order and its provisions do not require regard to be had to the development plan. Nevertheless, Policy CS17 of the Elmbridge Core Strategy 2011 and Policies DM12 and DM16 of the Elmbridge Local Plan Development Management Plan 2015 refer to matters relevant to siting and appearance of development, including in relation to heritage assets and for telecommunications. The National Planning Policy Framework (Framework) includes a section on supporting high quality communications and on achieving well-designed places. I have had regard to

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<sup>1</sup> Under Schedule 2, Part 16, Class A of the Order

these policies only in so far as they are a material consideration relevant to matters of siting and appearance.

5. At the written request of the occupiers of Sussex Cottage (93A Bridge Road), I viewed the appeal site from inside this house. I deal with this consideration in 'other matters' below.

## **Main Issues**

6. The main issues are:

- the effect of the siting and appearance of the proposed monopole on the character and appearance of the area, including the settings of the East Molesey Kent Town Conservation Area and the East Molesey Bridge Road Conservation Area; and
- if any harm would be caused, whether this is outweighed by the need to site the installation in the location proposed, taking into account any suitable alternatives.

## **Reasons**

7. The 20m monopole, antennas and dishes would be a new installation and, in effect, a revised scheme following a prior approval granted on appeal<sup>2</sup> for a 15m high monopole in essentially the same location. It would be shared by two telecommunications operators and maintain existing 2G, 3G and 4G network coverage and capacity when it replaced an installation elsewhere after it ceases operation. This would ensure continuity of service. New 5G coverage would fill a gap in the local area and one operator would support the emergency services network. Although innately utilitarian in design, the monopole is representative of this type and is the smallest, thinnest, it can be to meet these technical objectives on the appeal site.

### *Character and appearance*

8. The appeal site is part of a wide grass verge behind the pavement in Bridge Road, near the corner with Arnison Road. It is next to a low wall and taller trees and shrubs along the boundary of the three-storey block of flats behind at Boleyn Court. The depth and extent of communal front garden space at these flats, and the set back of some buildings in this part of Bridge Road, gives a spacious feel at the junction with Arnison Road. This section of the Bridge Road streetscene also includes other two and three-storey residential or commercial buildings, roadside and front garden trees and street furniture such as lampposts, telegraph poles, road signs, small equipment cabinets, litter bin, post box, bench seat and pedestrian central refuge with bollards.
9. The boundaries of the East Molesey Bridge Road Conservation Area (BRCA) and the East Molesey Kent Town Conservation Area (KTCA) are close by. While the site is not in either Conservation Area, it is common ground between the main parties that it is within the setting of both and I Agree.
10. While my site visit was during a summer month, I have had due regard to the appellant's photomontages. These show some trees not in leaf and portray more of a 'worst case' scenario. Despite a reasonably wide, uniform diameter, the simple vertical profile of the lower and midsections of the monopole shaft,

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<sup>2</sup> APP/K3605/W/19/3243927

and its green colour, would be seen in conjunction with nearby mature trees and shrubs, even when not in leaf. While noticeably thicker in diameter it would also be observed relative to some lampposts, road signs and telegraph poles. While this part of the monopole would still be discernible, especially in shorter distance public views from Bridge Road, it would nonetheless be generally well assimilated in this context. Nor would it have an inordinate visual or spatial influence in the setting of the BRCA or KTCA.

11. However, even as shown in the appeal plans and photomontages, the top of the monopole shaft would tower significantly above the tallest nearby trees and buildings, by about 9m and 8m respectively. In particular, the tallest and widest, thus most noticeable upper section supporting some of the antennas, would clearly breach the broadly uniform visual horizon of the tree canopies and protrude upwards, beyond the general panorama and outline of adjacent or nearby buildings.
12. While some degree of vertical separation or other clearance to potential obstructions is required to avoid interference, and despite its colour, this most bulky and conspicuous part of the monopole would nevertheless be overly dominant and unduly prominent. Although the visual impact would be relatively localised, such an imposing and isolated structure would nevertheless have an overwhelming, jarring presence in this part of the Bridge Road streetscene and appear incongruous.
13. Due to distance, intervening buildings and trees and the winding nature of the historic Bridge Road<sup>3</sup>, the upper section of the monopole would not have any meaningful visual or spatial influence in public views towards the site from the north, into the BRCA. However, this part would appear intrusive and detract from public views within the BRCA, from further south in Bridge Road. It would erode this important view northwards out of the BRCA and have a negative effect on the significance of the BRCA.
14. For similar reasons, the upper section of the monopole would not have any meaningful visual or spatial influence on the tightly enclosed built form either side of Bridge Road in the KTCA at the historic 'village' centre<sup>4</sup>. While this part of it would be seen in some public views from Bridge Road into the KTCA, it would be against a general backdrop of trees and houses. It would not interfere with the appreciation of the distinctive, grid pattern of roads and residential building lines with avenues of trees in the KTCA. However, this part of the monopole would appear increasingly intrusive in public views from within the KTCA towards the end of Arnison Road, on the approach to the more open (appeal site) side of this junction. It would erode this planned view and vista out of the KTCA and have a negative effect on the significance of the KTCA.
15. The upper section of the monopole would therefore diminish the experience of walking or cycling in the immediate area and in these parts of the BRCA and KTCA, including the transition into and out of these Conservation Areas towards and through these parts of their settings. Harm to the significance of the BRCA and KTCA would be limited to a small part of each Conservation Area and as a result would cause less than substantial harm to each Conservation Area overall.

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<sup>3</sup> Council's 'East Molesey (Bridge Road) Conservation Area Character Appraisal & Management Proposals'

<sup>4</sup> Council's 'East Molesey (Kent Town) Conservation Area Character Appraisal & Management Proposals'

16. Paragraph 199 of the Framework requires that I give great weight to the conservation of these designated heritage assets, irrespective of the level of harm to their significance, and paragraph 200 sets out that any harm to, or loss of, the significance of a designated heritage asset (including from development within its setting) should require clear and convincing justification. The Framework also states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal (paragraph 196). I return to this consideration in my 'planning balance' below.
17. The 15m monopole could be erected at the site under the extant prior approval. However, it would be appreciably (25%) lower than the proposed 20m monopole and support significantly fewer antennas (3 as opposed to 12). In particular, it would not rise as conspicuously above the nearby trees or buildings and most of the upper section would appear mainly through or against these trees, with a large part of the midsection obscured by the trees and other vegetation. Consequently, even though the 20m monopole would not be overly apparent in all of the public views that I have referred to above, and that such structures are becoming more common place in built-up areas (albeit in appropriate locations), the excess height would not be 'limited' and the increased adverse impacts would clearly, in my view, not be 'marginal'.
18. If it were erected, subsequent alteration or replacement of the 15m monopole, including to increase its height, would in principle be within the scope of relevant permitted development rights. Nonetheless, such an 'upgrade' would still be subject to prior approval, having regard to siting and appearance — ie would likely invoke similar considerations as in this appeal. It is not, therefore, certain that prior approval would be granted and I have not, anyway, been referred to any extant prior approval for such works. Consequently, these permitted development rights are not yet established.
19. The fall-back position in relation to the approved 15m monopole therefore carries little weight in my decision.
20. I have been referred to some other appeal decisions<sup>5</sup> for monopoles, including sites in a Conservation Area and/or in the setting of a listed building. These relate to other Council areas. Nonetheless, the level of harm in some cases was 'low' or 'limited' and others did not involve a 20m monopole. Moreover, some related to applications for planning permission, not prior approval. These factors were material to those decisions in the planning balance and can, therefore, be distinguished from the circumstances of the current appeal, which I have, in any event, determined on its individual planning merits.
21. Taking all of the above into account, I find that by virtue of the height and bulk of the upper section of the proposed 20m monopole, its siting and appearance would cause significant harm to the character and appearance of the area, including to the significance of the BRCA and KTCA by virtue of this development within their settings.

#### *Alternative sites*

22. As I have found that the monopole would cause harm, the issue of alternative sites is relevant to my decision. The Council has not addressed alternative sites

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<sup>5</sup> APP/R5510/W/16/3143922, APP/L1765/W/18/3197522, APP/Q3305/W/18/3206555, APP/L1765/W/18/31975, APP/P4605/W/19/3241791 and APP/Z5630/W/19/3221200

nor suggested any not already considered by the appellant. Moreover, it has not disputed the appellant's evidence in these regards. I appreciate that interested parties would prefer the monopole to be sited elsewhere, and have suggested some possibilities, but these comments are largely anecdotal.

23. The appellant's site search for 5G services typically covers a relatively small area as the cells have to be close to each other. In this case it also includes constraints such as land within a Conservation Area or that is closer to listed buildings or to residential properties. The appellant has sought to find 'the most technically efficient site' to meet all of its objectives and considers the appeal site to be the 'optimum location in terms of siting and design'.
24. However, there is no requirement in the Order or the Framework to select the best feasible site or the most appropriate location in these regards. No reason is given for the future decommissioning of the appellant's existing installation at Wardray Premise Ltd or when this would occur. It was not included in the schedule of alternative sites considered by the appellant, nor are there details of the nature of that installation. It is not, therefore, clear to me why there is no likelihood that this site would not reasonably be available or technically suitable to meet the appellant's objectives.
25. Furthermore, while the appellant has considered a number of potential rooftop and 'streetworks' sites, including a greenfield site, there is no explicit or apparent information either way about the possibility of erecting its antennas and dishes on an existing mast. Paragraph 117 c) of the Framework states that such evidence should be provided where a new mast or base station is sought.
26. Consequently, I am not satisfied that the appellant has sufficiently justified that there is no likelihood that a more suitable alternative site may reasonably be available.

### **Other Matters**

27. Reference has been made to various social and economic benefits of the proposal, as well as alleged adverse climate change and other environmental impacts. These matters have, though, effectively already been recognised by the grant of permission under Article 3(1). I have not, therefore, taken these into account in considering prior approval and the matters of siting and appearance. I acknowledge the current heightened context of the Covid-19 pandemic and increased home-working, but there is no certainty that these circumstances will persist or exert the same influence in the future as now.
28. The appellant has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). In these circumstances, and notwithstanding that there are dwellings nearby and schools in the area, the Framework advises that health safeguards are not something which a decision-maker should determine. There is no evidence to indicate that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified in this case. The Council has powers under other legislation to seek to control potential statutory nuisance, including noise generated by the proposed equipment.
29. The effect of development on private interests, such as a restrictive covenant, view or property value, is not material to my decision because planning

operates in the wider public interest<sup>6</sup>. The monopole would be sufficiently distant from the closest residential properties such that while it would be seen, it would not be overbearing or restrict outlook or natural light, so would not adversely affect the living conditions of nearby residents. This includes the side window in Sussex Cottage and the large communal garden at Boleyn Court.

30. Some of the cabinets would be quite tall and wide, but narrow and placed in a row, well set back from the road and pavement. They would not interfere with pedestrian movement or appear cluttered or overly conspicuous in longer distance views. Closer up they would be seen in front of the low wall and taller trees and shrubs at Boleyn Court and, even if this landscaping was lowered, thinned or removed, then against this block of flats.
31. There are statutory and locally listed buildings near the site, as well as some significant unlisted buildings<sup>7</sup>. The closest listed building is Kingfisher Court on the other side of Bridge Road, further up. However, none of the principal elevations of these buildings, or the most important parts of their settings, face directly towards the appeal site. Consequently, and notwithstanding the increased height of the monopole in this current appeal, I have no reason to differ from the conclusions of the previous appeal Inspector<sup>8</sup> on these matters. There would be no harm to, or loss of, the significance of these heritage assets.

### **Planning Balance**

32. I have assessed the siting and appearance of the proposed monopole mindful that it is permitted development and has been accepted in principle. It would maintain and enhance mobile telecommunication services in the local area and deliver appreciable public benefits in these regards. I give considerable weight to these matters in support of the proposal.
33. While the appeal site would meet a need to site the monopole in this location, it has not been demonstrated that there is no more suitable and reasonably available alternative site within the relevant search area. This is, therefore, a neutral factor in my decision.
34. However, the monopole would cause significant harm to the character and appearance of the area, including to the setting of two Conservation Areas with consequential harm to the significance of both Conservation Areas. I give substantial weight to these considerations and these are determining factors against the proposal in this appeal. Accordingly, the benefits would not outweigh the harm.

### **Conclusion**

35. For the reasons set out above, I therefore conclude that the appeal should not succeed.

*Robin Buchanan*

INSPECTOR

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<sup>6</sup> Planning Practice Guidance - Paragraph: 008 Reference ID: 21b-008-20140306

<sup>7</sup> As shown in the Council's BRCA and KTCA appraisals

<sup>8</sup> APP/K3605/W/19/3243927