



Appeal Decision

Site visit made on 29 November 2022

by Samuel Watson BA (Hons) MSc MRTPI

An Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 December 2022

Appeal Ref: APP/T3725/W/22/3301969

Verge adjacent to MKM Building Supplies, Junction of Juno Drive and Queensway, Leamington Spa CV31 3RG

- 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 Freshwave Facilities Limited against the decision of Warwick District Council.
 - The application Ref W/22/0394/TC, dated 17 February 2022, was refused by notice dated 5 May 2022.
 - The development proposed is for the installation of 20m high mast supporting communications apparatus and 4No. equipment housing cabinets at ground-level, ancillary works 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) for the siting and appearance of a 20m high mast supporting communications apparatus and 4no. equipment housing cabinets at ground-level, ancillary works thereto, at verge adjacent to MKM Building Supplies, Junction of Juno Drive/Queensway, Leamington Spa CV31 3RG, dated 17 February 2022, and the plans submitted with it, including 215 Max Configuration Site Plan and 265 Max Configuration Elevation.

Preliminary Matters

2. 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, Paragraph A.3(4) 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. My determination of this appeal has been made on the same basis.
3. Part 16 of the GPDO establishes that the proposal is permitted development and therefore it is accepted in principle by virtue of the legislation and there is no requirement to have regard to the development plan as there would be for any development requiring planning permission. Nevertheless, the National Planning Policy Framework (the Framework) is a material consideration and

includes sections on supporting high quality communications and achieving well-designed places, sections 10 and 12 respectively.

Main Issues

4. The main issues are:

- Whether the proposal would be permitted development; and,
- the effect of the siting and appearance of the proposed installation on the character and appearance of the area.

Reasons

Whether Permitted Development

5. The GPDO is clear, under the interpretation of Class A, that development that is reasonably required by, and ancillary to, the telecommunications equipment is also covered by the permitted development right of Class A. The interpretation specifically refers to perimeter walls and fences as examples of such development.
6. The appellant submits that the fence would be for security purposes, and I note that it would be of a fairly limited scale. I am also mindful that the mast and ground equipment would be in a somewhat exposed location with a low level of passive surveillance likely at night. I therefore find that a security fence of the scale proposed would be ancillary to, and reasonably necessary for, the development.
7. Although the Council have referred to examples across the district where fencing has not been included, I have not been provided with substantive details of these examples. Moreover, all proposals must be considered on their own merits and, as such, these examples do not preclude me from finding otherwise in this case.
8. Consequently, I find that the proposal would be covered by the provisions of Schedule 2, Part 16, Class A of the GPDO.

Siting and Appearance

9. The appeal site forms part of a grass verge at the entrance to an industrial estate. The surrounding area is characterised by utilitarian buildings that are somewhat softened by mature trees and grass verges. During my site visit I noted a number of security fences surrounding other plots.
10. Given the location of the appeal site at the entrance to the industrial estate, it is seen in the context of this estate rather than the residential development along Queensway. The proposed fence would be of a similar style to, and therefore in keeping with, the nearby fences within the industrial estate. The proposal would also only take up a small area of the verge and would be seen against a backdrop of mature vegetation. Moreover, the proposed fencing would allow views through to the vegetation and telecommunications equipment, further softening the prominence of the fence. I note the Council have not raised any concerns regarding the mast or the ground apparatus.
11. In conclusion, the siting and appearance of the mast and its associated features would not harm the character and appearance of the surrounding

area. In reaching this decision, I have been mindful of the Framework, including Sections 10 and 12.

Conditions

12. Any planning permission granted for the erection of telecommunications equipment, including a mast and cabinets under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2). These specify that the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin not later than the expiration of 5 years beginning with the date on which the local planning authority received the application, and must 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.

Conclusion

13. For the reasons given above, I conclude that the appeal should be allowed, and prior approval should be granted.

Samuel Watson

INSPECTOR