
Appeal Decision

Site visit made on 28 November 2022

by C Harding BA(Hons) PGDipTRP PGCert MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th January 2023

Appeal Ref: APP/T5150/W/22/3304150

Land on the southern side of Engineers Way, to the east of its junction with Wembley Park Boulevard, Wembley, London HA9 0FJ

- 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 Cellnex UK Ltd against the decision of the Council of the London Borough of Brent.
 - The application Ref 22/1396, dated 14 April 2022, was refused by notice dated 07 June 2022.
 - The development proposed is the installation of an 8m high slimline smart pole hosting three small cell antennas and ancillary electronic communication apparatus.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An application for costs has been made by Cellnex UK Limited against the Council of the London Borough of Brent. This application is the subject of a separate decision.
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, Paragraph A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking account of any representations received. My determination of this appeal has been made on the same basis.

Main Issue

4. The main issue is whether the proposed development comprises permitted development under Schedule 2, Part 16, Class A.

Reasons

5. Article 3(1) and Schedule 2, Part 16, Class A of the GPDO grants planning permission, amongst other development, for the installation, alteration or replacement of any electronic communications apparatus. It is not disputed that the proposed development could comprise development that would be considered permitted development under Part 16.

6. However, the permission granted by the GPDO is not unqualified and is subject to various conditions and limitations. These include, at Schedule 2, Part 16, Class A, Paragraph A.2(3) that development consisting of the installation of a mast is permitted subject to the conditions set out in Paragraph A.3.
7. Paragraph A.3(4) requires that prior to beginning the development, the developer must apply to the local planning authority for a determination as to whether prior approval of the authority would be required as to the siting and appearance of the development. Paragraph A.3(1) states that before making such an application, that the developer must give notice of the proposed development to any person who is an owner of the land to which the development relates.
8. In submitting the application for determination as to whether prior approval would be required, the appellant, amongst other documents, provided a location plan (UK00040862-00-004-ML001), a site plan render, details of the proposed smart pole, and evidence that notice had been given to the Council in its role as the Local Highway Authority.
9. There is dispute as to whether the provided location plan accurately reflects the intended location of the proposed development. If, as the Council assert, it would be located within the forecourt of the adjacent building, and would therefore be on private land, I agree that the incorrect notice would appear to have been served.
10. However, the appellant asserts that the location plan is correct, although it is acknowledged that the age of the base map may not reflect recent highway works. As a result, it is argued, the mast as plotted on the base map may appear to have been plotted further from the kerbside than it would be in the context of the revised road layout.
11. The appellant provided the Council with additional plans which, it is claimed, clarify the location of the proposed smart pole. Although the Council did not take these further plans into account in determining the application, and they have not been subject to any degree of public consultation, I have had regard to them.
12. The originally submitted site plan does not appear to reflect the surroundings of the site wholly accurately, and also appears to be inconsistent with the site plan render. The appellant's explanation that it is the base map that is incorrect is reasonable, and the provided additional plans do appear to reflect the highway layout with a greater degree of accuracy, and this results in a greater degree of certainty with regards to location of the proposed development in relation to the highway.
13. However, the location of the proposed smart pole on the additional plans appears to differ from that indicated on the location plan originally provided, relative to the closest buildings, with the additional plans indicating a location further to the east than on the original location plan. As a result, inconsistency remains between the submitted location plan and the additional information. Although red line boundary plans are not required for applications for prior approval under Part 16, the provided site location plan forms part of the submission, and regard should be had to it.

14. Accordingly, when considered as a whole, the evidence that is before me is ambiguous and results in a significant degree of uncertainty as to the specific location of the proposed development. Furthermore, I have not been provided within any clarification with regards to the extent of the adopted highway, and thus the extent of the Local Highway Authority's responsibility. Therefore, I cannot be satisfied that the correct notice was served prior to the application for prior approval being made.
15. Accordingly, I conclude that as the conditions set out in Paragraph A.3(1) have not been met, that the proposed development would not comprise permitted development under Schedule 2, Part 16, Class A.

Other matters

16. The Council has also raised concern with regards to the siting and appearance of the proposed development. However, as I have concluded that the proposal would not benefit from permitted development rights in any event, it is not necessary for me to consider these matters in detail.
17. The appellant has highlighted the benefits of the proposed development in improving coverage and connectivity in an area that experiences high demand. However, as I have concluded that the proposed development would not comprise permitted development in any event, these benefits do not weigh in favour the proposal.

Conclusion

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

C Harding

INSPECTOR