



Appeal Decision

Site visit made on 21 March 2023

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2023

Appeal Ref: APP/M3645/W/22/3298090

Westerham Road Lay-By Verge, Westerham Road, Westerham TN16 2EU

- 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 MBNL (EE (UK) Ltd and H3G (UK) Ltd) against the decision of Tandridge District Council.
 - The application Ref 2021/1653/T, dated 14 September 2021, was refused by notice dated 3 November 2021.
 - The development proposed is the installation of a 20 metre high monopole supporting 6no. antennas and 2no. 600mm dishes, the installation of 7no. equipment cabinets and development ancillary thereto.
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Decision

1. The appeal is allowed and prior approval is granted for a 20 metre high monopole supporting 6no. antennas and 2no. 600mm dishes, the installation of 7no. equipment cabinets and development ancillary thereto at Westerham Road Lay-By Verge, Westerham TN16 2EU in accordance with the terms of the application, Ref 2021/1653/T, dated 14 September 2021, and the plans submitted with it.

Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (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. Accordingly, as the principle of development is established by the GPDO and is not a consideration, the question of whether or not the proposal represents inappropriate development in the Green Belt does not arise. My determination of this appeal has been made on this basis.
3. The provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. Nevertheless, policies of the Tandridge Local Plan Core Strategy 2008 (CS), the Tandridge Local Plan Part 2: Detailed Policies 2014 (LP) and the Limpsfield Neighbourhood Plan 2019 (NP) are material considerations as far as they relate to the issues of siting and appearance. Similarly, the National Planning Policy Framework (the Framework) is also a material consideration.
4. The appellants' view is that the proposed cabinets do not require prior approval due to their size and function. This is not a matter for me to determine in the

context of an appeal made under section 78 of the Town and Country Planning Act 1990. I have determined the appeal on the basis of the scheme before me, which was the subject of the prior approval application and includes the proposed cabinets.

5. As part of this appeal, the appellants have submitted a revised siting of the equipment. Whilst this is designed to reduce the effect on nearby trees, under the prior approval process statutory consultees and the public are consulted and/or notified of the scheme at application stage. Accepting amended plans at appeal stage would obviate the required consultation and notification requirements relating to the amended proposals. This could prejudice interested parties who may wish to comment. I have therefore considered the appeal on the basis of the drawings submitted to the Council and on which they made their decision.

Main Issue

6. The main issue is the effect of the siting and appearance of the proposed installation on the character and appearance of the area; and if any harm were to occur, whether this is outweighed by the need for the installation to be sited as proposed, taking account of any suitable alternatives.

Reasons

7. The appeal site is part of a grassed verge on the northern side of Westerham Road (the A25). The verge separates the road from a large lay-by. The land in the area is gently undulating, rising slightly to the south and south-west of the site. Whilst there is sporadic development along the A25, the area is verdant and generally has an undeveloped rural character.
8. The site is within an Area of Outstanding Natural Beauty (AONB) and an Area of Great Landscape Value. The Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in an AONB. Development within an AONB should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.
9. The equipment would be positioned away from the edge of Westerham Road and close to a line of trees that partially help to screen the lay-by from the road. There are no other vertical features such as streetlights in the vicinity.
10. The alignment and curvature of the road would serve to limit wider views of the equipment from traffic travelling eastwards although when in view the mast would be a somewhat jarring feature projecting above the trees. The trees would provide a background against which the lower parts of the equipment would be viewed by traffic travelling westwards. Nonetheless, the mast would still be seen as a somewhat incongruous feature within the landscape. It would also be particularly evident when viewed from higher ground such as Moorhouse Road.
11. The proposal would require some tree removal and pruning. The scheme makes provision for a suitable tree replacement and maintenance programme. General tree protection would also be undertaken during the works. Taking that into account, I conclude that the proposals could have an effect on the trees, but I am satisfied that this will be monitored during construction and managed afterwards. Furthermore, given the extent of tree coverage in the area, this would not significantly alter the general effect on the wider area.

12. I acknowledge that the development would be sited between a large lay-by and an A-Class road, as well as being close to the entrance to an existing commercial operation through which, from my observations on site, large lorries appear to frequently arrive and depart. Thus, the immediate environment is not one that is entirely tranquil or has a complete sense of remoteness. Nevertheless, the proposed development would be at odds with the wider verdant and rural character of the area. It would be a prominent feature whose visual impact would be compounded by the thickness of the monopole and the antenna at the highest part.
13. I therefore conclude that, due to its siting and appearance, the proposed development would have a harmful effect upon the character and appearance of the area.
14. Insofar as they are a material consideration, the proposal would be contrary to the aims of Policies CSP18, CSP20 and CSP21 of the CS, Policies DP6 and DP7 of the LP, and Policy LNP5 of the NP which, amongst other things, seek to ensure that telecommunications infrastructure minimises its visual effects and that developments more generally respond to their context particularly in relation to trees and in the wider protected landscape; and so preserve or enhance the character of the local rural area.
15. As I have found that the monopole would cause harm, Paragraph 117 of the Framework requires that evidence of alternative sites is provided to justify the proposed development.

Alternative Sites

16. I have no reason to doubt the loss of the existing mast at Moorhouse Sand Pits nor the unavailability of what was meant to be a new location for the mast within the Moorhouse site.
17. Of the five alternative sites put forward by the appellants, one was the originally preferred alternative site which has been granted approval for a replacement mast. However, neither this site nor a further alternative owned by the same landowner are now available. The three other sites were said to not be within the required coverage area. None of the alternative sites therefore appear to be truly viable alternative options as they are either unavailable or located beyond the search area.
18. However, the site search for 5G services typically covers a relatively small area as the cells have to be close to each other. At my site visit I observed that the nature and topography of the area requiring additional coverage restricts opportunities for siting. Furthermore, there are few buildings or structures in the immediate vicinity that would offer sufficient height to be a viable option. It is therefore not readily apparent that there are any other, less harmful siting opportunities.

Other Matters

19. In support of the proposal, the appellants highlight the Government's aims of supporting high quality communications. The Framework sets out the objectives for communications infrastructure. It notes that high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile

technology (such as 5G) and full fibre broadband connections. Policies should set out how high-quality digital infrastructure, providing access to services from a range of providers, is expected to be delivered and upgraded over time.

20. The proposal would provide social and economic benefits by improving existing coverage and the ability to deliver 5G coverage in the future. It would deliver faster connections, increase capacity and greater connectivity to facilitate productivity, innovation and efficiency. The proposal might help support home working in a rural area and serve two providers on a single shared facility.
21. Published Government statements supporting the drive towards advanced digital connectivity have also been pointed to by the appellants. The necessity of digital technology is further stressed by them given the significance of the Coronavirus pandemic and post pandemic recovery.
22. I acknowledge concerns regarding the effect of the development upon health levels. The appeal documentation contains an International Commission on Non-Ionizing Radiation Protection declaration. Therefore, in line with the requirements of the Framework, I have no reason to believe that the proposed development would lead to an adverse effect upon the health of individuals. Planning decisions should not set health safeguards different from the International Commission guidelines for public exposure.
23. The Framework is also clear, at Paragraph 118, that the need for an electronic communications system should not be questioned.

Planning Balance

24. For the reasons set out above, I have found that the mast would cause harm to the character and appearance of the locality. However, I have also found that the potential for other sites within the search area appears to be restricted.
25. When weighed against the public benefits arising from the proposed improvement to telecommunications infrastructure and the associated social and economic benefits, as presented by the appellant, I conclude that the totality of the harm identified would be outweighed in the particular circumstances of the case.

Conditions

26. The GPDO does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators contained within it. These specify that the development must be carried out in accordance with the details submitted with the application, begin within 5 years of the date of the approval and 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

27. For the above reasons, the appeal is allowed, and prior approval is granted.

Stewart Glassar

INSPECTOR