



Appeal Decision

Site visit made on 16 May 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2023

Appeal Ref: APP/U5360/W/20/3258280

Regal House, 156 Lower Clapton Road, London E5 0QJ

- 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 & Hutchinson 3G UK Limited) against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2020/1856, dated 22 June 2020, was refused by notice dated 18 August 2020.
 - The development proposed is Prior approval for siting and appearance: Installation of 4 new antenna apertures mounted on 2 new support tripods, an equipment cabinet, new handrail and ancillary communications apparatus and support poles.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal would be permitted development, with particular regard to Paragraph A.1(2)(f)(ii) of Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), and;
 - If the proposal is permitted development subject to prior approval, the effect of the siting and appearance of the proposed installation on the character and appearance of the area, and the significance of designated heritage assets.

Reasons

Whether the proposal would be permitted development

3. The appeal site is within the Clapton Pond Conservation Area and therefore located on Article 2(3) land for the purposes of the GPDO.
4. The evidence before me does not demonstrate that the proposal would constitute a small antenna and small cell systems under the definition in the GPDO. The drawings show that the proposed antennas would be installed on the roof of the building and supported by tripod style masts. The underside of the antennas would be at a level of 16.05 metres above ground level and the top of the antennas would be at a level of 19.35 metres above ground level. As such, the antennas would have a height of 3.3m, thus exceeding the limitation

- in Paragraph A.1(2)(f)(ii) of Schedule 2, Part 16, Class A of the GPDO, relating to building-based apparatus other than small antenna and small cell systems.
5. It follows that the proposal would also not meet the limitations set out in Paragraph A.1(4) of Schedule 2, Part 16, Class A of the GPDO, for antennas and supporting structures installed, replaced or altered on Article 2(3) land. This is noting that Paragraph A.1(4)(a)(iv) of Schedule 2, Part 16, Class A of the GPDO, requires antennas or apparatus to be within the height limitation set out in Paragraph A.1(2)(f)(ii). As set out previously, the proposed installation would exceed that height limitation.
 6. In addition to the above, the evidence before me has also drawn my attention to Paragraph A.2(3) of Schedule 2, Part 16, Class A of the GPDO. However, whilst the conditions in Paragraph A.2, determine when Prior Approval is required, the proposed development must nonetheless meet the limitations for building-based installations set out in Paragraph A.1 of Schedule 2, Part 16, Class A of the GPDO to be development permitted by it and therefore, for such conditions to apply.
 7. On the evidence before me, I find that the height of the proposed antennas would exceed the height limitation for building-based apparatus on Article 2(3) land set out in Paragraph A.1(2)(f)(ii) of Schedule 2, Part 16 of the GPDO. For this reason, the proposal would not be permitted development.

Character and appearance, and heritage assets

8. Having found that the proposal would not be permitted development, it is not necessary for me to consider the siting and appearance of the proposed installation as it would not alter the outcome of the appeal.

Conclusion

9. For the reasons given and based upon the evidence before me, I conclude that it has not been demonstrated that the proposal is permitted development under Article 3(1) and Schedule 2, Part 16, Class A of the GPDO. The appeal is, therefore, dismissed.

G Sylvester

INSPECTOR