



Appeal Decision

Site visit made on 27 June 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2023

Appeal Ref: APP/M0655/C/23/3314289

Land off Spring Lane, Warrington WA3 7AS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by MBNL against an enforcement notice issued by Warrington Borough Council.
 - The notice was issued on 14 December 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of a telecommunications installation and associated ancillary works.
 - The requirements of the notice are to: Remove from the land the telecommunications installation and all associated ancillary works.
 - The period for compliance with the requirements is: Two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (c)

2. An appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. It is for the appellant to make their case on the balance of probabilities. Section 191(2) of the Act sets out that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).
3. Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) permits development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network in, on, over or under land controlled by that operator or in accordance with the electronic communications code, consisting of (a) the installation, alteration or replacement of any electronic communications apparatus, subject to certain conditions and limitations.
4. A planning permission granted by the GPDO is crystallised when, in the case of prior approval development, the Local Planning Authority has stated that prior approval is not required, or fails to make a determination within the specified period. Schedule 2, Part 16, Class A, Paragraph A.3 of the GPDO sets out that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting and appearance of the development.

It is not disputed that the works would meet the height limitations set out in the GPDO.

5. Sub-paragraph (5) of A.3 states that the application must be accompanied by (a) a written description of the proposed development and a plan indicating its proposed location together with any fee required to be paid; (b) the developer's contact address, and the developer's email address if the developer is content to receive communications electronically; evidence that the requirements of sub-paragraph (1) have been satisfied where applicable; and (d) where the condition in paragraph A.2(5A) applies, evidence that the Civil Aviation Authority, the Secretary of State for Defence or the operator of the civil safeguarding area or defence safeguarding area, as the case may be, has been notified of the proposal.
6. Sub-paragraph (8) of A.3 states that the development must not begin before the occurrence of, amongst other things, the expiry of a period of 56 days beginning with the date on which the local planning authority received the application in accordance with sub-paragraph (5) without the local planning authority notifying the applicant, in writing, of their determination as to whether such prior approval is required. It is not disputed that the Council made a determination as to whether prior approval is required, rather it is disputed that this determination was made within the requisite 56 day period.
7. The appellant states that they submitted an application to the Planning Portal on 26 May 2022 and considers that the 56 day period commenced on that day. In support of their case, the appellant has provided a receipt for payment from the Planning Portal Team, which advises that the application and fee will now [sic] be submitted to Warrington Borough Council. The document goes on to advise that the applicant contact the Council directly to discuss the application, as the Planning Portal is not involved in the decision-making process.
8. The Council disputes that it *received* (my emphasis) the application on that day and has provided me with a letter, dated 1 July 2022, which states that the application reference 2022/41635 was received by it on 20 June 2022. The Council advise that during May and June 2022 it was in a period of transition, having introduced a new planning case management software system, and was unable to receive applications from 20 May 2022 until 20 June 2022. The appellant has not disputed the Council's statement in this respect, and I have no evidence before me to show that the Council was able to receive applications from the Planning Portal during May and June 2022 and no reason to doubt the Council's case in this regard.
9. The Council describes the Planning Portal as an intermediate entity that functions as a conduit for the submission of planning applications. It is administered by a private limited company and provides submissions to the relevant local planning authority. Indeed, documentation provided by the appellant advises that the Planning Portal is 'an online application service provided by PortalPlanQuest and supports the submission of planning application information to Local Planning Authorities in accordance with statutory regulations.' Receipt of an application by the Planning Portal does not, in my view, constitute receipt by the local planning authority for the purposes of the GPDO.
10. Although the appellant has provided a letter from the Council, dated 28 April 2022, confirming receipt of application reference 2022/41422, this predates the

submission of the application via the Planning Portal. The appellant suggests that the Council put the wrong month on their initial letter, however, the reference number differs to that given to the appeal scheme. The Council states that the letter was in respect of another application, not the application related to this appeal. I have no substantive details regarding the submission made, which from the wording of the letter, appears to have been an application for planning permission rather than a notification under Part 16, Class A of the GPDO.

11. Given the above, I find that, on the balance of probabilities, the Council did not receive the application until 20 June 2022. Since the Council's determination was made on 11 August 2022, I consider the Council's determination was made within the specified period¹ and so prior approval is not deemed to be granted. Consequently, permission is not granted by the GPDO and the appeal under ground (c) must fail.
12. Paragraph 117 of the National Planning Policy Framework (2021)(the Framework) states that applications for electronic communications development (including applications for prior approval under the General Permitted Development Order) should be supported by the necessary evidence to justify the proposed development. This should include, amongst other things a statement that self-certifies that, when operational, International Commission guidelines will be met.
13. I note the Council's comments regarding the inclusion of a statement / declaration that the proposal, when operational, will meet the ICNIRP (International Commission on Non-Ionizing Radiation Protection) guidelines, which it is stated was submitted by the appellant on 22 June 2022. While I am not convinced any failure to provide such information would have stopped the clock on the statutory determination period, because such information is not expressly required by the GPDO, given my findings above, it is not necessary for me to make a determination in this regard.

Ground (a)

14. An appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Main Issues

15. The main issues are the effect of the appeal scheme on:

- The living conditions of nearby occupants, having regard to outlook; and
- The character and appearance of the area.

Reasons

Living conditions

16. The appeal scheme comprises a 25m high telecommunications mast and associated equipment, which is located off Spring Lane. To the north west of the appeal site is Springfield House Farm, which is a residential property. A

¹ Before the expiry of a period 56 days beginning with the date on which the local planning authority received the application.

series of photographs have been provided which have been taken from within the residential property and its rear garden. Although the residential property is separated from the appeal site by mature vegetation, the mast extends well above the trees and is clearly visible from rooms within the property and from the rear garden itself.

17. Policy MP2 of the Warrington Borough Council Adopted Local Plan Core Strategy (2014)(the LPCS) supports commercially operated telecommunications equipment provided that it satisfies certain criteria, including there are no significant detrimental impacts on residential amenity and policy QE6 seeks development which does not lead to an adverse impact on the amenity of nearby properties.
18. The appellant suggests that the site has been carefully selected in a position as far away as technically possible from the views of residential properties. However, I consider the distance between the appeal site and Springfield House Farm to be limited. Due to the substantial height of the mast and its proximity to Springfield House Farm, I consider occupants of the dwelling, including users of the rear garden, are likely to find the mast overbearing. As a consequence, occupants of the property may be deterred from using their garden. This is harmful to the living conditions of the occupants of Springfield House Farm, contrary to policies MP2 and QE6 of the LPCS, the requirements of which are set out above.

Character and appearance

19. The appeal site is located along a section of Spring Lane, which runs parallel to the M62. At the time of my visit, Spring Lane appeared well used by cyclists and vehicles. I saw that another telecommunications mast is located on the other side of the M62. The urban areas of Warrington and Risley are located to the south of the M62, while the area immediately to the north of the M62 has a more rural character.
20. Policy MP2 of the LPCS supports commercially operated telecommunications equipment provided that it does not harm the character and appearance of the area and policy QE7 seeks development which enhances the character and appearance of the local area, amongst other things. The Framework advises that equipment should be sympathetically designed and camouflaged where appropriate.
21. The mast is located along a section of verge, adjacent to the footway and comprises a lattice structure with antenna at the top. The mast sits on a concrete base with cabinets which are enclosed with green palisade fencing, allowing views of the equipment enclosed within. Although there is mature vegetation between the mast and land to the north, there is very limited space between the base compound and the footway, significantly limiting the opportunity for planting. As a consequence, the base and mast can be clearly seen by people travelling along Spring Lane.
22. Various other vertical features associated with the M62, such as signage, electricity poles, lighting and sheet piles are also evident from Spring Lane, however, they appear less intrusive than the appeal mast due to their limited width and/or height. Although there is another telecommunications mast on the opposite side of the M62 to the appeal site, due to the intervening motorway, it appears less dominant than the appeal scheme when viewed from Spring Lane.

23. Due to its significant height, width and proximity to the footpath, the appeal scheme appears a dominant feature which diminishes the rural character of this part of Spring Lane. In distant views, for example from New Lane, I accept that the mast is viewed against the backdrop of the M62 and other features, such as lighting, the telecommunications mast on the other side of the M62 and electric pylons. As such, I consider the harm to distant views is limited.
24. While the appeal site is not within an area subject to a statutory designation for the protection of its character, I find that the harm to the character and appearance of Spring Lane is significant, contrary to policies MP2 and QE7 of the LPCS, the requirements of which are set out above.

Planning Balance and ground (a) conclusion

25. The appellant states that the proposed installation is required to deliver new 5G coverage within the WA3 post code area. The Framework advises that decisions should support the expansion of electronic communications networks. The need for the facility should therefore be balanced against the harms I have identified above.
26. The Framework advises that for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure should be submitted. Both the appellant and the Council refers to evidence provided at the application stage to show that the appellant has explored the possibility of erecting the installation at an alternative location. However, limited information has been submitted in support of this appeal.
27. I am not persuaded that the need for the mast outweighs the significant harm to the living conditions of the occupants of Springfield House Farm, or the harm to the character and appearance of the area. Thus, for the reasons given above, I conclude that the appeal scheme would harm the living conditions of nearby occupants and the character and appearance and so would conflict with the development plan as a whole. There are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Conclusion

28. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Savage

INSPECTOR