



Appeal Decision

Site visit made on 27 September 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2013

Appeal Ref: APP/T5150/C/22/3307556

Telecommunications Mast, Land rear of 229 All Souls Avenue, London NW10 3AE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by The Company Secretary of Cornerstone against an enforcement notice issued by London Borough of Brent.
 - The enforcement notice was issued on 16 August 2022.
 - The breach of planning control as alleged in the notice is breach of Condition 1 of appeal decision ref: APP/T5150/W/21/3284546 by the Planning Inspectorate on 29 April 2022 in relation to the planning application ref: 21/1729, which was refused by notice dated 1 September 2021.
 - The development to which the permission relates is:
"The temporary retention (12 months until 30 June 2022) of 23.5m high temporary mast with antenna headframe above (top height 23.5m) and associated ancillary development".
 - The condition in question is no 1 which states that:
"The development/use hereby permitted shall be for a limited period until 30 June 2022. The mast and associated structures/equipment hereby permitted shall be removed and the land restored to its former condition on or before the 30 June 2022 in accordance with a scheme of works that shall first have been submitted to and approved in writing by the Local Planning Authority".
 - The notice alleges that the condition has not been complied with in that:
"The mast and associated structures/equipment have not been removed and the land has not been restored to its former condition on or before the 30 June 2022 in accordance with a scheme of works submitted to and approved in writing by the Local Planning Authority".
 - The requirements of the notice are to:
Step 1 - Remove the telecommunications mast and associated structures/equipment from the premises.
Step 2 - Dig/rip the land and landscape the area where the mast previously stood with appropriate shrubs and turf and replace any that die or get damaged.
 - The period for compliance with the requirements is: 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice is varied by:

- the deletion of Step 2 of Schedule 4 and the substitution with:
"Step 2 Restore the land to its former condition prior to the development taking place."
- The deletion from Schedule 5 of "1 month" and the substitution therefor of "3 months" as the time for compliance.

2. Subject to the variations, the enforcement notice is upheld.

Preliminary Matters

3. A nearby occupier requested that I visit their property as part of my site visit. They were informed of the date and time of my visit, but I was not able to enter the property. I viewed the existing development from the surrounding area and am satisfied that I have sufficient information to be able to determine the appeal.

Ground (c)

4. An appeal on this ground is a claim that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof falls on the appellant and the relevant test of the evidence is on the balance of probabilities.
5. The appellant accepts that the mast and the associated telecommunications apparatus remain on site beyond the time set out in the relevant condition. This is therefore a breach of planning control. However, the appellant then asserts that the previous ground conditions and/or materials of the ground cover were not part of the description of development and thus this matter cannot be a breach of planning control.
6. However, the breach as set out in the notice is non-compliance with a condition subject to which planning permission was granted, which required removal of equipment from the site together with restoration of the land. The appellant accepts that the equipment remains and thus the alleged breach has occurred. The arguments put forward by the appellant are more suited to an appeal under ground (f) and thus I shall return to them below.
7. For the above reasons, the appeal under ground (c) must fail.

Ground (f)

8. This ground of appeal is that the requirements of the notice are excessive and that lesser steps would overcome the objections. The enforcement notice seeks the removal of the mast and associated equipment as well as the restoration of the land, and as such the purpose is clearly to remedy the breach. This is confirmed within Schedule 4 of the notice.
9. The appellant's concern is in respect of the second requirement of the notice, which states:

"Dig/rip the land and landscape the area where the mast previously stood with appropriate shrubs and turf and replace any that die or get damaged."
10. It is the appellant's contention that the ground conditions do not form part of the alleged unauthorised development, as they were not part of the description of development when planning permission was granted and they were not referred to by the previous Inspector when granting temporary permission for the development. While this is noted, the condition which has been breached required the removal of the mast, as well as the restoration of the appeal site. Accordingly, matters relating to how the land is to be restored can legitimately be addressed within the requirements of the notice. Moreover, to not require the restoration of the land would not remedy the breach in its entirety.

11. Notwithstanding the above, while not raised by the appellant, I do have concerns over the specific wording of this second requirement of the notice. Firstly, the requirement is not sufficiently precise, in that it does not specify how the area is to be landscaped and the term “appropriate” is ambiguous. Also, the requirement to replace any landscaping that dies or gets damaged is not defined with any timescale. Accordingly, this requirement is not reasonable and not sufficiently precise to enable the appellant to be able to ascertain what they must do to comply with it.
12. I find that it is necessary to ensure that the site is restored to its previous condition, as set out in the condition, and thus I will vary the notice to require that this is done. The appellant is best placed to know the condition of the land prior to the development taking place and thus such a requirement would be reasonable. I am satisfied that to do so would cause no injustice to the appellant or the Council.
13. The appeal on ground (f) succeeds to this extent.

Ground (g)

14. The ground of appeal is that the time given to comply with the notice is too short. The notice requires the removal of the mast and associated equipment and the restoration of the site within one month. The appellant seeks that the compliance period be 18 months.
15. The appellant cites difficulties in securing a location for the permanent siting of the telecommunications mast, and that without a replacement the loss of the mast would result in the loss of service to users in the area, with the consequential economic and social effects. It is also stated that planning permission has been secured for the erection of a new mast at a local sports centre, but that it is discussions with the landowner that are proving to be problematic, despite these having been underway since 2018.
16. I am conscious of the difficulties explained by the appellant, however these and the economic and social effects must be balanced against the harm that results from the installation, as found by the Inspector when determining the previous appeal and granting temporary planning permission. The Inspector was satisfied that the harm would only exist for a short period of time. The short period that was envisaged has been far exceeded at this point. I consider that a three-month period to comply with the requirements would strike the appropriate balance between mitigating the harm resulting from the mast and providing scope to the appellant to find some alternative arrangements.
17. I shall therefore extend the period for compliance as I have set out and the appeal under ground (g) succeeds to this extent.

Other Matters

18. I am aware of comments from interested parties that the mast is unsightly, overbearing and results in health concerns for nearby residents. However, these matters were specifically addressed by the Inspector when determining the previous appeal on the site and when granting temporary planning permission. It was found that the development would not have a significantly overbearing effect on views or harm outlook. It was also confirmed that the development met the relevant guidelines in respect of exposure to non-ionising

radiation and thus there were no health reasons to reject the scheme. No substantive evidence is before me to lead me to conclude differently.

Conclusion

19. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on grounds (f) and (g) succeed to that extent.

Martin Allen

INSPECTOR