



Appeal Decision

Site visit made on 31 October 2023

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 13th December 2023

Appeal Ref: APP/Y0435/W/23/3321322

Wolverton EME Compound, Monks Way, Bradwell, Milton Keynes MK13 9AR

- 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 & Hutchison UK Ltd) against the decision of Milton Keynes Council.
 - The application Ref 23/00020/PRIOR, dated 19 January 2023, was refused by notice dated 1 March 2023.
 - The development proposed is +25.0m AGL monopole telecommunications installation upgrade and associated ancillary works. Existing +17.5m MBNL monopole mast to be removed.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of the proposed +25.0m AGL monopole telecommunications installation upgrade and associated ancillary works. Existing +17.5m MBNL monopole mast to be removed, at Wolverton EME Compound, Monks Way, Bradwell, Milton Keynes MK13 9AR, in accordance with the terms of the application, Ref 23/00020/PRIOR, dated 19 January 2023, and the plans submitted with it including: 002 Site Location Plan, 200 Proposed Site Plan, and 250 Proposed Elevation.

Preliminary Matters

2. 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 GPDO) planning permission is granted for the installation, alteration or replacement of electronic communications apparatus, provided it meets the limitations and conditions set out at paragraphs A.1 and A.2, and the procedural requirements set out at paragraph A.3.
3. In accordance with A.3 (4) of Schedule 2, Part 16, Class A of the GPDO, the appellant applied to the local planning authority for determination as to whether the prior approval of the authority would be required as to the siting and appearance of the development. The Council refused the application for prior approval because in its view, the proposal does not accord with the conditions set out under the GPDO and therefore it considers that the proposal is not permitted development.
4. Where a proposal is not found to be permitted development, it is not necessary to go on to consider whether to grant prior approval. If the proposal is deemed

to be permitted development, under the provisions of paragraph A.3(4) of Article 3(1) and Schedule 2, Part 16, Class A of the GPDO and prior approval is required, the local planning authority must only assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. If I find that the proposal is permitted development, my determination of this appeal would be made on the same basis.

Main Issues

5. The main issues are:

- Whether the proposal would be permitted development, with particular regard to Schedule 2, Part 16, Class A of 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.

Reasons

Is the proposal permitted development?

6. The replacement of electronic communications apparatus is permitted development under Class A (a) of Schedule 2, Part 16 of the GPDO, subject to the limitations and conditions set out.
7. Given the proposal relates to the replacement of a mast, amongst other requirements, it must fall with the limitations set out under A.1(1)(e) of Class A (a) of Schedule 2, Part 16 of the GPDO. This states that development is not permitted in the case of the alteration or replacement of a mast where (i) the mast is on any land which is, or is within a site of special scientific interest; and (ii) the mast would, when altered or replaced, exceed the original width of the mast by more than one third.
8. Given that there is no evidence before me to suggest the appeal site is on any land which is, or is within a site of special scientific interest and the second criteria is dependent on that finding, then A.1(1)(e) does not apply in this case.
9. The Council assert that the proposed cabinets and structures that would be ancillary to the mast would not house radio equipment and due to the size do not comply with the requirements of criteria A.1(7) of Class A (a) of Schedule 2, Part 16 of the GPDO. However, there is no cogent evidence before me to suggest these cabinets would not house radio equipment and therefore, I am not convinced that this particular part of the GPDO is relevant to the proposal before me.
10. Given that the proposal is a replacement mast, then A.1(1)(b), raised by the Council does not apply.
11. Turning then to conditions for Permitted Development, the proposed replacement mast would be 25m in height, which is allowed for on unprotected land under A.2(3)(c)(ii) of Class A (a) of Schedule 2, Part 16 of the GPDO.
12. The Council state that the proposal is not permitted development as it does not meet with the requirements of A.2(3)(c)(iia)(aa) and A.2(3)(c)(iia)(bb) of Class A (a) of Schedule 2, Part 16 of the GPDO due to the proposed increased width

of the replacement mast compared with the original. However, the limitations set out under A.2 (3) identify the developments that are permitted development, without the need for prior approval, and those that require an application for prior approval following the process set out under A.3, rather than those developments that cannot be dealt with through the prior approval process.

13. The Council assert that the width of the mast is currently 81cm whilst the replacement would be 2.08m. However, the submitted drawings show a lesser width for both the existing and proposed masts. Given the width of the existing mast, being less than 1m, A.2(3)(c)(iia)(aa) of Class A (a) of Schedule 2, Part 16 of the GPDO applies in this case rather than A.2(3)(c)(iia)(bb). The test as to whether a prior approval application is required, based on this particular part of the GPDO is therefore, would the replacement mast exceed the original width of the mast by two thirds.
14. Based on the submitted drawings before me I consider that the width of the proposed replacement mast would exceed the width of the original mast by two thirds. Prior approval is therefore required.
15. The Council's Decision Notice further referred to other parts of the GPDO. Developments set out under A.2(4)(d)(i), A.2(4)(d)(ii), A.2(4)(e)(i) and A.2(4)(e)(ii) of Class A (a) of Schedule 2, Part 16 of the GPDO are those that are excluded under paragraph A.2(3)(a) which relates to article 2(3) land. There is nothing in the evidence before me to suggest that the appeal site is located within a Conservation Area, Area of Outstanding Natural Beauty, the Broads, a National Park or a World Heritage Site and therefore it is not located on land designated as article 2(3) land. These requirements are therefore not applicable in this case.
16. I therefore conclude that the proposal is permitted development, subject to the prior approval of siting and appearance under A.3 of Class A (a) of Schedule 2, Part 16 of the GPDO.

Character and appearance

17. Whilst not identified in the reason for refusal, the Council did consider the issues of prior approval in its Officer Report stating that the proposal would be supported.
18. The appeal site is surrounded by vegetation and is removed from the nearby residential properties, Bowls Club and Tennis Club by a reasonable distance. It is set back from the Public Right of Ways and the road, Monks Way. Whilst the height of the proposed mast would be taller than that of the existing mast it would replace, given the set back position of the compound in which it would be located and the significant vegetation and the height of the trees around it, the mast would not appear visually obtrusive.
19. The proposed cabinets would be located at the base of the proposed mast within the existing compound area, behind the palisade fencing. They would be relatively low level and set back within the vegetation. They would therefore be screened significantly and in any case would appear as part of the telecommunications development. The cabinets would therefore be acceptable with regard to siting and appearance.

20. I therefore find that the siting and appearance of the proposal would not harm the character and appearance of the area. In reaching this conclusion I have taken account of Policies D1 and D2 of Plan:MK (2019) which seek to ensure, amongst other things, that development proposals respond appropriately to the site and surrounding context. The proposal would also be consistent with the overarching aims of the Milton Keynes Council Telecommunications Systems Policy Adopted May 2005, which seeks to ensure that proposals minimise the visual impact of telecommunications developments. The proposal would also comply with paragraph 115 of the National Planning Policy Framework which seeks, amongst other things, that equipment should be sympathetically designed and camouflaged where appropriate.

Other Matter

21. The Council have identified that the proposal is located in relative proximity to the nearby railway line and that Network Rail requested an informative to be attached to any consent, to inform the appellant of additional permissions they require in this regard. Whilst I have not attached an informative to the decision, I am satisfied, given that it was raised in the Officer Report, that the appellant has been referred to this matter.

Conditions

22. Any consent granted for the erection of telecommunications equipment, including a mast and cabinets under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2). These specify that the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin no later than the expiration of 5 years beginning with the date on which the local planning authority received the application, and must 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.

23. The GPDO does not provide any specific authority for imposing additional conditions beyond those deemed conditions raised above.

Conclusion

24. For the reasons given above, I conclude that the appeal should be allowed, and prior approval should be granted.

G Dring

INSPECTOR