



Appeal Decision

Site visit made on 19 July 2024

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2024

Appeal Ref: APP/K1128/W/24/3338009

Head Ruddy, Babbage Road, Totnes TQ9 5JA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 Atlas Tower Group against the decision of South Hams District Council.
 - The application Ref is 2603/23/PAT.
 - The development proposed is Installation of a 22.5m lattice tower, 3 no. antenna apertures, 4 no. 600mm microwave transmission dishes and 8 no. equipment cabinets inside an 11.6m x 6.5m compound enclosed by a 1.8m high chain link fence with gate and development ancillary thereto.
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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 installation of a 22.5m lattice tower, 3 no. antenna apertures, 4 no. 600mm microwave transmission dishes and 8 no. equipment cabinets inside an 11.6m x 6.5m compound enclosed by a 1.8m high chain link fence with gate and development ancillary thereto at Head Ruddy, Babbage Road, Totnes TQ9 5JA, in accordance with the application Ref 2603/23/PAT, and the plans submitted with it including: 002 Site location plan (Issue E); 100 Existing site plan (Issue E); 150 Existing elevation a (Issue E); 215 Max configuration site plan (Issue E); 265 Max configuration elevation A (Issue E); and Tree Retention/Removal & Protection Plan (Drawing No BHA_5861_02, Rev A, dated 16 January 2024).

Preliminary Matters

2. Amended plans were submitted with the appeal, along with an arboricultural report and an updated Declaration of Conformity with the International Commission on Non-Ionizing Radiation Protection Public Exposure Guidelines (ICNIRP declaration). The report provides further clarity on the effect of the development on trees. The updated ICNIRP declaration refers to the relevant amended plan and includes the site address as detailed in the banner heading above. The amended plans include some changes compared to the scheme that was considered by the Council and by interested parties at the application stage. However, the amendments, principally related to boundary treatment and retaining a tree, are minor.
3. Cumulatively, the amended plans and the above documents do not, therefore, fundamentally change the proposed development or result in a substantial difference from that originally applied for. Consequently, considering the appeal with regard to the amended plans and above documents would neither cause procedural unfairness nor prejudice interested parties' interests. I have determined the appeal on this basis.

4. 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 authority to assess the proposed development solely based on its siting and appearance, taking account of any representations received. The principle of development is also established by the GPDO and the provisions of Schedule 2, Part 16, Class A do not require consideration of the development plan. However, in this instance, whilst the Council has not referred to any development plan policies, it has alleged a conflict with the National Planning Policy Framework (Framework). This includes with regards to its provisions related to character and appearance and the submission of sufficient information to justify the proposed development. I have therefore had regard to the Framework in my determination of this appeal.

Main Issues

5. Accordingly, the main issues are:

- whether sufficient information has been provided to demonstrate that the proposed development would meet the ICNIRP public exposure guidelines; and
- the effect of the siting and appearance of the proposed development on the character and appearance of the surrounding area.

Reasons

ICNIRP guidelines

6. The application for prior approval submitted to the Council was accompanied by an ICNIRP declaration self-certifying that the proposed equipment and installation at the site would comply with the ICNIRP public exposure guidelines. This meets the Framework's requirement in part c) of paragraph 121 which requires a statement that self-certifies that, when operational, new masts or base stations will meet International Commission guidelines.
7. The submitted declaration neither refers to the latest ICNIRP guidelines nor UK legislation. However, the Framework does not stipulate that self-certification statements should reference either. It also seems self-evident to me that the installation, when operating, would meet relevant UK legislation and the latest guidelines. On this basis, I concur with the Council's statement that it is a common-sense interpretation that any reference to guidelines would imply the latest guidelines available. The Annex C template in the Code of Practice for wireless network development, which does also not reference the latest ICNIRP guidelines, does not lead me to a different conclusion.
8. The updated declaration refers to the relevant amended plan and confirms that the scheme would fully comply with the guidelines. This complies with the requirements of the Framework. I therefore conclude that sufficient information has been provided to demonstrate that the proposed development would meet the ICNIRP public exposure guidelines.

Character and appearance

9. The appeal site forms part of an industrial unit situated within an industrial estate. Although on the edge of the estate and next to a verdant, tree-lined footpath which runs beside the Dart, the site is part of the unit's industrial character and is separated from the path by a relatively substantial wall. It therefore forms part of

the built-up industrial area and the visual and audible presence of the industrial estate from the path and locality is inescapable.

10. Whilst the wall and trees provide some screening, a break in the trees means that the proposed mast would be clearly visible from a short but close-up section of the path. Due to the path's undulating nature, I saw on my site visit that the proposed ground equipment and chain link fence would also be observable above the wall for a brief period. Nevertheless, the siting of the proposed development within a built-up industrial area means that it would not read as an incongruous or unexpected feature. Combined with its muted colours, functional appearance and the mast's relatively slender form, the development would therefore form part of the existing backdrop and industrial context of the path and locality; and, despite the mast's height above surrounding buildings and trees, neither would it appear unacceptably dominant. In coming to this view, I have taken into account that the proposed development would be closer to the path than the existing industrial building.
11. Its siting and appearance would therefore not harm the amenity of the adjacent footpath or the character and appearance of the surrounding area. In addition, the updated details relating to trees, along with the amended plans, show that one tree next to the site (rather than two, as previously indicated) would be lost due to the proposed development; and that the retained trees could be sufficiently protected during construction works, as shown in the Tree Retention/Removal & Protection Plan. As such, the remaining trees on and near the site would also screen much of the appeal proposal in longer distance views and avoid it appearing as a prominent feature.
12. The amended plans include a new fence above the boundary wall with the path. Whilst such a structure would significantly reduce views of the proposed development, the fence would be positioned outside of the appeal site. As such, and on the basis that conditions cannot be imposed on this type of prior approval scheme, the fence cannot form part of the appeal proposal. However, given my findings above, it is not necessary for any such additional boundary treatment to be erected beyond the site's redline boundary in relation to this main issue.
13. In conclusion, the proposal would not harm the character and appearance of the surrounding area, including the amenity of the adjacent footpath. Consequently, the siting and appearance of the proposal would be acceptable.

Other matters

14. Extensive concerns have been raised about the potential effects of the mast on human health, including with respect to 5G, and particularly given the position of the proposed development in relation to numerous residential properties, public facilities (including a doctors' surgery), and places of work, education and leisure. I recognise the significant number of concerns raised by objectors on this issue and the extent of those concerns, particularly with regards to vulnerable people and those with electro-sensitivity, and the extra protection afforded to them under various legislation, including the Health and Social Care Act 2012. Related concerns also include the size of the required exclusion zone; the liability associated with any harm to human health; the legitimacy of the ICNIRP, the guidelines not covering vulnerable people, and developers being allowed to self-certify; who regulates and checks the installations and resulting emissions; the lack of long-term data on health risks and the need for further research; the need for a precautionary approach and a risk assessment on radiation exposure; previous studies not being relevant or sufficiently applicable to 5G, and that some recent studies have identified health concerns.

15. Nevertheless, as required by the Framework, the appellant has provided a certificate to confirm that the proposal has been designed to comply with the ICNIRP guidelines; and in these circumstances, the Framework is clear that health safeguards are not something which a decision-maker should determine. No sufficiently authoritative evidence has been provided to indicate that equipment on the site, when operational, would not comply with the ICNIRP guidelines or that a departure from national policy would be justified.
16. A number of other matters have been raised by interested parties and I have taken them all into account. This includes matters such as: the validity of the appeal; the need for the proposal; security of devices using 5G; the proposal's speculative nature and the need for providers to share facilities; whether the proposer needed to consult the Totness progressive school and people with medical conditions in the locality; the local community preferring a natural lifestyle and not wanting the mast; the level of public consultation on the prior approval application; the site identification process and the consideration of alternative sites; the impact on people's mental health and wellbeing; the applicability of the public sector equality duty and the need for an equality impact assessment; the need for an environmental impact assessment and bat survey, and the effect (direct and indirect) on flora and fauna, particularly insects; the need to comply with legislation protecting wildlife and the natural environment; energy consumption and the effect on climate change and the local temperature; the relevance of development plan policies; the proposal's effect on heritage assets; noise pollution; the use of rare earth materials and the need to recycle the equipment in future; and the Framework not being legislation and its provisions on telecommunications proposals conflicting with its provisions on healthy communities and the natural environment.
17. However, whilst I take these representations seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these, and some also do not relate to the matters of siting and appearance. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed.

Conditions

18. Any permission granted 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 not 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.

Conclusion

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

T Gethin

INSPECTOR