



Appeal Decision

Site visit made on 17 July 2024

by L Reid BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 September 2024

Appeal Ref: APP/V5570/W/24/3340099

Vale Royal Car Park, Vale Royal, Barnsbury, London N7 9AP

- 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 EE Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref is P2023/3459/PRA.
 - The development proposed is the installation of 1no. 10m 'Phase 5' monopole, 2no. antennas, 2no. 0.3m dishes and 3no. ground-based equipment cabinets and ancillary development thereto.
-

Decision

1. The appeal is allowed and prior approval is deemed to be 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 installation of 1no. 10m 'Phase 5' monopole, 2no. antennas, 2no. 0.3m dishes and 3no. ground-based equipment cabinets and ancillary development thereto at Vale Royal Car Park, Vale Royal, Barnsbury, London N7 9AP in accordance with the application P2023/3459/PRA and the details submitted with it including plan nos:

1561197_CMN203_77404_N/A_M002 Issue B – 002 SITE LOCATION PLAN
1561197_CMN203_77404_N/A_M002 Issue B – 150 PROPOSED SITE PLAN
1561197_CMN203_77404_N/A_M002 Issue B – 250 PROPOSED SITE
ELEVATION A

Application for costs

2. An application for costs was made by EE Ltd against the decision of the Council of the London Borough of Islington. This application is the subject of a separate Decision.

Procedural Matters

3. Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ("Class A" of "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.

4. In accordance with Paragraph A.3(8)(a) – (c) of Class A of the GPDO the development must not begin before the occurrence of one of the following: the receipt by the applicant from the local planning authority of a written notice of their determination that prior approval is not required, where the local planning authority gives the applicant written notice that prior approval is required that such approval is given or refused, within a period of 56 days beginning with the date on which the local planning authority received the application.
5. If that notification has not occurred in time, then prior approval is deemed to be granted. The appellant claims that the 56 day period had expired before the notification was received and that prior approval is deemed to be granted as a result.
6. As part of this appeal, the appellant has submitted evidence of the working hours of the representative who was acting on their behalf. This did not form part of the application, however, the Council has had the opportunity to comment on this evidence.

Main Issue

7. The main issue is whether prior approval is deemed to be granted by reason of the timing of the Council's decision.

Reasons

8. Article 2(9) of the GPDO states that where the electronic communication is received by the recipient outside the recipient's business hours, it is taken to have been received on the next working day.
9. It is common ground between the main parties that the 56 day period to notify the applicant of the Council's decision ended on 25 January 2024. The Council sent written notice of its decision via e-mail on this day. However, it was received outside of the appellant's representative's business hours. This is therefore taken to have been received on the next working day in line with Article 2(9) of the GPDO.
10. The Council's statement references an email which states that there are slight variations in the working hours of the appellant's representative. However, I have no reason to doubt that the standard working hours are 08:30 to 16:30. These hours do not strike me as particularly unusual. Had the Council wanted to query the hours prior to issuing its decision on Day 56, it could have asked for confirmation. Issuing a decision via email at 17:13 comes with the inherent risk that it will be delivered after the recipient's office has closed for the day.
11. Consequently, the Council did fail to notify the applicant within the requisite 56 day period because the notification was received the following day. Therefore, prior approval is deemed to be granted on the expiry of the statutory period for the Council to notify the applicant of its determination.
12. It is not open to me to address any of the prior approval matters due to the failure to refuse the application within the 56 day period.

Conditions

13. Any planning permission granted for the proposed installation 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), which 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 from the land 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, or to any other condition as may be agreed in writing between the local planning authority and the developer.

Conclusion

14. For the reasons given above the appeal should be allowed.

L Reid

INSPECTOR