



Appeal Decision

Hearing held on 8 October 2024

Site visit made on 8 October 2024

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 23 October 2024

Appeal Ref: APP/N0410/C/22/3301854

Land on the south side of Parish Lane, Farnham Common SL2 3JH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Haim Ben Ami of Ratesu Limited against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 18 May 2022.
- The breach of planning control as alleged in the notice is "Without planning permission, the erection of two antenna masts and ancillary concrete pads, concrete blocks and storage container".
- The requirements of the notice are to:
 - (1) Remove from Land the two antenna masts and supporting cabins shown in the approximate location by asterisk as * on the plan;
 - (2) Remove the concrete pads upon which the masts are resting on;
 - (3) Remove the concrete blocks being used to stabilise the masts;
 - (4) Remove the green metal storage container; and
 - (5) Remove from the Land (outlined on the attached plan), all materials and debris resulting from carrying out steps 1 to 4 of this Notice.
- The period for compliance with the requirements is 6 months of the notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Applications for Costs

1. An application for costs has been made by Buckinghamshire Council against the appellant. This application is the subject of a separate decision.

Preliminary Matters

2. Since the appeal start date, the National Planning Policy Framework has twice been superseded. I have determined this appeal with regard to the latest version published in December 2023 (Framework), on which the parties were given the opportunity to comment during the course of the appeal. The parties were also given opportunity to comment on the draft consultation version of the Framework, issued in July 2024. These representations have been taken into account in my decision.
3. The appellant submitted a number of late documents in advance of the hearing. These documents comprised an addendum to the appellant's hearing statement and an updated statement from Raft CEO Mr Moshe David, together

with appendices. During the time which had elapsed between the appeal start date and the hearing, there had been important changes to policy which were relevant to the issues in dispute between the parties. There had also been a number of relevant appeal decisions during this time. It was therefore reasonable to accept these documents into evidence. The Council had time to review the documents in advance of the hearing, which means acceptance should not have caused undue prejudice. During the hearing, I also accepted a written statement from Mr Alex Pilosov, which was read out during the event.

4. The appeal site is located in the Green Belt. The parties agree that the development is inappropriate development in the Green Belt when assessed against the Framework and local policy. Based on the evidence before me, I have no reason to disagree. The Framework is clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 153 of the Framework says that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. This provides context for the main issues with regard to the ground (a) appeal.

Ground A

5. The main issues in respect of the ground (a) appeal, being the deemed planning application, are:
 - the effect of the development on the character and appearance of the area;
 - the effect of the development on the openness of the Green Belt; and
 - whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Reasons

Character and Appearance

6. The appeal site comprises a parcel of land within Ponds Wood Farm, which is accessed along a track from Parish Lane to the north and Collinswood Road to the south/south-west. The site occupies a clearing within an area of ancient woodland, which as mentioned, is within the Metropolitan Green Belt. Whilst there are a number of buildings within the vicinity of the appeal site, including buildings within the farm, the area is mostly typified by open countryside and woodland, thereby reflecting its Green Belt credentials. There is a Public Right of Way (FAR/2/1) (PROW) which runs through the woodland alongside the south-western side of the appeal site.
7. The development consists of two antenna masts, together with ancillary ground-based equipment, including concrete pads, concrete blocks and a storage container. Each of the masts is approximately 30 metres tall, and includes large antenna at their highest points.
8. The masts extend beyond the tree canopy of the woodland, which means they are clearly visible from a number of areas close to the appeal site. The masts

are particularly prominent in the landscape when approaching the appeal site from the west, along Collinswood Road (A335). Where visible, the masts appear as stark and incongruous features, which undermine the rural character of the woodland and the surrounding countryside.

9. In turn, the development harms the character and appearance of the area. Nonetheless, the woodland setting does help screen the masts and ancillary equipment, which limits the degree of harm. However, this will fluctuate throughout the year, given seasonal changes in the level of surrounding tree cover, particularly along the PROW to the south-west of the appeal site. Overall, given the harm identified, the development conflicts with Policy EP3 of the South Bucks District Local Plan (1999) (Local Plan), which seeks to ensure development is compatible with the locality, in terms of scale, height and design.

Openness

10. Paragraph 142 of the Framework says that the fundamental aim of Green Belt policy is to keep land permanently open. It also highlights that one of the essential characteristics of Green Belts is their openness.
11. The masts and ancillary equipment have introduced built form in an undeveloped area. Whilst they occupy a small footprint, spatially, this means they do adversely affect the Green Belt's openness. As discussed, the masts are also seen as prominent features in the landscape, which means visually, they also interrupt the sense of openness which characterises this rural area.
12. Whilst the harm is again mitigated by the screening afforded by the surrounding woodland, the harm to openness does weigh further against the development.

Other Considerations

13. The appellant's business has developed a high frequency intercontinental radio transmission system. This system shortens the time it takes messages to travel between continents compared to existing communications systems.
14. Ratesu uses the shorter delay time advantage in the field of electronic stock market trading between large financial centres, including London, New York, Chicago and Tokyo. The split-second delay-time advantage in message transmission can increase their client's competitive advantages in the buying and selling of stock activities. In turn, this increases the competitiveness of the financial centres they serve.
15. The development enables the appellant's business to operate in the UK. Acuiti's report sets out the potential financial benefits to the UK economy, which derive from overall revenues, tax receipts and job creation. The potential scope of these benefits is significant. If Ratesu, or its competitors, were unable to operate from the UK, these benefits to the UK economy would be at risk, as clients may defect to more competitive financial markets elsewhere in the world.
16. For the communications infrastructure to achieve optimum performance, it needs to be located somewhere which meets certain requirements and parameters. Critically, the appellant says the masts must have a direct line of site with receiving antenna at the data centre which serves the financial

markets of London, which is located in Slough. To that end, the appellant says the equipment needs to be sited within 20km of the data centre, and ideally on elevated ground. The antenna must also be sited in an electrically quiet location, generally within undeveloped countryside, away from built up areas. This requirement makes mast sharing problematic.

17. Given these requirements, the appellant says it was very difficult to find a suitable and available site to accommodate the infrastructure. To help demonstrate these difficulties, the appellant prepared a Zone of Theoretical Visibility (ZTV), which highlights areas of elevated ground within a 20km radius of the slough data centre, where a direct line of site with the data centre could potentially be achieved. In the context of the 20km radius, the ZTV shows such areas are relatively limited.
18. Given the constraints, the appellant's Statement of Case says a "*Green Belt location is almost impossible to avoid in order to ensure the required connection to the Appellant's Data Centre in Slough*". Mary Fisher's Statement echoes this point. It was a point also reiterated by Mr Moshe David during the hearing, who said they did not search for locations outside of the Green Belt, as it was known such areas would be unsuitable.
19. Notwithstanding the site constraints, the robustness of a site search remains a fundamental aspect of assessing the scheme's acceptability. The appellant's starting point for their site search, where non-Green Belt locations were not assessed in detail, is therefore problematic.
20. Notably, whilst the ZTV demonstrates the limitations of suitable sites, it does appear to show areas within 20km of the data centre which are outside of the Green Belt and which meet the elevation requirements. Some limited explanation was given during the hearing as to why these areas were not considered suitable. However, there is no written evidence before me which details other sites which were considered and discounted as part of the search at the time. This is a critical gap in the appellant's evidence, as without this information, I cannot properly determine the robustness of the site selection process, nor the potential availability of less harmful sites.
21. The objection from Mr Pilosov details a number of sites where Ratesu's competitors, which also rely on the Slough data centre, have obtained planning permission for similar equipment. Some of these sites are outside of the Green Belt. Whilst the appellant has explained why these sites are not suitable for its own equipment, the examples do attest to the potential suitability of non-Green Belt sites for this type of communications infrastructure. This amplifies the importance of a thorough and comprehensive site search, to ensure less harmful sites have not been inadvertently missed.
22. As discussed above, the potential benefits of the development to the UK economy are undoubtedly significant, particularly given the Framework's objective to support economic growth and productivity and to build a strong and competitive economy. The scheme also contributes to the local economy through payment of utilities and services, as well as through job creation attributed to the construction and maintenance of the infrastructure. If a temporary condition were imposed, the reversibility of the scheme would also weigh in the development's favour, as any permanent harm to the Green Belt would be diminished. I also note the other telecommunications infrastructure

within the wider site, which helps avoid fresh encroachment into the countryside.

23. However, given the identified shortcomings with the appellant's site selection, I cannot determine whether the development could be located in a less harmful location, outside of the Green Belt. This means I cannot be sure that the benefits could not be achieved, but for this particular development in this particular location. This reduces the overall weight of the benefits in my decision.
24. As a consequence of this, the other considerations in this case, including the benefits highlighted, would not clearly outweigh the harm by reason of inappropriateness, and the other harm to openness, character and appearance which have been identified. In turn, the very special circumstances necessary to justify the development do not exist.
25. The development therefore conflicts with paragraph 152 of the Framework, which says inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The development also conflicts with Policy GB1 of the Local Plan which reflects the overarching objectives of the Framework to protect the Green Belt (albeit the weight ascribed to this policy conflict is limited, given its age).
26. Overall, for the reasons given, the development conflicts with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. The appeal on ground (a) therefore fails.

Ground F

27. Pursuant to ground (f), the appellant says that the steps required to be taken in the EN exceed what is necessary to remedy the alleged breach of planning control. In particular, the appellant says that the extent of land shown on the plan attached to the EN could be reduced, so that it only covers the particular location of the development.
28. As per s173(4) of the Town and Country Planning Act 1990, the purpose of the EN is to remedy the breach of planning control, being the erection of the antenna masts and supporting equipment. The requirements set out in the notice must therefore achieve this purpose. Together, the requirements of the EN require removal of these unauthorised structures and go no further than remedying the original breach of planning control as described in the EN.
29. In terms of the plan area, it incorporates the land included within the relevant title for the appeal site. If the plan area were reduced to the location of the equipment alone, it is possible that the masts could simply be moved to an alternative location within the same title in order to comply with the notice. This would not properly remedy the breach. Any suggestion that the masts could be moved within the same site would also not overcome the harms identified.
30. For these reasons, the appeal on ground (f) fails.

Ground G

31. Pursuant to ground (g), the appellant says that the time given to comply with the notice is too short. The notice currently requires the steps to be carried out within 6 months of the notice taking effect.
32. To continue operating in the UK, the appellant will need to locate an alternative site. Once a suitable and available site has been identified, planning permission will need to be obtained. This process is likely to take some time, and likely much longer than 6 months.
33. In the circumstances, I consider it reasonable to extend the period for compliance to 18 months, which should give the appellant sufficient time to find an alternative site and obtain permission. This timescale balances the need to avoid any interruption to their service, whilst also protecting the extent of harm to the Green Belt.
34. The appeal on ground (g) therefore succeeds.

Other Matters

35. The Council has suggested that the development was intentionally unauthorised. However, given the outcome of the appeal on ground (a), it is not necessary to consider this factor in further detail.
36. Numerous appeal decisions have been provided by the appellant, where Inspectors have granted permission for telecommunications and other technological infrastructure within the Green Belt, on the basis that very special circumstances exist. In certain circumstances, the benefits of such infrastructure can certainly constitute the very special circumstances required. However, these benefits do not negate the need to carry out a thorough and comprehensive site selection process, to ensure the site is the most appropriate site for the relevant infrastructure. This has not been demonstrated in this instance.

Conclusion

37. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall therefore vary the enforcement notice, and extend the period for compliance to 18 months. The appeal on ground (g) succeeds to that extent.
38. However, for the reasons given, I conclude that the appeal on grounds (a) and (f) should not succeed. I shall therefore uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Decision

39. It is directed that the enforcement notice is varied by:
 - (a) the deletion of the words "6 months" in paragraph 6 of the notice (Time for Compliance), and replacing them with the words "18 months".

40. Subject to this variation 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.

James Blackwell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Daniel Stedman Jones (Counsel)
Karen Jones
Tatiana Zanré
Ben Hubbard
Moshe David
Lior Katz
James Iles
Mary Fisher
Will Mitting
John Roche

FOR THE LOCAL PLANNING AUTHORITY:

Adam Pegley
Stephanie Penney

INTERESTED PARTIES:

Alex Pilosov