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## Appeal Decision

Site visit made on 3 June 2025

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2025

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**Appeal Ref: APP/N4205/C/24/3347004**

**Land adjacent to 36 Scowcroft Street, Bolton, BL2 2HD**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by IX Wireless Limited against an enforcement notice issued by Bolton Metropolitan Borough Council.
- The notice was issued on 22 May 2024.
- The breach of planning control as alleged in the notice is: without planning permission, the erection of a telecommunications mast together with associated cabinets (as shown for identification purposes in the photograph attached to this notice).
- The requirements of the notice are to:
  - i) Remove the telecommunications mast and associated cabinets (shown for identification purposes in the photograph attached to this notice) and any cable or other equipment used to facilitate the use of the mast from the land;
  - ii) Once step (i) has been complied with, reinstate the land to its condition prior to the unauthorised development taking place.
- The period for compliance with the requirements is 90 days.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made in the terms set out below in the Formal Decision.**

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### Preliminary Matters

1. The appellant initially appealed on grounds (a), (b) and (c). However, although they maintain their view that the matters stated in the notice represent permitted development, grounds (b) and (c) were subsequently withdrawn by the appellant. I have not considered these grounds further. The appeal proceeds on ground (a) only, which is that planning permission ought to be granted in respect of the matters stated in the notice.

### Matters relating to the Notice

2. The appellant is concerned that the notice may be a nullity because of an inconsistency between the allegation which omits reference to the antennas and what has actually been installed, even though the antennas were in place when the notice was served. The appellant says that the notice does not therefore identify all of the development, yet it requires the land to be returned to its prior condition, and as such they cannot be confident in the steps required to comply with it.
3. A notice will be null if it omits to clearly state the matters constituting the breach of planning control. It must enable the recipient to know what those matters are and thus a notice may be null because the allegation is too unclear. The test is whether the notice is hopelessly ambiguous and uncertain as regards the description of the

breach or the necessary remedial steps, as set out in *Miller-Mead*<sup>1</sup>. It is also important that the allegation is accurate because the deemed planning application arising under the ground (a) appeal is derived from its terms.

4. The allegation in the notice refers to a telecommunications mast and cabinets, as shown on the attached photograph. Whilst it would have been more accurate for the allegation to include reference to the antennas, the notice is directed at the whole development including the antennas as these were in-situ when the notice was served and are part and parcel of it. This is clear from the requirements in paragraph 5 of the notice which require the removal of the mast, cabinets, and 'any cable or other equipment used to facilitate the use of the mast', which includes the antennas as they facilitate the use. Moreover, both parties' statements address the antennas as part of their consideration of the merits of the case under ground (a). The removal of the mast would necessarily mean the removal of the antennas since these cannot be in place without it. It is unfortunate that the attached photograph shows the mast before the antennas were installed, but there is no requirement for a notice to include photographs and the development is adequately identified in the notice and on the plan attached to it.
5. Therefore, the notice is not hopelessly ambiguous and uncertain to the extent that the recipient could not tell in what respect it was alleged that they had developed the land without permission or with reasonable certainty what steps they had to take to remedy the alleged breach. For these reasons I consider the notice is not a nullity. However, the reference to the photograph in paragraphs 3 and 5 of the notice should be removed since this does not fully reflect the unauthorised development at the time the notice was served. I am satisfied that this correction can be made without causing injustice to either party.

## Main Issues

6. The main issues are:
  - the effect of the development on the character and appearance of the area;
  - the effect on the living conditions of neighbouring occupiers; and,
  - if there is any harm, whether this is outweighed by other considerations, taking into account any suitable alternative sites.

## Reasons

### *Character and appearance*

7. The appeal site is a section of the footway on Scowcroft Street close to the junction with George Barton Street, Entwistle Street and Larkfield Grove. The area is predominantly residential and is mainly characterised by two storey terraced properties which vary in form and design. Scowcroft Street has a straight alignment with long distance views along it. There are numerous street lighting columns and telegraph poles along the street and on neighbouring streets.
8. The unauthorised development comprises a 15m high telecommunications mast and ground-based cabinets, together with antennas which were added to the top of the mast at a later date. It is sited at the back of the pavement adjacent to the

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<sup>1</sup> *Miller-Mead v Minister of Housing and Local Government* [1963] 1 All ER 4592

boundary with 36 Scowcroft Street, an end terraced dwelling. As well as hosting antennas to facilitate the wireless local access network, the mast supports aerial fibre cables that are linked to nearby telegraph poles to form a wider distribution network, thereby providing electricity needed for the local access network.

9. The development is of utilitarian appearance with a galvanised metal finish and is prominently sited in the pavement. Its overall size is similar to the two masts at the junction of Thicketford Road and Crompton Way. However, these are a considerable distance away and are seen in a different context, including a busy road junction, and are not comparable to the appeal site.
10. The development is seen in the context of nearby street lighting columns and telegraph poles, which mitigates the visual effects of the development. However, the mast is higher and wider than these and it is also taller than the nearby dwellings. It is clearly visible along Scowcroft Street due to the lack of screening, and it can also be seen from the junction with Entwistle Street and certain points on neighbouring streets. The mast has not been camouflaged and the antennas have not been shrouded. The galvanised metal finish draws the eye and accentuates its prominence. The development is therefore an eye catching and bulky structure which lacks screening, and its overall scale is at odds with the character of the area, albeit the impact is localised. The cabinets are of modest size and do not significantly add to the visual effects of the development.
11. The Council suggests a condition requiring the mast and antennas to be painted grey. However, this would make little difference to the appearance of the development which already has a grey, metallic finish, and would not overcome my concerns regarding its unacceptable siting and size.
12. I conclude that the siting and appearance of the development results in moderate harm to the character and appearance of the area. The Council refers to a conflict with Policy OA4 of Bolton's Core Strategy Development Plan Document 2011 (CS). However, this policy relates to West Bolton, whereas the site is within Inner Bolton where CS Policy RA1 applies. There is conflict with Policies RA1, CG3 and CG4 of the CS and Policy JP-P1 of the Places for Everyone Joint Development Plan 2024 (PfE Plan) which, amongst other things, require development to conserve and enhance local distinctiveness, ensuring development has regard to the overall built character and landscape quality of the area. The development is also contrary to paragraph 120 of the National Planning Policy Framework (the Framework), which requires new electronic communications equipment to be sympathetically designed and camouflaged where appropriate.

### *Living conditions*

13. There are several residential properties within proximity of the development, the nearest of which is 36 Scowcroft Street, which has a rear garden adjacent to the site. The notice itself does not refer to any adverse effects on the living conditions of neighbouring occupiers. However, the Council's statement raises concerns about loss of outlook and amenity to neighbouring dwellings, in particular No 36, by virtue of the height, siting and appearance of the development.
14. The development will be visible from the rear garden of No 36 and from its rear windows. However, from here the cabinets and the lower section of the mast are partly concealed by the high boundary fence which adjoins the pavement and runs along the length of the rear garden. The development is slightly offset relative to the

rear windows of No 36 such that it is not directly in line with the windows and not overbearing on the outlook of this property. Other neighbouring properties are further away from the site, and are not significantly affected by the development.

15. For these reasons I find that the development is not significantly harmful to the living conditions of the occupants of the neighbouring properties. Thus, in this respect, there is no conflict with Policy CG4 of the CS and Policy JP-P1 of the PfE Plan, where these seek to ensure that new development is compatible with surrounding occupiers and protects amenity.

#### *Alternative sites*

16. Paragraph 122 of the Framework sets out that applications for telecommunications development should be supported with the necessary evidence to justify the development, including evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure.
17. As part of their site selection process, the appellant says that the possibility of utilising existing telecommunications infrastructure or buildings has been explored. The need for an unobstructed line of sight between the antennas and the customers, together with the requirement for the overhead cables to link into the wider distribution network, limits the feasibility of using other operators' telecommunications installations or other suitable structures in the required location. However, there is little evidence to suggest that the possibility of utilising existing structures has been fully investigated.
18. The appellant has considered several alternative locations for the development in this constrained, mainly residential area. All were subsequently discounted for various reasons. However, the evidence before me is limited to a map of the search area, the locations of the discounted options and a very brief explanation as to why each of the alternatives is unsuitable. Some do not appear to be feasible because of poor network coverage, whilst others have been discounted due to potential adverse effects on highway safety or residential occupiers. The assessment of alternative sites lacks sufficient detail in terms of how the search for alternatives was carried out or how sites were selected for further consideration. No substantive evidence has been provided to show that adverse impacts would take place in these other locations or that the alternative sites could not host an installation. Moreover, the search for alternative sites appears to have been limited to highway land. There is no indication that the possibility of using land within third party ownership has been explored.
19. Therefore, I cannot be satisfied that alternative sites have been comprehensively assessed or that the appeal site represents the least harmful option available in the area to meet the coverage requirements and so secure the same public benefits. In these circumstances, there is insufficient evidence to justify the development.

#### **Other Matters**

20. The appellant sets out that the installation of poles of up to 15m in height and associated cables is permitted development under Part 16, Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015, and can be undertaken by communications code operators without prior approval. Their potential fall back position would comprise a fibre cable based local access network supported by significantly more poles and cables. However, I am not persuaded

that there would be a need for masts of a height comparable to the appeal development given that the connection into the network is via overhead cables which are positioned much lower than 15m. The appellant has not demonstrated that they have thoroughly assessed alternative locations for the development so it is possible that the antennas could be sited more appropriately elsewhere without the need for a 15m high mast in this sensitive residential area or a proliferation of poles and cables. Therefore, the appellant's fall back position is materially different to the appeal development and it is not clear that it would be more visually intrusive. Against this background, despite claims that the permitted development scheme is a realistic option, I have attributed limited weight to the fall back position.

21. The Council notes that other local planning authorities have taken enforcement action against the appellant following the erection of similar masts. I have determined this appeal on its own merits based on the particular circumstances of the case and the evidence submitted.

## **Conclusion**

22. Paragraph 119 of the Framework states that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning decisions should support the expansion of electronic communications networks, including next generation mobile technology, such as 5G. The development provides high quality, affordable broadband service to a large number of properties and promotes digital inclusion in accordance with the aims of Policy JP-C2 of the PfE Plan, with associated social and economic benefits. These public benefits weigh significantly in favour of the development.
23. However, there is harm to the character and appearance of the area. The assessment of alternative sites is not sufficiently robust and so I cannot be certain that there are no other sites available where the harm would be less severe. Consequently, I find that the public benefits of the development do not outweigh the harm identified.
24. For these reasons I conclude that the appeal should not succeed on ground (a) and planning permission will not be granted.

## **Formal Decision**

25. It is directed that the enforcement notice be corrected by deleting the words in paragraph 3 of the notice and replacing them with "Without planning permission, the erection of a telecommunications mast together with associated cabinets"; and deleting the words in paragraph 5 i) of the notice and replacing them with "Remove the telecommunications mast and associated cabinets and any cable or other equipment used to facilitate the use of the mast from the land".
26. Subject to these corrections 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.

*M Ollerenshaw*

INSPECTOR