
Appeal Decision

Site visit made on 1 November 2018

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2018

Appeal Ref: APP/Q3305/W/18/3206555

Footpath adjacent to Whiting Way, Wells, Somerset BA5 2QF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Vodafone Ltd against the decision of Mendip District Council.
 - The application Ref 2017/3382/TEL, dated 6 December 2017, was refused by notice dated 8 February 2018.
 - The development proposed is 15m electronic communications mast and associated equipment.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) for 15m electronic communications mast and associated equipment at Footpath adjacent to Whiting Way, Wells, Somerset BA5 2QF in accordance with the terms of the application, Ref 2017/3382/TEL, dated 6 December 2017, and the plans submitted with it.

Procedural Matters

2. Notwithstanding the description of development in the fourth bullet point of the above header, I note from the original application form that the proposed mast would comprise a replica telegraph pole with internal antenna in a brown timber replica finish, and that the proposal would also include associated dark green steel radio equipment cabinets. I have determined the appeal on that basis.
3. Since the submission of the appeal, the new revised National Planning Policy Framework (July 2018) (the Framework) has been published which replaces the first version published in 2012. The Council and appellant have had the opportunity to comment on this during the appeal process. I have determined the appeal taking account of the new revised version.

Main Issues

4. The main issues are:
 - i) whether or not there is a need for the proposed mast, as opposed to making use of any existing mast, building or other structure, in order to provide an efficient operation of the network;

- ii) whether the proposal would preserve or enhance the character or appearance of the nearby Wells Conservation Area (the CA) and preserve the setting of listed buildings (LBs) in the vicinity, and in the event that any harm is identified, whether that harm would be outweighed by any public benefits.

Reasons

GPDO basis for determining the appeal

5. The GPDO sets out in Schedule 2, Part 16, Class A that 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, consisting of, amongst other things, the installation, alteration or replacement of any electronic communications apparatus, or development ancillary to radio equipment housing, is permitted development subject to certain criteria set out in paragraph A.1 and conditions set out in paragraphs A.2 and A.3. The Council has not raised any issues in respect of paragraph A.1 and I have no reason to conclude differently.
6. However, paragraph A.3(4) states that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting and appearance of the development. My determination of this appeal relates to the Council's refusal of such approval.

Need

7. Having regard to paragraphs 113 and 115 of the Framework, it is evident from the submissions that the appellant has investigated the possibility of utilising existing buildings, masts or other structures but that no suitable options are available. I note that other locations for the proposed development have been suggested by local residents. However there is no substantive evidence to clearly demonstrate that they are available, would meet the operational requirements, and be less visually prominent than the appeal proposals.
8. I have also taken into consideration that the Council no longer raises objection to the proposed mast in light of the appellant's evidence relating to coverage requirements and other sites not being available or suitable. Based on that evidence, and whilst taking account of the rebuttal submissions of local residents in this respect, I have insufficient substantive basis to consider differently to the Council. Furthermore, whilst I have determined the appeal on its merits based on all of the submitted evidence, I have had regard to the circumstance whereby the Council has granted prior approval for an albeit lower, 12.5 metre high, mast on the same site since its decision relating to the appeal proposal. In terms of the matters concerning this main issue, that is therefore a significant material consideration to which I have afforded substantial weight due to the fallback position it establishes for a new mast at this site.
9. For the above reasons, I conclude on this issue that there is a need for the proposed mast, as opposed to making use of any existing mast, building or other structure, in order to provide an efficient operation of the network. The proposed siting would therefore be acceptable in this respect.

Character or appearance of the CA and setting of the LBs

10. The site is located close to the CA and at varying distances from the LBs. Special attention has to be paid to the desirability of preserving or enhancing the character or appearance of the CA and preserving the setting of the LBs. The CA comprises a variety of designs and types of buildings and includes the LBs which contribute to its pleasant historic character. The LB of particular relevance is the Grade I listed Church of St. Cuthbert, the tower of which is particularly prominent as seen from the appeal site and its vicinity. Other nearby LBs comprise the Grade II* listed Budwiths Almhouses close to the southern end of Whiting Way, and those along Priests Row to the south-east of Whiting Way.
11. The proposed mast would be positioned within a line of existing lampposts relating to both Whiting Way and the adjacent supermarket car park. It would be thicker than those existing features but nevertheless of a uniform appearance and a still fairly slender design. In these respects, notwithstanding its significantly greater height, it would not appear out of place in terms of only representing one additional vertical feature into the immediate streetscene. Furthermore, the increased height would not be an isolated or dominating feature seen from the closer approaches on that side of the road due to the positioning of the existing lampposts in the foreground. In that respect, it would therefore also not be generally seen in isolation against the backdrop of the tower of the listed church.
12. Nevertheless, it would be seen in varying degrees of isolation against the backdrop of the sky from other local vantage points and in that respect would stand out as being a taller feature than others in the vicinity. In this respect, it would be seen to some extent in the same context as the church tower against the sky backdrop. However, its fairly slender and uniform design would lessen its prominence and massing effect. Furthermore, in looking from the CA, including the southern end of Whiting Way and Portway Avenue, it would be seen to varying extents in the context of those existing lampposts on Whiting Way, telegraph poles in Portway Avenue and the modern building comprising the supermarket adjacent to the site, albeit that it would be taller than those features. The degree of separation from the Budwiths Almhouses and those LBs along Priests Row, together with the presence of intervening buildings and vegetation, which would also restrict the degree of inter-visibility between those assets and the proposal, would ensure that their particular settings would be unlikely to be materially harmed.
13. Additionally, the proposed equipment cabinets would be of fairly modest size and not dominant features in the context of the other nearby street furniture, including the lampposts, and positioning on a wider section of footway. I have had regard to concerns raised about the proposal being a target for graffiti and vandalism. However, I have no substantive evidence to indicate the likelihood of such, and in any case any anti-social behaviour would have the potential to be controlled by other means outside of the planning system.
14. For these reasons the extent to which the proposal would harm the character and appearance of the nearby CA and the settings of the LBs in the vicinity would be low. With regard to paragraphs 193, 194 and 196 of the Framework, harm to the significance of those designated heritage assets would be less than substantial due to the relatively small scale of development involved. In

considering the need for the proposal, Government policy, as set out in the Framework states that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. In this respect, I have found that there is a need for the proposal which therefore weighs strongly in its favour. As I have found that the level of harm relating to this second main issue would be low, that identified need would outweigh the harm in this case.

15. For the above reasons, I conclude on this issue that despite the less than substantial harm that would be caused, the public benefits of the proposal would outweigh that harm. As such it would accord with Development Policy 3 of the Mendip District Local Plan which relates to heritage conservation and sets out that any harm to a heritage asset requires justification and the demonstration of overriding public benefits which would outweigh the damage to that asset or its setting. It would also accord with paragraphs 193, 194 and 196 of the Framework in this respect.

Other matters

16. Concerns have been raised by local residents about potential effects on health due to the proximity of residential properties, schools and outdoor recreation facilities. However, the appellant has provided a declaration to certify that the proposal has been designed to conform with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). In these circumstances, the Framework advises that health safeguards are not something which a decision-maker should determine. No sufficiently authoritative evidence has been provided to indicate that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified.
17. Concern has also been raised about highway safety in terms of obstruction to the visibility of drivers exiting the Waitrose car park and also due to the mast being a distraction to drivers. However, there is no substantive evidence provided to justify the concerns, and I have no basis to consider that the proposal would pose a risk to highway safety. Furthermore, in respect of the former concern, the development would be set away from the edge of the highway and thereby likely to ensure the retention of existing levels of visibility. As such it would also not impede visibility of drivers on the road. The footway in that location is also fairly wide such that the proposal would be unlikely to cause an obstruction to pedestrians and people using mobility scooters or to force them into the road. Furthermore, the Council's Highways section raises no objections and for the above reasons I have no substantive basis to consider otherwise.
18. I have had regard to concerns about the effect of the proposal on tourism within Wells, having regard to its visual impact. However, in light of the low level of harm that I have found would be caused in respect of the second main issue, I consider that it would be unlikely to have a materially detrimental effect in respect of this matter.
19. In respect of concern raised about the effects of the proposal on bees, I have received insufficient substantive evidence to demonstrate that any significant harm would be caused in this respect.

20. Concern has been raised about a precedent being set for other masts being erected in the city. However, any future proposals would have to be considered on their own merits as I have done in this case.

Conditions

21. Standard conditions are set out in the GPDO for development by electronic communications code operators and it is not necessary for me to impose any additional conditions beyond those.

Conclusion

22. For the above reasons, I conclude that the appeal should be allowed.

Andrew Dawe

INSPECTOR