



Appeal Decision

Site visit made on 7 February 2023

by **A Price BSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 February 2023

Appeal Ref: APP/V2255/W/22/3295885

Land at Central Car Park, Leslie Smith Drive, Faversham ME13 8PW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 MBNL (EE Ltd and H3G UK Ltd) against the decision of Swale Borough Council.
 - The application Ref 21/504482/TNOT56, dated 12 August 2021, was refused by notice dated 29 September 2021.
 - The development proposed is the installation of an 18 metre high monopole supporting 6 antenna apertures and 2 transmission dishes, the installation of 7 equipment cabinets and ancillary development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.
3. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require that regard be given to the development plan. I have had regard to the policies of Bearing Fruits 2031: The Swale Borough Local Plan (LP, 2017) and the National Planning Policy Framework (the Framework) only insofar as they are material considerations relevant to the matters of siting and appearance.

Procedural Matters

4. The appellant contends that the Council failed, in accordance with the provisions of paragraph A.3(8) of the GPDO, to give the applicant or their agent written notice of its determination that prior approval was required. Nevertheless, it is clear that the decision notice was issued within the prescribed 56 day statutory period setting out that prior approval was refused. Failure to notify the appellant during the process does not invalidate the refusal.

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Main Issues

5. The main issues are:

- the effect of the siting and appearance of the proposed installation on the character and appearance of the area, including on the setting of heritage assets; and
- if any harm is identified whether that harm would be outweighed by the need for the installation, taking into account any suitable alternative sites.

Reasons

6. The appeal site comprises an area of hard landscaping within Central Car Park, adjacent to the existing single-storey toilet block. To the north of the site lie the rear of town centre properties forming part of West Street, Market Street and Preston Street. The appeal site lies within Faversham Conservation Area (CA). The significance of the CA lies, insofar as this appeal is concerned, in the character of historic and tightly packed town centre buildings enclosing narrow streets, together with nineteenth century residential development to the south-west, of similar development form, scale and building materials.
7. The site is also close to a series of Grade II listed buildings. These include 73-74, 76-78A and 88-90 Preston Street, 9 Market Street, 12, 14 and 15 The Market Place, 3-5 Hugh Place and the brick and stone setts within the curtilage of 1-7 Hugh Place. The significance of these buildings is derived from their age, ranging from the fifteenth to the nineteenth centuries, and architectural detail, including timber framed construction, the use of brick, and tiled gables.
8. The listed buildings are most clearly viewed, and best experienced, from the streets onto which they front. However, rear views of them allow them to be appreciated from the site and wider Central Car Park. Due to the proximity of the appeal site and these heritage assets, together with their intervisibility, the proposed installation would fall within the setting of the listed buildings.
9. The proposed installation would comprise an 18-metre high monopole and 7 ground-based equipment cabinets. The prominent location of the installation, together with its scale, is such that it would be highly visible from within the surrounding public realm and from nearby properties facing onto the site.
10. Although I appreciate that the mast has been reduced in height and coloured green since a previous planning application, and I accept that the area surrounding the site contains a range of street furniture, including lighting columns and telegraph poles, the proposed installation would be appreciably higher than those features, appearing visually intrusive and dominant. It would also project above the mature and semi-mature trees that surround the site. These are deciduous, further reducing coverage during the winter months.
11. Ultimately, a substantial extent of the modern and utilitarian mast would be viewed against the skyline. This would form a jarring and incongruous feature next to the historic buildings which surround it, interrupting views of the rear of the listed properties and marring their setting.
12. For the above reasons, the proposed installation would have a harmful effect on the character and appearance of the CA, neither preserving nor enhancing

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it, and would harm the setting of the listed buildings. Nevertheless, the harm to the setting of the heritage assets would be 'less than substantial' as only a part of their setting would be affected. In line with the requirements of paragraph 202 of the Framework, this harm must be weighed against any public benefits of the proposal.

13. There are clear public benefits to the proposed installation, including the contribution to providing good, fast, reliable and cost-effective communications, an objective supported by the Government¹, and the replacement of a nearby decommissioned mast. I also appreciate that the communications provider has been awarded a contract by the Home Office to provide new Emergency Services Network and that this appeal site would form part of that network. Nevertheless, I conclude that the harm identified above would not be outweighed by the need for the installation to be sited as proposed.
14. For the above reasons, I conclude that the siting and appearance of the proposed installation would fail to preserve or enhance the character or appearance of the CA, or preserve the setting of the Grade II listed buildings. It would be contrary to the relevant provisions of LP Policies DM14, DM32 and DM33. These policies, amongst other objectives, seek to ensure that heritage assets are preserved.

Alternative sites

15. The appellant has set out 7 discounted alternative locations for a mast and associated apparatus. These were discounted for various reasons, including in some cases their inability to provide suitable coverage and their visual impact.
16. However, the level of detail submitted is limited. I have no substantive information before me which convincingly demonstrates the extent to which masts in those locations would fail to achieve the same level of coverage as the site before me, or the extent to which they would harm character and appearance.
17. Consequently, based on the evidence before me, I am not persuaded that the appellant has properly explored all other potentially available, and less harmful, alternative options.

Other Matters

18. The appellant has referred to the similarities between the proposal and schemes that were allowed at appeal at Cricklewood Lane, London², Gillender Street, London³ and Leighton Buzzard Road, Hemel Hempstead⁴. However, the circumstances at those sites are not directly comparable, not least as they are located in different settlements. I have assessed the appeal scheme on its own individual circumstances, based on the evidence before me and my observations on site. Ultimately, the existence of those appeals does not lead me to an alternative conclusion on the main issue in this particular case.

¹ Framework paragraph 114

² Ref APP/N5090/W/20/3250662

³ Ref APP/E5900/W/21/3272180

⁴ APP/A1910/C/20/3256772, APP/A1910/C/20/3256773

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19. I also acknowledge that the proposal would not have adverse impacts on public health. However, that has not been a determining factor in this case and attracts no weight in support of the appeal.

Conclusion

20. For the above reasons, I conclude that the appeal is dismissed.

A Price

INSPECTOR