



Appeal Decisions

Site visit made on 2 May 2007

by George Mapson MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
10th May 2007

Appeal 1 - Ref: APP/D3505/C/06/2019192

Appeal 2 - Ref: APP/D3505/C/06/2019193

Appeal 3 - Ref: APP/D3505/C/06/2019194

22 Orwell View Road, Shotley, Ipswich IP9 1NP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by (1) Mr Kevin Robert Cullum; (2) Miss Katie Michelle Bateman; and (3) Mr David James Bateman against an enforcement notice issued by Babergh District Council.
- The Council's reference is B/05/57/ENF.
- The notice was issued on 24 May 2006.
- The breach of planning control as alleged in the notice is "*The erection of an aerial mast.*"
- The requirements of the notice are "*To dismantle the mast and to remove the resultant material from the land.*"
- The period for compliance with the requirements is 2 months.
- The appeals are proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeals are dismissed and the enforcement notice upheld.

Main issue

1. An appeal on ground (c) is that there has not been a breach of planning control; for example, because the matters alleged in the notice do not constitute "*development*"¹, or, if they are development, are "*permitted development*"². Consequently, the main issue is whether the mast requires planning permission.

Reasons

Background

2. The mast is a free-standing (ground-based) telescopic lattice tower with a galvanised finish. It has a tilt-over design and an array of antennas at the top. It stands within the curtilage of a dwellinghouse and is used for amateur radio purposes.

Does the erection of the mast constitute "development"?

3. Three factors – size, degree of physical attachment and permanence – have a bearing on whether, as a matter of fact and degree, the erection of the mast constitutes development.

¹ Within s.55(1) of the Town and Country Planning Act 1990

² Within the Town and Country Planning (General Permitted Development Order) 1995(as amended in 1998 and 1999) [The GPDO].

4. On size, the mast is certainly not something which would be regarded as "*de minimis*"³. The appellant says that it is about 18.28m (60 feet) high when fully extended, but is normally not extended beyond about 15.24m (50 feet). It is designed to withstand adverse wind and weather conditions and is a substantial, durable structure.
5. On the degree of physical attachment, the mast is attached to the ground by means of a vertical steel post. About 1.8m of this post is above the ground and 1.8m has been driven deep into ground. It is set in a concrete pad, which has a surface area of about 1m by 1.2m. The mast is firmly and securely affixed to the ground.
6. On permanence, although the mast can be lowered when not in use, it is clearly intended to be a permanent structure, remaining *in situ* in the same position on the land. It would only be removed by a process of dismantling. It has a degree of permanence that is significant in the planning context.
7. I find that the mast is sufficiently large, sufficiently attached to the land and sufficiently permanent to amount to development that requires planning permission.

Is the mast "permitted development"?

8. The next stage is to consider whether the Town and Country Planning (General Permitted Development) Order 1995 [GPDO] grants deemed planning permission for the mast.
9. Circular 10/2005 provides guidance on the permitted development rights for antennas which is found in Part 1, Class H and Part 25, Class A and Class B of Schedule 2 to the GPDO. The Circular explains, at paragraph 6, that the limitations and restrictions on permitted development rights for antennas are intended to protect the environment from unnecessarily large, unsympathetic or poorly sited antennas.
10. Further guidance is set out in the ODPM publication "*A Householder's Planning Guide for the Installation of Antennas including Satellite Dishes*" (published in December 2005).
11. Part 1, Class H of the GPDO is relevant here. It sets out the permitted development rights for antennas (up to a specific size) on dwellinghouses, or in the garden of a dwellinghouse. With houses and buildings up to 15m high - which would include the appeal property - Class H permits up to 2 antennas per dwelling. The first may be no more than 100cm in any linear direction. The second, or one located on a chimney stack, may be no more than 60cm in length.
12. It is a requirement that antennas be located so as to minimise their effect on the external appearance of the building. They should be placed in an inconspicuous position; if possible, where they would not be seen by neighbours or the general public.
13. The mast fails to meet these criteria. I find nothing in the GPDO that grants deemed planning permission for the free-standing 15m to 18m high mast that has been erected within the curtilage of this dwellinghouse. It follows that it is not permitted development.

Conclusions

14. As a matter of fact and degree, the erection of this mast constitutes development for which planning permission was required but which was neither sought nor obtained. Accordingly, the appeals made on ground (c) must fail.

³ "*De minimis (non curat lex)*" - a legal principle meaning "*the law does not concern itself with trifles*". It is applied to minor infringements of planning law which are of little or no public interest.

15. For the reasons given above and having regard to all other matters raised, I conclude that the appeals should be dismissed.

Formal Decisions

16. I dismiss the appeals and uphold the enforcement notice.

George Mapson

INSPECTOR