

Town and Country Planning Act 1990 (as amended)

Section 78 Appeal by Cellnex UK Limited against the decision of the London Borough of Hillingdon Council to refuse prior approval for the installation of electronic communications apparatus to upgrade the Cherry Lane Cemetery Communications Installation, Shepiston Lane, West Drayton, London UB7 9DL

Final Comments – Response to the LPA’s Appeal Statement and Third Party Representations

Planning Inspectorate Reference APP/R5510/W/22/3292326

London Borough of Hillingdon Council Reference: 35298/APP/2021/3325

Cellnex UK Limited Reference: UK-LO-004678

April 2022

1. The LPA's appeal statement

1.1 The LPA's statement explains that it intends to rely upon its Planning Officer's delegated report, which sets out the justification for the refusal, as its main appeal case. It further explains that the remainder of its statement seeks to address the points made in the appellant's Statement of Case.

1.2 In response, we accept that the Green Belt policies set out in the National Planning Policy Framework and the Development Plan are material considerations in the LPA's assessment, albeit only in so far as they relate to matters of siting and appearance. Consequently, we do not disagree with that part of the LPA's statement which highlights that issues of visual impact and the openness of the Green Belt were relevant to its determination of the prior approval application.

1.3 There is, however, nothing contained in the LPA's statement that specifically addresses the appellant's evidence on why the issues of inappropriate development and Very Special Circumstances were considered relevant to its determination. Similarly, the LPA's statement has not taken the opportunity to challenge the appellant's argument that it ignored appeal decisions that confirm that these issues do not apply to prior approval application determinations. Instead of addressing these points in evidence, the LPA's statement at paragraph 2.2 contains the following reference only, which completely side steps the appellant's challenge to the weight it gave to the assessment of the inappropriate development and Very Special Circumstances tests:

"2.2 The appellant has referenced the LPA's green belt reference in their statement of case. Whilst this forms part of the reason for refusal, a key part of the reason for refusal is the impact on the open character of the wider area, due to the siting, scale, bulk and height of the proposal. The open character of the green belt is material to the decision, as it is relevant in terms of the character assessment when considering the development; the siting and appearance rightly noted in the statement."

1.4 Similarly, there is very little in the LPA's statement that addresses the appellant's claim that national, regional, and local planning policies for electronic communications were omitted from its assessment of the planning balance. Instead, paragraph 2.3 of its statement contains the following explanation (with our emphasis):

*'Whilst the need for enhanced telecommunications on a **National scale** is appreciated and supported by other approvals elsewhere in the LB Hillingdon, the role of the LPA was to make an assessment of the siting and appearance of the development. In this instance, given the particular site circumstances and context, it is considered that the alterations would be materially harmful with regards to the siting and appearance of the telecommunications mast and associated equipment...'*

- 1.5 This explanation does nothing to alter the appellant's opinion that national, regional, and local planning policies for electronic communications development were not properly assessed by the LPA as part of the planning balance when determining the application.
- 1.6 Similarly, the LPA's statement does not address the appellant's evidence on the UK Government's direction of travel in relation to the introduction of more generous permitted development rights in Part 16 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (the GPDO) to support 5G and other connectivity. At the time of writing our appeal case, these changes had been the subject of two consultation exercises, including the technical consultation paper issued in April 2021, and were awaiting the Government's final decision on scope and implementation (see paragraphs 5.26-5.33 of the appellant's Statement of Case).
- 1.7 Those changes have now been introduced. We, therefore, wish to draw the Inspector's attention to the amendments made to Part 16 of Schedule 2 to the GPDO that came into force on 4 April 2022 under Statutory Instrument 2022 No. 278. Amongst other things, these changes now create permitted development rights, free of the prior approval application process, for the following works:
- Increasing the height of an existing ground based mast to 25m above ground level on unprotected land. This applies to Green Belt areas such as the appeal site. Prior approval is now required only for the alteration of masts to heights between 25m and 30m above ground level on unprotected land, and anything taller requires planning permission
 - Increasing the width of existing masts that are one metre wide or wider, such as the one at the appeal site that is 2m wide, by up to half the width of the mast or 2m, whichever is the greater.
- 1.8 The Government has also introduced a new 28 day notification period for engagement with the Civil Aviation Authority, the Secretary of State for Defence, and the operator of a civil safeguarding area (if this not the CAA) when Code Operators plan to install, alter, or replace a mast on land within defence or civil safeguarding areas.
- 1.9 These most recent amendments to Part 16 of the GPDO have now created the fall-back position, should this appeal be dismissed, of the works required to upgrade the Cherry Lane base station constituting outright permitted development. The works involved in the appeal proposal no longer require prior approval and, as before, do not require express planning permission.

- 1.10 Consequently, the works required to upgrade the base station could be undertaken following the relevant notifications to the LPA under Regulation 5 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003, as amended, and to Heathrow Airport under a combination of Regulation 8A of the Code Regulations and Condition A.2(5A) of the latest iteration of Part 16 of the GPDO that came into force on 4 April 2022. The latter would be a procedural formality, however, as engagement has already been undertaken with Heathrow Airport and it has confirmed that the increase in the height of the mast does not raise any aerodrome safeguarding concerns. The relevant engagement with Heathrow Airport's Airside Works and Safeguarding Manager is provided in Annexe G of the appellant's Statement of Case.

2. Third party representations

- 2.1 The letter from the Ministry of Defence's Safeguarding Team (MOD) dated 28 March 2022 is the only third party representation submitted to the appeal. This confirms that the MOD raises no objection the development proposed and thereby repeats its consultation response to the prior approval application that was received by the LPA after its determination.
- 2.2 Although not stated in its letter, the closest MOD aerodrome to the appeal site is RAF Northolt, which is 5.6km to the north west. While the MOD was consulted by the LPA, RAF Northolt is beyond the 3Km threshold requiring pre-application notification by Code Operators under the iteration of Part 16 of the GPDO applicable at the time the prior approval application was made.

3. The LPA's suggested planning condition

- 3.1 The LPA has requested a standard time limit and plans condition should the Inspector be minded to allow the appeal. Such a condition is superfluous. This is because section A.3(9) of Part 16 of Schedule 2 to the GPDO requires the development to be undertaken in accordance with the details provided with the application, unless varied by agreement with the LPA under A.3(10), and A.3(11) specifies a five-year life for prior approval permissions.
- 3.2 Notwithstanding these points, Parliament has not granted decision takers any powers to impose conditions in prior approval determinations beyond those already specified in Part 16 of the GPDO. The LPA's suggested planning condition, therefore, serves no purpose, as it essentially replicates the statutory controls already embedded into Part 16 of the GPDO.