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## Appeal Decision

Site visit made on 12 October 2020

**by Andrew Bremford BSc (Hons) MRICS**

an Inspector appointed by the Secretary of State

Decision date: 29 October 2020

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**Appeal Ref: APP/K3605/W/19/3243927**

**Bridge Road (southwest of junction with Arnison Road), East Molesey  
KT8 9HY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 Elmbridge Borough Council.
  - The application Ref 2019/1219, dated 30 April 2019, was refused by notice dated 25 June 2019.
  - The development proposed is installation of a 15m high monopole incorporating shrouded antenna and supporting 2no. external dishes and development ancillary thereto.
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### Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of a 15m high monopole incorporating shrouded antenna and supporting 2no. external dishes and development ancillary thereto at Bridge Road (southwest of junction with Arnison Road), East Molesey KT8 9HY, in accordance with the application ref: 2019/1219, dated 30 April 2019, and the plans submitted with it.

### Procedural Matters

2. The appellant contends that the Council failed, in accordance with the procedures set out in Schedule 2, Part 16, Class A of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) (hereafter the GPDO 2015), to give the appellant or their agent written notice of its determination that prior approval was required. The appellant contends that in these circumstances the Council's refusal notice is not valid. However, the evidence is clear that the Council issued a letter to the agent on 9 May 2019 clarifying that the prior approval of the local planning authority is required for the siting and appearance of the development proposed by application ref: 2019/1219, dated 30 April 2019.
3. The Council's refusal notice refers to the effect of the proposed 15m high monopole on the character and appearance of the area. It also refers to the effect of 'associated equipment cabinets'. However, the application was solely

for development as described in the banner heading above. I have therefore determined the appeal on this basis.

4. The provisions of the GPDO 2015, 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.

### **Planning Policy**

5. The principle of development is established by the GPDO 2015 and the provisions of Schedule 2, Part 16, Class A of the GPDO 2015 do not require regard be had to the development plan. I have had regard to the policies of the development plan and the National Planning Policy Framework (the Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.

### **Main Issue**

6. The main issue is the effect of the siting and appearance of the proposed development upon the character and appearance of the area.

### **Reasons**

7. The proposed 15m high mast would be a slim monopole design and coloured 'fir green'. It would host three shrouded antennas and two external dishes and would be located at the back edge of the grass verge adjacent to a low wall which separates the grounds of Boleyn Court from the verge and public footway on the western side of Bridge Road. The site is close to the junction of Bridge Road and Arnison Road where there is existing street furniture including two telecommunications cabinets, a bench and a waste bin.
8. Boleyn Court is a residential block of flats located at the junction of Bridge Road and Arnison Road. Owing to the orientation of the building within the corner plot its front elevation faces the road junction and the site. However, there is a grassed area in front of the building which forms part of its gardens. Moreover, mature deciduous and evergreen trees, interspersed with other vegetation, line the inside boundary of the gardens along Bridge Road and Arnison Road.
9. The site is approached from gentle curves in both directions along Bridge Road, which is characterised by a mix of generally low level residential and commercial development. However, there are large mature trees along the eastern side of Bridge Road opposite the junction with Arnison Road and others just within the boundary of the listed Kingfisher Court. The site lies just outside the East Molesey (Kent Town) Conservation Area and the East Molesey (Bridge Road) Conservation Area. There are also other listed buildings nearby.
10. I visited when leaf fall had only just begun, however the evidence in the form of photomontages shows how the proposed mast would appear in some views against a backdrop of largely denuded tree branches. In views along Arnison Road and from the north east along Bridge Road the mast would mainly appear through or against the tall and spreading cover of the trees and so its impact would be limited. Although the mast would extend above the line of trees in views from the south west along Bridge Road a significant portion of

its midsection length would be obscured by tree and vegetation cover including evergreen trees.

11. The mast would be taller and thicker than the existing nearby street lighting columns, road signs and overhead cable poles. Due to its height, the mast would be visible in local views from the public domain and from some residential properties in proximity to the site including the flats within Boleyn Court. However, such masts are becoming more commonplace within the urban environment and so it would not appear as an alien or unexpected feature. Although the mast would rise to a greater height than the line of trees within the grounds of Boleyn Court and nearby buildings, the excess height is limited. The structure would not therefore appear unduly tall within this context. As a result of its slimline design and green colour the mast would not visually compete with the trees. Because of their maturity and substantial size, in all respects except for maximum height the trees would remain considerably more prominent in longer views than the proposed mast.
12. Taking into account the location of the boundaries of the two Conservation Areas relative to the site, in longer range views, the gentle curves of Bridge Road and the intervening trees would substantially reduce the visual impact of the development in views in and out of the two Conservation Areas. Consequently, the proposal would have a minimal effect on their settings and so there would be no harm to the character, appearance or significance of the Conservation Areas.
13. The closest listed buildings are at Kingfisher Court to the east and Nos 95 and 97 Bridge Road to the south west. Views from around the site of these locations, in which the proposed mast would also be visible, are relatively limited and largely obscured by trees. As such, the proposal would preserve the particular significance of these heritage assets and their settings.
14. The proposed mast would be visible in the street-scene. However, for the reasons outlined above, it would not result in any significant harm to the character and appearance of the area.

### **Other Issues Raised**

15. Interested parties have raised a number of other issues. Taking into account the slim profile of the proposal and the intervening distances involved, the proposal would not be unacceptably overbearing or intrusive when viewed from residential properties in the vicinity of the site including from the flats within Boleyn Court. Consequently, there would be no adverse effect on the living conditions of nearby residents through loss of outlook. The proposal does not create overlooking, so it does not raise privacy issues. Construction works and maintenance activities would likely lead to some disruption, but these activities would be temporary and any effects from them would be short-term. Concerns have also been raised that the proposal would devalue house prices in the neighbourhood. However, it is well established<sup>1</sup> that the planning system does not exist to protect private interests such as the value of property.
16. Concerns have been raised about the potential effects on health and, in this regard, the proximity of the site to a school. However, the appellant has provided a certificate to confirm that the proposal has been designed to comply

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<sup>1</sup> Planning Practice Guidance - Paragraph: 008 Reference ID: 21b-008-20140306

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. Interested parties indicate that there are alternative sites available for the proposed mast. However, given my conclusion on the main issue it is unnecessary to address the merits of alternative sites. There is no requirement in the Framework or the GPDO 2015 to select the best feasible siting. In any event, this issue was not reflected in the Council's reason for refusal.
18. None of the other issues raised alter or outweigh my conclusion on the main issue.

### **Conditions**

19. Any planning permission granted for the mast under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2), which specify that the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin not later than the expiration of 5 years beginning with the date on which the local planning authority received the application, and must be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.
20. The Council has suggested that two additional planning conditions be imposed should approval be granted. However, the GPDO 2015 does not provide any specific authority for imposing additional conditions beyond the deemed conditions mentioned above and, in any event, the Council merely sought to require the implementation of the colour scheme indicated on the submitted details and the development to be carried out in accordance with the submitted plans. Consequently, I have not imposed those suggested conditions.

### **Conclusion**

21. For the reasons given above, and having taken all other issues into account, I conclude that the appeal should be allowed and prior approval should be granted.

*Andrew Bremford*

INSPECTOR