

Wolverhampton City Council

OPEN INFORMATION ITEM

Committee / Panel	<u>PLANNING COMMITTEE</u>	Date 28 th February 2012
Originating Service Group(s)	EDUCATION AND ENTERPRISE	
Contact Officer(s)/	CHRIS HOWELL (Section Leader)	STEPHEN ALEXANDER (Head of Development Control and Building Control)
Telephone Number(s)	(01902) 551126	(01902) 555610
Title/Subject Matter	PLANNING APPEALS	

1.0 Purpose of Report

- 1.1 To provide the Committee with an analysis of planning appeals in respect of decisions of the Council to either refuse planning or advertisement consent or commence enforcement proceedings.

2.0 Planning Appeals Analysis

- 2.1 The Appendix to this report sets out the details of new planning appeals, ongoing appeals and those which have been determined by the Planning Inspectorate in respect of the decisions of the Council to either refuse planning or advertisement consent or commence enforcement proceedings.
- 2.2 In relation to the most recent appeal decisions of the Planning Inspectorate i.e. those received since last meeting of the Committee, a copy of the Planning Inspector's decision letter, which fully explains the reasoning behind the decision, is attached to this report. If necessary, Officers will comment further on particular appeals and appeal decisions at the meeting of the Committee.

3.0 Financial Implications

- 3.1 Generally, in respect of planning appeals, this report has no specific financial implications for the Council. However, in certain instances, some appeals may involve the Council in special expenditure; this could relate to expenditure involving the appointment of consultants or Counsel to represent or appear on behalf of the Council at Public Inquiries or, exceptionally, if costs are awarded against the Council arising from an allowed planning/enforcement appeal. Such costs will be drawn to the attention of the Committee at the appropriate time.

**4.0 Equal Opportunities/
Environmental Implications**

- 4.1 None.

NEW APPEALS

Appeal Site / Ward / Appellant	Application No / Proposal	Type of Appeal / Date Submitted	Summary of Reasons for Refusal / Requirements of Enforcement Notice
53 Mount Road, Tettenhall Wood, Wolverhampton Tettenhall Wightwick Mr P Stafford	TREE/0181/11/TR Fell a Beech Tree	Planning Written representation 11.01.2012	The information submitted was insufficient to establish that the tree is causing structural damage, or having a serious impact upon drainage, nor is a link established between drainage problems and the health of the applicants' children. The relative scale of the tree, in relation to the property, would have clearly been apparent to the present owners at the time of the purchase of the property, a few years ago. Reasons related to shedding of debris from the tree, pigeon droppings and desiccation of the garden are not considered to be valid reasons for the removal of a healthy preserved tree of high amenity value.

ONGOING APPEALS

<u>Appeal Site / Ward</u>	<u>Appellant</u>
1. Land At Front Ashmore Park Library Griffiths Drive	Vodafone Ltd & Telefonica O2 UK Ltd
Wednesfield North	
2. 1 Carisbrooke Gardens Wolverhampton	Mr M Evanson
Bushbury North	
3. 42 Lower Prestwood Road Wolverhampton	Mrs Jane Hammond Bood
Wednesfield North	
4. 115 Wynn Road Wolverhampton	Mr Paul
Penn	
5. 295 Great Brickkiln Street Wolverhampton	Mr M Zahiri
Graiseley	
6. Midland Snacks Bridge Street Heath Town	Midlands Snacks Ltd
Bushbury South And Low Hill	
7. 54 Linden Lea Wolverhampton WV3 8BD	Mr & Mrs Robert Gilham
Tettenhall Wightwick	
8. Penn Manor Medical Centre Manor Road Penn	Mr Nigel Ford
Penn	
9. Land Fronting 291 Tettenhall Road Wolverhampton	Vodafone (UK) Ltd And O2 (UK) Ltd
Park	

APPEALS DETERMINED SINCE LAST MEETING

Appeal Site / Ward / Appellant	Application No / Proposal	Type of Appeal / Date Submitted	Reasons for Refusal / Requirements of Enforcement Notice	Decision and Date of Decision
3 Long Knowle Lane, Wolverhampton, Fallings Park Mr Surinder Kumar	11/00164/FUL Change of Use from A1 (retail) to mixed A1 (retail) and A5 (hot food take-away) and installation of external extraction flue	Planning Written representation 19.09.2011	Over concentration of this particular use (A5) Insufficient evidence to support loss of A1 Use Neighbouring amenities Flue out of scale and character Contrary to UDP Policies SH14, CEN6, D4, D7, D8, D9, EP5, ENV8 and AM12	Appeal Dismissed 23.01.2012
Land Fronting The Westacres, Finchfield Hill, Wolverhampton Tettenhall Wightwick Vodafone Ltd & Telefonica 02 UK Ltd	11/00531/TEL Telecommunication - Vodafone/02 - Installation of 13.8m high Streetpole enclosing two antenna and associated equipment and housing.	Planning Written representation 23.09.2011	The installation would result in unnecessary visual clutter creating an undesirable visually prominent, obtrusive and incongruous feature. As such the proposed street pole would impact on the skyline, have serious adverse effect on visual amenity and is detrimental to the streetscene and locality. Contrary to UDP Policies D6, D7, D9 and EP20 BCCS Policies CSP4, ENV3 and Interim Telecommunications Policy	Appeal Dismissed 20.01.2012



Appeal Decision

Site visit made on 17 January 2012

by Stephen J Pratt BA (Hons) MRTPI

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

Decision date: 23 January 2012

Appeal Ref: APP/D4635/A/11/2161062

Unit 3, Long Knowle Lane, Wolverhampton WV11 1HZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Surinder Kumar against the decision of Wolverhampton City Council.
 - The application Ref:11/00164/FUL, dated 18/02/11, was refused by notice dated 07/04/11.
 - The development proposed is change of use from A1 (retail) to mixed A1 (retail) and A5 (hot food takeaway) and installation of extraction flue.
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Decision

1. The appeal is **dismissed**.

Reasons

2. This appeal concerns the change of use of this currently vacant shop unit from retail (Class A1) to mixed retail and hot-food takeaway (Class A5). The appellants intend to use the premises for retail use during the daytime (selling Indian sweets) and as a hot-food takeaway in the evening (selling Asian food between 1800-2100 hours). The main issues are whether the proposal would result in an over-concentration of Class A5 uses, to the detriment of the retail function of this parade; whether it would adversely affect the living conditions of nearby residents, due to noise, odour and the presence of the extraction flue; whether it would adversely affect the appearance of the premises; and whether sufficient parking provision is available.

Principle of the proposed change of use

3. Black Country Core Strategy (BCCS) Policy CEN6 aims to protect shops that provide an important service to the locality. UDP Policy SH14 confirms that catering outlets should be located within defined centres, except where there is a local need for this type of use, but recognises that such uses can cause noise and disturbance to local residents, particularly at the weekend and evening.
4. However, in this small parade on the corner of Long Knowle Lane and Prestwood Road West, there are already four Class A5 uses, including a fish and chip shop, Indian restaurant, café and Chinese restaurant/take-away, some of which are open until late in the evening. The appeal premises are currently vacant (previously used as a hairdressers), and there is only one other retail unit (the Premier convenience store). Although the current appeal proposal would retain the unit in retail use during the daytime, it would introduce another hot-food takeaway into this small parade during the evening. This would result in an over-concentration of this type of use and erode what

remains of its retail function. Bearing in mind the presence of other hot-food takeaways in this parade and in nearby shopping centres and parades, the local community would seem to be well served by this type of use without the need for a further facility at the appeal premises. Consequently, I consider the proposal would be contrary to BCCS Policy CEN6 and UDP Policy SH14.

Impact on the living conditions and general amenity of nearby residents

5. BCCS Policy ENV8 aims to promote healthy living, by reducing exposure to poor air quality. UDP Policies B5 & EP5 aim to protect the amenity of surrounding residents and avoid developments that give rise to unacceptable levels of noise pollution, whilst Policies D7 & D8 seek to avoid developments which adversely affect people's outlook and privacy. In this case, the upper floor of the appeal premises and the adjoining units is used as residential accommodation, with access from the rear. I understand that, in addition to the cooking of hot-food takeaways, the Indian sweet shop use would involve some cooking/preparation of the product. The Council refers to a history of complaints and concerns about the level of cooking odours emitted from the existing ground floor units. Although modern extraction equipment could probably overcome some of these concerns, the addition of another hot-food takeaway would intensify and increase the potential for additional cooking odours in the evening, to the detriment of the living conditions of neighbouring residents. The proposal would therefore be contrary to UDP Policies B5 & EP5 and BCCS Policy ENV8.
6. Furthermore, the proposal would involve the erection of another extraction flue at the rear of the premises, above the single-storey rear extension, not far from the rear window of the residential accommodation above the units. Although there is little detail about the design of the flue or its relationship with the upper floor, it would not only be visible from the rear window of the residential accommodation, but when the window is open, there would also be the potential for additional cooking smells, to the detriment of the living conditions of occupiers. For these reasons, the proposal would be contrary to UDP Policies D7, D8, EP5 & B5, and BCCS Policy ENV8.

Impact on the appearance of the building

7. BCCS Policy ENV3 aims for high quality design in new developments, whilst UDP Policies D4, D5, D7 & D8 set out more detailed criteria for the design of new developments. Although there are few details about the design of the new flue, it is apparent that it would project about 0.7m above the existing roof line and some 3.1m above the castellated parapet at the rear of the premises. From Prestwood Road West, it would appear as a rather obtrusive new feature in the street scene, resulting in a more cluttered appearance of the rear and side elevations of the premises, and detrimental to the overall appearance of the building. If the flue were to be encased in a brick structure, as suggested, it would appear even larger and more obtrusive. Consequently, the proposal would not meet the requirements of BCCS Policy ENV3 and UDP Policies D4, D5, D7 & D8.

Adequacy of parking provision

8. On my visit, I saw that there are 22 parking spaces on the forecourt of this shopping parade for customers visiting the existing retail and Class A5 units. There appear to be no restrictions on the use of these spaces, and further details could be provided by a planning condition. Consequently, this is not a soundly-based reason to refuse planning permission for this proposal.

Other matters

9. In reaching my conclusions on this appeal, I have borne in mind that the proposal would bring back into use a currently vacant unit, and maintain a retail function during the daytime. I also recognise that other units are open until later than the time proposed in this current appeal scheme. Any concerns about the detailed structure and appearance of the extraction flue could also be the subject of a planning condition. However, these more positive features of the proposal do not outweigh the fact that it would increase the number of Class A5 uses in this small shopping parade and be likely to erode the general amenity and living conditions of nearby residents.

Conclusions

10. I therefore conclude that the appeal proposal would result in the over-intensification of Class A5 uses in this small parade to the detriment of its remaining retail character and function, the appearance of the building, and the general amenity and living conditions of neighbouring residents. As such, it would be contrary to relevant policies of the Black Country Core Strategy and Wolverhampton UDP, and these represent sound and clear-cut reasons to justify refusing planning permission. Having also considered all the other points raised in the representations, including the views of local residents (including a petition), I conclude that this appeal should be **dismissed**.

Stephen J Pratt

STEPHEN J PRATT
Inspector



Appeal Decision

Site visit made on 10 January 2012

by Roger Pritchard MA PhD MRTPI

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

Decision date: 20 January 2012

Appeal Ref: APP/D4635/A/11/2161192

Land fronting The Westacres, Finchfield Hill, Wolverhampton, WV3 9HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to give prior approval under Part 24 of the Town and Country Planning (General Permitted Development) Order 1995 as amended in respect of permitted development by Telecommunications Code Systems Operators.
 - The appeal is made by Vodafone Ltd and Telefónica Ltd against the decision of Wolverhampton City Council.
 - The application Ref 11/00531/TEL, made by notification letter dated 24 May 2011, was refused by notice dated 28 June 2011.
 - The development proposed is the installation of a 13.8 metre streetpole enclosing two antennae and associated equipment and housing.
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Decision

1. The appeal is dismissed.

Main Issue

2. I consider the main issue to be the effect of the proposed development on the character and appearance of the neighbouring street scene.

Reasons

3. The proposed telecommunications streetpole and associated equipment would be sited on the west side of Finchfield Hill immediately to the north of its junction with Broadway. The proposed streetpole, with a height of just under 14 metres, would be shared by the two operators who have submitted the appeal. The installation would seek to improve 3G network coverage within the surrounding residential area of Compton.
4. Finchfield Hill is the northernmost part of the B4161 that provides a link between the A454 and the A449 avoiding Wolverhampton City Centre. The proposed streetpole would be erected on an area of highway land in front of The Westacres Public House. (Some local residents have claimed that The Westacres is a listed building. The Council has confirmed that it is not.) Adjacent to the site of the proposed streetpole are two mature trees, the height of which I estimate to be between 10 and 12 metres, i.e. below that of the proposed streetpole. Apart from The Westacres, the surrounding area is overwhelmingly residential.
5. Planning Policy Guidance 8, *Telecommunications* (PPG 8) recognises the potential visual impact of telecommunications facilities and advises that priority should be given to protecting, *'...high quality landscapes and quality in urban*

areas.' Policy EP20 of the adopted Wolverhampton Unitary Development Plan (UDP) identifies '*sensitive locations*' where telecommunications equipment will be acceptable only if there is demonstrable need, no practicable alternative sites are available and it has been designed and sited to minimise its impact on the appearance of the area. Transport corridors and predominantly residential areas are among the sensitive locations that Policy EP20 identifies. Policy EP20 is supplemented by an Interim Telecommunications Policy that the Council adopted as Supplementary Planning Guidance (SPG) in 2002.

6. I note that, although some third parties have questioned the requirement for the installation, the Council has not raised the issue of need in its reasons for refusal. I have no reason to disagree. The appellants also contend that the proposed site has emerged after a 'sequential' assessment that demonstrated that there were neither existing telecommunications installations nor suitable rooftops or structures in the area of search which could accommodate an additional facility. A new, freestanding ground-based site is, in their view, the only option. I note that the sequential, assessment process was fully shared with the Council and that it has neither disputed this conclusion nor suggested any alternative site. Although there is a substantial weight of local opinion suggesting that sites less close to residential properties and less visually prominent are available in the search area, no one has pointed to any particular location.
7. The proposed site would result in the installation becoming a prominent feature in the streetscene and the tallest structure in the immediate vicinity. The streetpole would dominate views from the south and east. It would also, despite the adjacent trees, draw the eye as one approached the site from the north. Only from the west would there be a degree of screening, though the top of the installation would come into view above The Westacres and the tree in the public house's forecourt. It would be visible from many neighbouring residential properties and would be especially significant when seen from the frontages of the houses immediately opposite the site on the other side of Finchfield Hill. There is, in my view, a substantial risk that the streetpole would be so visually dominant as to become a primary element in the character and appearance of the surrounding area.
8. Nevertheless, I accept that there are some mitigating factors. The two operators, Vodafone and O2, would share the proposed installation. This would lead to a single, albeit slightly bigger structure. However, given the alternative of finding locations for two structures in an area that has proved less than fruitful in this respect, I recognise that the single streetpole provides for less overall impact and is in line with current Government advice.
9. Nevertheless, I conclude, on balance, that in respect of this particular site the material harm to the visual appearance of this residential area is not sufficiently offset by the need for the installation and the mitigating benefits of two operators sharing it. In these circumstances, I conclude that the proposed installation is incompatible with the policies of the adopted UDP and contrary to the advice of PPG8 on siting. The appeal should therefore be dismissed.

Other Matters

10. Some local residents have suggested that the proposed installation would increase the risk to highway users using the junction of Finchfield Hill and Broadway. I accept that the B4161 is moderately heavily trafficked and that

there are visibility limitations to the north. However, I have noted that the Council's Highways Department has raised no objection to the proposed installation and, from my site visit, I concluded that it would not materially affect visibility at the junction. I have therefore given this argument no weight in my decision.

11. A number of local residents, although concerned about the same issues as caused the Council to refuse the original application, have raised two other matters which I consider I should not take into account in reaching my decision.
12. The first is the health risk that some local residents believe would arise from the installation of new telecommunications equipment. In addition, although not raised by the Council, concerns have been expressed about the proximity of a hospice and schools. However, none of these facilities is adjacent to the proposed site. Although PPG 8 accepts that health considerations can in principle be material in determining planning applications, it also advises that it is the Government's firm view that the planning system is not the place for determining health safeguards. It also advises that Councils should not implement their own precautionary policies, for example by imposing minimum distances between new telecommunications development and other development.
13. PPG 8 advises that where a proposed mobile phone base station meets the standards set by the International Commission on Non-Ionising Radiation Protection (ICNIRP), it should be unnecessary further to consider health concerns. I note that the application is accompanied by a certificate showing compliance with ICNIRP standards, as required by Policy EP20 of the adopted UDP, and that the Council has not raised any concerns in this respect.
14. The second is that some local residents are concerned about the effect of the proposed development on property values. However, PPG 8 also advises that the planning system is not intended to protect the private interests of one person against the activities of another. The material question is whether a proposal would have a detrimental effect on the locality as a whole and amenities that ought to be protected in the public interest.
15. Neither of the above matters has therefore played any part in my decision.

Conclusion

16. For the reasons given above, and taking account of all the representations that I have received, I conclude that the appeal should be dismissed.

Roger Pritchard

INSPECTOR



The Planning Inspectorate

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An Executive Agency in the Department for Communities & Local Government and the Welsh Assembly Government

Our Complaints Procedures

Introduction

We can:

- review your complaint and identify any areas where our service has not met the high standards we set ourselves.
- correct some minor slips and errors provided we are notified within the relevant High Court challenge period (see below).

We cannot:

- change the Inspector's decision.
- re-open the appeal once the decision has been issued.
- resolve any issues you may have with the local planning authority about the planning system or the implementation of a planning permission.; we can only deal with planning appeal decisions.

The **High Court** is the only authority that can ask for the Inspector's decision to be reconsidered. Applications to the High Court must be made within 6 weeks from the date of the decision letter for planning appeals, and in most instances 28 days for enforcement appeals.

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly-held.

The Quality Assurance Unit works independently of all of our casework teams. It ensures that all complaints are investigated thoroughly and impartially, and that we reply in clear,

straightforward language, avoiding jargon and complicated legal terms.

We aim to give a full reply within three weeks wherever possible. To assist our investigations we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future.

Who checks our work?

The Government has said that 99% of our decisions should be free from error. An independent body called the Advisory Panel on Standards (APOS) monitors this and regularly examines the way we deal with complaints. We must satisfy it that our procedures are fair, thorough and prompt.



Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary and Health Service Ombudsman, who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

“Can the decision be reviewed if a mistake has happened?” – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision or change the decision reached. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

“So what is the point of complaining?” – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

“Why did an appeal succeed when local residents were all against it?” – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds on all of the evidence whether these views justify refusing planning permission.

“What do the terms ‘Allowed’ and ‘Dismissed’ mean on the decision?” – ‘Allowed’ means that Planning Permission has been granted, ‘Dismissed’ means that it has not. In enforcement appeals (s.174), ‘Upheld’ means that the Inspector has rejected the grounds of appeal and the enforcement notice must be complied with; ‘Quashed’ means that the Inspector has agreed with the grounds of appeal and cancelled the enforcement notice.

“How can Inspectors know about local feeling or issues if they don’t live in the area?” – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have made on the appeal.

“I wrote to you with my views, why didn’t the Inspector mention this?” – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

“Why did my appeal fail when similar appeals nearby succeeded?” – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

“I’ve just lost my appeal, is there anything else I can do to get my permission?” – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to its planning officer about this might help you explore your options.

“What can I do if someone is ignoring a planning condition?” – We cannot intervene as it is the council’s responsibility to ensure conditions are complied with. You could contact the council as it has discretionary powers to take action if a condition is being ignored.

Further information

Each year we publish our Annual Report and Accounts, setting out details of our performance against the targets set for us by Ministers and how we have spent the funds the Government gives us for our work. We publish full statistics of the number of cases dealt with during the preceding year on our website, together with other useful information (see ‘Contacting us’). You can also obtain booklets which give details about the appeal process by telephoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or at www.apos.gov.uk

Contacting us

Complaints & Queries in England

Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone: 0117 372 8252

E-mail: complaints@pins.gsi.gov.uk

Website www.planning-inspectorate.gov.uk

Enquiries

Phone: 0117 372 6372

E-mail: enquiries@pins.gsi.gov.uk

Complaints & Queries in Wales

The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ

Phone: 0292 082 3866

E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman

Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0845 0154033

Website: www.ombudsman.org.uk

E-mail: phso.enquiries@ombudsman.org.uk

Please see Wales leaflet for information on how to contact the Wales Public Services Ombudsman.