

## Wolverhampton City Council

## OPEN INFORMATION ITEM

Committee / Panel	<b><u>PLANNING COMMITTEE</u></b>	Date 5 <sup>th</sup> March 2013
Originating Service Group(s)	<b>EDUCATION AND ENTERPRISE</b>	
Contact Officer(s)/	<b>STEPHEN ALEXANDER (Head of Planning)</b>	
Telephone Number(s)	<b>(01902) 555610</b>	
Title/Subject Matter	<b>PLANNING APPEALS</b>	

---

**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**

<b>Appeal Site / Ward / Appellant</b>	<b>Application No / Proposal</b>
Land Adjacent To 6, Wrekin Drive, Merry Hill  Merry Hill  Mr Kevin Fearon	12/01197/FUL  Construction of 3 no. three-bed townhouses
The Claregate Public House, 34 Codsall Road, Wolverhampton  Tettenhall Regis  Marstons Estates	12/00784/FUL  Erection of retail store on part of car park at the Claregate Public House - removal of condition 19 requiring the installation of a pedestrian crossing
The Former Mitre Site , Church Road, Bradmore  Graiseley  Mr. Kevin Ryder	12/00549/VV  Variation of Condition No. 14 (to exclude railings at front gardens) Planning permission reference No. 07/01147/FUL

## **ONGOING APPEALS**

	<b><u>Appeal Site / Ward</u></b>	<b><u>Appellant</u></b>
1.	28 & 29 Stubbs Road Wolverhampton	Mr & Mrs DJ & M Bradley
	<b>Graiseley</b>	
2.	Grass Verge Corner Of Wergs Road And Wrottesley Road Wolverhampton	Telefonica UK Ltd
	<b>Tettenhall Regis</b>	
3.	7 Uplands Avenue Merry Hill Wolverhampton	Mrs L Bower
	<b>Merry Hill</b>	
4.	52 Woodthorne Road Wolverhampton	Jabber Mir
	<b>Tettenhall Regis</b>	
5.	Lidl Finchfield Hill Wolverhampton	Miss Donna Commock
	<b>Tettenhall Wightwick</b>	
6.	Autumn View Grove Lane Wolverhampton	Mr A Sharma
	<b>Tettenhall Wightwick</b>	
7.	1 Market Street Wolverhampton	Mr Joseph Yusef
	<b>St Peters</b>	

## **APPEALS DETERMINED SINCE LAST MEETING**

<b>Appeal Site / Ward / Appellant</b>	<b>Application No / Proposal</b>	<b>Decision and Date of Decision</b>
Land At Wergs Garage, 81 Wergs Road, Wolverhampton  Tettenhall Regis  Telefonica UK Ltd	12/00721/TEL  Telecommunications base station comprising 15m high streetworks column, 2 no 300mm diameter dishes, 2 no radio cabinets and ancillary development.	Appeal Allowed  20.02.2013
41A Wellington Road, Wolverhampton  Bilston North  Mr Ranbir Mehta	12/00774/FUL  First floor side extension and conservatory	Appeal Dismissed  18.02.2013



---

# Appeal Decision

Site visit made on 14 January 2013

**by Victoria Lucas-Gosnold LLB MCD MRTPI**

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

**Decision date: 20 February 2013**

---

**Appeal Ref: APP/D4635/A/12/2182292**

**Land at Wergs Garage, Wergs Road, Tettenhall, Wolverhampton, Staffordshire, WV6 9BP.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
  - The appeal is made by Telefonica UK Ltd against the decision of Wolverhampton City Council.
  - The application Ref 12/00721/TEL, dated 22 June 2012, was refused by notice dated 30 July 2012.
  - The development proposed is a telecommunications base station comprising a 15 metre high shared slim streetworks column (height including shrouded antennas), 2 No. 300 mm diameter dishes, 2 No. radio equipment cabinets and ancillary development.
- 

## Decision

1. I allow the appeal and grant approval under the provisions of Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) for the siting and appearance of a telecommunications base station comprising a 15 metres high shared slim streetworks column (height including shrouded antennas), 2 No. 300 mm diameter dishes, 2 No. radio equipment cabinets and ancillary development at Land at Wergs Garage, Wergs Road, Tettenhall, Woverhampton, Staffordshire, WV6 9BP in accordance with the terms of the application Ref 12/00721/TEL, dated 22 June 2012, subject to the following condition:
  - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Nos. 200 (Revision C), 300 (Revision C), 400 (Revision D), 500 (Revision C).

## Procedural Matter

2. In addition to the plans submitted with application, additional plans<sup>1</sup> were submitted with the appeal, which omit the 2 No. 300 mm diameter dishes. The appellant has advised that these could be considered as alternative designs to the appeal proposal. However, I am required to deal with the appeal on the basis of the same plans that were the subject of the Council's decision. Indeed, the Planning Inspectorate Good Practice Advice Note 09 makes it clear that the appeal process should not be a means to progress alternatives to a scheme that has been refused, or a chance to amend a scheme so as to overcome the reasons for refusal. Any revised scheme would need, in the first instance, to be submitted to the Council for consideration.

---

<sup>1</sup> Ref. Nos: 300 (Revision D) and 500 (Revision D).

## Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area.

## Reasons

4. The proposed development is intended to replace an existing installation on the roof of the ADAS building, in the vicinity of the appeal site, which is due to be decommissioned in order to facilitate the re-development of that building. A replacement installation is needed to ensure there will be no loss of 2G and 3G network coverage in the local area for Telefonica and Vodafone as a result. As a consequence, a temporary installation<sup>2</sup> is in place at the appeal site however this has been erected in a different location to which this appeal relates. Although local residents have expressed concerns as to the present location of the temporary mast, the appeal relates to a different proposed location within the site and I have therefore had regard to the specific merits of the appeal before me. I am advised that a previous planning application for a similar proposal, on a different location within the appeal site, was withdrawn on 14 May 2012 after it was identified that a restrictive covenant affected the precise location selected. Additionally, the appellant advises that a location for a suitable site is being explored to the east of the current ADAS site, which will also assist in replacing network coverage. The appellant has confirmed that the installation would conform to current ICNIRP guidelines.<sup>3</sup>
5. The appeal site is situated within Tettenhall, which is characterised by a high quality, residential townscape, with large detached houses and mature trees and shrubs predominating. The appeal site fronts onto the A41, Wergs Road, which is a main arterial transport route. Immediately opposite the appeal site, Wergs Road widens to two lanes, and a small island, which hosts a traffic information matrix sign, is situated in the middle of the road. The road therefore has a wide and spacious appearance which adds to the feel of a major transport corridor. Close to the appeal site, tall streetlighting columns and road signage are present along the road and this provides a context for the presence of tall vertical street furniture and visual clutter in the streetscene. Wergs Garage, and the nearby pub, The Crown, form a small collection of commercial properties which, in combination with the major highway feel of Wergs Road, assists in separating the character and appearance of the appeal site from the residential character of the surrounding area. I therefore consider that whilst the wider surrounding area may be residential in character, the appeal site itself should be assessed in relation to its close context, which is a small commercial enclave adjacent to a major transport route.
6. The proposal would be situated within the forecourt of Wergs garage, at the back edge of the pavement, and close to an existing street lighting column. The proposal is for a shared installation between two mobile phone operators, Telefonica UK Ltd and Vodafone Ltd, thus avoiding the need for two separate base stations. The appellant advises that the additional height and bulk proposed is required in order to accommodate the antennas necessary to provide coverage and capacity in the local area. Following pre-application discussions with the Council, the proposed streetworks column has been

---

<sup>2</sup> Erected under emergency powers of Class A. of Part 24 of the Town and Country Planning (General Permitted Development) Order 1995. I am advised by the Council that the emergency period for this installation ends on 16 February 2013.

<sup>3</sup> International Commission on Non-Ionizing Radiation Protection

reduced in height from 17.5 metres to 15 metres, although this height would still exceed the height of the streetlighting columns in the area by approximately 2.5 metres.

7. Although the proposed streetworks column would be slightly taller than existing streetlights, I consider this would not be viewed as overbearing or unduly prominent when seen in the context of other vertical street furniture in the close context of the appeal site. The column proposed would also be somewhat wider in girth than the existing streetlighting columns, although its design would remain relatively slim and the antennas would be hidden by a shroud. The inclusion of the two dish antennas towards the top of the proposed streetworks column would add to the width of the column towards the top; however I consider that this would not detract from the overall simple and uncluttered design proposed. The submitted Supplementary Information Document states that the proposed column will have a galvanised finish, designed to match the finish of the adjacent streetlight columns. The proposal would therefore be seen in the context of other vertical structures on the highway and this would assist in assimilating the proposed development into the existing streetscene. The submitted plans<sup>4</sup> show additional ancillary works are also proposed comprising the extension of a low forecourt boundary wall at the back edge of the pavement, which would assist in screening the lower part of the proposed equipment cabinets, providing a horizontal continuance to the streetscene.
8. Accordingly, whilst the proposed development would be visible, given its siting and simple, uncluttered design, I am not persuaded that the proposal would be an obtrusive, prominent or incongruous form of development given the character and appearance of the close context of the appeal site.
9. There is some discussion between the parties as to the level of screening that would be provided by existing trees in the area. During the site visit, I was able to observe that there are a number of tall trees in the vicinity. Specifically, there are several large conifer type trees along the rear boundary of No. 11 Wergs Drive (No. 11). Given that the appeal site is situated next to a major transport route and within a garage forecourt, close to the appeal site, the aspect is relatively open and therefore I am in agreement with the Council that screening of the proposal would be limited. However, the presence of tall street furniture and road signage are characteristic of a major highway and one would not normally expect such installations to be screened by vegetation. I do consider that the presence of tall trees in the wider area establishes a visual reference for tall vertical structures. This, in combination with the presence of other vertical street furniture, lessens the dominance that the proposed development would otherwise have in the skyline. I therefore find no harm in this regard.
10. The development proposed would be visible from the rear gardens of properties on Wergs Drive, whose rear boundaries border the appeal site. Specifically, the rear garden of No. 11 Wergs Drive (No. 11) would be immediately next to the proposed development. Although No. 11 itself would be situated approximately 40 metres away, the boundary of the rear garden to that property would be situated approximately 6 metres away. Whilst the development proposed would be visible from the rear garden of No. 11, during the site visit, I observed that several street lighting columns were visible from

---

<sup>4</sup> Drawing Nos. 200 (Revision C) and 300 (Revision C).

the garden of that property and I consider that the development proposed would be seen in this visual context. Additionally, a number of conifer type trees are present along the rear boundary within the garden of No. 11 and these would assist in screening the lower part of the proposed development. Although I note comments made by the occupants of No. 11 that these trees are not a permanent feature and may need to be removed, I consider that as the trees also screen the existing street lighting columns along Wergs Road, it is likely that the occupants would seek their retention. Whilst acknowledging the concerns expressed by the occupants of No. 11, I consider that the development proposed would not have an unduly overbearing effect resulting in significant harm to the living conditions of the occupants of that property such that planning permission for the proposal should be withheld.

11. The appellant and a local resident have referred to two appeals<sup>5</sup> relating to proposed telecommunications development in the local area which would indicate that this appeal be both dismissed and allowed. In determining this appeal, I have had regard to the specifics of the appeal site and the planning merits of the case before me.
12. The appellant has submitted a substantial amount of evidence that demonstrates the appeal site was selected for the proposed development following a sequential site selection process. The Supplementary Information Document, submitted with the original application, shows that an extensive list of potential site locations were explored to accommodate the proposed installation but were discounted due to technical constraints, or likely visual impact. I am therefore satisfied that the appellant has undertaken a suitable site selection process and it is no part of the Council's case that this requirement has not been met.
13. Accordingly, I conclude that the proposal would be consistent with Policies ENV3 and CSP4 of the Black Country Core Strategy (Adopted 2011) and policies D6, D7 and D9 of the Wolverhampton Unitary Development Plan (Adopted 2001) (UDP) which, among other things, seek to ensure that developments proposed are of a high design quality and that they understand and reflect the design context of the local area.
14. The Council's Interim Telecommunications Policy (Adopted 2002) identifies a number of sensitive locations where proposals for the installation of telecommunications equipment are required to comply with a number of criteria. I consider that the appeal site, being on a transport corridor and within a residential area, is in a sensitive location within the meaning of the policy. The appellant has submitted extensive evidence which demonstrates that alternative sites for the proposed development have been considered and dismissed (including alternative sites in other sensitive locations). Having regard to the policy, for the reasons given above, I conclude that the proposed development has been designed and sited so as to minimise its impact on the character or appearance of the area. Additionally, I have already concluded that the proposal would be unlikely to have an adverse impact on the living conditions of adjacent occupiers such that planning permission should be withheld. I therefore conclude that the proposal would be consistent with the Interim Telecommunication Policy.

---

<sup>5</sup> APP/D4635/A/11/2160731, approved 12 December 2011. APP/D4635/A/11/2160700, dismissed 10 January 2012.



15. Paragraph 46 of the National Planning Policy Framework (Framework) states, among other things, that Local Authorities, in determining planning applications, should not question the need for the telecommunications system. Accordingly, for the reasons given above, in addition to the fact that the proposed development would be for a mast installation to be shared between two operators, I conclude that the proposal would be consistent with policy EP20 of the UDP which, among other things, states that applications for telecommunications equipment will be approved where certain criteria, such design and siting considerations, are met. Additionally, the appellant advises that there are no existing buildings or structures available in the area that could accommodate the required telecommunications equipment and there is no substantive evidence which has been submitted that would lead me to a different conclusion.
16. Paragraph 42 of the Framework confirms, among other things, the importance of providing high quality communications infrastructure as being essential for economic growth and that the expansion of electronic communications networks, including telecommunications, should be supported. The proposal would also be consistent with paragraph 43 of the Framework which states, among other things, that the numbers of telecommunications masts and sites should be kept to a minimum consistent with the efficient operation of the network and that where new sites are required, equipment should be sympathetically designed.
17. For the reasons given above, I conclude that the development proposed would not have a significantly harmful effect on the character or appearance of the local area.

### **Other Matters**

18. In arriving at my conclusion, I am conscious that the proposal has attracted widespread opposition locally, expressed through individual letters. Mr Paul Uppal MP, Cllr Jonathan Yardley (a local member for Tettenhall Regis Ward), and several local residents, have raised concerns about the development and a number of objections have been submitted. I have already concluded that the development would be acceptable in terms of its effect on the character and appearance of the area. Specific concerns regarding health implications of the development have been raised. Whilst public fear or perception of harm is capable of being a material consideration, it may only be accorded weight if there is reason to believe that the particular development proposed would justify such apprehension. Notwithstanding that material concerning EC directives, the Stewart Report, and various research publications from the Health and Safety Executive website is cited by local residents in some detail, the fact remains that the application is supported by the relevant ICNIRP certification. The Framework specifically states<sup>6</sup> that decision makers should not determine health safeguards if the development proposed meets such guidelines. There is no evidence before me to suggest that there are particular factors in this instance that would require a departure from that principle.
19. Mr Paul Uppal MP has also requested that, in light of concerns expressed by local residents that the appeal is dealt with as soon as possible. The appeal has been administered within the timescales advised and, so far as I am aware, been dealt with expeditiously.

---

<sup>6</sup> National Planning Policy Framework, paragraph 46.

20. Whilst open countryside may be within a quarter of a mile of the proposed development, this does not form part of the setting for the appeal site. There is also no substantive evidence before me to suggest that bats, or any other protected species, are present in the vicinity of the site nor that they would be materially harmed by the development proposed.
21. Local residents have also raised concerns as to the effect of the proposed development on highway safety, however there is no substantive evidence before me to suggest that highway safety would be adversely affected and I note that the highway authority did not object in this regard.
22. Although local residents raise concerns regarding increased levels of noise and disturbance, there is no substantive evidence before me to suggest that the proposed development would result in an increase and find no harm in this regard.
23. Concerns have been raised by local residents as to the effect of the proposed development on house prices in the area. Additionally, various comments have been made regarding alleged financial incentives for the appellant in siting the proposed development at the appeal site. However, in determining this appeal, I have had regard only to the planning merits of the case.

### **Conclusion and Conditions**

24. I conclude, for the reasons given above, that the appeal should be allowed.
25. I have considered the conditions suggested by the Council in line with the advice in Circular 11/95 and for clarity. A condition requiring the removal of the development hereby permitted after it is no longer required is not necessary as Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) imposes relevant conditions as standard.
26. A condition is required to ensure that the development is constructed in accordance with the submitted plans, for the avoidance of doubt and in the interests of proper planning.

*Victoria Lucas-Gosnold*

INSPECTOR



---

# Appeal Decision

Site visit made on 6 February 2013

**by D J Barnes MBA BSc (Hons) DipTP MRTPI**

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

**Decision date: 18 February 2013**

---

**Appeal Ref: APP/D4635/D/12/2188852**

**41a Wellington Road, Bilston, West Midlands WV14 6AH**

- 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 R Mehta against the decision of Wolverhampton City Council.
  - The application Ref 12/00774/FUL was refused by notice dated 17 September 2012.
  - The development proposed is first floor rear extension and conservatory.
- 

## Decision

1. The appeal is dismissed.

## Main Issue

2. It is considered that the main issue is the effect of the proposed development on the living conditions of the occupiers of 2 Elm Avenue.

## Reasons

3. The appeal property is a 2-storey semi-detached dwelling which already possesses a 2-storey side extension and single storey rear extension. A conservatory has recently been erected attached to part of the rear extension and this formed part of the proposal considered by the Council but the reasons for refusal were directed at a proposed first floor extension. This proposed extension would be situated above part of the existing rear extension and sited close to the shared boundary with 2 Elm Avenue.
4. The closest rear opening of No. 2 to the proposed extension is a ground floor bay window which is, unusually, overhung by the first floor of this dwelling. Accordingly, the first floor projection above this window already has an affect on outlook and levels of daylight. There is also an affect on daylight and outlook associated with the appeal property's existing single storey extension which is sited close to the shared boundary.
5. The erection of the proposed first floor extension would result in a 2-storey flank wall being sited adjacent to the shared boundary. By reason of height and siting, the proposed extension would accentuate the existing situation and significantly affect the level of daylight reaching what appears to be a window to a habitable room. When viewed from the bay window the massing of the flank wall would be an overbearing form of development. The inclusion of a flat roof does not alter this judgement. For these reasons, the living conditions of the occupiers of No. 2 would be adversely harmed by this element of the appeal scheme.

6. By reason of orientation of the siting of the appeal property and No. 2, these existing buildings already affect the levels of sunlight reaching the rear garden of No. 2. The proposed extension would not materially change the existing situation for the majority of the day. However, as noted by the Council, by reason of siting and height there would be some reduction in the level of sunlight reaching the bay window and part of the rear garden of No. 2 during summer evenings. In isolation this would not amount to a reason to dismiss this appeal but it does reinforce my concerns about the adverse harm which has already been identified.
7. For the reasons given, it is concluded that the proposed development would adversely harm the living conditions of the occupiers of 2 Elm Avenue and, as such, it would be contrary to Policies D7 and D8 of the Wolverhampton Unitary Development Plan (UDP). These policies require development not to be overbearing and for the amenity of adjoining occupiers not to be prejudiced by reason of significant reductions in daylight and sunlight. The aims of these policies are consistent with the National Planning Policy Framework's (the Framework) core principle of securing a good standard of amenity for all existing and future occupants of land and buildings.
8. Accordingly, and taking into account all other matters including the Framework's presumption in favour of sustainable development, it is concluded that this appeal should fail.

*D J Barnes*

INSPECTOR