



# Appeal Decision

Inquiry opened on 26 September 2007

Site visit made on 27 September 2007

by **Graham Dudley** BA (Hons) Arch Dip  
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an Inspector appointed by the Secretary of State  
for Communities and Local Government

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Decision date:  
27<sup>th</sup> November 2007

**Appeal Ref: APP/D3315/C/06/2031079**

**Highway verge adjacent to Shoreditch Road, Taunton TA1 3BU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by O<sub>2</sub> (UK) Limited against an enforcement notice issued by Taunton Deane Borough Council.
- The Council's reference is TEL/1/05.
- The notice was issued on 17 October 2006.
- The breach of planning control as alleged in the notice is the erection of a 15m high telecommunications mast is not in accordance with details submitted for a slim line monopole under Reference TEL/1/05 which acquired deemed permission on 3 March 2005 in that (i) the diameter of the mast as erected is 1.03m; (ii) the mast, as erected, does not have a step-taper at a height of 6m; (iii) the mast, as erected, is painted green rather than having a grey finish; (iv) the antennae of the mast as erected exceed the permitted width of 35cm.
- The requirements of the notice are to dismantle the telecommunications mast and remove it from the land.
- The period for compliance with the requirements is twelve weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period, so the application for planning permission deemed to have been made under section 177(5) of the Act as amended is to be considered.

**Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.**

## Procedural Matters

1. The inquiry sat on the 26 and 27 September 2007.
2. At the Inquiry an application for costs was made by O<sub>2</sub> (UK) Limited against Taunton Deane Borough Council. The application is the subject of a separate decision.
3. At the inquiry it was questioned whether the section that the notice was issued under (section 171A(1)(a)) was correct or if it was intended to be section 171A(1)(b) of the Town and Country Planning Act 1990 as the breach could be considered to relate to a breach of a condition. The council confirmed that in its opinion the deemed planning permission has not been complied with so the basis of the notice is that the development is not in accordance with a planning permission. Their requirement is for removal of the mast, not simply compliance with a breached condition. I have therefore considered the appeal on the basis that the notice was issued, section 171A(1)(a).

## Reasons

### *Grounds (b) and (c)*

4. The parties do not dispute that because required procedures were not followed by the council a mast at the site obtained deemed planning permission in March 2005 under The General Permitted Development Order 1995, Part 24 Class A. Part 24 Class A A(a) permits installation of any electronic communications apparatus, but is tempered, in this case, by Class A A.1(a) which limits the height of the mast (excluding the antennae) to 15m. It is common ground that the mast is lower than the 15m height limit.
5. However, before beginning the development the developer shall under Part 24 A.3 (3) Condition apply to the local planning authority for a determination as to whether the prior approval of the authority will be required for the siting and appearance of the development. Part 24 A.3 (4)(a) condition requires that the application must be accompanied by a written description of the proposed development, a plan indicating its proposed location and the fee. In circumstances where prior approval of siting and appearance has not been required by the council, Part 24 A.3 (8)(b) condition notes that the development shall be carried out in accordance with the details submitted with the application, providing the local planning authority has not stated otherwise in writing.
6. The appellant argues that Part 24 A.3 (4)(a) condition does not require detailed plans of the mast to be provided and as prior approval of siting and design was not requested, these matters have not been approved. Therefore, control of the development is restricted to the written description and location plan required by Part 24 A.3 (4)(a) condition.
7. The local planning authority say that the detailed plans submitted, while being in excess of what is required by condition Part 24 A.3 (4)(a), formed part of the details submitted and were relied upon by the council to form an understanding of the proposed development. Therefore, in accordance with Part 24 A.3 (8)(b) condition, the development is to be carried out in accordance with all the details submitted with the application.
8. The permitted development procedures allow an applicant to submit simple details of a proposed mast (written description and plan). If an authority considers that a mast in the location indicated may be harmful in terms of siting and appearance, they can inform the appellant that they require prior approval of details of siting and appearance. In this situation the appellant might then submit further details and the authority can either approve or refuse the application on the basis on those details, or do nothing and let the permitted development proceed after the statutory period.
9. Importantly Part 24 A.3 (8)(b) condition does not specifically state that the development has to be built in accordance with the details *required to be submitted* by Part 24 A.3 (4)(a) condition, but with the details submitted with the application. The appellant's letter to the local planning authority accompanying the prior approval application listed out what the application comprised, including the drawings and justification document.

10. It is therefore reasonable that the local planning authority should rely on all the details submitted with the initial application in forming their decision as to whether to require prior approval on the basis that the mast is to be built in accordance with the details submitted. It is quite clear in this case that the council wanted to refuse planning permission for appearance and siting, relying on the details submitted in reaching that judgement. In my view, the proposal should be considered against the submitted details that include the information beyond the requirement of Part 24 A.3 (4)(a) condition.
11. The plans submitted with the prior approval notification were drawn to a scale of 1 – 100. A scale drawing means that all the different elements of that drawing are in the correct proportion to each other, whether enlarged or reduced. I accept that reproduction of drawings can result in the original scale of the drawing being altered because of possible stretching or shrinking of the paper and through reproduction. In this respect, the dimensioned scale to the side of the drawing enables the extent that the drawing has changed from the original to be assessed.
12. I do not accept the appellant's claim that there are likely to be significant differences between different parts of the drawing. If this were the case the drawing would not be to scale and the scale box would need to indicate that is the case. I therefore consider that it was reasonable for the council to place reliance on the drawings when considering the prior approval notification and this is the usual situation with many planning applications where dimensions are often not noted on the application drawings.
13. The appellant considers the council should have identified the various dimensions at the time the prior approval application was made, and asked for further information if the written dimensions were found to be wanting. However, at that stage there was no reason why the council would want to identify specific dimensions. The council had assessed the scale drawings, found the proposal unacceptable and intended to refuse the application, but because of the procedure followed, this refusal did not come into force. It is entirely reasonable that once the structure was built the council should return to the submission drawings to see if what was built was in accordance with the details submitted. In normal circumstances with a drawn negative the original could be checked for accurate dimensions or with a computer generated drawing, as here, the drawing file would have the dimensions very accurately recorded. It is therefore unfortunate that these files and dimensions are not available to the parties.
14. While I acknowledge that there is a note on the drawing stating 'Use written dimensions only', in circumstances where the original is not available, it is reasonable for the parties to make the best possible estimates of the sizes that are shown on the scale plan. The appellant indicated at the inquiry, while maintaining its stance that the plans should not be scaled, that to help the inquiry it had obtained the most accurate plans available, to scale measurements. These were, apart from some very minor differences, agreed between the parties. In the absence of being able to go back to the original drawing file, I consider that this is the most reasonable approach to decide if differences have occurred in relation to the indicated dimensions and I have used these together with the scale plans in coming to my decision.

15. The first and second allegations relate to the diameter of the mast and step in the diameter of the mast part way up. The council acknowledged that the dimension given in the first allegation is the circumference and asked that the notice be corrected by replacing diameter with circumference. It is common ground that the circumference of the mast is about 1030mm with the associated diameter of about 327mm. In my opinion, it was plain that the 1030mm could not be the diameter of the mast and that a simple calculation would have revealed the error. I am satisfied that correcting this would not cause injustice to the appellant. The scaled dimension from the drawings is for a diameter below the step in the mast of about 300mm and above the step of about 240mm. In my opinion, about 87mm is a significant proportion of and material increase in the size of the upper part of the mast, and clearly is not in compliance with the drawing submitted. Even if the word diameter were not to be substituted by circumference, there clearly is no step in the mast as built, an important feature of the details submitted.
16. The third allegation relates to the colour of the mast. Details submitted with the prior approval application indicate that the mast would have a grey finish. The mast was constructed with a green finish. While I acknowledge that this has now been repainted grey, the mast with the green finish was not constructed in compliance with the submitted details.
17. The fourth allegation relates to the width of the antennae. The drawings do not show the actual antennae as these are encompassed by a shroud and it is the shroud that is shown. The actual width of the antennae within the shroud is about 280mm, less than the 350mm identified on the enforcement notice. The appellant objects to the correction of the notice to indicate that it is the width of the shroud that is at issue. It considers that the council has expert advice and would know the difference between antennae and the shroud.
18. I acknowledge that what the council intended to refer to was the shroud and the notice is incorrect. The proposed elevation on the drawing has a line at the centre of the shroud and refers to the antennae. While I acknowledge that this refers to them within the shroud, it is quite clear what affects visual impact and I have no doubt that the appellant understood what allegation 4 referred to. I do not consider that there would be any injustice in correcting the notice to refer to shroud instead of antennae.
19. I am satisfied that the shroud enclosing the antennae as constructed is larger than that shown on the drawing. I acknowledge that the height of the mast is about 70mm less than it could be, but what is important is the proportional difference and in this case the difference between the details submitted and that constructed particularly in relation to the mast width above the step.
20. I acknowledge that the mast as constructed is of a form that would be described as a slim-line monopole, but this can describe masts of very different sizes and detailed design. I conclude that as a matter of fact the slimline monopole mast as constructed is not in accordance with the details submitted with the prior approval application as required by Part 24 A.3 (8)(b). The differences in dimensions and form between that constructed in proportion to that approved are materially different and not in accordance with the deemed planning permission. The appeal on grounds (b) and (c) does not succeed.

**Ground (a)**

*Character, Appearance and Outlook*

21. The development plan includes the Somerset and Exmoor National Park Joint Structure Plan Review [SP] and the Taunton Deane Local Plan [LP]. SP Policy 63 notes that provision should be made for utilities where they respect the environment in terms of scale, location and design. LP Policy C14 permits telecommunication masts provided their siting and appearance would minimise harm to the landscape, there are no alternative sites or solutions with less environmental impact and there is evidence that existing masts or structures cannot be used. Local Plan Policy S1 sets out general requirements including that the character and appearance of any affected settlement or street scene would not be harmed as a result of the proposal. LP Policy S2 relates to design.
22. In the vicinity of the appeal site are a number of trees and other items of street furniture, including lighting columns. The character of the area as seen from Shoreditch Road is that of an urban street. In my view, the appeal proposal, which is a slimline monopole with enclosed antennae at the head and associated cabinets, has the character and appearance of street furniture. The nearby trees provide good screening of much of the mast and equipment when approaching the site in either direction along Shoreditch Road. While the leaves on the trees provide additional screening, in my opinion, the branches of the trees would also provide a reasonable degree of screening and background to the mast in winter months. Therefore, although of a significantly different scale and height to the streetlights, I do not consider that the mast is an unacceptably dominant or obtrusive feature when seen in the context of Shoreditch Road and it conforms to this aspect of the local context. The cabinets are not overly large or prominent.
23. However, the mast is also in very close proximity to Bilberry Close and a significant number of residential properties, particularly the rear garden of number 90. The scale and character of this area is that associated with a relatively small scale residential close and does not have the same urban street character of Shoreditch Road. The mast, which is very prominent from much of Bilberry Close, is, because of a combination of its height and width, a very bulky and unacceptably prominent structure in this location, totally at odds with the scale and character of the area. In addition, it is extremely prominent from a number of the rear gardens of the closest properties and has a particularly overbearing effect on the outlook of occupiers from these gardens. There is some screening by trees, but even in the summer from this direction the mast, because of its prominence and bulk, is an unacceptably alien and obtrusive feature.
24. Planning Policy Guidance Note 8 – Telecommunications notes that modern telecommunications are an essential and beneficial element in the life of the local community and in the national economy. The government's policy is to facilitate the growth of new and existing telecommunications systems whilst keeping environmental impact to a minimum. In order to fulfil its obligations as a code system operator, the appellant has identified a need to fill a gap in the network and cater for increasing demand for the third-generation service, providing coverage to residential and commercial communities in the area.

25. PPG 8 strongly encourages local planning authorities and operators to explore possible alternative approaches, particularly the opportunities for mast and site sharing and also in terms of the location. Other potential sites have been considered by the appellant, but none found to meet its coverage requirements and without causing problems, including related to interference, particularly between 2G and 3G coverage of the motorway. However, the council has identified what it considers to be a suitable alternative and obtained planning permission for a mast next to the motorway. The council confirmed at the inquiry this was the only site being put forward as a suitable alternative.
26. In terms of network coverage from the alternative site, I am not convinced that the spread from the council's mast site, which could have a 3m taller mast on higher ground, would not be able to provide at least the same pattern of coverage as from the existing mast, accepting that there will be a small difference in the actual area covered related to the distance separating the sites. As there are no particular features intervening, I would expect the spread of coverage from the taller mast to be a little wider. Even accepting the computer model's estimated spread from the proposed alternative mast, it is clear that once any mast is commissioned it will be optimised to give the best coverage and spread in conjunction with neighbouring masts. I consider it likely given the height and elevation of the alternative mast that better coverage than has been modelled is likely to be achievable, although not necessarily reaching quite as far as the existing mast in a northerly direction.
27. I have taken into consideration that there will be some tree loss associated with a mast at the alternative site, potential access difficulties and the likelihood of interference between 2G and 3G service on the motorway until the 3G network is fully implemented. I also acknowledge that some aspects of consultation, particularly in relation to the location of the M5, would have been desirable in association with the planning application for the alternative site and that the appellant considers that some aspects of the council's policies are not complied with. Nevertheless, the permission for a mast at the council site is extant and has not been legally challenged. Even if there were no permission on the alternative site, it is clear that it has significant potential as an alternative, with distinct advantages in relation to its visual impact on residential environments. I also consider that the lack of an identified alternative site would not be sufficient to outweigh the substantial harm caused by the existing mast to the character and appearance of Bilberry Close.

### ***Fall-back***

28. While I have found that the mast is not in accordance with the permission, there is no dispute that the site has the benefit of a deemed planning permission, which is not time expired. I consider it remains extant and upon removal of the existing mast the appellant or another telecommunications company can build a mast that conforms to the details of the deemed permission. The appellant confirmed in submitted evidence and at the inquiry that should the decision of this appeal go against it another mast will be manufactured to the agreed dimensions and placed at the appeal site and I was left in no doubt that would be the likely situation. However, the mast as constructed is significantly bulkier than the mast with deemed consent and will inevitably have a greater impact than the mast the subject of the fallback position, so I attach little weight to the appellant's fallback position.

### ***Health***

29. In accordance with the recommended precautionary approach, the appellant has confirmed that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection on limiting exposure to radio waves. Planning Policy Guidance Note 8 - Telecommunications says that in these circumstances it should not be necessary to consider further the health aspects and concerns about them. In coming to my decision that the existing mast is unacceptable in this location, I have attached no weight to this matter.

### ***Ground (f)***

30. It was raised at the inquiry that if the colour alone were found to be unacceptable, that it would be unreasonable to require removal, particularly as the colour has now been changed to grey. However, I have found that the mast is unacceptable in relation to other matters and therefore this situation does not arise. The appeal on ground (f) does not succeed.

### ***Ground (g)***

31. The appellant requests 4 months for time to comply with the requirements of the enforcement notice, instead of the proposed 12 weeks. The council rely on the time taken to remove a mast at another site, but clearly circumstances will be different in relation to each case. While I acknowledge that there is a planning permission for the council's alternative site, there will be significant investigation and negotiations necessary if it were to be utilised. Even if the appellant is to re-erect a compliant mast at the appeal site this would, in my view, take a considerable time to arrange for manufacture, removal and repositioning. Overall, I consider that 4 months is a reasonable period for compliance. The appeal succeeds in relation to ground (g).

### **Conclusions**

32. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed, but only to the limited extent indicated above. I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the deemed application.

### **Formal Decision**

#### **Appeal Ref: APP/D3315/C/06/2031079**

33. I direct that the enforcement notice be corrected by:

- The deletion of the word diameter and substitution with the word circumference in allegation (i).
- The deletion of the word antennae and substitution with the word shroud and changing exceed to exceeds in allegation (iv);

and that the notice be varied by the deletion of 12 weeks and the substitution of 4 months as the time for compliance.

34. Subject to these corrections and variation, I dismiss the appeal and uphold the enforcement notice as corrected and varied. I refuse to grant planning permission on the deemed planning application.

*Graham Dudley*

INSPECTOR

**APPEARANCES  
FOR THE LOCAL PLANNING AUTHORITY:**

Mr G Tucker	Of Counsel, instructed by Mr J Thornberry, Solicitor to Taunton Deane Borough Council
He called	
Mrs H E Pulsford BA Hons	Planning Officer, Taunton Deane Borough Council
Mr R Newstead	Director of ECS Limited

**FOR THE APPELLANT:**

Mr T Blaney MSc, LAMRTPI	Partner of Lawrence Graham LLP, Solicitors, 4 More London Riverside, London
He called	
Mr R G Holt BEng Hons NDEE MIEE	Director of TileHouse Solutions Ltd, Tile House, Vicarage Hill, Tanworth-in-Arden Solihull, West Midlands
Mr R Newstead BA Hons DMS MRTPI	Town Planning Solutions Ltd, 5 Holly Close, Sutton Coldfield, West Midlands

**INTERESTED PERSONS:**

Mr C J Davey also representing other residents including Mr and Mrs Thorne	86 Bilberry Grove, Taunton, Somerset TA1 3XN
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**DOCUMENTS SUBMITTED TO THE INQUIRY**

Document	1	Notification letter
	2	Council's list of appearances
	3	Appellant's list of appearances
	4	Statement of Mr Davey with appendices
	5	Supplementary proof of Mr G Holt
	6	Supplementary proof of Mr Waterson
	7	Appendices to Mr Waterson's supplementary proof
	8	Summary proof of Mr Waterson
	9	Summary proof of Mr Holt
	10	Plan P/19873/GEN/103 with photograph of mast as built
	11	Appendix 2 Coverage plots and technical justification letter
	12	Letter of 25 September 2007 to The Planning Inspectorate
	13	Mast measurements for the statement of common ground (not fully agreed)
	14	Letter dated 25 September 2007 to Lawrence Graham LLP
	15	Letter dated 6 September 2007 to Lawrence Graham
	16	Letter dated 14 September 2007 to Lawrence Graham
	17	Opening submission on behalf of the local planning authority
	18	Agreed statement of common ground
	19	Summary proof of evidence of Hilary Pulsford
	20	Closing submissions on behalf of the Council
	21	Extract relating to case law
	22	Closing submissions on behalf of the appellant

**PLANS**

Plan A P/19873/GEN/101, 102 and 103