

Yr Arolygiaeth Gynllunio



MP SLW
The Planning Inspectorate

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Mrs S Williams (For Chief Planning Officer)
Wrexham County Borough Council
Development Services - Planning
Lambpit Street
P O Box 1290
Wrexham
LL11 1WF

Your Ref / Eich Cyf P/2005/0178

Our Ref / Ein Cyf APP/H6955/A/05/1190147

Date / Dyddiad 12 January 2006

Dear Madam

**TOWN & COUNTRY PLANNING ACT 1990
APPEAL BY 02 UK LTD**

**SITE AT LAND AT THE JUNCTION OF BRYNYCABANAU ROAD, AND KINGSMILL ROAD,
ADJACENT TO THE TRAVELLERS REST PH, WREXHAM, LL13**

Amgaeaf benderfyniad yr Arolygydd ar
yr apêl uchod.

I enclose the Inspector's decision on the
above appeal

Yn gywir

Yours faithfully

Helen Verey
Cofrestrfa - Registry

Rydym yn Croesawu Gohebiaeth yn Gymraeg a Saesneg
We Welcome Communications in English and Welsh





Penderfyniad ar yr apêl

Ymweliad â safle a wnaed ar 13/12/05

Appeal Decision

Site visit made on 12/12/05

gan/by A D Poulter BArch RIBA

Arolygydd penodwyd gan Cynulliad
Cenedlaethol Cymru

an Inspector appointed by the National
Assembly for Wales

Dyddiad/Date 12 -01- 2006

Appeal Ref: APP/H6955/A/05/1190147

Site address: Junction of Bryn Y Cabanau Road and Kingsmill Road, Wrexham LL13

- 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 O₂UK Ltd against the decision of Wrexham County Borough Council.
- The application, Ref P/2005/0178, dated 16 February 2005, was refused by notice dated 13 April 2005.
- The development proposed is 1 No. 10m Hutchinson Engineering Flexicell 2 Telegraph Pole Column, with 1 No. Nortel 3G street furniture equipment cabinet to be located at the base of the tower, and an associated electric meter equipment cabinet.

Decision

1. I allow the appeal and approval is given for the siting and appearance of the development proposed, in accordance with the application and the drawings submitted therewith.

Reasons

2. The proposed mast and the associated equipment cabinets would be sited adjacent to a raised flower bed and an existing bench. The lower part of the proposed mast would be made to look like a telegraph pole, with shrouded antennas mounted on top. For technical reasons the height to the top of the shroud would be about 10m above ground level.

Character and Appearance

3. The proposed mast would be taller than most telegraph poles and lighting standards in the vicinity. Together with the equipment cabinets, the mast would add to the general clutter of street furniture in the locality and would therefore not make a positive contribution to its appearance. Telegraph poles and equipment cabinets are, however, features found in the street scene, and the proposed development would in this respect be in keeping with the character of the area. The partial disguising of the mast as a telegraph pole and the siting of the equipment against the raised flower bed would mitigate the visual impact on the location. Whilst I accept that there would be some adverse visual impact, and notwithstanding that the site is on a prominent corner on a busy gateway to Wrexham, I consider for these reasons that the degree of harm to the character and appearance of the area would be small.
4. The need for the development, which would provide improved third generation (3G) mobile phone coverage to the area, has not been questioned. It is evident that the industry site database was checked for suitable sites by the operator. Several alternative sites were investigated, but for various reasons none were found to be suitable and available. The Officer's report of 11 March 2005 concluded that sufficient investigation has been given to

alternative sites and I concur with this view. It is therefore evident that there is no potential to share other masts or sites, to use existing buildings or structures, or to use alternative sites. I am therefore satisfied that there are no technically satisfactory and available alternative locations which would be more environmentally acceptable, and that the appeal site provides the optimum solution to development requirements.

5. Policy GDP1a of the Wrexham Unitary Development Plan (UDP) is a general policy which seeks to ensure that built development accords with the character of the site and would make a positive contribution to the appearance of the nearby locality. UDP Policy CLF8 relates specifically to telecommunications development. It permits telecommunications development where it is shown that there is no potential to share other masts or sites, to use existing buildings or structures, or to use alternative sites, provided that the siting of any development would minimise the impact on the location and appropriate mitigation measures are taken.
6. I acknowledge that the adverse visual impact I have identified would bring the proposal into conflict with UDP Policy GDP1a. However, the small degree of harm and conflict with planning policy would in my opinion be outweighed by the substantial public benefit of improved access to modern, high-speed telecommunications services in the area. I find no conflict with the requirements of UDP Policy CLF8.

Other Considerations

7. Local residents have raised concerns with regards to potential health risks and drawn my attention amongst other things to the proximity of the site to dwellings, local schools and play areas. However, the report of the Independent Expert Group on Mobile Phones (the Stewart Report)(2000) concluded that the balance of evidence indicates that there is no general risk to the health of people living near to base stations. The guideline for public exposure recommended by the Stewart Report is that adopted by the International Commission on Non-Ionising Radiation Protection (ICNIRP). In this case the Appellant has confirmed that the proposed development would conform to ICNIRP guidelines. On this basis I am satisfied that the proposal would comply with guidelines adopted by the Assembly Government to protect public safety. I do not consider that the proximity of the appeal site to other development is sufficiently exceptional to warrant setting aside these guidelines. In these circumstances I do not attach sufficient weight to public perceptions of a possible threat to health to warrant dismissal of the appeal.
8. I have taken into account all other matters that have been raised, including that improvements have recently been made in the area, highway safety and safety during construction, and the effect on local property values. None are of sufficient weight, however, to turn me from the conclusion that the appeal should be allowed.



INSPECTOR

Our Complaints Procedures

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 both for and against 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 Complaints Officer 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 Complaints Officer for Wales works independently of all our casework teams. This 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 you a full reply within three weeks wherever possible.

When investigating a complaint, we may need to ask the Inspector for his or her 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, we know that 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.

Minor slips and errors may be corrected under the terms of the Planning & Compulsory Purchase Act 2004 but we cannot amend or change in any way the substance of an Inspector's decision.

Who checks our work?

The Government have said that that 99% of our decisions should be free from error and has set up an independent body called the Advisory Panel on Standards (APOS) to report to them on our performance. APOS regularly examines the way we deal with complaints and we must satisfy them that our complaints 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 Public Services Ombudsman for Wales, who can investigate complaints of maladministration against Welsh public bodies.

If your complaint is against a government department or national public body the Parliamentary Commissioner for Administration may be able to help you (often referred to as the 'Ombudsman'). If you decide to go to this 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. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"If you cannot change a decision, 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 whether these views justify refusing planning permission.

"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 submitted.

"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 their 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. They can investigate and have discretionary powers to take action if a condition is being ignored.

(6/05)

Further information

Every year, we publish a Business and Corporate Plan which sets out our plans for the following years, how much work we expect to deal with, and how we plan to meet the targets which Ministers set for us. At the end of each financial year, we publish our Annual Report and Accounts, which reports on our performance against these targets and how we have spent the funds the Government gives us for our work. You can view these and obtain further information by visiting our website (see 'Contacting us'). You can also get booklets which give details about the appeal process by phoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or on the ODPM website - www.odpm.gov.uk/

Contacting us

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Public Services Ombudsman for Wales

1 Ffordd yr Hen Gae
Pencoed
CF35 5LJ

Tel 01656 641150 Fax 01656 641199

Website: www.ombudsman-wales.org.uk
E-mail: ask@ombudsman-wales.org.uk
(General enquiries only)

Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Decisions are therefore final unless successfully challenged, on legal points only, in the High Court. If a challenge is successful, the appeal will be returned to us to be considered again.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful, you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers that this affected the decision and outcome of the appeal, it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions. For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area consent enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65, you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This note is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" - In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this - see Further Information).

"How much is it likely to cost me?" - A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees - see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court, but it is recommended as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again, but for different reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Contacting us

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Complaints for appeals in Wales

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Public Services Ombudsman for Wales

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Tel 01656 641150 Fax 01656 641199

Website: www.ombudsman-wales.org.uk
E-mail: ask@ombudsman-wales.org.uk
(General enquiries only)

Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents here at the National Assembly for Wales building in Cathays Park Cardiff by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting would involve a long or difficult journey, it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Further information

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: www.courtservice.gov.uk/using_courts/guides_notices/notices/divis/

Council on tribunals

If you have any comments on appeal procedures, you can contact the Council on Tribunals, 81 Chancery Lane, London WC2A 1BQ. Telephone 020 7855 5200; website: <http://www.council-on-tribunals.gov.uk/>. However, it cannot become involved with the merits of individual appeals or change an appeal decision.

(9/04)



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INVESTAD IN DEODD