



Appeal Decision

Site visit made on 17 June 2014

by **D Cramond** BSc MRTPI

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

Decision date: 18 July 2014

Appeal Ref: APP/Q1445/A/14/2214347

Airwave Solutions Site Number SUS107, Court Farm Barn, Devils Dyke Road, Hove

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Airwave Solutions Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2013/02358, dated 9 July 2013, was refused by notice dated 23 September 2013.
 - The application sought the variation of a condition attached to a planning permission Ref BH2008/03539, dated 6 February 2009, which was itself for variation of a condition attached to planning permission Ref BH2005/02256/FP for a radio base station for the Airwave network and a 9 metre timber mast within compound.
 - The condition in dispute is No 1 which states that: *The mast is hereby permitted for a limited period only expiring on 31 September 2015 after which the land shall be reinstated to its former condition.*
 - The reason given for the condition is: *The barn provides a screen and its removal would expose the mast to wider views than at present, the mast without the screening would be inappropriate in an Area of Outstanding Natural Beauty and to comply with policies QD23, QD24, NC6, NC7 & NC8 of the Brighton and Hove Local Plan.*
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Decision

1. I allow the appeal and grant planning permission for a radio base station for the Airwave network and a 9 metre timber mast within compound at Airwave Solutions Site Number SUS107, Court Farm Barn, Devils Dyke Road, Hove in accordance with the application Ref BH2013/02358, dated 9 July 2013, without compliance with condition number 1 previously imposed on planning permission Ref BH2008/03539, dated 6 February 2009, but subject the following new condition:
 1. The structures hereby permitted shall be removed and the land restored to its former condition on or before 17 June 2024 in accordance with a scheme of work submitted to and approved in writing by the local planning authority.

Main Issue

2. The main issue in this case is the effect of removing the disputed condition on the character and appearance of the locality.

Reasons

3. Guidance on conditions is found in the National Planning Policy Framework (the Framework). In brief conditions should be:
 - (i) necessary
 - (ii) relevant to planning
 - (iii) relevant to the development permitted
 - (iv) enforceable
 - (v) precise
 - (vi) reasonable in all other respects.
4. Planning Practice Guidance (guidance) sets out that it will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so. It goes on to state that there is no presumption that a temporary grant of planning of planning permission should be granted permanently.
5. The Brighton & Hove Local Plan (LP) includes Saved Policies QD23, QD24, NC6, NC7 and NC8. The former two policies are in respect of Telecommunications Development and amongst other matters seek to ensure that projects are justified and suitably sited in landscape terms. The other three policies seek to prevent development that would cause harm to countryside / downland generally (NC6) and the Sussex Downs Area of Outstanding Natural Beauty (AONB) in particular.
6. I note that the AONB has been revoked following the designation of the South Downs National Park (NP). The site used to lie in the AONB it now rests in countryside close to the NP boundary. However this proximity to the NP indicates to me that the broad landscape principles and priorities enshrined in the cited protective policies continue to have relevance. Indeed explanatory text in the LP (paragraph 7.43) does indicate that the Council will use 'AONB' and 'National Park' as inter-changeable terms. Nevertheless the Appellant's points about the site no longer actually lying within GPDO Article 1(5) land, and the rights that brings relating to telecommunications, are very well made and noted. Similarly I shall take into account the matters about the restricted lifespan of the nearby non-operational telecommunications mast and the siting and emergency services' justifications put forward for the case in hand.
7. From my perspective given the topography of the site, the range and nature of short and longer distance views available, the attractive countryside location and the proximity of the NP, the crux of the matter is that the barns which are adjacent to this installation serve a very important role in its screening. Without the barns the prominence of the appeal development would increase markedly and its acceptability could very much be thrown into doubt. The barns are not within the ownership of the Appellant. In the past they have been assessed as being in a condition such that there should be caution over their future. However my viewing showed them presently as reasonably robust structures with relatively sophisticated anti-crime devices and I have seen correspondence from their owner which explains the important role they play in a wider landholding and the intention for retention. On this basis I can certainly see it would be most unlikely for them to be removed in the short or medium term.
8. Whilst guidance dissuades against the issue of a second (in this case third) temporary permission in my view this would be one of the *rare* cases where

such a course of action would be justifiable and it is therefore a path I shall follow. The barns explored above are in fair condition and certainly appear at the present time to have a key role to play in the wider farming estate which adjoins the appeal site. However both their condition and their role could change over the long term and with this their permanence cannot be guaranteed. I agree with the Council and a previous Inspector under appeal decision reference APP/Q1445/A/06/201977, that their screening function is very important to the visual acceptability of the mast installation within what was and continues to be sensitive landscape.

9. In the circumstances, in the interests of visual amenity, I consider it necessary, reasonable and relevant to apply a new planning condition which effectively time limits the planning permission for 10 years from the date of my site visit. Having regard to all relevant matters including the principal parties' submissions, I consider this to be a rational timescale. It would not be overly onerous on the Appellant whilst at the same time keeping a suitable degree of review control available to the Council to enable assessment of the position appertaining to the barns in an appropriately defined but fairly distant timeframe.
10. I am satisfied, in conclusion and for the reasons given above, that the approach I shall adopt would accord with the aims and objectives of relevant elements of the development plan policies I have cited. It would also accord with the Framework and guidance in their stance on planning conditions and on the government's attitude to matters such as sustainable development, the weight to be accorded to saved local plan policies since 2013, telecommunications development and landscape protection objectives.

Overall conclusion

11. In the light of the foregoing I shall allow the appeal albeit to the limited degree of imposing a further time-restricted condition.

D Cramond

INSPECTOR