

Replacement Site Interpretation – Part 16 of the General Permitted Development Order 2015 (As Amended) Vale Road SW, Gravesend

1) Introduction

- a) The proposal is to install a replacement telecoms mast within the grass verge on Vale Road, Gravesend. The proposal is for a 20m monopole hosting equipment on behalf of both EE and Three. Coverage is currently provided by a monopole mast located at B&S Motors, Vale Road, DA11 9QQ which has received planning permission to be redeveloped to residential properties. The mast was subject to a Notice to Quit and thus requires the removal of the equipment. This creates a gap within network coverage for the entire area, especially considering that the relocation of the mast has come about due to the building of a residential properties only increasing demand on the Mobile networks.

2) Proposal

- a) The Regulation 5 Notification is for a 20m slim monopole and associated equipment cabinets. The monopole will accommodate antennas on behalf of both EE and Three covering 2G, 3G, 4G and 5G. The height is taken excluding any antennas as set out in part 16 of the GPDO, and the associated equipment cabinets are within 2.5 cubic metres and thus themselves are permitted development.
- b) All works can be carried out within the grassed verge which is adopted Highway and controlled by the Local Highways Authority. Notifications have been issued to the Highways Authority with consideration for maintaining footpath widths, observing visibility splays and provisions for ongoing maintenance. The design and location has been chosen in accordance with the guidance document “Inclusive Mobility” issued by the Department for Transport in December 2021 (see Part 1 A.2(d)). It is considered that the location is acceptable from a Highways perspective and every consideration to other road users or pedestrians has been accommodated within the design.

3) Regulatory Framework

- a) The Regulation 5 Notification has been made with consideration of the provisions set out in Part 16 of the GPDO 2015 (as Amended). An amendment to the GPDO was made in April 2022 (SI Nos: 2022 No. 278). The changes made within the revised Statutory Instrument set out alterations to the width parameters within which replacement masts can benefit from Permitted Development rights. The development is by or on behalf of an electronic communications code operator for the purposes of the operator’s electronic communications network. The provisions of Part 16 require only that the development is for an installation, alteration, or replacement of any electronic

communications apparatus. In this particular case it is a replacement of an existing mast.

- b) Part 16 is written by exception; therefore, electronic communications apparatus is permitted development except for the provisions laid within the instrument. These provisions cover the location of the installation, be that a ground-based installation, building-based installation, whether on a dwelling house or if the apparatus constitutes a small cell system, driver information system, equipment housing or apparatus on an existing mast. With consideration of the current proposal the provisions are set out in A.1 subject to Conditions within A.2.
- c) Development not permitted for ground-based masts are set out in A.1(1) concerning the height, location and if the proposal is for a replacement, then consideration as to the extent of change in design from the original. The wording of this section is explicit in reference to three categories: the installation, alteration or replacement of an existing mast. Height limits are applicable and differ whether on article 2(3) land, on a highway or within a site of special scientific interest.
- d) It is important to note that A.1(1) sets out separately the installation of a mast against the alteration or replacement. A.1(1)(c) references the installation of a mast and A.1(1)(d)/(e) references alteration and replacement. It is considered that these are three separate issues benefiting from separate permitted development rights. Limits are placed upon height (excluding the antennas) where in the case of the current proposal the height limit on a Highway is 20m above ground level. As can be seen the current development to the top of the antenna is 20m and as such the mast itself is well within the permitted height.
- e) Set out in Conditions A.2 is specific references to the criteria within which each type of development should be considered and the parameters which dictate the extent of permitted development. Within Conditions A.2 are two separate processes by which permitted development can proceed, either Permitted Development with Prior Approval or Permitted Development without Prior Approval. A.3 sets out the process by which Permitted Development with Prior Approval has to proceed, the type of application, consideration by the Local Planning Authority, requirements for making a decision and timescales within which it must be made. Where development is not required to comply with A.3 and therefore is Permitted Development without Prior Approval, the requirement is to submit a Regulation 5 Notification as set out in The Electronic Communications Code (Conditions and Restrictions) Regulations 2003. This requires notification to the Local Planning Authority that the Electronic Communications Code Operator (the applicant) benefits from Permitted Development Rights for the installation of certain equipment and the Local Planning Authority has 28 days within which to raise an objection which can be considered if practicable. If no objection is raised within that time period, then the development can proceed.

- f) The specific requirements set out in Conditions A.2 can become confusing and complicated. In principle when considering the replacement of an existing ground-based mast with another ground-based mast the location is the first consideration. The proposed location is not within any designated land and thus is not restricted by the conditions governing installations within Article 2(3) land. In this case being on the highway the height is limited to 20m. The second consideration is whether the replacement mast is within the width limits as set out in A.2(3)(d), where if the existing mast is less than 1m in width then the replacement can be no more than two thirds the width increase. If the existing mast is greater than 1m in width, then the replacement mast can be up to 2m or 50% of the existing width as an increase. With regards to the current development the replacement mast is well within either set of parameters and thus complies with Permitted Development without Prior Approval with regards to the location, the height and the width.

4) Replacement Masts

- a) It is important to consider the specific wording of the word replacement with consideration of developing a mast where it is the subject of an NTQ. It can be assumed that Parliament intended different meanings and effects by the use of the words “alteration “ and “replacement”. Alteration implies that there are changes to be made to an existing installation in its current location, whilst replacement can mean either the wholesale replacement of the apparatus within its current location or the replacement of the current apparatus in an alternative location. The only caveat would be the interpretation of the replacement being materially different and/or a different purpose from that being replaced.
- b) In order to assess and understand what parliament intended for the wording “replacement” it can be seen that the same consideration has been made by the devolved authorities when setting out their Permitted Development rights for electronic communications operators. In Scotland, The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2017, sets out a limit of 10m from the existing apparatus for replacement masts. In Northern Ireland The Planning (General Permitted Development) Order (Northern Ireland) 2015 requires such a replacement to be no more than a “reasonable distance” from that which it replaces. It is noteworthy to consider that in both sets of legislation “replacement” is given consideration to the installation of a mast to replace an existing at a distance away from the exiting location, thus emphasising the interpretation of replacement as being not only within the existing location but also in an alternative location. Within the English and Welsh Secondary legislation it is silent when it comes to referencing distance, this can be seen to deviate from the express limitations placed in Northern Ireland and Scotland. It therefore suggests that the interpretation of the word replacement within Part 16 of the GPDO (and to the same degree Part 24 in the Welsh GPDO) allows the replacement of an existing mast in a separate location having no restriction specific to distance but subject to the other caveats and parameters within

the legislation. In addition, any such restriction should be made in consideration of the need for such a replacement. If the existing mast has to be removed it is serving a specific requirement, the technical need for an installation is therefore proven as there is an existing mast with a defined purpose and coverage area. A replacement should therefore support that need and replicate the technical requirements if it is to be considered a replacement. Within the parameters and restrictions placed upon replacement masts within Part 16, namely, land designation, height and width, any such replacement must also replicate the technical need as shown by the existing mast.

- c) The changes brought about in the revisions to Part 16 under SI 278 in April 2022 were made to broaden and enhance access to and deployment of, electronic communications apparatus. Consideration was made to the Devolved Authorities legislation and as such it is prudent to consider that parliament reviewed and understood the restrictions placed upon distance that Scotland and Northern Ireland had placed within their own legislation. As the revised legislation did not reflect such restrictions it can only be assumed that such a consideration did not support the requirement for improving connectivity and increasing the deployment of electronic apparatus. The amendments to Class A of Part 16 did recognise that any relaxation of the regulations needs to be countered with an increase in preserving and enhancing designated areas. Consequently, there were additional conditions put in place with regards to visual impact, effects upon Article 2(3) land and added protection for more sensitive areas where development does not require prior approval. It can be seen that such improved protections have gone hand in hand with the assessment against Scotland and Northern Ireland's decision to specify a distance for replacement masts. The mere silence with regards to distance and the increase in protections emphasises the fact that a replacement does not necessarily have to be located at the existing site or even in the immediate vicinity, provided that the technical justification for the use of alternative sites and any adverse impacts are to be minimized as far as is practicable.

5) Code of Practice

- a) To accompany the publication of the amendments to Part 16 by the 2022 Amendment Order the Department for Digital, Culture, Media and Sport issued a new Code of Practice, The Code of Practice for Wireless Network Development in England 2022. Within the Code of Practice is reference to replacement masts and thus provides an indication as to how the govt intended the new legislation to be assessed.

"71. An agreement, or code agreement, is often needed by Code Operators and landowners in order to access land and install wireless infrastructure. However, it is not always possible for an operator and a landowner to reach agreement and this limits the number of sites available to operators for locating their equipment. In addition, the Notice to Quit (NTQ) provisions within code agreements mean that sites have to be

relocated. Where NTQs are proposed, the existing coverage and capacity will be removed and as such a replacement site is needed within close proximity to where the existing site was located.”

- b) As the Code of Practice was published in conjunction with the amendments to Part 16 it does provide a stronger indication as to the definition of “replacement”. If consideration within the Code of Practice allows the location of a replacement mast ‘*within close proximity*’, this directly defines a replacement as a location away from the existing installation, governed only by the technical needs for a direct replacement of the existing installation reflecting the capacity and coverage provided by the existing site replicated by the replacement mast.

6) Caselaw

- a) Due to the amendment to Part 16 having been made relatively recently in 2022, there is no case law which considers the interpretation of proximity and the definition of replacement masts. With the lack of precedent, it is more important to work with Local Planning Authorities to identify the legislative framework, the interpretation and an understanding of the intent of the law when it was drafted. It is therefore necessary to consider the three separate descriptions of development, installation, alteration and replacement, along with the Code of Practice. The Code of Practice indicates that replacement masts do not need to be located at the same site as the existing for an NTQ, and it is also necessary to consider other legislation by the devolved authorities governing telecoms apparatus where replacement masts were considered to require a relocation, and that within certain parameters they can be Permitted Development without Prior Approval. Consequently, it can be seen that an interpretation in England under Part 16 for the intent and wording of the legislation does allow the replacement of an existing installation at an unspecified distance from the existing apparatus as long as the development complies with the restrictions and conditions set out in Part 16.

7) Summary

- a) The proposed development is for a replacement telecoms installation and associated apparatus on Highways adopted land on Vake Road. The mast is within the parameters set out within Part 16 of the GPDO, being below the permitted height, within the width increase parameters and not within designated land excluded by the legislation and the design complies with govt guidance as set out in Inclusive Mobility 2021. The need for the installation is proven by the fact that this represents a replacement to an existing installation that has to be removed due to the redevelopment of the land. A valid Notice to Quit was issued to MBNL by the landowner requiring the removal of our equipment. The need still exists to provide network services for both EE and Three to the area and is only increased as a requirement with consideration that the redevelopment of the land will bring a greater number of residents within the coverage area. No provision was made by the landowner nor within the detailed application for the redevelopment of the land for relocating the telecoms equipment.

It can be seen that without the removal of the existing telecoms mast the redevelopment of the land would be adversely affected. It is important to find provision for such existing uses as a priority in conjunction with any and all utility providers where such redevelopment occurs. The ongoing need for such network provision satisfies the requirement that a replacement has to be found and that solution needs to be as close as possible to the existing installation. It can be seen that the proposed development is Permitted Development without Prior Approval, being a replacement mast serving the same need, within the specified parameters and a Regulation 5 Notification is the appropriate means by which to notify the Local Planning Authority.

- b) For the reasons provided above the proposed development is Permitted Development and the correct process by which such a development can proceed is through the Regulation 5 notification submission to the Local Planning Authority. The Local Planning Authority has 28 days within which to raise objections and for those objections to be considered as far as they are practicable.