

Our Ref: WIG/Fishery Lane/CW

Your Ref: APP/18/01165

Date: 1st May 2019

Daphney Haywood
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Dear Madam

APP/18/01165: Retrospective planning application for alternative location of Permitted Telecommunications Development: Compliance with Conditions 1 & 2 – Requiring Planting of 9m high Leyland Cypress Tree.

I refer to your email of 29th April to the agent who submitted the above application to the Council on behalf of The Wireless Infrastructure Group (WIG) regarding the above. I can confirm we are now acting on behalf of WIG to regularise this situation to the satisfaction of all parties.

It is noted that the above application was submitted under section 73A of the Act as the permitted development as originally given prior approval of its siting and design under reference APP/15/01029 was constructed in the wrong location. Having reviewed the documentation on this application it would appear that the repositioning of the proposed Vulcan cabinet and new taller monopole were to try to avoid removing the trees on site. Unfortunately the original site plan drawing number 130542-201 Issue B does not appear to have accurately represented the existing Leyland Cypress trees located along the western boundary of the site and it would appear the contractor building the site has marginally moved the equipment cabinet and pole approximately 0.7m and 1.2m respectively eastward to avoid removal of the most southerly tree within this grouping.

I note in the application report on application APP/15/01029 that it is acknowledged given the existence of the 10m high monopole and ground based equipment that the monopole's upgrading to a height of 15m in terms of visual effect was not considered to be intrusive, or visually detrimental due to its slimline nature and the existing line of fast growing Leyland Cypress trees located along the western boundary, which at this time in 2015 were indicated to be approximately 12m high.

In terms of the effect on neighbouring properties, it was considered that whilst visible from surrounding properties, for the above reasons it was not considered intrusive.

It is my understanding that a complaint received from a member of the public resulted in an investigation regarding a breach of planning control and the above mentioned breach was identified and given the very limited alteration from the approved submitted details, the Council considered the commensurate action to be the submission of a section 73A application. WIG duly complied with this request and submitted the relevant application to regularise the development and this would be wholly within usual enforcement best practice guidance.

It is with somewhat surprise however that I note that a request was made for the planting of a 9m high Leyland Cypress tree. It is noted that the most southerly located tree on the west boundary was cut back severely and permanently damaged on the east side to allow the development and may require removal owing to stability due to the limited root depth of this species. However there are other trees of the same species and height that would continue to provide a natural visual context to the monopole and this request appears slightly onerous in planning terms. These trees were likely planted as a screen on the boundary of the Southern Water site and chosen for their fast growing and screening potential. This species as you will be aware grow at rate of approximately 1m per year and are often chosen for screening or windbreak purposes for development. As far as I am aware these trees are not afforded any statutory protection and whilst offering a screen to the equipment within the compound offer little contribution to the character and overall appearance of the wider area.

It is noted that conditions have been imposed on the retrospective planning permission regularising the location of the telecommunications apparatus requiring the planting of a 9m high Leyland Cypress tree to replace that damaged. WIG have since the granting of the application subject to these conditions been investigating the planting of such a tree in the location as indicated on drawing No. 130542-02 Issue C. Having taken arboricultural advice on this matter a 9m tall tree of this species can only be planted in root ball form to have any chance of surviving. Unfortunately the space available between the fence line and existing monopole is insufficient to plant this height of tree with such a root ball. It is for this reason that conditions 1 and 2 have not been complied with as the compliance is not practicably possible.

I appreciate my client indicated on the drawing a tree in the location proposed and of a 9m height as requested by the Council, who would not agree to a lower height tree being planted. However at this time no expert arboricultural advice was sought by WIG as to the practicalities of such a request and they assumed as the Council had requested this, that it would be possible. It should be noted that whilst a lower height tree could be planted in this location, in time it would present issues in terms of impact on the antennas on the adjacent monopole and the underground sewer due the fast growing nature of such trees. This is likely to result in the need for a further height increase of the mast, or more likely the removal of the tree to prevent damage to the sewer.

Southern Water's consultation response dated 5th December 2018 (Ref: PLAN-025621) confirms that no development or tree planting should be within 3m either side of the public sewer and that reference should be made to Southern Water publication

"A Guide to Tree Planting near water Mains and Sewers" which confirms at paragraph 3.5 that certain species, including most conifers should only be planted as individual specimens or a single row if at least 6m clear of the pipe or sewer.

It is clear from the submitted drawing that this guidance cannot be adhered to and that following arboricultural advice given the need to plant a tree of 9m height with the root ball that the 3m requirement cannot be met either. Indeed to adhere to this guidance it would be better not to plant a replacement tree and to rely on the existing adjacent trees located on the boundary for visual impact mitigation.

In light of the attached conditions of planning permission APP/18/01165 these do not meet three out of the six tests within Circular 11/1995 Use of Conditions in Planning Permission, in terms of being necessary, enforceable and reasonable in all aspects. Given the existing trees, a further tree is not necessary for visual mitigation. Given the practicalities of planting a 9m tree there is insufficient space and this is not physically possible on site given the proximity of the required excavation for the root ball to properly establish in relation to the fence line and mast so the condition is unenforceable. Finally in terms of the minimal change in location of the original permitted development whose appearance and siting was approved by the Council, it is unreasonable to request as part of the section 73A application that a 9m high tree be planted. It is further unreasonable as there is a need to replant any tree which dies within 5 years, and if a 9m tree is planted within an insufficient space its roots are unlikely to thrive, leading to the demise of the tree and need to replant.

Given the above circumstances WIG are happy to apply for a section 73 application to amend the terms of conditions 1 and 2 to plant a smaller 2m high tree which would fit within the space as it could be planted from a pot rather than root ball, although given the previous comment in due course such a tree is likely to be removed due to impact on the propagation of the signal from the antenna and impact on underground services. It would therefore be advantageous to make such an application to revoke the conditions requiring an additional tree to be planted at this location. It would be appreciated if the Council could consider this request and advise whether they are amenable to such an application being submitted and would be favourably minded to determine it. If this is not an option the Council are willing to consider then WIG will have no other option but to exercise their right to appeal these conditions for the six test failures as outlined above.

I note the Council's comment regarding the breach of condition and any further action in this respect and would highlight that such action may only be taken in the public interest whereby a development is considered injurious to amenity. Given all of the foregoing, and despite the letter of objection to the application and the preceding complaint there is no possible justification for the Council to pursue such further enforcement action to remedy this breach in this instance. Any such action taken by the Council would require to be vigorously defended by our client.



I apologise for the length of this letter, but I wanted to set out our client's full justification for not duly complying with the conditions and their intended remedy for this. Please do not hesitate to give me a call to discuss this further if you consider this would be helpful. Otherwise I look forward to the Council's response in due course.

Yours faithfully,



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On behalf of The Wireless Infrastructure Group