

Department of the Environment and
Department of Transport

Common Services

Room 1408

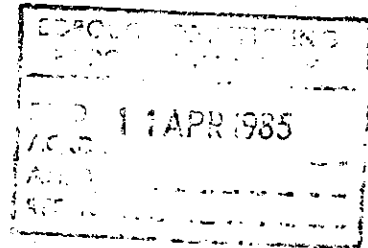
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Our reference T/APP/L2820/C/84/1413/
and A/84/15898/P6

Date

10 APR 85

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTIONS 88 AND 36 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
APPEALS BY MR A D BROWN
LAND AND BUILDINGS AT 3 WESTWAY, KETTERING

1. As you know I have been appointed by the Secretary of State for the Environment to determine the above-mentioned appeals. These appeals are against an enforcement notice issued by the Kettering Borough Council and against a refusal of planning permission by that council concerning the above-mentioned land and buildings. I have considered all the representations made by you and by the council and also those made by interested persons and I inspected the site on 14 January 1985.

2. a. The date of the notice is 17 April 1984.

b. The breach of planning control alleged in the notice is the erection of a telescopic radio mast and receiving aerials.

c. The requirements of the notice are to remove the telescopic radio mast and receiving aerials.

d. The period for compliance with the notice is 2 months.

e. The appeal was made on ground 88(2)(a).

3. The development for which planning permission was refused is renewal of permission for a telescopic radio mast and aerial.

4. The enforcement notice alleges a breach of planning control by the carrying out of building, engineering, mining or other operations, as described in Schedule 2, without the grant of planning permission for that development; ie the erection of a telescopic radio mast and receiving aerials. It is common ground between the parties that permission was granted on 12 January 1983 for this development, subject to a condition that the development so permitted should be removed after one year from the date of the permission (KE/82/832).

5. In these circumstances, the breach of planning control alleged in the notice is incorrect. Such a breach has not occurred; the actual breach is "failure to comply with a condition of planning permission". Thus, the notice has not correctly been directed at the breach of planning control. This defect in the notice is material and cannot be corrected within the powers contained in Section 88A(2) of the Act. Accordingly, the notice will be quashed.

6. The Section 36 appeal remains to be determined and following my inspection of the site, its surroundings and the representations made, I am of the opinion that the main issue is the effect on residential amenities of the neighbouring property, No. 4 Westway.

7. At my site inspection, I saw the telescopic mast in its erect and extended positions. It is a substantial erection affixed to the single-storey garden shed. On top is a YAGI type aerial and trailing wires lead to ground level at the back of the garden and also to another aerial on the bungalow roof. On the south side of the bungalow there is an ordinary domestic television aerial. It is the telescopic mast which is the subject of the Section 36 appeal before me.

8. I agree with the council that this is a fairly dense development of bungalows and the mast, because of its size and height, has a significant impact on the visual amenity of Westway in general. I viewed the mast from the back garden of No. 4 and formed the opinion that the ordinary reasonable enjoyment of the garden and the property itself was to some degree, adversely affected. It is impossible not to be aware of the presence of the telescopic aerial mast, topped as it is with the 12-bar horizontal aerial, a slender "Slim Jim" and the trailing wires.

9. Against these considerations I have to balance Mr Brown's pursuit of an interesting and rewarding hobby. I agree that this mast is unlikely to collapse into the neighbouring garden: indeed it is, as you point out, of substantial and superior design and construction. However, this results in it being very noticeable. In the grounds of appeal it is claimed that "the main aerials are in scale with domestic receiving aerials". I do not accept this view: I saw the mast raised to approximately 30 ft and it is acknowledged that it can be extended to 50 ft. It is prominent on the skyline, notwithstanding the proximity of the overhead electric cables. It is also claimed that 95% of amateur radio operators operate from home; I do not dissent from this opinion. Whether or not such an activity is appropriate in a residential area, would depend on individual circumstances. In the case before me, it is the height and nature of the structure, together with its siting close to the boundary of the next-door property, which results in some detriment to the amenities and reasonable enjoyment of the occupants.

10. Mr Brown claims that he has much local support for his hobby, but I have before me the letters from No. 4, and it is that property which is most affected. I am concerned that planning controls should not be unduly restrictive, especially in relation to hobbies. Nonetheless, I have concluded the radio mast does make the adjoining property "a less pleasant place to live in" and for this reason the grant of permanent planning permission would not be justified.

11. It is clear, however, that the detriment to amenity arises very largely when the subject mast is extended. Whilst the mast is only required to be extended to operate radio equipment, during the period of the temporary permission there has been no formal obligation on the appellant to ensure that the mast is fully retracted when the related radio equipment is not in use. You refer to this aspect in your submission dated 12 July 1984. In these circumstances it seems to me that a further temporary permission, incorporating a condition requiring full retraction of the mast when the radio equipment is not in use would be reasonable. The local planning authority will be able to assess the effect of the development, thus restricted, in the light of which appropriate action can be taken by them on expiry of the permission. I have considered the imposition of a further condition restricting the hours during which the mast could be extended, but have concluded that this would be impracticable and unreasonable.

12. I have considered all the other matters raised in the representations, but none is sufficient to affect my decision.

13. For the above reasons, and in exercise of the powers transferred to me, I direct that the enforcement notice be quashed. I also allow the Section 36 appeal and grant planning permission for retention of a telescopic radio mast and aerial at 3 Westway, Kettering in accordance with the terms of the application (No KE/84/3) dated 4 January 1985 and the plans submitted therewith, subject to the following conditions:-

1. The permission hereby granted shall expire and the development hereby permitted shall be removed on or before 12 months from the date of this letter.

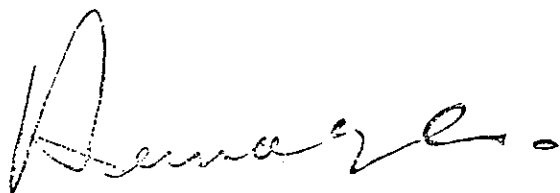
2. The mast shall be fully retracted when the radio equipment in the shed to which the mast is attached, is not in use.

14. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than section 23 of the Town and Country Planning Act 1971.

This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Sir

Your obedient Servant



T A K SAVAGE MBE FCIT FI ARB
Inspector