

Case Name: *Mawbey, R (On the Application Of) & Orsv Cornerstone Telecommunications Infrastructure Ltd.* [2019] EWCA Civ 1016 (17 June 2019)

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Commentary: This case concerned the meaning of the term “mast” in Class A of Part 16, ‘Communications’, of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995.

A telecommunications company appealed against a court order quashing the determination of the London Borough of Lewisham that the electronic communications apparatus installed on the roof of a residential property was permitted development under Class A of Part 16. The appeal was dismissed by the Court of Appeal which concluded that a “mast”, in this legislative context, is an upright pole or a lattice-work structure, whose function is to support an antenna or aerial.

Paragraph A.1(2)(c) of Class A of Part 16 provides that the installation of a “mast” on a building which is less than 15 metres in height, where the “mast” would be within 20 metres of the highway, is not permitted development.

The electronic communications apparatus installed on the roof of the relevant block of flats comprised nine antennae on a plant room roof. Each antenna was supported by an antenna pole attached to a central support pole, held in place by steel legs forming a tripod and set into the concrete slab of the roof. The property was less than 15 metres in height and the apparatus was within 20 metres of the highway; as such the key question was the meaning of the term “mast”.

The London Borough of Lewisham considered that the central support poles were not “masts” as they were not ground based and their scale and design was not characteristic of a roof mast.

The Court held that the meaning of the term “mast” in paragraph A.1(2)(c) is a matter of law and the starting point is a straightforward interpretation of the term in that particular provision (giving it its ordinary and natural meaning), before then considering whether this is displaced by anything in the legislative context.

In terms of the ordinary meaning of the term “mast”, the Court held that the place to start is the definition of “mast” in paragraph A.4 which is plainly intended to apply generally to Class A in all of the provisions in which it occurs. This definition is couched in deliberately broad terms; a “mast” simply means a “radio mast” or a “radio tower” and the fact that the term “radio mast” is not defined means that the term “mast” was clearly deemed to have a well understood meaning, requiring no explanation. If there were any real doubt as to the ordinary relevant meaning of the word, it would be appropriate to consider the dictionary definition, according to which a “mast” is an upright pole or lattice-work structure, whose function is to support an antenna or aerial. This definition fits with the evident meaning and

purpose of the provisions for “building-based apparatus” within paragraph A.1(2)(c). Neither the definition of “mast” in paragraph A.4 nor the exclusion from permitted development rights in paragraph A.1.(2)(c) prescribe any specific dimensions of the apparatus itself; while the height of the building is relevant to the exclusion, the height of the apparatus is not.

Furthermore, the Court held that there is nothing in the legislative context to displace the ordinary meaning of the term “mast”. Contrary to the finding of the London Borough of Lewisham, there is no qualification requiring the “mast” to be ground based or of any particular scale or design. As such, the Council erred in law by adopting too narrow an interpretation, while the judge was correct to treat it as a “broad” concept which would include the support poles.

In sum, the Court held that the task of a local planning authority in determining whether a particular structure is a “mast” within paragraph A.1(2)(c) is simply to ascertain whether, as a matter of fact and degree, it is an upright pole – or another structure to which the definition in paragraph A.4 applies – whose function is to support an antenna or aerial; whether the building is less than 15 metres in height; and whether the structure would be within 20 metres of the highway.

Case summary prepared by Town Legal LLP