

Appeal Decision

Site visit made on 2 August 2016

by J E Tempest BA(Hons) MA PGDip PGCertHE MRTPI IHBC

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

Decision date: 15th December 2016

Appeal Ref: APP/U3935/W/16/3150855

Land on north side of Cassini Drive, Swindon, Wiltshire SN25 2HU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by UKB Networks Ltd against the decision of Swindon Borough Council.
 - The application Ref S/TC/16/0014, dated 4 January 2016, was refused by notice dated 11 February 2016.
 - The development proposed is the installation of a 15 metre high monopole supporting 3 no. antennas and a 0.3 metre transmission dish, the installation of a radio equipment cabinet and electricity meter cabinet and development works ancillary thereto.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Class A of Part 16 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the installation of a 15 metre high monopole supporting 3 no. antennas and a 0.3 metre transmission dish, the installation of a radio equipment cabinet and electricity meter cabinet and development works ancillary thereto on land on north side of Cassini Drive, Swindon, Wiltshire SN25 2HU in accordance with the terms of the application Ref S/TC/16/0014 dated 4 January 2016, and the plans submitted with it.

Background and Main Issues

2. Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO") permits development including the installation of electronic communications apparatus subject to compliance with various restrictions and conditions, one of which is that the developer must apply for a determination as to whether prior approval of the local planning authority is required as to the siting and appearance of the development.
 3. The Council issued two notices of decision, one advising that prior approval was required for the siting and appearance of the development and the second refusing such prior approval. Accordingly, siting and appearance are the matters which can be taken into account and I have determined the appeal on this basis.
 4. The **main issues** in this appeal are therefore the effect of the proposed installations on the character and appearance of the area and on the living conditions of adjacent residential occupants in terms of outlook and whether
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any harm caused as a result of these or any other matters is outweighed by the need to site the installation in the location proposed.

Reasons

5. The proposal is described as a slimline 15m high monopole on a concrete base. The three antennae would be shrouded such that the topmost section of the monopole would be of greater diameter than the lower section of mast. The 0.3 m diameter transmission dish would be fixed externally to the monopole just below the shrouded antennae. The monopole would be finished in black and the cabinets in Fir green.
6. The site of the proposed monopole and other installations is within a grassed area, adjacent to a footpath which forms part of a landscaped amenity area designated as open space in the Local Plan. The site is within an area of predominantly residential development on the north western side of Swindon and adjacent to a roundabout at the junction of Voyager Drive, Cassini Drive and Pioneer Road. The evidence states that the installation will have a coverage radius of approximately 500 m providing a service to the homes within this area.
7. Whilst the site is close to an existing utilities cabinet and there is street furniture including lampposts in the vicinity, the height of the proposed monopole would be markedly greater than that of the existing lampposts. The proposed siting within an area of open space, close to a roundabout and pedestrian routes is such that the full height of the monopole would be visible from several directions although in some views this would be over relatively short distances.
8. In views from the west along Voyager Drive, the monopole and cabinets would be seen against the backdrop of the substantial tree belt which runs parallel to the bridleway. In approaches to the site from Pioneer Road to the north, the tree belt would not screen the monopole but the pole would be sufficiently close to the tree belt for the two to be viewed in context, minimising the isolated appearance of the monopole. From Phoebe Way to the south, the tree belt would not offer screening but again would assist in minimising the visual isolation of the monopole. In approaches along Cassini Drive and associated footpaths from the east the monopole would be close to but not be screened by the tree belt. In all of these views, the monopole would be seen in the context of existing street lights. Whilst the monopole would be taller than the lighting columns, the columns nonetheless provide a series of vertical elements within views from roads and associated footpaths and within the open space.
9. The installations would provide 4G network coverage to help meet demand for wireless data. The operator's 4G service is based on a network of radio base stations which need to be located close to customers. The evidence indicates that the coverage to be provided is to fill a gap in the network coverage in this part of North Swindon. The appellant is stated to be working with the Borough Council to provide a 4G network within the borough making super-fast wireless broadband services available to residents and public in general.
10. Section 5 of the National Planning Policy Framework (Framework) sets out the government's support for high quality communications infrastructure including the vital role of high speed broadband in enhancing the provision of local community facilities and services. Paragraph 43 of the Framework confirms

that where new sites for equipment are required, such equipment should be sympathetically designed and camouflaged where appropriate.

11. Paragraph 46 of the Framework confirms that decision makers should not seek to prevent competition between different operators or question the need for the telecommunications system. In this case, there is clear evidence that the appellant has considered other options and sites in a sequential manner before submitting the proposals for the site which is the subject of this appeal. The appellant confirms that there are no existing masts within the search area and therefore no opportunities for sharing; nor are there buildings or structures which could be used taking into account that the antennae need to be above the height of buildings and trees.
12. As the range of coverage which the installation would provide is relatively limited the area of search for alternative sites is also limited. I note that the majority of alternative sites considered are focused on Pioneer Road and Oakhurst Primary School. These were rejected for a variety of reasons including closeness to residential property, visual intrusion assessed as being greater than the appeal site and consultation responses including those from representatives of the primary school. One suggested site was rejected as it was within a Site of Special Scientific Interest.
13. The Council's case refers to alternative sites having been found in respect of other parts of the Borough following refusal of prior approval for similar installations. However, no specific evidence is offered by the Council with regard to the site search carried out in relation to this area or that alternative and preferable sites are likely to be available. I am satisfied that taking into account constraints associated with the relatively local short distance over which coverage is provided from the installation, and the need to minimise impacts on residential properties as well as the wider area, opportunities within the site search area are constrained. I find that the site selection process is robust in this case.
14. Development in the immediate vicinity of the appeal site is predominantly three storeys in height and some properties have a fourth storey. Further away, properties are two storeys and two and half storeys. Whilst the monopole is required to be above the height of surrounding features including trees for technical reasons, I consider that the height of the monopole would not be so out of scale with surrounding features that it would appear unacceptably incongruous.
15. There are residential properties on the opposite side of Cassini Drive the closest of which would be some 20 metres distant from the monopole. However, the siting of the monopole has been designed to avoid the direct line of view from principal windows. Whilst the monopole would nonetheless be visible from properties, particularly those on the south side of the Cassini Drive, I am satisfied that the harm to outlook from these properties would not be sufficient to warrant refusal on these grounds.
16. Interested parties refer to guidance set out in the Cabinet Siting and Pole Siting Code of Practice¹ and also to the Code of Best Practice on Mobile Network

¹ Cabinet Siting and Pole Siting Code of Practice June 2013

Development². The Council's evidence confirms that the former refers to fixed electronic telecommunications equipment and is therefore not relevant to 'wireless' infrastructure' whilst the latter relates to the mobile network and is less rigid with regard to specific siting measures. These voluntary codes are not formally adopted by the Council and therefore have limited weight.

17. I have taken into account the policies of the Swindon Borough Local Plan 2026 (the Local Plan) insofar as they relate to matters of siting and appearance. Policy DE1 is a wide ranging policy relating to high quality design and requires proposals be assessed in respect of context and character, particularly with regard to existing built characteristics and features such as trees. Siting and scale are other considerations. Whilst the monopole is taller than nearby lampposts, it is slender and uncluttered in its design.
18. Although not raised in the Council's reasons for refusal, other parties have raised compliance with Policy EN3 of the Local Plan. This policy relates to open space and section 'b' of the policy protects open space assets from development. The small site area involved in the proposal is such that there would be no material conflict with Policy EN3.
19. There can be little doubt that the landscaped open space within which the appeal site is located performs a valuable role within an area of medium and higher density housing. The visual impact of the proposed monopole will have an adverse but limited effect on the enjoyment of that open space. There would be minimal loss of area within the open space. The effect of the monopole and the cabinets on the open space would be modest and would not deprive the open space of its amenity value.
20. Policy IN3 is specific to information and communications technology and telecommunications. This policy requires proposals to be sited and designed with consideration to the appearance of the surrounding and should be supported if the siting and any other additional equipment does not unduly detract from the street scene or is not unduly intrusive. The amenity of neighbouring sites should not be unacceptably harmed by the proximity of the proposal. The colour and profile of the equipment should be sympathetic to the site's surrounding and the size of the development should be kept to a technical minimum to minimise adverse impact on the environment. However, Policy IN3 notes that the development plan is supportive of proposals that make provision to incorporate super-fast broadband.
21. Whilst there would be some adverse local impacts arising from the proposal installation and in particular from the proposed monopole, I am satisfied that they would not be unacceptably harmful. The presence of existing lampposts and the proximity of the substantial tree belt will assist in mitigating the appearance of the proposed monopole.
22. The cabinets would be sited further away from the highway than the proposed monopole and to the east of an existing utilities cabinet. Whilst the cabinets would add to the number of structures in the immediate area, the appearance of the cabinets would not be unduly harmful. The highway authority confirm that the installations would not be detrimental to pedestrian or highway safety and would not obstruct footpaths or crossing points.

² Code of Best Practice on Mobile Network Development in England, Code of Best Practice 2013 Edition Published 24 July 2013

Other matters

23. The proposals have attracted opposition locally in relation to matters relating to the main issues identified above. In relation to the concerns about the health implications of the masts, having particular regard to nearby housing and flats as well as the local school and routes to it, the appellant has provided a certificate in respect of the proposal to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionising Radiation Protection (ICNIRP). The Framework confirms that in such circumstances health safeguards are not something which a decision maker should determine.
24. Whilst concern is expressed with regard to lack of consultation, the evidence shows that the appellant undertook consultation prior to the original submission of the proposal and subsequently the Council notified all properties with a 100m radius of the site. I am therefore satisfied that adequate consultation was undertaken and I have taken into account the responses submitted in respect of the application and this appeal.
25. In addition to matters addressed above, the Parish Council comment that the site is too close to a major oil pipeline through Oakhurst. This has not been raised as an issue by the Borough Council in relation to its consideration of the siting of the installation.
26. Representations have been made to the effect that the rights of nearby residents, under the Human Rights Act 1998, Article 1 of the First Protocol would be violated if the appeal was allowed. I do not consider this argument to be well founded as I have found the proposed development would not cause unacceptable harm to the living conditions of nearby residents. The degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 1 of the First Protocol.
27. The appellant has referred in evidence to appeal decisions relating to other sites outside Swindon Borough. Given the limited information provided I am unable to conclude that any of these cases are sufficiently similar to the proposal before me to create a precedent. I have determined this appeal on its own planning merits.

Conclusions

28. There would be some harm to the character and appearance of the area as a consequence of the proposed installations and therefore a degree of conflict with those development plan policies which seek to maintain high standards to design and to protect local character including the built environment and the amenity of neighbouring sites. However, alternative siting options have been considered and have taken into account impacts upon occupiers of residential properties and the wider area. The Framework provides clear guidance on the benefits of providing good communications infrastructure.
29. Taking all of the above into consideration, I conclude that on balance the appeal should be allowed. No conditions are necessary as the development order imposes relevant conditions as standard.

J E Tempest

INSPECTOR