
Appeal Decision

Site visit made on 6 April 2017

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 10 April 2017

Appeal Ref: APP/P4605/W/17/3167259

**Communication Station (52568) on roof of 264-266 Oxhill Road,
Birmingham B21 8ER**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Part 16, Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by H3G UK Limited against the decision of Birmingham City Council.
 - The application Ref 2016/07926/PA, dated 19 September 2016, was refused by notice dated 17 November 2016.
 - The development proposed is installation of an 11 metre high Alpha monopole, to be painted brown, and a Pogona cabinet.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Birmingham Development Plan (BDP) was adopted in January 2017. Its policies replace those of the Birmingham Unitary Development Plan (2005) (UDP) with the exception of those in Chapter 8. Consequently, UDP Policies 3.8 and 3.10, which are referred to in the Council's decision notice, have been revoked. The Council is therefore seeking to rely on BDP Policy PG3 along with the relevant saved UDP Policies. I have taken this into account in my determination of the appeal. Having said that, there is no statutory requirement to have regard to the development plan in the case of prior approvals. However, the development plan does contain material that is relevant to the planning judgements to be made in respect of the matter before me and I have therefore taken account of this as a material consideration.
3. In so doing, I am satisfied that the appellant has had the opportunity to consider the provisions of the relevant BDP Policies and no-one's case is prejudiced by my taking them into account.

Main Issue

4. Whilst I am satisfied that the proposal complies with the relevant limitations and restrictions set out in the GPDO, development under Part 16, such as the appeal scheme, is subject to a condition that the prior approval of the Council must be sought for the siting and appearance of the development. The Council has withheld its approval on the basis that the proposal would cause harm by way of its effects on visual amenity. Consequently, the main issue in this appeal is the effect of the proposal on the street scene.
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Reasons

5. The appeal site is located along a busy road that runs through a predominantly residential area although dwellings are interspersed with occasional groups of commercial buildings. Whilst urban in character, the built environment along Oxhill Road is softened by mature street trees although there is a break in these around the appeal site.
6. The proposal seeks to remove an existing telecommunications antenna which is located on the building comprising Uplands Auto Centre (no 264-266) and replace it with a new monopole next to the equipment cabinets that are sited against a recessed section of the fence around the auto centre car park and which front the highway. In addition a further cabinet would be sited between the existing ones and the new monopole.
7. The appellant asserts that the site would not be a 'new site', given that it would be an upgrade scheme. However, the new monopole would be located away from the building to which the current mast is attached. However, whilst there is support for high quality communications infrastructure within the National Planning Policy Framework (the Framework) and within BDP Policy TP46, the Framework also says that existing masts, buildings and other structures should be used, unless the need for a new site has been justified. Where new sites are required, equipment should be sympathetically designed and camouflaged where appropriate. Although the Framework does not define what constitutes a 'new site', the scheme does not propose to use an existing mast, building or other structure. I therefore consider it appropriate to apply the Framework requirements for new sites in the circumstances of this case.
8. The appellant argues that the proposed monopole would replicate the existing nearby telegraph poles through its proportions and colour. However, it would nonetheless be easily differentiated from the timber telegraph poles by the absence of telephone wires and its solid brown colouring. Moreover, the existing poles have weathered to give a pleasant patina and they sit unobtrusively between and along the same line of the existing street trees. Given that the appeal site is more visually exposed, the monopole would therefore be more obtrusive than these other features.
9. It would also appear squat and heavy-set in comparison to the more elegant and slender form of the lighting columns along the northern side of Oxhill Road and would thus stand out incongruously next to the highway. For similar reasons, it would also appear obtrusive in views to the north along Avenue Road.
10. In addition, the associated equipment cabinet would add to the proliferation of such structures along the existing fence which, in combination with the monopole, would increase the street clutter in a prominent location. Although it would be set within the bounds of the auto centre site, it would still be clearly visible as a solid mass behind the fence which would have a relatively open structure.
11. Accordingly, the proposal would run counter to the Framework requirements for new sites and BDP Policy PG3 that expects development to demonstrate high quality, contributing to a strong sense of place. It would also conflict with UDP Policies 8.55 and 8.55A-B that collectively require telecommunications equipment to minimise the impact on the visual amenity of the area, including

form neighbouring properties and within the street. The Council also refers to UDP Policy 8.55C, which requires that regard be had to Planning Policy Guidance 8 (PPG8). However, PPG8 has been replaced by the Framework and no longer has any status as planning policy. This limits the weight I give to UDP Policy 8.55C.

12. I have also taken into account the provisions of the Council's Supplementary Planning Document¹ (SPD). Although this was prepared in the context of national and local policy of the time, it nonetheless chimes with the overall objectives of BDP Policy PG3 and the Framework in respect of design matters. I therefore give the SPD significant weight and consider that the proposal conflicts with it.
13. I acknowledge that in dismissing the appeal, the appellant may consider applying for permission for a site away from the auto centre. However, I am not persuaded from the available evidence that the location chosen within the bounds of the auto centre is necessarily the least harmful in terms of its visual effects. Furthermore, I cannot be certain that the harm would be equivalent or worse on a site elsewhere.

Conclusion

14. For the above reasons and having had regard to all other matters raised, the proposal does not meet the relevant GPDO conditions and the appeal does not therefore succeed.

Hayden Baugh-Jones

Inspector

¹ Telecommunications development: mobile phone infrastructure Supplementary Planning Document 2008