
Appeal Decision

Site visit made on 14 December 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2020

Appeal Ref: APP/X1355/W/19/3237881

Land at Darlington Road DNS , Neville's Cross, Durham DH1 4PE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order. 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 EE(UK) and Hutchinson UK Ltd against the decision of Durham County Council.
 - The application Ref DM/19/02375/PNT, dated 16 July 2019, was refused by notice dated 6 September 2019.
 - The development proposed is Proposed MBNL 17.50m High Phase 5 Monopole to be installed on D9 Root Foundation and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The developer's notice submitted to the Council referred to the site address as Darlington Road DNS, 2 Darlington Road, Nevilles Cross, Durham DH1 3QZ. This is not the correct location for the proposal and for clarity I use the address used in the appellant's covering letter which accurately describes the location of the proposal.

Main Issues

3. The Council's stated reasons for refusal refer to the issues of the visual amenity of the immediate area and the justification put forward by the appellant for the proposal. It is evident from the Council's statement and the delegated report prepared by the planning officer that the Council does not regard the effect that the proposal may have on the living conditions of the occupiers of the residential properties closest to the site to be, in itself, an issue. A number of comments have been received from interested parties which include reference to the relationship between the site and nearby housing. I therefore deal with this matter in my decision, having provided the appellant with the opportunity to make further comments in respect of the issue.

4. In light of the above, the main issues are:

- The effect of the proposal on the character and appearance of the area;
- The living conditions of the occupiers of houses close to the proposal;
- Whether it has been demonstrated that there are no preferable locations for the proposal, having regard to the other main issues in the appeal.

Reasons

The character and appearance of the area

5. There is some disagreement as to whether the area surrounding the proposed site should be described as residential or urban in character. In my view it comprises a suburb of the City, predominantly residential in character, although influenced by the presence of the A167 road which is a significant transportation corridor.
6. The proposed mast and associated cabinets would be a prominent feature in the area. The visual impact would be accentuated by the enclosed nature of the road at this point, with 2 storey dwellings to one side, dense woodland to the other, and the proposed siting of the mast close to the footpath and road. A further factor which would increase the perception of the scale of the mast would be its height and width relative to the nearby street lighting columns, and the scale of the houses on the opposite side of the road. The installation of microwave dishes in the upper half of the mast would also increase the visual effect.
7. The meaning of significance has been questioned in relation to the effects of the proposal in terms of prominence. It is inevitable in relation to such a proposal that a judgement has to be made on a site by site basis. The site is not within a conservation area, nor does it affect the setting of any designated heritage assets or statutory landscape designation, matters which weigh in favour of the proposal. However, due to the scale of the mast and its context in relation to the streetscape in this part of Darlington Road, there would be a significant and adverse visual effect which would be harmful to the character and appearance of the area as a whole.
8. It has been suggested that the colour of the mast could be chosen to help to mitigate the visual appearance, but even if a muted colour such as green was chosen, the mast would still be much higher than the trees alongside the road, and the mast itself would be plainly visible against the skyline. Alternatively, the mast could be of a light grey colour to seek to reduce the impact against the sky. The Framework supports the sympathetic design and colouring of equipment, however in this case seeking to camouflage the mast would only have a marginal effect in mitigating visual impact.
9. Therefore, on this main issue and for the reasons given I conclude that the proposal would cause harm to the character and appearance of the area, in conflict with Policy U1 (6) of the City of Durham Local Plan (2004) (the CDLP) and the Framework which requires that development should be sympathetic to local character.

Living Conditions

10. The site is opposite residential properties on Darlington Road. It is not in dispute that the nearest property, no 10 is approximately 26m from the proposal. The property has its front door and some habitable room windows facing towards Darlington Road and the proposal. Whilst the proposed mast is not of a scale or thickness which could have any appreciable impact in terms of overshadowing or loss of outlook, its impact would still be of some significance. The occupier of the dwelling would find the presence of the mast to be quite unavoidable, given its height and proximity, and it would appear as an intrusive, dominant and alien feature. Given the severity of this impact I find that the effect on living conditions of this property, and to a lesser extent the neighbouring properties at 8 and 9 Darlington Road, could not be regarded as reasonable.
11. It has been suggested by a number of residents within The Downs that the proposal would give rise to unacceptable effects on the living conditions within that estate. The houses are at a lower level than the site and there is an intervening area of woodland. At the junction of Lows Fall and Lowes Wynd, the mast would be visible to anyone entering or leaving the estate, even with the presence of the trees. Given the information available to me, which does not include a section drawing, it is not possible for me to determine the exact extent to which the proposed mast would be visible from any individual houses within Lowes Fall. However, given my findings on the effect on houses on Darlington Road, there is no need for me to reach a final view on the effect on the living conditions of occupiers of these properties.
12. In response to my request for comments from the appellant on this issue, he has commented that there is no opportunity pull the proposal further away from residential receptors due to the tight cell search area and topography.
13. I therefore conclude on this main issue that, for the reasons given, the proposal would give rise to significant adverse effects on the living conditions of residents at nos 8 -10 Darlington Road, in conflict with Policy U1 (6) of the CDLP which requires the siting of telecommunications equipment to have an acceptable relationship to its surroundings, and the Framework which requires that development should ensure a high standard of amenity for existing users.

Whether it has been demonstrated that there are no preferable sites

14. The proposal arises from the need to replace an existing temporary mast which is subject to a Notice to Quit (NTQ). The Framework is clear that the provision of high quality communications infrastructure is essential for economic growth and that the need for electronic infrastructure systems should not be questioned. It also requires that applications must be supported with necessary evidence to support the proposed development.
15. The application for a determination as to whether prior approval is required was supported by Site Specific Supplementary Information (SSSI) including information on the background to the proposal and the designated area of search for sites. The SSSI states that the potential for mast and site sharing or using existing buildings has been explored on a sequential basis, and all such options have been discounted, resulting in the need to pursue a site for a ground based installation.

16. It has been suggested that the SSSI is not a fully up to date assessment of the opportunities available to site the proposal within the coverage area. The centring of the site search within southern part of the DH1 4 area, the limited radius used, and the absence of confirmation as to whether previous approaches to landowners have been followed up, to establish whether their previous position may have changed, have all been questioned.
17. The appellant's statement does not provide any detailed rebuttal of these criticisms but restates that a sequential site selection process has been undertaken as a result of which the site is the preferred and only option. I am not fully persuaded by the appellant's arguments in this respect and consider that some contradictory arguments have been advanced. For example, the statements that the site is suitably distant from sensitive receptors and that efforts have been made to keep the proposal as far away from residential properties whilst providing coverage are at odds with the proximity of the houses opposite the site.
18. Therefore, I am not persuaded that it has been satisfactorily demonstrated that there are no preferable locations for the proposal which would give rise to less harm in respect of the effects on the character and appearance of the area and the living conditions of the occupiers of houses close to the site. The proposal does not, therefore, conform to Policy U1 (4) of the CDLP which requires the possibility of shared use of existing sites and structures to be investigated, and the Framework which requires that application must be supported by necessary evidence to justify the proposal.

Other matters

19. In addition to providing mobile services for local residents and businesses a solution to providing the necessary coverage is required to support the development of the Emergency Services Network which will replace the existing radio network used by the police, ambulance and fire services.
20. The extracts from statement by the Secretary of State for Culture, Media and Sport of September 2012, and the Letter to Chief Planning Officers dated 31 March 2011 provided have been taken into account in my decision. The Framework, as already noted, provides the up to date statement of Government policy and recognises the importance of high quality and reliable communications infrastructure in supporting economic growth.
21. I have noted the comments of the Planning Inspector who dealt with planning appeal against the refusal of a proposal for a 12.5m high mast in a location to the south of the appeal site¹. In that case the Inspector questioned why the highway verge between the site proposed and the existing NTQ site at Nevilles Cross had not been considered as part of the site search. That does not mean he expressed any support for the current location.
22. It is evident from the statements which have been submitted by the appellant that there is disagreement over the extent to which the proposal has been subject to pre application engagement and whether this, in part supports the selection of the current site. I accept that there was a process of consultation both with representatives of the Council and a meeting with local residents however that does not overcome my concerns regarding the proposal.

¹ Appeal ref: APP/X1355/W/03567/PNT, dated 24 May 2018.

23. The main parties have drawn my attention to an ongoing enforcement appeal in relation to the NTQ site at Nevilles Cross². I note the point but my decision is based on the merits of the proposal.

Planning Balance

24. The Framework is clear that the planning process should support the expansion of electronic communications networks including the next generation of mobile technology (5G). The need for the appellant to seek to replace the mast that is subject to the NTQ is apparent, however for the reasons given it has not been demonstrated that proposal is the only feasible location for a new mast, or even that other options such as mast sharing or the use of a tall building have been fully explored.
25. The Framework must be read as a whole, and it places a strong emphasis on protecting the overall quality of an area and promoting a high standard of amenity for existing users, which in the case of the proposal includes those persons who would frequently pass through the area around the site, and also those living in close proximity.
26. Bringing all of the above together, whilst the need to find a solution to provide coverage for the DH1 4 area is not disputed, the proposal, due to its scale, location and proximity to residential property would cause harm to both the character and appearance of the area and the living conditions of the occupiers of houses closest to the site. These negative effects would not be outweighed by the positive factor of securing the network coverage unless all other alternatives have been demonstrably exhausted, which I do not find to be the case in this instance.

Conclusion

27. For the reasons given the appeal is dismissed.

Tim Wheeler

INSPECTOR

² Appeal ref: APP/X1355/C/19/3237884