
Appeal Decision

Site visit made on 6 July 2020

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2020

Appeal Ref: APP/Q4625/W/20/3246742

Land at Windward Way, Castle Bromwich, Birmingham B36 0SP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by EE (UK) Ltd and H3G (UK) Ltd against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2019/01875/PPFL, dated 11 July 2019, was refused by notice dated 11 September 2019.
 - The development proposed is installation of a replacement 20m monopole, accommodating 12 No. antennas in an open head frame together with the upgrade of the equipment cabinets and ancillary development thereto.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are whether this would be an acceptable location for the development, having regard to (i) the existence of suitable alternative locations, (ii) the effect on the character and appearance of the area, and (iii) the effect on the living conditions of nearby residents, with particular regard to outlook.

Reasons

Alternative locations

3. The appeal relates to a grass verge between the pavement and road in a predominantly residential area. There is an existing mast on the verge, which is just under 15 metres in height, along with an assortment of cabinets. This is located roughly centrally between two recently built three-storey blocks of flats. The gap between the flats is shared amenity space and parking. The evidence suggests that when the existing mast was installed, the adjacent site was in an industrial use.
4. The development would not sit on exactly the same spot as the mast it would replace. Rather, it would be located a short distance to the north, nearer to one of the blocks of flats. Solihull Local Plan (2013)(SLP) Policy P14 states that in sensitive areas, which includes residential locations, telecommunications equipment will only be permitted if there is no other technically suitable location that both meets the operational requirements of the operator and causes less environmental harm. The policy also states that any mast must be at least twice its height from the nearest residential property. Paragraph 115(c)

of the National Planning Policy Framework (the Framework) states that for a new mast or base station, there should be evidence that the applicant has explored erecting antennas on existing buildings, existing masts or other structures. Although there is an existing mast on the verge, the proposal would not make use of this for the new antennas. As such, the development would not satisfy this requirement.

5. The appellant states that they have considered locations within 100 metres of the existing site and that no suitable alternatives have been identified. The reason given for using a relatively small area of search is that relocating the existing mast even a short distance from its current position would have a negative impact on both 4G and Emergency Service Network (ESN) coverage. However, no substantive evidence in the form of coverage plots or other data has been provided to confirm this would be the case. One alternative location was identified outside the 100 metre search radius, but this was rejected on the basis of service provision. However, this appears to be predicated on the assumption that the existing mast must be relocated.
6. The development would allow the sharing of equipment between operators and different technologies. This should reduce the need for additional installations. This is encouraged by both SLP policy and the Framework. However, neither document suggests that this objective should necessarily be met at the expense of other relevant planning factors, including the effect on the environment and amenity of residents. Indeed, Policy P14 is clear that the sharing of equipment is but one of a number of factors that will be considered.
7. The appellant has also made the point that coverage plots for 5G were not provided because it is a new technology. This implies that there are fewer restrictions on where the 5G installation could be located. While this approach might result in an overall increase in the number of installations locally, this might still be justifiable if the chosen site was in a less sensitive location, or the resulting impact less harmful than what is proposed here. Taken as a whole, the evidence before me does not satisfy me that there are no suitable alternative locations for what is proposed which would result in less overall harm. Consequently, the proposal does not meet the requirements of SLP Policy P14, the objectives of which are set out above. Neither would this meet the requirements of paragraph 115 of the Framework.

Character and appearance

8. The existing mast is clearly visible when travelling along Windward Way, which is a relatively long straight road. Although discernibly taller than nearby streetlights and the flats themselves, its slimline and uncluttered design ensures that it does not appear as an unduly dominant or intrusive structure.
9. The same would not be said of the development. This would be significantly taller and wider than what is already in place. The base would also be bulkier and more substantial. The mast would also be a busier and more cluttered structure, particularly near the top where the unshrouded antennas would be highly visible. The mast would tower above the existing flats and stand out starkly against the skyline.
10. The overall width and bulk of the mast would also ensure that it would not appear as a slimline or complementary feature in the street scene. I acknowledge there may be technical reasons why the mast must be of this

height, width and design. Nevertheless, the development would still result in a highly prominent and visually intrusive structure. Its excessive height in comparison to any other nearby features and utilitarian appearance would not be in-keeping with the residential character of this area.

11. The proximity of the mast to one of the blocks of flats would also accentuate the extreme height in relation to even the tallest buildings in the street and the unsympathetic visual relationship to nearby housing. The appellant's suggestion of conditions controlling the colour of the mast would not address my concerns. The appellant has also pointed out that a monopole of the same height could be installed under the terms of the General Permitted Development Order (GPDO). However, the width of the structure means that it exceeds the limitations of the GPDO. As such, this neither represents a realistic fallback position nor justifies something that would be inherently harmful to local character.
12. Although individually larger than those they would replace, the proposed cabinets would take up a similar amount of space on the verge. As such, I have no particular concerns over this element of the proposal. However, this does not alter my view that the mast would result in material harm to the character and appearance of the area. It would also be significantly more harmful than the existing mast. Accordingly, the development would conflict with SLP Policy P15 which seeks, amongst other things, to ensure development conserves and enhances streetscape quality. It would also conflict with Policy P14, which states that the design and external appearance of the apparatus will be taken into account when considering the siting of telecommunications equipment.
13. Paragraph 113 of the Framework states that where new sites are required, telecommunications equipment should be sympathetically designed and camouflaged where appropriate. Notwithstanding the change in position of the equipment, I acknowledge that the wider site is already an established location. However, when considering the overt difference in the scale and nature of the equipment proposed, the development does not escape the requirement for sympathetic design. For the reasons given above, the proposal fails this requirement. In any event, the development would still conflict with paragraph 127 of the Framework, which states that development should function well and add to the quality of the area, be visually attractive and sympathetic to local character.

Living conditions

14. SLP Policy P14 states that in order to protect the living conditions of residents, masts should be at a distance at least twice their height from the nearest residential properties. The proposal would clearly be within 20 metres of the nearest block of flats and thus there is clear conflict with this element of the policy. As already noted, I am also unconvinced that the appellant has demonstrated that alternative sites are not available to accommodate the installation away from this 'sensitive location'.
15. The proposal would be located near to the northernmost block of flats, roughly in line with the edge of the building. The mast would therefore be a prominent feature in the outlook from the nearest windows. The effect of this would be exacerbated by the slight angling of the front elevation of the building away from the line of the road. This would bring the mast more obviously into the outlook of affected windows.

16. The development would not be a slimline or complementary feature in the vein of streetlights or telegraph poles, which are commonplace in residential areas. Rather, it would be a large, imposing and discordant feature. In my view, the presence of this structure would be unduly intrusive and would consequently tangibly diminish the enjoyment of affected rooms to the detriment of any occupant's living conditions.
17. The existing mast is no doubt visible from some of the flats. Nevertheless, it is further from any windows than the proposal and is a more slimline and less bulky feature than that proposed. The impact on outlook is therefore unlikely to be comparable to that which would occur as a result of the development.
18. I therefore find that the development would have an unacceptable impact on the living conditions of nearby residents. Accordingly, there would be conflict with SLP Policy P14 which seeks, amongst other things, to protect and enhance the amenity of existing occupiers. It would also conflict with paragraph 127(f) which seeks to ensure development provides a high standard of amenity for existing users.

Other considerations

19. Paragraph 112 of the Framework advises that high-quality communications infrastructure is essential for economic growth and social well-being. It also states that planning decisions should support the expansion of electronic communications networks, including next generation mobile technology such as 5G. SLP Policy P14 is also generally supportive of the development of communications networks in principle. The development would enable 5G coverage in this area and improvements in 4G and ESN provision. The broad economic and social benefits of this are recognised and are important material considerations in favour of the proposal.
20. The development would also facilitate the sharing of equipment between operators which ought to help minimise the number of installations required. This is consistent with the objectives of national policy. However, as concluded above, there is insufficient evidence to conclude that there are no reasonable alternatives that would maintain 4G coverage, while still providing the benefits associated with 5G. I have therefore given this factor only moderate weight.
21. The appellant has drawn my attention to a number of appeal decisions¹ where Inspectors considered the benefits of development outweighed the harm they had identified. I do not have the full details of each case before me, but it is evident that each of the examples given differ in terms of the scale of mast proposed. I cannot be certain therefore that these proposals are directly comparable to that before me, particularly in terms of the impact on local character or the living conditions of nearby residents. They were also in different local authority areas where different local planning policies may have applied. In any balancing exercise, the outcome will necessarily depend on the particulars of any case. As such, these examples have not had a significant bearing on my decision.
22. I have noted the appellant's technical arguments as to why the mast could not be located on exactly the same spot as the existing structure. I also have no reason to conclude that the height and scale of the mast and other equipment

¹ APP/W0734/A/11/2154882, APP/K2610/W/17/3176890, APPG5180/W/19/3231491

are not the minimum necessary to ensure the equipment is installation in this particular location. However, this does not justify the harm caused by the siting of the mast or its impact on the character and appearance of the area.

Other matters

23. The Council raised no objections on the basis of impact on highway or pedestrian safety or any other factor not considered above. I saw nothing that would lead me to a different conclusion. However, a lack of harm in these respects is neutral and weighs neither for nor against the development.

Planning Balance & Conclusion

24. Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. I have found there would be conflict with the development plan as a whole by virtue of the proposal's impact on local character and appearance, the effect on the living conditions of nearby residents and its failure to comply with the SLP's policies on the siting of telecommunications equipment. While I have had regard to the potential benefits of the development, these do not outweigh the harm that would be caused.
25. There are therefore no material considerations that would lead me to a decision other than in accordance with the development plan in this case. For this reason, I conclude that the appeal should be dismissed.

S J Lee

INSPECTOR