



Appeal Decision

Site visit made on 29 June 2021

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 July 2021

Appeal Ref: APP/P4605/W/21/3271840

Grass Verge On Dogpool Lane, Dogpool Lane, Selly Park, Birmingham, West Midlands B29 7PX

- 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 GPDO).
 - The appeal is made by Cornerstone and Telefonica UK Limited against the decision of Birmingham City Council.
 - The application Ref 2020/06510/PA, dated 14 August 2020, was refused by notice dated 14 October 2020.
 - The development proposed is installation of a 20 m slim-line column supporting 6 no. antennas, 2 no. transmission dishes, a GPS module and 3 no. remote radio units (RRUs) with 1 no. equipment cabinet at the base and ancillary development.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Part 16 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of a 20 m slim-line column supporting 6 no. antennas, 2 no. transmission dishes, a GPS module and 3 no. remote radio units (RRUs) with 1 no. equipment cabinet at the base and ancillary development at the Grass Verge On Dogpool Lane, Dogpool Lane, Selly Park, Birmingham, West Midlands B29 7PX, in accordance with the terms of the application Ref 2020/06510/PA, dated 14 August 2020, and the plans submitted with it.

Preliminary Matter and Main Issues

2. Within certain limits, Class A of Part 16 of Schedule 2 of the GPDO grants permission for the development of telecommunications equipment subject to a prior approval procedure. The GPDO states that the relevant issues when assessing applications of this type are the siting and appearance of the proposed development. I have taken into account the policies of the development plan and the National Planning Policy Framework (the Framework) only in so far as they are relevant to matters of siting and appearance.
3. Having regard to the Council's refusal reasons, the main issues are the effect of the siting and appearance of the proposal on (i) the character and appearance of the area, (ii) the setting and significance of the former Hibernian public house, (iii) the living conditions of the occupiers of nearby residences, and (iv) Selly Park Girls School.

Reasons

Character and appearance

4. The appeal site is a small grassed area containing trees on the junction of Dogpool Lane and Pershore Road. It is in an urban location with largely built up surroundings that include residential, commercial and community buildings. Vertical structures such as lighting columns, traffic lights and road signs are common features on the adjoining streets, particularly along Pershore Road.
5. The development would be on the central part of the verge, surrounded by the trees which would partially screen it, particularly when they are in leaf. Also, nearby buildings and vegetation would obstruct views of the proposal from parts of the adjoining streets. However, the column would be tall and so it would be readily visible when approaching the site along Dogpool Lane, Pershore Road and St Stephens Road. The proposed cabinets would be low and so only noticeable from nearby.
6. As it would be seen amongst trees and near to buildings, the pole would not stand out as an isolated or unduly exposed structure, even though it would be on a corner. The upper part of the column including the antennas and dishes would protrude above the trees and so would stand out in the skyline. However, there are several nearby lamp posts that are tall, in prominent roadside locations and which also stand out against the sky. The pole would be taller and slightly wider than these lamp posts, but nevertheless it would be sited where vertical structures form part of the street scene. As such, it would be compatible with its surroundings.
7. The proposed cabinet would be of similar appearance to others near to the site and it would be typical of the form of structures often seen on roadsides. As such, it would be an appropriate feature on the grass verge.
8. For the above reasons, I conclude the siting and appearance of the proposal would not harm the character or appearance of the area. Whilst not determinative, in these regards the scheme would accord with saved paragraphs 8.55 and 8.55 A to C of the Birmingham Unitary Development Plan 2005 (UDP) and policy PG3 of the Birmingham Development Plan 2017 (BDP). Amongst other things, these look for ground based telecommunications equipment to take advantage of backdrops to buildings and other screening and requires development to respond to the local area context.

The setting and significance of the former Hibernian public house

9. The former pub lies on the opposite side of Pershore Road to the appeal site and on the corner with St Stephens Road. It is not a statutorily listed building but it has been identified by the Council as being an important part of the city's heritage. Its significance appears to lie with its age, its attractive stone and brick street elevations, its unusual roof form and its history as a pub and hotel.
10. The proposal would be set away from the former pub with the Pershore Road in between. Given this separation as well as its narrow width and positioning amongst trees, the slim-line column would not cause any meaningful obstruction to views of the pub. There would be a degree of intervisibility between the pole and the Hibernian on some parts of nearby streets. However, the pub is already seen in the context of lamp posts, some of which are directly

outside the building. As such, the proposal would not be an incongruous feature within its surroundings.

11. For these reasons, I conclude the siting and appearance of the development would cause no harm to the setting or significance of the former Hibernian public house. In these regards, it would accord with BDP policies PG3 and TP12. Amongst other things, these seek to ensure development conserves and responds sensitively to heritage assets and their settings.

Living conditions of the occupiers of nearby residences

12. The nearest residence to the proposal would be a flat at first floor above a food takeaway outlet at 1052 Pershore Road (No 1052). Windows in the flat would directly face the development. However, trees on the verge lie close to the windows and already partly restrict outlook from the flat. These trees would lie between the windows and the proposed column and so, to a degree, they would screen views of the development. Also, while it would extend a significant height above No 1052, the column would be a relatively narrow structure in comparison to the width of the tree canopies. Therefore, it would cause no meaningful obstruction to views from the windows and would have no significant overbearing effect on the flat.
13. There appears to be residential accommodation above shops on the opposite side of Pershore Road with windows that would allow views of the proposal. However, the units would be further away from the development than No 1052 and the windows would not directly face the column. Moreover, other residences on Pershore Road, Dogpool Lane and St Stephens Road are a significant distance from the site. As such, the proposal would cause no detriment to the living conditions of occupants of any other nearby dwelling.
14. Saved paragraph 8.55A of the UDP and the Council's Telecommunications Development: Mobile Phone Infrastructure Supplementary Planning Document 2008 (SPD) encourages the location of telecommunications equipment away from residential areas wherever possible. While the area around the site includes some dwellings, it also includes commercial and community buildings. Therefore, the development would not be in a predominantly residential area and so it would not be contrary to the Council's policy in this regard.
15. In any event, for the above reasons, I conclude the siting and appearance of the development would not cause a significant visual intrusion where seen from any dwelling or result in any other harm to living conditions of nearby residents. As such, in these regards, the siting and appearance of the scheme would accord with UDP paragraphs 8.55 and 8.55 A to C. Amongst other things, these look to ensure telecommunications development has regard to outlook from neighbouring properties.

Selly Park Girls School

16. UDP paragraph 8.55A and the SPD define locations that are more sensitive than others for the siting of telecommunications equipment, including sites adjacent to education facilities. The school lies on the opposite side of Pershore Road from the site and so the proposal would be in a more sensitive location.
17. In such circumstances, the UDP and SPD require evidence that confirms no reasonable alternative sites exist. The appellant has provided details of a search area for the proposal that takes into account its service coverage and

transmission requirements. Also, details are submitted of a number of other sites on private and public land and buildings which have been considered for the proposed equipment but discounted. Reasons for ruling out other sites include insufficient space, highway safety, greater visual impact and structural inadequacies of rooftop sites. The appellant's existing shared site at Ten Acres is ruled out as there is insufficient space for a larger mast which would be needed to accommodate 5G telecommunications equipment.

18. While noting comments that the proposal could be provided elsewhere, there is no substantive technical evidence that contradicts the appellant's submissions in respect of the area of search. Also, there is no convincing argument against the reasons for discounting alternative sites and no other locations are suggested. As such, I am persuaded that there is no reasonable alternative location for the proposal.
19. Moreover, the school officials have been consulted on the scheme and have raised no objections. Also, the development would be on the opposite side of the road and so it would not appear obtrusive from the school grounds.
20. For these reasons, I conclude the siting and appearance of the proposal would be acceptable in terms of its relationship to Selly Park Girls School. In these regards, it would accord with UDP paragraphs 8.55 and 8.55 A to C.

Other considerations

21. A number of other concerns have been raised. The proposal would result in a new telecommunications site. The Framework seeks to minimise the number of such sites and encourages the use of existing masts and buildings for new equipment. However, in this case there is evidence that the possibility of erecting antennas on a building or other structure has been explored and reasonably discounted. Also, for the reasons set out under the first main issue, the scheme would be sympathetic to its context. Consequently, the proposal would accord with the Framework in respect of new telecommunications sites.
22. The Council's submissions indicate the proposal would be a reasonable distance from the boundary of Selly Park Conservation Area (the CA) and no concern is raised by the Council that the proposal would harm its significance. Given my findings in respect of the first main issue, there are no grounds for me to arrive at a different conclusion on this matter. Therefore, I find the scheme would not harm the setting, character or appearance of the CA.
23. I am advised of a proposal to redevelop No 1052 and adjoining land to provide new student accommodation. From the limited information before me, it would appear that the proposed building would not be any closer to the appeal development compared to No 1052. Therefore, having regard to my conclusion on the third main issue, the column would not cause an unacceptable effect on the living conditions of occupiers of the student accommodation. Moreover, as it would only take up a small proportion of the area, the appeal proposal would not prevent enhancements to the grass verge.
24. The evidence includes certification that the development would not exceed International Commission guidelines on non-ionising radiation protection when in operation. The Framework indicates that such a statement is sufficient to demonstrate a proposal would include appropriate health safeguards and so the scheme would be acceptable in these regards.

25. The development would be on the opposite side of Dogpool Lane to St Andrew's Healthcare Centre. Sites adjacent to health institutions are defined as more sensitive locations for telecommunications equipment under UDP paragraph 8.55A and the SPD. However, there is no substantive evidence that shows the scheme would affect electronic equipment at the hospital. Moreover, having regard to my reasoning and conclusion in respect of the fourth main issue, I find the siting and appearance of the development would be acceptable in terms of its relationship to the health centre in light of the UDP and SPD.
26. Reference is made to a highway improvement line, although no details of any proposals have been provided. The Council raise no concerns that the scheme would prejudice highway works and there is no reason for me to arrive at a different view on the matter. Also, as it would be situated away from the road edge and off the pavement, the development would not obstruct the visibility of road users nor significantly hinder traffic or pedestrian movement.
27. As it would have a small footprint, works to construct the scheme are likely to affect only a minor proportion of the nearby trees' roots and canopies. In the absence of any firm evidence that indicates otherwise, I find the development would not cause harm to the general well-being of the trees.
28. Various appeal decisions relating to telecommunication developments have been referred to me, some of which have been allowed and some dismissed. The range of decisions illustrate how the characteristics of a site and the effect of telecommunications development on an area are often very specific to the particular proposal. As such, it is unlikely that a decision to allow this appeal would set a precedent that is bound to be followed in the consideration of any other scheme.
29. I am advised that a telecommunications development proposal relating to the site was refused approval by the Council in 2005 and subsequently dismissed at appeal. Limited details on this scheme are before me and it is unclear from the submissions as to the factors that influenced these decisions. In any event, I am required to consider this proposal in light of current circumstances and evidence. As such, the previous decisions do not set a precedent that I am bound to follow.
30. There is no justification to dismiss the appeal for any of the above reasons. Hence, the concerns raised do not affect or override my conclusions on the main issues.

Conditions and Conclusion

31. There is no authority in this type of case to apply any further conditions beyond those as set out in the relevant part of the GPDO. For the reasons given above, I conclude that the appeal should be allowed.

Jonathan Edwards

INSPECTOR