

Appeal Decision

Site visit made on 20 July 2021

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2021

Appeal Ref: APP/P4605/W/21/3271271

Grass verge opposite 463-465 Shenley Lane, Selly Oak, Birmingham B29 4HZ

- 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 Telefonica UK Ltd against the decision of Birmingham City Council.
 - The application Ref 2020/08232/PA, dated 16 October 2020, was refused by notice dated 7 December 2020.
 - The development proposed is an application for Prior Notification for the proposed telecommunications installation of a 20m height column supporting 6 no. antennas, 2 no. 0.3mm microwave dishes, 1 no. equipment cabinet and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address and description of development in the banner heading above is taken from the decision notice, which is more detailed than the description given in the application form.
3. During the course of the appeal, the updated National Planning Policy Framework (July 2021) (the Framework) was published. The parties were provided with an opportunity to comment on the relevance of this, and I have taken any subsequent comments received into account in my determination of this appeal.
4. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.
5. While the appellant disputes the consistency of the development plan policies and supplementary guidance with the Framework, the relevant provisions of the GPDO do not require regard to be had to the development plan. Accordingly, I have had regard to these policies and related supplementary guidance only in so far as they are a material consideration relevant to matters of siting and appearance. They are not, in themselves, determinative.

Main Issue

6. The main issue is the effect of the siting and appearance of the proposal on the character and appearance of the area, including the setting of heritage assets, and whether any harm caused is outweighed by the need to site the installation in the location proposed having regard to the potential availability of alternative sites.

Reasons

7. The appeal site comprises a grass verge adjacent to Shenley Lane, a busy dual carriageway. The surrounding area is mostly suburban in character, comprised predominantly of two-storey buildings. The houses along Shenley Lane are set well back from the highway while Manor Farm Park is an expanse of high-quality open space on the appeal site side of the road. As a result, the area has an open, spacious and verdant character, with trees and wide grass verges further contributing positively to the character of the area. The proposal includes a telecommunications mast of 20m height with 6no antennas and 2no microwave dishes attached with a ground level equipment cabinet.
8. There are a number of existing vertical features in the area surrounding the site, including streetlights, traffic signals and highway signs. There is also an existing telecommunications mast of approximately 13.8m height with associated cabinets. This mast is of similar width and only slightly taller than the streetlights meaning it does not appear as prominent in the streetscene. By comparison, the proposed 20m mast with antennas and dishes would be considerably taller than the existing trees and street furniture and noticeably broader.
9. The installation would therefore be highly visible to passers-by on Shenley Lane and users of the footpath and park. While I understand the mast must be taller than other objects in order to 'see' over obstructions, the large size and utilitarian appearance of the proposed equipment would appear out of scale and overly prominent within its immediate setting. This is regardless of whether the appeal site is located within a designated landscape.
10. As defined within the Framework, the setting of a heritage asset is the surroundings in which the heritage asset is experienced. As such, a proposed development which could be seen from, or in conjunction with, any heritage assets would potentially affect their setting.
11. The appeal site is located approximately 70m from No.7 (Old Park Farm) and Outbuildings to the Rear of No.7, both of which are Grade II Listed Buildings. These designated heritage assets are located off Whitehill Lane with Manor Park Farm to the rear. The significance of the Listed Buildings derives from their aesthetic value and historic association with the development of the area, including Manor Farm Park which has aided in the area retaining some of the open and rural character the farm would have had. The setting therefore makes a significant contribution to the significance of the Listed Buildings.
12. I accept that there is a band of tree coverage between the rear of the Listed Buildings and the appeal site which would block most intervisibility between the locations. However, the mast would appear as a stark and intrusive feature when viewed from within the park and therefore the setting of the Listed Buildings.

13. Following on from my reasoning that the siting and appearance of the mast would represent an intrusive and harmful feature in the street scene, it follows that the proposal would also adversely affect the setting in which No.7 (Old Park Farm) and Outbuildings to the Rear of No.7 are experienced. Whilst I accept that the harm would be limited, nevertheless any harm should require clear and convincing justification. In terms of the approach set out in paragraph 202 of the Framework, due to the scale of the proposal and relationship to its surroundings, the harm to the significance of the heritage asset would be less than substantial. In such cases, harm should be weighed against the public benefit of the proposal.
14. The appellant has pointed to a lack of alternative available sites because of the area that the proposed mast would serve. The information that I have in this regard is of a limited nature, especially as to whether alternative locations would be as prominent. There is also limited explanation on why landowners of disregarded locations refused to allow the mast to be located on their land. The Framework states that applications for electronic communications development should be supported by the necessary evidence to justify the proposed development. In this case, such evidence is lacking as regards alternative sites.
15. I therefore conclude that the siting and appearance of the development would have a harmful visual effect on the character and appearance of the local area and would not preserve the setting of the nearby heritage assets. This would be contrary to saved paragraphs 8.55 and 8.55 A-C of the Birmingham Plan Unitary Development Plan (adopted October 2005) (the UDP). These paragraphs advise telecommunications equipment will only be acceptable in sensitive areas, such as Listed Buildings, if the applicants are able to demonstrate that there is no other suitable location. The proposal would also be contrary to the Telecommunications Development: Mobile Phone Infrastructure Supplementary Planning Document (SPD) (adopted March 2008) which advises that within the City in sensitive locations, which include listed buildings, telecommunications equipment will only be acceptable if the applicants are able to demonstrate that there is no other suitable location.

Other Considerations

16. I have found that the proposal would harm the character and appearance of the local area and would cause less than substantial harm to the significance of a designated heritage asset. Nevertheless, paragraph 115 of the Framework also recognises the need for telecommunications equipment to be sympathetically designed and camouflaged where appropriate. Even if I were to accept the appellant's claim that there are no other suitable sites in the area, albeit this has not been suitably demonstrated in the evidence before me, I am not satisfied that appropriate consideration has been given to minimising the visual impact of the installation in relation to the local area, and the setting of nearby Listed Buildings. Heritage assets are an irreplaceable resource and as per the Framework great weight should be given to their conservation. Therefore, although the Government aims to facilitate the growth of new telecommunication systems, it also places great emphasis on protecting areas and buildings of architectural or historic importance.
17. There is clear need for, and importance of, the rollout of the 5G network. The proposed monopole is said by the appellant to be the minimum height and width possible to accommodate multiple-generation technologies, which cannot

- be placed on the existing mast nearby due to transmission issues. Given the ongoing pandemic the need for suitable telecommunications infrastructure to accommodate home working has become very apparent in many people's lives and this carries significant weight in favour of the proposal.
18. The Framework is clear in paragraph 114 that the provision of high-quality communications infrastructure is essential for economic growth and social well-being. It also outlines that the expansion of electronic communications networks, including next generation mobile technology, should be supported. The proposal would facilitate up to 5G coverage and I have had regard to the public benefits of this technology to local residents, visitors and businesses in the area. I have also taken into account that the scale of the mast and equipment are the minimum possible to achieve the required coverage and comply with the International Commission on Non-Ionizing Radiation Protection guidelines. Cumulatively, these factors and public benefits weigh significantly in the scheme's favour.
19. I acknowledge that telecommunications equipment is now a common feature of the built environment. However, the surrounding environment changing over time does not justify any and all development, and potentially places more importance on maintaining that openness and coherence of scale which remains (as attesting to the historic development of the Listed Buildings and their locale).
20. I have had regard to the appellant's statement of case including comments that the proposal would not have an adverse effect on the living conditions of neighbouring occupiers. This matter is not in dispute and a lack of harm would be neutral in the decision-making process rather than weighing in favour of the proposal.
21. My attention is drawn to several other proposals for telecommunications equipment, including masts, in the area which were the subject of both planning applications and appeals. However, these developments would have had their own site-specific circumstances which led to their approval. While I agree in general that consistency in decision making is important, it does not follow that this proposal should be approved on this basis. Accordingly, I have determined the appeal scheme on its own merits, having regard to its own individual context.

Conclusion

22. Having regard to all of the above, the weight that I attach to the public benefits and other factors in favour of the proposal would not be sufficient in this case to outweigh harm to the character and appearance of the area and the less than substantial harm that would be caused to the designated heritage assets as a result of the siting and appearance of the development.
23. The proposal would therefore, for the reasons set out above, be contrary to the relevant identified policies of the development plan, and the Framework. I therefore conclude that the appeal should be dismissed.

C McDonagh

INSPECTOR