



Appeal Decision

Site Visit made on 13 October 2021

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2021

Appeal Ref: APP/P4605/W/21/3277631

Claremont Road, Jewellery Quarter, Birmingham B18 5LT

- 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 Hutchison UK Ltd against the decision of Birmingham City Council.
 - The application Ref 2021/03463/PA, dated 11 April 2021, was refused by notice dated 8 June 2021.
 - The development proposed is 15 m Phase 8 Monopole C/W wraparound cabinet at base and associated works.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and 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 15 m Phase 8 Monopole C/W wraparound cabinet at base and associated works at Claremont Road, Jewellery Quarter, Birmingham B18 5LT, in accordance with the terms of the application Ref 2021/03463/PA, dated 11 April 2021, and the plans submitted with it.

Preliminary Matters

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 proposal. Prior approval cases such as this are not required to be determined in accordance with the development plan or National Planning Policy Framework (the Framework), although planning policies may be relevant as material considerations.

Main Issues

3. The main issues are the effect of the siting and appearance of the proposal on the Jellybean Pre-School Nursery (the nursery) as well as the general character and appearance of the area.

Reasons

4. The development would be positioned adjacent to a line of trees and a grass area that lie in the nursery grounds. The monopole would be away from the nursery building and it would be narrow and only slightly taller than the trees.

Therefore, the proposal would be shielded to a significant degree and it would not cause an unacceptable visual intrusion when viewed from the nursery.

5. Also, the submissions includes certification that the development would not exceed International Commission guidelines on non-ionising radiation protection when in operation. This is sufficient to demonstrate it would include appropriate health safeguards to users of the nursery.
6. Moreover, the mast would be in an urban area dominated by the main A41 Soho Hill road. Part of this highway is elevated as it passes the site with tall lighting columns in exposed positions to the side of the road. In contrast, the monopole would be erected on a lower level and on the back of the pavement away from the carriageway. Also, a nearby group of roadside trees as well as the trees at the nursery would screen and provide a backdrop to the development. Consequently, the proposal would not appear unduly prominent or incongruous in its surroundings. Instead, it would integrate sensitively into the area.
7. The Council's Telecommunications Development: Mobile Phone Infrastructure Supplementary Planning Document 2008 (the SPD) and saved paragraph 8.55A of the Birmingham Unitary Development Plan 2005 (BUDP) defines sites adjacent to education institutions as locations that are more sensitive than others for telecommunications equipment. The proposal would be just outside the boundary to the nursery and so would be in a more sensitive location. In such circumstances, applicants are required to demonstrate there is no other suitable location.
8. The appellant has considered and discounted a number of alternative sites for the proposal. While the explanations are brief, I find no reason to dispute the rationale for discounting these alternatives. However, contrary to the terms of the Framework, the evidence fails to show that existing buildings in the surrounding area have been contemplated as options to accommodate the proposed equipment. As such, the evidence does not demonstrate there are no other suitable locations for the proposal.
9. Therefore, the scheme would not fully accord with the saved paragraphs 8.55 and 8.55 A to C of the BUDP, the SPD and the Framework. However, in the assessment of prior approval applications such a conflict with policy is not determinative. In the absence of any identifiable actual harm, the non-compliance with policy attracts limited weight. The Council does not dispute the proposal would bring social and economic advantages in terms of enhancing the telecommunications coverage for the surrounding area. Such benefits attract significant weight and provide sufficient justification to allow the scheme, despite the conflict with the BUDP, the SPD and the Framework.
10. For the above reasons, I conclude the siting and appearance of the development would have no harmful effect on the nursery or the general character and appearance of the area. The proposal would not fully accord with the terms of the BUDP, the SPD and the Framework but other considerations are of sufficient strength to justify granting approval.

Other Matters

11. Reference is made to Santon Works, a grade II listed building that at least partly derives its significance from its attractive front elevation. The proposal

would be set away from this building with the main road in between and so there would be little intervisibility between the two. As such, the scheme would not harm the setting or significance of Santon Works.

12. Also, the Soho and Lozells Conservation Area (the CA) is referred to. As it would not be detrimental to the character and appearance of the general area, the development would avoid harm to the setting or significance of the CA.

Conditions and Conclusion

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

Jonathan Edwards

INSPECTOR