



Appeal Decision

Site Visit made on 26 October 2021

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2021

Appeal Ref: APP/P4605/W/21/3272943

Victoria Road, Newton, Birmingham, B6 5EJ

- 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 Hutchison 3G UK Ltd against the decision of Birmingham City Council.
 - The application Ref 2020/07845/PA, dated 26 September 2020, was refused by notice dated 26 November 2020.
 - The development proposed is a 20m Phase 8 Monopole C/W wraparound cabinet at base and associated ancillary works.
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Decision

1. The appeal is allowed and prior approval is granted for a 15m Phase 8 monopole complete with a wraparound cabinet at base and associated ancillary works at land outside 74 Victoria Road, Newton, Birmingham B6 5EJ in accordance with the terms of application Ref 2020/07845/PA, dated 26 September 2020, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: BHM10824-M002 Rev B – 002 Site Location Plan, BHM10824-M002 Rev B – 210 Proposed H3G Site Plan, and, BHM10824-M002 Rev B – 260 Proposed H3G Elevation.
 - 2) Prior to first use, the mast and associated equipment hereby approved shall be externally treated in a colour to be agreed in writing with the local planning authority. Thereafter the mast and equipment shall be maintained in accordance with the agreed colour for the life of the development.

Preliminary Matters

2. The address and description appearing in the banner heading above are taken from the application form. During the course of the application, the appellant revised the proposal to reduce the overall height of the monopole to 15m. Accordingly, I have considered the proposal on the basis of the reduced height proposal and referred to it in my decision above. I have used the address stated by the Council on its Decision Notice as this provides a more accurate description of the proposed location of the development.
3. The appeal follows a decision by the Council not to grant prior approval for the siting or appearance of a development that would otherwise be permitted under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). The

principle of the development is therefore established and the scope of this appeal is limited to the effects of its siting and appearance.

4. For telecommunications development, the provisions of the GPDO do not require regard be had to the development plan. However, I have had regard to the saved Policies 8.55-8.55C of the Birmingham Unitary Development Plan 2005 (UDP), Policy PG3 of the Birmingham Plan 2031 and the National Planning Policy Framework (the Framework) only insofar as they are material to the matters of siting and appearance.

Main Issues

5. The main issues are:

- the effect of the proposal on the character and appearance of the locality
- the effect of the proposal on the setting of the Grade II listed Christ Church Chapel
- if any harm is caused, whether it is outweighed by other considerations.

Reasons

Character and appearance

6. The proposed site is located on a busy road corridor linking large junctions on both the A34 and the A38. The road consists of predominantly 2 and 3-storey houses with some pockets of commercial and community facilities along the northern side. To the south are modern terrace blocks set behind a wide landscaping strip incorporating a mature deciduous tree line. An area of open space lies opposite the site.
7. The proposal for a 15m open-head mast with integral base cabinet would be sited alongside a row of three new cabinets. The group would be located close to a modern health centre building by the junction of Victoria Road with Whitehead Road. On the Victoria Road frontage, the building has an open forecourt contiguous with a wide pavement area. The area lies adjacent to a signalled pedestrian crossing and features boundary railings, bollards, some young street trees and a light column.
8. The siting of the apparatus would be such that there would be few direct-facing views from surrounding residential properties. Offset views from properties on the opposite side of the road would be filtered by the existing street trees. Although this effect would vary at different times of the year, taken with the intervening distances, it would limit the visual impact from those properties.
9. The development would be experienced in the outlook from the adjacent health centre. The close proximity would limit the range of views to only the lower or intermediate sections of the mast such that it would not create a significant sense of overbearing to those within the building.
10. The reduction of the mast to the minimum operationally viable height would maximise the screening effect of the street trees. The broader framing arising from the open spaces opposite and views against the backdrop of the nearby buildings would provide some moderation of the structure's scale. Nevertheless, notwithstanding that the proposal utilises an industry standard form of mast, the height and large diameter of the pole and headset would be

a prominent and discordant feature in an area of predominantly 2 and 3 storey development. This would lead to a minor adverse impact on the visual amenity of the locality.

Listed building

11. For development which affects a listed building or its setting, Section 66(1) of the (Listed Buildings and Conservation Areas) Act 1990, requires a decision maker to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
12. The Council estimates the proposed siting of the mast to be approximately 188m from Christ Church Baptist Church and 159m from the original Aston Library, which are Grade II listed buildings. There is little direct visual or functional linkage between the site and the Aston Library building. Accordingly, I find that the proposed development would not adversely affect its setting.
13. The Christ Church Baptist Church is an impressively detailed ornate brick building with inset stone detailing and a prominent stone spire and finials. It is located at the western end of Victoria Road and partly set forward of the main building line on the northern side of the road. Consequently, the spire forms a focal element in the closing vista of Victoria Road when travelling along it from the east.
14. As I have found above, the combined effect of the height and diameter of the pole and headset would cause it to be visually prominent in the locality. It would visually compete in the long views of the church spire. Whilst the effect is somewhat tempered by the intervening distance, this would be a detracting feature in those important views and harmful to the setting of the listed building.
15. In the context of the Framework, the extent of overall harm of the proposal would be less than substantial given the nature of the development and the intervening distance. Paragraph 202 of the Framework advises that such harm should be weighed against the public benefits of the proposals. This is a matter to which I return below.

Other Matters

16. Saved Policies 8.55-8.55C of the Birmingham Unitary Development Plan (UDP), in conjunction with the Council's Telecommunications development: Mobile Phone Infrastructure Supplementary Planning Document [2008] (SPD) describes locations adjacent to health institutions as being sensitive. For new facilities, the SPD reflects the requirement at Paragraph 117 of the Framework for the proposals to be supported by the necessary evidence to justify the siting of the development. This seeks evidence that the applicant has explored and discounted other options, including the possibility of erecting antennas on an existing building, mast or other structure. The demonstration of agreement with the relevant health institution is not a requirement of the Framework; the SPD is therefore out of date in this respect.
17. The appellant has provided detail of the area of limited coverage and capacity in the nearby primarily residential areas. The technical restrictions which require improved line of sight for 5G masts and subsequent necessity for the mast head to clear nearby obstructions are also outlined. According to the appellant, a number of alternative sites were assessed and discounted on

various grounds. An additional site in close proximity to existing base stations was also suggested by the Council.

18. There are some discrepancies between the information accompanying the application for prior approval and that submitted with the appeal. In either case, the reported information is deficient as it is not supported by objective evidence to demonstrate the findings. However, at my site visit I observed that the area requiring additional coverage is predominantly high-density residential development about streets of often limited width. This restricts opportunities for siting. Furthermore, there are few buildings or existing structures that would offer sufficient height to offer other viable options. Nevertheless, I find there would be a conflict with the Framework requirements in regard to evidence of the consideration of other siting opportunities.
19. In support of the proposal, the appellant highlights the Government's aim of supporting high quality communications. Paragraph 114 of the Framework sets out the objectives for communications infrastructure. It states that: 'Advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections. Policies should set out how high-quality digital infrastructure, providing access to services from a range of providers, is expected to be delivered and upgraded over time; and should prioritise full fibre connections to existing and new developments (as these connections will, in almost all cases, provide the optimum solution).'
20. The proposal would provide social and economic benefits by improving existing levels of coverage and ability to deliver 5G coverage in the future. It would deliver faster connections, increase capacity and greater connectivity to facilitate productivity, innovation and efficiency. The proposal would support home working in a predominantly residential area and serve two providers on a single shared facility. This could be achieved without impeding pedestrians or vehicles.

Planning balance

21. For the reasons set out above, I have found that the mast would cause limited harm to the character and appearance of the locality. It would cause less than substantial harm to the setting of a listed building. I have also found that the evidence of the survey effort in regard to other potential sites in the search area to be limited such that there would be a conflict with a requirement of the Framework.
22. However, when weighed against the public benefits arising from the proposed improvement to telecommunications infrastructure and the associated social and economic benefits, as presented by the appellant, I conclude that the totality of the harm identified would be outweighed in the particular circumstances of the case.

Conditions

23. Standard conditions are set out in the GPDO for development by electronic communications code operators. However, I find that it is necessary for me to impose a condition to specify the relevant plans as this provides certainty. In

addition, a condition requiring an appropriate colour treatment of the mast to moderate its appearance in the locality is necessary and reasonable in the circumstances of the case.

Conclusion

24. For the above reasons, the appeal should be allowed.

R Hitchcock

INSPECTOR