



Appeal Decision

Site Visit made on 26 October 2021

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 18 November 2021

Appeal Ref: APP/Z4310/W/21/3279581

Central Reservation of Aigburth Road (Opposite Belgrave Road), Liverpool L17 4LF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of the Town & Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).
 - The appeal is made by Hutchison 3G UK Ltd against the decision of Liverpool City Council.
 - The application Ref 21PT/1217, dated 12 April 2021, was refused by notice dated 24 May 2021.
 - The development proposed is the installation of an 18 metre high monopole supporting 6 no. antennas and 2 no. transmission dishes, 4 no. equipment cabinets and development works ancillary thereto.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The provisions of the GPDO 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.
3. The Council has referred to a number of development plan policies in its decision notice. However, the principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. As such I have had regard to the policies of the development plan, emerging development plan policies and the Framework¹ only in so far as they are material considerations relevant to matters of siting and appearance.
4. In respect of policies in the Emerging Plan², which is at an advanced stage of preparation, I agree that due to outstanding general objections and range of main modifications Policy STP5 is considered to have limited weight as a material consideration. However, Emerging Plan Policy HD1, which relates to Heritage Assets, provides a detailed approach to the consideration of proposals affecting designated and non-designated heritage assets. I find the approach has broad alignment with the Framework's aims to conserve and enhance the historic environment and, in the absence of evidence to suggest significant

¹ The National Planning Policy Framework (2021)

² The Liverpool Local Plan 2013-2033 – Pre-submission draft (2018)

unresolved objections remain, I find emerging Policy HD1 is entitled to significant weight as a material consideration.

Main Issues

5. The main issues are:

- Whether or not the siting and appearance of the proposed development would preserve or enhance the character or appearance of the Lark Lane Conservation Area; and
- In the event of any harm to the significance of designated heritage asset being found, whether or not this would be outweighed by the need for the installation in the proposed location, the lack of less harmful alternative sites, and the proposal's public benefits.

Reasons

Conservation Area

6. The appeal site forms part of a grassed central reservation on Aigburth Road, which is a wide, main arterial route into Liverpool, and sits facing the junction with Belgrave Road. The central reservation along this busy highway contains a number of mature trees and a range of street furniture, including lighting columns, pole mounted CCTV, road signals, traffic lights, and a telecommunication monopole.
7. The surrounding area is predominantly commercial in character, however there is terrace housing and a school nearby. On the basis of the evidence before me it also appears that the appeal site is located on the edge of, but within the Lark Lane Conservation Area (the Conservation Area).
8. The terms of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 require me to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. I have been provided with limited information on the Conservation Area as a whole and its significance as I do not have the conservation area appraisal for this heritage asset before me. However, based on my site observations, I consider its significance to derive from its large Victorian villas and terraces, street patterns and connection to Sefton Park.
9. Despite the presence of street furniture and trees nearby, the relatively spacious and open character of the Aigburth Road dual carriageway, of which the appeal site forms a part of, helps to frame views of the villas and buildings within the Conservation Area. It thereby positively contributes to the significance of this heritage asset.
10. I note that the Council's decision notice makes no reference to the proposed ground base cabinets but to the monopole only. The appellant contends that the associated ancillary equipment cabinets are within the size limits to be classified as permitted development. However, I am not convinced that there is a greater than theoretical possibility that the installation of the cabinets on their own may occur. In any case, the proposal before me relates to the whole installation, and I have therefore considered the impact of all of the proposed equipment on the character and appearance of the area. In this regard, I acknowledge that the cabinets are proposed to be coloured dark green and

would be seen in the context of other low level street furniture on this landscaped reservation. Accordingly, I have no reason to question the Council's lack of objection in this regard.

11. The Council has raised concerns, however, about the siting of the proposed monopole in close proximity to a previously approved mast (Ref: 20PT/2587) to either side of a junction which forms the main entrance into the Conservation Area. Nonetheless, this mast was not erected at the time of my site visit and does not form a part of the immediate local context. I have therefore taken the present condition of the surroundings as the starting point for assessing the impact on character and appearance.
12. In views along Aigburth Road the mast is likely to be reasonably well screened by the trees, particularly in the summer months. Even in winter, the trees would offer some screening. However, the mast would be appreciably taller than the nearby lamp posts and would clearly project above the trees. Consequently, regardless of any potential changes in its colour, I am in no doubt that the proposed monopole would be seen by road users and pedestrians along Aigburth Road.
13. It would also be clearly seen from Belgrave Road. From this direction there is a gap in the trees, and it would, despite its design, appear as a bulky, dominant and intrusive feature, particularly when seen against the skyline and the side elevation of the large detached Victorian villa on Parkfield Road, that sits within the Conservation Area. As a consequence, the proposed monopole would visually distract from views into the Conservation Area and therefore have a materially harmful effect on its significance.
14. Both main parties are in agreement that the subsequent harm, in the parlance of paragraph 201 of the Framework, would be 'less than substantial' and for the reasons above I have no reason to disagree. Paragraphs 199 and 200 of the Framework explain that great weight should be given to the conservation of a designated heritage asset, and any harm requires clear and convincing justification. In paragraph 202 it goes on to state that where a proposal would lead to less than substantial harm to the significance of such an asset that this harm should be weighed against the proposal's public benefits, and I will turn to these below.
15. In so far as they are a material consideration, the proposal would therefore be contrary to Saved UDP³ Policies HD11 and HD27 and Emerging Plan Policies STP5 and HD1. Amongst other matters, these require proposals for masts and other structures to have regard to the visual impact on the built and natural environment, and for all new development to conserve or enhance the historic environment, and protect important views and vistas within, into and out of the conservation area.

Need, Alternatives and Public Benefits

16. The Framework recognises that high quality and reliable communications infrastructure is essential for economic growth and social well-being. It therefore supports the expansion of electronic communications networks, including 5G.

³ The City of Liverpool Unitary Development Plan (2002)

17. As such I am mindful of the economic and social benefits of providing and enhancing electronic communication infrastructure. In this case, there is no dispute that the equipment is needed to provide a 5G network and to infill coverage and capacity, and future projected increases in demand for this part of Liverpool. Nor is there any contention of the substantial benefits to mobile connectivity and the network (access and speed) to a multitude of users, device, services and sectors, which have been demonstrated during the coronavirus pandemic. These public benefits, weigh in favour of the proposal.
18. Nonetheless, the Framework requires the number of masts and the sites for such to be kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion. It states that the use of existing masts, buildings and other structures is encouraged. Additionally, paragraph 117 of the Framework advises that applications for electronic communications development (including applications for prior approval under the GPDO) should be supported by the necessary evidence to justify the proposed development. For a new mast or base station, this should include evidence that the applicant has explored the possibility of erecting antennas on existing buildings, masts, or other structures.
19. The Council argues that the appellant has not properly addressed the possibility of sharing the recently approved 17.5 metre high EE mast (Ref: 20PT/2587) to the east of the appeal site. The appellant contends that a substantial increase in the scale of this installation, in terms of its height and bulk, and additional cabinets would be required to provide the enhanced connectivity, which they state is likely to involve either a lattice tower or a large open headframe.
20. I appreciate that it may be the case that two slimline masts may cause less harm to the appearance of the area than the design, style and size of equipment that would be required for the redevelopment of the existing mast, in a more open location. However, the Council has questioned how the appellant and EE can supply shared masts elsewhere in the city that do not have open headframes and has drawn my attention to an example on Aigburth Road which indicates that a shared mast of acceptable design could be achieved. Additionally, other than for an image of an open headframe in its statement of case the appellant has not provided any details of what the appearance of the mast on the approved site would be like, including its height, should it be redeveloped. It is therefore not possible for me to compare the two options and reach an opinion regarding their respective effects on the appearance of the area.
21. The appellant has provided brief comments in an email which indicate that they have a site sharing agreement with EE where their coverage requirements align, and that EE do not have a current requirement to share on the pole. However, little substantive evidence has been provided by EE to collaborate this and demonstrate that this option would not be feasible.
22. On the basis of the evidence before me I am therefore not convinced that the appellant has adequately explored whether there may be less harmful alternatives. As a result, it has not been demonstrated that the public benefits outlined above could not be achieved by redeveloping the approved mast, which would be preferable in respect of siting and appearance. In this instance the public benefits associated with the proposal therefore carry limited weight.

Other Matters

23. My attention has been drawn to a number of appeal decisions⁴ that relate to the public benefits of telecommunications proposals, the lack of alternative sites and the effect on the character and appearance of an area. Whilst I have had regard to the appellant's points on these cases, I can confirm that these have not been decisive in my assessment of this appeal as I have determined it based on its own merits.
24. I am also aware that the proposal has been reduced in height since the previously refused application (Ref:20PT/3191) and that the Council has not raised any concerns in respect of its effect on listed buildings, trees and residential amenity. However, the absence of harm in these respects would be neutral in any planning balance and therefore does not attract any positive weight in favour of the proposal.

Planning Balance and Conclusion

25. Although the harm caused by the proposal would be less than substantial in Framework terms, it would nonetheless be significant, and any harm caused to a designated heritage asset is a matter that attracts considerable weight and importance. With that in mind, neither the public benefits of the scheme, nor any other material consideration, including national planning policy, the operational and locational needs of the operators, or the possible sharing capabilities of the proposal outweigh the harm that would be caused to the significance of the heritage asset.
26. As such, the proposal would fail to preserve the character and appearance of the Conservation Area. For the reasons above I therefore conclude that the appeal should be dismissed.

Mark Caine

INSPECTOR

⁴ APP/L1765/W/18/3197522, APP/V5570/W/20/3246770, APP/G5180/W/19/3231491, APP/Z4310/W/21/3269643