



Appeal Decision

Site visit made on 4 January 2022

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 25 January 2022

Appeal Ref: APP/Z4310/W/21/3281636

Land at Brodie Avenue, Mossley Hill, Liverpool L19 7NT

- 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 MBNL EE (UK) Ltd and H3G (UK) against the decision of Liverpool City Council.
- The application Ref 20PT/1300, dated 19 May 2020, was refused by notice dated 17 May 2021.
- The development proposed is the installation of a 20 metre phase 8 pole with wrap around cabinet built around the base, 3no. new equipment cabinets and ancillary development thereto.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The name of the applicant is given as MBNL EE (UK) Ltd and H3G (UK) in the original planning application forms, but the appellant's details are specified as Mr Will Osborne of MBNL in the submitted appeal forms. However, an email has been submitted to confirm that MBNL EE (UK) Ltd and H3G (UK) is the appellant. I have therefore used this name in the banner heading above.
3. 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.
4. 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 National Planning Policy Framework (the Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.
5. The Liverpool Local Plan 2013-2033 – Pre-submission draft (2018) (Emerging Plan) is not adopted and the consultation on the main modifications is yet to take place. I do not have any firm details of the extent and nature of the main modifications nor of the resulting outcome of the consultation exercise. As such, and in accordance with Paragraph 48 of the National Planning Policy Framework, I give only moderate weight to policies of the Emerging Plan.

Main Issue

6. The main issue is the effect of the siting and appearance of the proposed development upon the character and appearance of the area.

Reasons

7. The appeal site forms part of a grassed central reservation on the busy wide Brodie Avenue highway. It sits adjacent to the junction with Ravenstone Road and Stairhaven Road. Whilst there are some commercial properties nearby the surrounding area is predominantly residential with a number of two storey detached houses set out in a linear pattern and principally orientated to face Brodie Avenue and the appeal site.
8. Brodie Avenue contains a range of street furniture and is framed by regularly spaced lighting columns, bus shelters and road signs. However, other than for a road sign and an existing telecommunication monopole with equipment cabinets, its central reservation is dominated by mature trees.
9. The appellant has emphasised that the siting and height of the proposed mast arises from technical and operational requirements, and that the proposed design is the only version available that would accommodate all technologies while still being shared by 2 independent network operators. I also appreciate that it would not be located in a designated area such as a Conservation Area or near to any listed buildings.
10. Nonetheless, the proposed monopole would be appreciably taller, bulkier and more prominent than the existing telecommunications pole to be retained, and the street lighting columns throughout the street scene. The site is also located on a small section of the central grassed reservation where there are no trees and is relatively open in nature. Moreover, the proposed mast would be appreciably taller than and clearly project above the nearest trees along this landscaped strip. As Brodie Avenue is a long, wide and straight road, the proposal would therefore be readily visible from long distances in the approach from either direction and would become a focal point in its own right.
11. In addition, the proximity of the existing mast to the appeal proposal would serve to draw the eye, and further accentuate the visual presence, resulting in a harmful cumulative effect. This would be exacerbated by its open and relatively exposed location near to the junctions of Ravenstone Road and Stairhaven Road. It would thereby appear prominent in views from these highways, and a number of houses and vantage points. These factors, in combination with the general clutter that would result from the associated cabinets, would have a significant, negative visual impact on the character and appearance of the area.
12. I appreciate that the appeal proposal is referred to as a replacement installation. However, the appellant's evidence is ambiguous in respect of when the existing monopole will be replaced. The plans show this structure and a number of equipment cabinets to be retained. The appellant also states that the existing equipment is required to be retained in the short term and that it will be decommissioned some time after the erection of the proposed development. However, there is little indication or information before me to substantiate when this may be.

13. I also recognise that the GPDO imposes a condition to ensure that any apparatus or structure provided in accordance with that permission is removed as soon as is reasonably practicable after it is no longer required for electronic communications purposes. Nonetheless, there is little evidence to confirm that the existing mast benefits from any such type of permission or planning condition.
14. The appellant also contends that the siting, appearance and number of associated equipment cabinets have not been questioned by the Council in its delegated officer report. It also considers that these 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 effect of all of the proposed equipment on the character and appearance of the area.
15. In so far as they are a material consideration, the proposal would therefore be contrary to Saved Policy HD27 of The City of Liverpool Unitary Development Plan (2002) and Policy STP1 of the Emerging Plan. 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 ensure attractive residential neighbourhoods across the City. The proposal would also conflict with the Framework in respect of equipment being sympathetically designed.
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. As such, I am mindful of the economic and social benefits of providing and enhancing electronic communication infrastructure, which are reinforced by other documents¹ that have been put forward by the appellant. In this case, there is no dispute between the main parties that the equipment is needed to provide a 5G network and additional coverage in this part of Liverpool. Nor is there any contention of the benefits to mobile connectivity and the network (access and speed) to a multitude of users, devices, facilities and services, which would improve health, traffic flow, security and safer and more efficient cities.
17. The appellant also suggests that the Covid-19 pandemic has created additional demand on the existing network and that a 5G network would offer people the opportunity to work, socialise and interact differently which would reduce the need for people to travel and make for a better work and home life balance. These benefits, some of which are public benefits, weigh in favour of the proposal.
18. The proposal would also be an upgrade of an existing base station and shared by 2 operators which would reduce the proliferation of electronic communication equipment in comparison to separate installations. I have also been informed that this has been 'future-proofed' for upgrades.
19. Nonetheless, paragraph 117 of the Framework advises that applications for electronic communications development (including applications for prior

¹ Ofcom Online Nation – 2021 report, Councils & Connectivity2, Building Mobile Britain, May 2019, DDCMS Connected Growth Manual, DDCMS & MHLG joint statement 'Collaborating for digital connectivity', MBNL Statement on 5G and Future Technology.

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.

20. The appellant has submitted a list of alternative sites investigated, including the mast sharing with the existing monopole, and other areas along Brodie Avenue and Stairhaven Road which have all been discounted. Whilst there is no requirement in the Framework or Part 16 of the GPDO for developers to select the best feasible siting, I have found that the siting and appearance of the proposal would cause significant harm to the character and appearance of the area. Other potential options are therefore an important consideration.
21. The appellant argues that from a technical perspective there is no opportunity to deviate from the site in question as it would have knock-on impacts on the wider network and not fulfil the operator's technical requirements. I also did not see any nearby tall buildings on my site visit. However, the cell coverage maps and area of search for the proposed installation is not specified. This means that I am not in a position to fully review the appellant's conclusion that no alternative sites are available.
22. In particular, this means that I am unable to confirm that other locations, such as those alongside the highway or away from residential areas, for lower height ground-based installations or building based apparatus have been fully considered. As a result, I am not in a position to fully review the appellant's conclusion on this matter or be satisfied that no alternative sites are available as I do not know the limits of the search area.

Other Matters

23. My attention has been drawn to several previous appeal decisions² for telecommunications development. I concur with the view that a balancing exercise must be carried out that weighs the need for telecommunications equipment and the public benefits against the harm in allowing the development to take place. However, I note that there are clear material differences between the proposal and the individual circumstances surrounding these appeal decisions. 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. It has been put forward that the appellant submitted a pre-application enquiry for this scheme and that no responses were received from the Council or Ward Councillors. However, this has not had any bearing on my decision as I have only had regard to the planning merits of the proposal that is before me.

Planning Balance and Conclusion

25. Having regard to all relevant considerations, including national planning policy and the potential availability of alternative sites, I do not consider that the benefits of the installation in terms of the enhancement of the telecommunications network, its contribution to economic growth and social well-being, and the operational and locational needs of the operators outweigh

² APP/G5180/W/3151769, APP/M5450/W/20/3244354, APP/P4605/W/19/3241791, APP/W1905/W/17/3167026, APP/Q3305/W/18/3206555, APP/Z3825/D/19/3242513, APP/J4423/W/17/3188962, APP/L1765/W/18/3197522.

the significant harm that would arise to the character and appearance of the area. As a result, the proposal would not deliver sustainable development.

26. For the reasons given above the appeal is therefore dismissed.

Mark Caine

INSPECTOR