



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: 27 January 2022

Appeal Ref: APP/Z4310/W/21/3281637

Land o/s Othellos Restaurant, Gateacre Park Drive, Liverpool

- 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/1407, dated 2 June 2020, was refused by notice dated 17 May 2021.
- The development proposed is described as 'Telecommunications Equipment. 19metre pole - galvanised steel, 1no. APM5930 cabinet 1900 mm x (D) 600 mm x (W) 1752 mm (H), 1no BOWLER cabinet 600 mm (D) x 600 mm (W) x 1200 mm (H), 1no Wrap around cabinet 1800mm (D) x 700mm (W) 1560 mm (H), 1no. BATSMAN cabinet 600 mm (D) x 500mm (W) x 1585 (H).'

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form states that the site address is '41 Gateacre Park Drive, Liverpool, L25 1PD' but the Council's decision notice indicates that the appeal site is 'o/s Othellos Restaurant, 105 Gateacre Park Drive, Liverpool, L25 1PD'. The appeal form refers to the address as 'Land o/s Othellos Restaurant, Gateacre Park Drive, Liverpool'. In the absence of any conclusive information, I have used the address provided in the appeal form in the banner heading above as this appears to be more accurate.
3. The name of the applicant is given as MBNL (EE (UK) Ltd and H3G (UK) Ltd) in the original planning application form, but the appellant's details are specified as Mr Will Osborne of MBNL in the submitted appeal form. 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.
4. 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.
5. 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.

6. 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 Framework, I give moderate weight to policies of the Emerging Plan.

Main Issue

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

Reasons

8. The appeal site forms part of a grass verge that runs along the eastern side of the Gateacre Park Drive highway. It is located adjacent to the vehicular entrance to the car park for Othellos restaurant, which is a small detached single storey building, and a large retaining wall and car parking area for a nearby Aldi Store and local shopping centre. Regularly spaced lighting columns, and an existing telecommunications monopole with equipment cabinets are also situated on the same side of the highway as the appeal site.
9. Despite the presence of commercial properties nearby, the surrounding area is in mixed use, with a number of detached bungalows situated on the opposite side of Gateacre Park Drive. The topography of the area is such that this road rises up to and beyond the appeal site. This has resulted in the site appearing raised and above the Aldi Store when viewed from the northern end of this highway.
10. The proposed site plan shows that the monopole mast, which would be approximately 19 metres high, and equipment cabinets would be positioned adjacent to the back edge of the footway. These would be situated next to an existing approximately 10 metre high telecommunications mast and a streetlight.
11. 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. It would also not be located in a designated area such as a Conservation Area or in close proximity to any listed buildings.
12. The siting, appearance and number of associated equipment cabinets have not been questioned by the Council in its delegated officer report. The appellant also considers these to be 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. In this regard, I acknowledge that the cabinets would be seen in the context of other low level street furniture in the area. Accordingly, I have no reason to question the Council's lack of objection in this regard.

13. Nonetheless, the street lights and existing monopole are of a comparable height and width and therefore maintain a relatively consistent appearance within the street scene. Conversely, the proposed monopole would be approximately double the height and have a distinctly wider circumference than these 2 structures. The proposed monopole's excessive height and greater bulk would therefore result in a dominant and visually obtrusive feature in the street scene.
14. This dominance would be further emphasised by the topography of the area as it would protrude considerably higher than the nearby Aldi Store, restaurant and residential buildings in the vicinity. It would also be widely visible from the public domain, including the car parking areas of the Aldi Store and local shopping centre and from the nearby residential properties. 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.
15. I appreciate that the appellant refers to the appeal proposal being a replacement installation. However, the appellant's evidence is ambiguous in respect of when the existing monopole will be replaced. The plans appear to show this structure and a number of equipment cabinets to be retained. The appellant also states that the existing equipment is required for a temporary period and that it will be decommissioned when it can be shown that the network is stable with sufficient capacity to provide the necessary coverage. However, there is little indication or information before me to substantiate when this may be.
16. 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.
17. In light of the above, I therefore find that there would be a significant, negative visual impact on the character and appearance of the area. 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 to ensure attractive residential neighbourhoods across the City. The proposal would also conflict with the Framework in respect of equipment being sympathetically designed.
18. 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

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

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 things such as health, traffic flow, security and lead to safer, cleaner and more efficient cities.

19. 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 live, work, socialise and interact differently. This in turn 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.
20. The proposal would be an upgrade of an existing base station and be 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.
21. Nonetheless, 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.
22. The appellant has submitted a list of alternative sites investigated. These include the potential to mast share with the existing monopole, the roof top of the nearby Aldi Store and other areas along Grange Lane and Rockbourne Avenue 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.
23. 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 have not been specified by the radio engineers. 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.
24. 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. It has therefore not been demonstrated that the public benefits outlined above could not be achieved elsewhere, which would be less harmful in respect of siting and appearance. In this instance the public benefits associated with the proposal therefore carry limited weight.

Other Matters

25. The appellant has referred me 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.
26. I also recognise that the proposed monopole has been reduced in height and now has an additional equipment cabinet since the pre-application stage. However, this matter has had no bearing on the outcome of this appeal as I have only had regard to the planning merits of the proposal that is before me.

Planning Balance and Conclusion

27. 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 the significant harm that would arise to the character and appearance of the area. The appeal should therefore be dismissed.

Mark Caine

INSPECTOR

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.