



Appeal Decision

Site visit made on 11 January 2022

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2022

Appeal Ref: APP/Z4310/W/21/3280839

Utting Avenue, Walton, Liverpool L4 7UR

- 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 & Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Hutchison UK Ltd against the decision of Liverpool City Council.
 - The application Ref 21PT/0950, dated 25 March 2021, was refused by notice dated 29 June 2021.
 - The development proposed is an 18m Phase 8 Monopole C/W wrapround Cabinet at base and associated ancillary works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The name of the appellant company is spelt differently on the Application Form and Appeal Form. I have used the name as spelt on the former in this decision.
3. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) require the proposed development to be assessed solely on the basis of its siting and appearance, taking into account any representations received. My determination has been made on this basis.
4. The principle of development is established by the GPDO and the provisions of the Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. I have, though, had regard to the policies of The City of Liverpool Unitary Development Plan (UDP), and the National Planning Policy Framework (Framework) insofar as they are a material consideration relevant to matters of siting and appearance. I have also had regard to the emerging Liverpool Local Plan 2013-2033 (draft Local Plan) as a material consideration to which I attach moderate weight to given it is at an advanced stage with examination hearings having concluded and the relevant policy not being subject to any modifications.

Main Issue

5. The effect of the proposed development's siting upon the safe and efficient operation of the highway.

Reasons

6. The appeal site is part of a grass verge to the side of Utting Avenue, a stretch of dual carriageway which is located in the vicinity of Anfield Stadium. This grass verge separates the vehicular carriageway from the footway. A vehicular crossover is located a short distance away from the site serving a large car park which I understand from the information before me, provides for football match parking and other events at the nearby stadia.
7. The proposed mast and associated cabinets would be positioned to the edge of the grass verge, adjacent to the footway. They would be sited close to each other in a linear arrangement. Although pedestrians would not be hindered or obstructed, given the combined mass of the closely positioned structures forming the proposal, they would intrude on sight lines of motorists exiting the nearby car park.
8. I have been provided with a plan that shows a visibility splay of 43m along Utting Avenue can be achieved from a position set 2.4m back from the edge of the vehicular carriageway. The Council have however stated that this is based on vehicles travelling at 30mph and have raised concerns on the nature of traffic on this dual carriageway giving rise to increased vehicular speeds.
9. Given the potential for vehicles travelling along Utting Avenue to be changing lanes due to parked vehicles near local shopping facilities around Ince Avenue and Stanley Park Avenue, and possibly speeding up whilst they seek to do this, I cannot be certain the visibility splay of 2.4m by 43m is adequate for the speeds along Utting Avenue. I am also mindful, as the Council have stated, that this nearby access is the sole vehicle entry and egress to a car park that is said to have a capacity of up to 1000 vehicles. Given the busy nature of this road, this would present few gaps in traffic for the large number of vehicles waiting to leave the car park at the end of a match or other event at the stadia. This may result in drivers having a greater tendency to undertake hazardous manoeuvres in joining the carriageway resulting in vehicles travelling along Utting Avenue having to slow down. In this existing environment, as vehicles emerge from the access across the footway, the proposal would partially obscure visibility of vehicles on Utting Avenue, and as a consequence, pose a greater risk to the safety of highway users.
10. The Framework sets out that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being and in this respect, there is a need to support the expansion of electronic communications networks, including next generation mobile technology. The proposed mast would provide 5G coverage and a number of potential benefits have been set out by the appellant. Reference has also been made to the Government's Future Telecoms Infrastructure Review (2018) and 'Planning for Growth' (31 March 2011). These are said to lend support to the proposal and the Council confirm the development, which supports 5G, would be acceptable in principle. I see no reason to take a different stance and acknowledge the substantial benefit to the area in terms of facilitating next generation mobile technology.
11. The appellant states that the proposal is in a highly constrained cell search area and is influenced by various factors, such as the proximity of residential properties and separation required from other equipment and the presence of underground services. Within the search area, a number of sites were

considered and discounted with the appellant concluding that the appeal site is the most appropriate location. I have no reason to doubt the appellant's assessment of these alternative sites. However, there appears to have been no consideration given to other potential sites along this section of Utting Avenue, particularly to the north-east of the nearby car park access which would not impede visibility from emerging vehicles. I appreciate the appeal site has been carefully selected but I don't consider from my site observations that an alternative site along this nearby section of Utting Avenue would place it unduly close to sensitive receptors or why it would necessarily result in a taller mast. Given that there are alternative locations that could potentially accommodate the proposal, I find that the analysis by the appellant is not sufficiently comprehensive in that it has not considered all reasonable options.

12. I appreciate the need for this installation is to address the provision of 5G coverage in the area. It would provide benefit in terms of access and speed to a multitude of users and this weighs in favour of the appeal as does the potential of this proposal to facilitate future site sharing and use for future technologies. I have also no reason to question the need for a new site for this proposal and the adherence by the appellant to the sequential approach in considering existing base stations/structures, site sharing or installing on an existing building or tall structure. The siting of the proposal would, however, for the reasons set out above, be harmful to the safe and efficient operation of the highway. I note that a mast with a height of 18m is the minimum required. On the evidence before me though I am not convinced that less harmful alternatives have been properly explored and it is my overall view that the need for the proposal does not in this case, outweigh the harm.
13. Given my findings, the siting of the proposed development would be unacceptable and, as a result, contrary to paragraph 111 of the Framework, which seeks, amongst other matters, to avoid development that has an unacceptable impact on highway safety.
14. Although not cited in the decision notice, my attention has been drawn to Policy HD27 of the UDP and a copy of it has been provided. The proposal would be contrary to this policy and to Policy TP3 of the draft Local Plan which seek, amongst other matters, development of land that would not compromise land used for transport functions and ensuring that there is no suitable alternative site that can satisfactorily accommodate the proposal. Although Policies TP6, TP8 and TP9 of the draft Local Plan were cited in the refusal notice, these relate to walking, car parking and servicing, as well as public transport matters which, as far as I can see, are not relevant to this appeal proposal.

Other Matters

15. I note that a number of concerns have been raised on the visual effect of the proposal and the potential effects on health. The Council have not though identified these matters as part of the refusal. Given the main road location of the appeal site and the presence of grass verge areas with trees around the proposed development, I do not consider that there would be any harmful effect from the siting and appearance of the proposal on the character of the area. In relation to health, the appellant has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). A lack of harm in these areas and on the living conditions of residential occupiers

are neutral matters and do not weigh in favour of the proposal. I acknowledge also that the site is not within an area with a statutory designation such as a conservation area. The lack of harm to such a protected area is also a neutral consideration.

16. The appellant has set out that the cabinets that form part of the appeal submission would be permitted development. This is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. In this regard, it is open to the appellant to apply to have this matter determined under section 192 of the Act, and such an application would be unaffected by my determination of this appeal.
17. I note the appellant sought pre-application discussions with the LPA who did not provide a response and that this appeal comes after a previous refused application. This appeal follows the Council's formal decision, and I can confirm that I have assessed the development on both its merits and impacts, within the limitations of the relevant part and class of the GPDO.

Conclusion

18. For the above reasons and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

F Rafiq

INSPECTOR