



Appeal Decision

Site visit made on 18 January 2022

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 10 February 2022

Appeal Ref: APP/Z4310/W/21/3282207

Grass verge in proximity to roundabout serving Promenade Gardens, Riverside Drive, L17 7HW

- 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 & H3G (UK) against the decision of Liverpool City Council.
 - The application Ref 21PT/0726, dated 10 March 2021, was refused by notice dated 5 May 2021.
 - The development proposed is the installation of a 15 metre phase 8 pole with wrap around cabinet built around the base, 5no. new equipment cabinets and ancillary development thereto.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance for the installation of a 15 metre phase 8 pole with wrap around cabinet built around the base, 5no. new equipment cabinets and ancillary development thereto at the Grass verge in proximity to roundabout serving Promenade Gardens, Riverside Drive, L17 7HW in accordance with the terms of the application, Ref 21PT/0726, dated 10 March 2021, and the plans submitted with it.

Preliminary Matters

2. The application form, appeal form and decision notice give different variations of the site address. However, it has been confirmed in writing that 'Grass verge in proximity to roundabout serving Promenade Gardens, Riverside Drive, L17 7HW' is the correct address. I have therefore used this in the banner heading and in my decision above.
3. The description of development in the application form sets out there are 5no. new equipment cabinets proposed, however the appeal form states that there are 4 no. new equipment cabinets. Nonetheless, it is clear from the submitted plans and accompanying details before me that the development includes 5 new equipment cabinets. I have therefore used the description of development as set out in the application forms in the banner heading and my decision.
4. The name of the applicant is given as MBNL (EE (UK) Ltd and H3G (UK) LTD) in the original 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.

5. 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.
6. 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 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.

Main Issue

7. The main issue is the effect of the proposal on the character and appearance of the area and, in the event that any harm is identified, whether that harm would be outweighed by the need to site the installation in the location proposed, having regard to the potential availability of alternative sites.

Reasons

8. The appeal site forms part of a grass verge that is located adjacent to the southern side of Riverside Drive and the junction with a traffic roundabout. The approaches to this roundabout, from 3 different roads, contain a range of existing street furniture including tall lighting columns, road signs, a bus stop and an existing telecommunications monopole with equipment cabinets.
9. The majority of this street furniture is seen against the backdrop of tall banks of mature trees. These provide dense verdant corridors and separate the highways from the bungalows and two storey houses that typify the area. Nonetheless, many of the vertical structures that are positioned around the roundabout, and in proximity to the appeal site, are in exposed open positions that are not screened by vegetation.
10. The Council has no objections to the proposed ground base equipment (cabinets), and I have no reason to form a different view. In its delegated planning officer report the Council also accept that whilst the proposed monopole would be taller, at approximately 15 metres in height, and wider than other vertical street furniture, the presence of existing landscaping would lessen the visual impact of the proposal. I share this view and consider that the banks of dense mature trees would serve to prevent extensive views of the proposed development until in close proximity to the site. It would also not appear as an intrusive feature from closer range when viewed in the context of the other tall relatively exposed vertical structures near to the roundabout.
11. Nonetheless, the proposed equipment would be located on a gap in between semi-mature trees on the grass verge. The Council has advanced concerns in respect of the potential of the siting of the proposed apparatus leading to undue pressure for the trees to be pruned or even removed.
12. Whilst it appears that the proposed monopole would be likely to be a sufficient distance from any tree roots the submitted plans show 3 of the proposed

equipment cabinets to be sited directly under the canopy of a tree to the east. The location of this equipment therefore raises questions about any potential impact and harm to the roots of this tree.

13. I am mindful that this street tree does not have any statutory protection and that the significant amount of much taller well established mature trees in the surrounding area would remain. These would continue to screen long distance views of the proposal from a number of directions. On my site visit I also saw that this street tree and another similar sized tree are situated between the appeal site and a bus stop. Given their approximate 8 metre height and their species, which are distinct from other trees around, and the degree of separation from any bank of tall mature trees, they stand apart, and are easily distinguishable within their surroundings. As a result, I consider that the tree makes a modest contribution to the dense verdant corridors and setting of the area.
14. However, I have little substantive evidence, or professional arboricultural advice before me to sufficiently demonstrate that this tree would be adequately protected during or after the construction of the development. In the absence of any compelling evidence to the contrary I am therefore unable to be certain that the proposed installation would not harm the future health of this tree, and thereby cause some harm to the character and appearance of the area to which I afford moderate weight.
15. Therefore, whilst the proposal would not appear overly prominent or visually intrusive, I find that the potential adverse impact on the health of the nearby street tree would cause moderate harm to the character and appearance of the area. In so far as they are a material consideration, the proposal would therefore conflict with Saved Policies HD22 and HD27 of The City of Liverpool Unitary Development Plan (2002). Amongst other matters, these require new development layouts to provide adequate spacing between trees, taking into account the existing and potential size of trees and their impact both above and below ground level. Proposals for masts and other structures are also required to have regard to the visual impact on the built and natural environment and to ensure attractive residential neighbourhoods across the City.

Alternative Sites

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.
17. 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.
18. The appellant has submitted a list of alternative sites investigated, including mast sharing with the existing monopole, and other areas along Riverside Drive, Beech Avenue, Promenade Gardens and Camelia Court which have all been discounted. However, the appellant has not advanced the cell coverage

maps and the area of search for the proposed installation is not specified. As a result, the Council consider there may be nearby roof top installations in the area which would be preferable in terms of visual impact.

19. Nonetheless, on my site visit I saw that most development within the immediate area is of relatively low density and height. It is therefore understandable that an appropriate siting on an existing building has not been identified. Furthermore, paragraph 115 of the Framework seeks to keep installations to a minimum by using existing sites and sharing apparatus whilst providing better mobile coverage. As the existing structure would be replaced there would be no overall increase in the number of masts or sites as a result of this proposal. It would also have the benefit of supporting the networks of two mobile phone companies. These matters are positive factors which attract significant weight in favour of the proposed installation.

Other Matters

20. Local residents have expressed concerns about the health implications of the proposed installation, the potential for vandalism and its effect on highway safety and the outlook from residential gardens.
21. However, 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). In these circumstances, the Framework advises that health safeguards are not something which a decision-maker should determine. No sufficiently authoritative evidence has been provided to indicate that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified.
22. The proposed column would also be visible from some nearby properties' garden areas. However, I am satisfied that the location and separation of the installation from these buildings, along with the screening provided by trees would not result in an unacceptable impact on living conditions having regard to outlook. I am also satisfied on the basis of my observations of the location of the installation that there would not be an unacceptable impact on highway movements as a consequence of an impact on visibility. I note that no objections have been received to the proposals from the Council's Highways Engineer in this respect. In addition, there is little compelling evidence before me to support a local resident's view that the proposal would have the potential for anti-social behaviour in the form of vandalism.
23. Reference has been made by the appellant to various social and economic benefits but these have not been taken into account in considering the matters of siting and appearance.

Planning Balance

24. Having regard to all relevant considerations, including national planning policy and the lack of available alternative sites, my findings are that the operational and locational needs of the operators, the enhancement of the local telecommunications network, along with the sharing capabilities of the structure, therefore minimising proliferation, would outweigh the moderate harm caused to the character and appearance of the area through the potential

loss of a semi mature tree. As such I find that prior approval should be given in this case.

Conditions

25. The Council has suggested that three planning conditions be imposed should approval be granted. However, the GPDO does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators contained within it, including the colour of the proposed monopole and equipment. These specify that the development must be carried out in accordance with the details submitted with the application, begin within 5 years of the date of the approval and be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place. Consequently, I have not imposed the Council's suggested conditions.

Conclusion

26. For the reasons above, the appeal should be allowed and prior approval is granted.

Mark Caine

INSPECTOR