



Appeal Decision

Site visit made on 5 April 2022

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2022

Appeal Ref: APP/P4605/W/21/3285834

Hollymoor Way, Longbridge, Birmingham B31 5HY

- 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 and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by CK Hutchinson Networks (UK) Ltd against the decision of Birmingham City Council.
 - The application Ref 2021/06150/PA, dated 8 July 2021, was refused by notice dated 26 August 2021.
 - The development proposed is the installation of a 15 metre high monopole supporting and 4 no. equipment cabinets and development works ancillary thereto.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Revised drawings have been submitted with the appeal which attempt to overcome a reason for refusal of the Council. When having regard to the Wheatcroft principles and in the interests of fairness, this appeal must be determined on the basis of the plans on which the Council made its decision, and which have been subject to consultation. To decide the appeal on the basis of the amended plans would prejudice unacceptably the interests of interested parties and/or consultees who would not have been consulted on the amended plans and who may have observations to make. I have therefore determined this appeal with reference to the plans upon which the Council made its decision.
3. The '*Procedural Guide – Planning Appeals – England*' advises that if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal, they should normally make a fresh planning application (*Annexe M.1.1*).
4. If a planning appeal is made, the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested parties and or consultees views were sought (*Annexe M.2.1*).
5. 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 of this appeal has been made on this basis.

6. 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 Local Plan and the National Planning Policy Framework (the Framework) insofar as they are a material consideration relevant to matters of siting and appearance.

Main Issues

7. The main issues in this appeal are:-

- The effect of the development on the character and appearance of the area,
- The effect of the development on highway safety; and
- That alternative sites for the proposal have been fully explored.

Reasons

Character and appearance

8. The appeal is for a new 15m monopole with associated equipment, which was submitted as a prior notification application. A previous application has been made for a 20m mast on the site and refused.
9. The mast would be located adjacent a cycle path, on the northern side of Hollymoor Way. There is landscaping nearby, and a number of streetlamps in the area, which have a vertical emphasis. However, these would still be dominated by the proposed mast and the landscape screening would do little to mitigate against the impact of the structure.
10. This would expose the mast in a prominent location. Whilst the location has no official designation in terms of sensitivity, I find that the proximity to residential properties with views of the mast would be injurious to the outlook from those properties. Moreover, despite the presence of nearby buildings and trees, the incongruity of the proposal in the street scene would be materially exacerbated by its proposed location in front of an area of grassed open space.
11. I therefore find that the siting and appearance of the proposed installation would have an unacceptable and significantly harmful effect on the character and appearance of the area. Whilst not determinative, I have had regard to Policy PG3 of the Birmingham Development Plan (2017) (the BDP). To the extent that they are relevant considerations within the terms of the GPDO, the proposal would conflict with the collective aims that, amongst other things, proposals for the installation of telecommunications equipment will be supported where the siting and design of the installation would minimise its impact upon the appearance and character of the area.

Highway safety

12. With regard to highway safety, the relevant consultee has raised an objection to the proposals, in that an ancillary cabinet would reduce the width of the footway to 1m between the cabinet and the cycle lane. The consultee has stated that this should be re-sited to allow a minimum of 1.5m of width at any point.

13. This is a valid request in order to ensure that the footway is not narrowed to the detriment of pedestrians and cyclists, and the appellant appears to have agreed with the suggestion. However, as set out in my Preliminary Matters section at the head of my appeal decision, I cannot accept the revised plans as part of this appeal process.
14. Therefore, I find the proposals contrary to the objectives of the Framework in terms of satisfying the need for evidence to support the need for a mast and equipment in a certain location. Whilst not determinative, I have also had regard to policies PG3 and TP44 of the BDP in terms of development responding to site conditions and the safe use of the transport network.

Alternative sites

15. There is a balance to be struck in terms of appropriate locations for new masts and consideration should be given to the need for the installation to be sited as proposed, taking into account any suitable alternatives. The proposal seeks to provide an installation to facilitate digital communications in the local area. The proposal would be a standalone facility as other sharing options appear to have been exhausted.
16. Paragraph 117 of the Framework expects that an application for a new mast is supported with evidence that the possibility of erecting antennas on an existing building, mast or other structure has been explored. The appellant has suggested that the cell search area is extremely constrained, and the appeal site and design of the proposal represents the optimum environmental solution.
17. However, I find the level of detail of each alternative site and the subsequent reasons for discounting them is considerably lacking. In addition to this, I also note that the same search has been supplied from the previous refusal, indicating that no additional work has been done to identify alternatives. I am not therefore satisfied that a thorough search for a site that is less harmful than the appeal site has been carried out.
18. Insofar as it is a material consideration, the proposal would be contrary to the aims of the Framework's objective of achieving well designed places and appropriate evidence supplied. I am not persuaded that this harm is outweighed by the need for the installation to be sited as proposed, taking into account the lack of a comprehensive search with regard to the potential availability of alternative sites.

Other Matters

19. The Framework sets out that advanced, high-quality and reliable communications infrastructure is essential for economic growth and social wellbeing, as well as that planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G). This attracts moderate weight.
20. The appellant has provided information to support the height of the proposed monopole in order to avoid interference from buildings and landscaping, and also in order to clear International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines. I therefore have no reason to dispute the specification and the height of the proposed monopole. These considerations also weigh in the proposal's favour.

21. Published Government statements and the objectives of the Framework to support and drive towards advanced digital connectivity has also been pointed to by the appellant.

Balance and Conclusion

22. The appellant states that the appeal site is the only viable option to site their equipment to provide the identified need for 5G service to the local area, and the resultant public benefits that would ensue to which they attract due weight.
23. I apportion significant weight to the harm I have explained would occur to the character and appearance of the local area by siting the monopole in the proposed location, as well as the small selection of alternative sites considered and my findings. In this instance, on balance, the positive weight I have attached to the merits of the scheme would not outweigh the harm that would arise to the character and appearance of the local area and the harm to highway safety.
24. For the reasons given above, I conclude that the appeal should be dismissed.

Paul Cooper

INSPECTOR