



Appeal Decision

Site visit made on 10 May 2022

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 May 2022

Appeal Ref: APP/P4605/W/21/3286693

Onyx, Lancaster Circus, Birmingham B4 6JU

- 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 MBNL against the decision of Birmingham City Council.
 - The application Ref 2021/07538/PA, dated 23 August 2021, was refused by notice dated 19 October 2021. The development proposed is Proposed telecommunications NTQ rooftop installation and associated ancillary works at Onyx Birmingham. C/L of Antennas +43.85m AGL.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council adopted the Development Management in Birmingham Development Plan Document (the DPD) on 7 December 2021, after the start of the appeal. The appellant made reference to draft Policy DM16 of the DPD in their appeal statement and this policy was subsequently adopted without any notable amendments. Saved policies 8.55 to 8.55C of the Birmingham Unitary Development Plan (2005) were superseded on adoption of the DPD. The main parties were given the opportunity to comment on the relevance of this to the appeal. I have had regard to any comments received in my decision.
3. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) 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 principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A do not require regard be had to the development plan. I have nevertheless had regard to the policies of the development plan, including Policy PG3 of the Birmingham Development Plan (January 2017) and Policy DM16 of the DPD, as well as the Council's Telecommunications Development: Mobile Phone Infrastructure Supplementary Planning Document (2008) and the National Planning Policy Framework (Framework), only in so far as they are material to matters of siting and appearance.

Main Issue

5. The main issue is the effect of the siting and appearance of the proposal on the character and appearance of the area and, if any harm would occur, whether this is outweighed by the need for the installation to be sited as proposed taking into account any suitable alternatives.

Reasons

6. Onyx is a striking building with a sleek form. Its elevations have crisp edges at roof level which are emphasised by dark cladding that contrasts strongly against the sky. The building comprises the main tower block and an adjoining lower tower block, the latter of which would accommodate the appeal proposal. It occupies a prominent location with high visibility on key routes through the city where it appears as a high quality building and as such, makes a positive contribution to the character and appearance of this part of the city.
7. From St Chads Queensway, the lower part of the building is visible against the backdrop of the taller tower. Consequently, in longer views from this direction the extent to which the proposal would break the skyline would be limited. In closer views, the lower portion of the building becomes the more dominant element of the building. However given this building's still substantial scale, from closer range at street level the proposed antenna are unlikely to appear unduly prominent here.
8. From New Town Row, Onyx is highly visible as a standalone building. The crisp edges of the two tower blocks are seen as distinct rather than overlapping elements, both clearly visible against the sky. From there, the proposed antenna to be located in the right-angled corner of the roof space would appear prominent in the skyline, adding clutter at roof level and detracting from the current simplicity of form. Similarly, from James Watt Queensway and adjacent pavements there are clear views of the clean lines of the building's form against the skyline.
9. Therefore, taking into account the proposed position of the antenna close to the building's roof edge, the installation would be highly noticeable in a number of key views. Whilst not an unusual sight, this would nevertheless detract from features of the appeal building that make a positive and prominent contribution to the character and appearance of the area. Although this proposal is intended as a replacement rather than new facility, in this instance the existing ground based equipment is positioned away from key routes and is relatively unobtrusive in the street scene.
10. I note the alternative locations considered by the appellant and reasons given for discounting each of those. Given the harm I have identified, such alternatives must be robustly explored to determine the likelihood of there being less harmful alternatives to the appeal scheme. Of the twelve discounted options presented at appeal, the evidence indicates that D1 at Aston University and D2 at 115 Bagot Street may offer suitable alternative locations for rooftop installations subject to further investigation.
11. D1 is a large, prominent building that is highly visible from a number of key city centre routes. However, its building form appears more complex than that of the appeal building, with stepped roof projections at either end and visible roof level railings. This greater variation in building form indicates that the

appeal proposal might reasonably be accommodated there, with less harm to the character and appearance of the surrounding area. I note also that whilst D2 is a prominent building it does not appear to be so highly visible as the appeal site, being set further away from key arterial routes through the city.

12. Accordingly, it would appear that D1 and D2 provide realistic alternatives that might reasonably accommodate the appeal scheme with less harm to the character and appearance of the area. No robust evidence is before me to indicate otherwise. Also, I note that the Council's evidence at appeal questions whether the proposal could be set back from the edge of the building to reduce its visibility from key routes. Without clear and convincing evidence to the contrary it appears reasonably likely that the precise positioning of the proposal on the building could be adjusted to achieve a less visible and therefore less harmful solution.
13. The appellant has stated their willingness to accept a condition specifying the colour of the proposed antenna, which is not clearly defined within the appeal submission. 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.
14. I recognise the importance of good, fast, reliable and cost-effective communications and the support for high quality communications infrastructure within the Framework. Nevertheless, I conclude that the harm from the siting and appearance of the proposed installation on the character and appearance of the area would not be outweighed by the need for the installation to be sited as proposed, taking into account the potential for suitable alternatives.

Conclusion

15. For the reasons given above, I conclude that the appeal should be dismissed.

Rachel Hall

INSPECTOR