
Appeal Decision

Site visit made on 10 May 2022

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 June 2022

Appeal Ref: APP/N1025/W/21/3286820

Victoria Road Street Works, Victoria Road, Derby DE72 3NA

- 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 and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Thomas Gallivan (CK Hutchison Networks (UK) Ltd) against the decision of Erewash Borough Council.
 - The application Ref ERE/0721/0057, dated 24 July 2021, was refused by notice dated 16 September 2021.
 - The development proposed is a H3G Phase 8 18m high street pole c/w wrap-around cabinet and 3 further additional equipment cabinets.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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 an assessment of the proposed development solely on the basis of its siting and appearance, taking into account any representations received.
3. While quoted by the appellant in their appeal statement and the Council in the reasons for refusal, the relevant provisions of the GPDO do not require regard to be had to the development plan. I have had considered these policies only in so far as they are relevant to matters of siting and appearance. They are not, in themselves, determinative.
4. The National Planning Policy Framework (the Framework) supports high quality communications infrastructure and requires that local planning authorities must determine applications on planning grounds only. In accordance with the provisions of Schedule 2, Part 16 of the GPDO, and subject to any relevant exception, limitation or condition specified therein, development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network is permitted development. Therefore, the principle of the development proposed is acceptable.

Main Issues

5. The main issue is the effect of the siting and appearance of the mast on the character and appearance of the area, including the Draycott Conservation Area (DCA).

Reasons

Character and Appearance

6. The appeal site is a section of footpath located adjacent Victoria Road. The site is close to the centre of Draycott and is located on the edge of the boundary of the DCA. The area is generally of mixed residential and commercial uses.
7. The submitted drawings show the height of the mast would be considerably taller than nearby buildings, trees and street furniture such as streetlights. I note the appellant concurs. While I appreciate that the mast cannot be placed on existing structures, and must be taller than other objects and obstructions in the vicinity in order to operate efficiently, the large size and utilitarian appearance of the proposed equipment would appear out of scale and overly prominent within its immediate setting.
8. The site is located close to, although outside of, the DCA. I have not been provided with any information on the DCA, such as an appraisal of its character. From my own observations, the significance of the heritage asset is derived in part from its vernacular architecture and its industrial history which has shaped the settlement and guided development until relatively recently. As a tall structure of functional and modern appearance, it would be at odds with the historic and generally low-rise character and appearance of the DCA. Due to the location of the appeal site at the entrance to Market Street, the structure would be extremely prominent in views both into and out of the DCA. Its height and ancillary equipment such as the antennas would jar with the historic and domestic scale of these buildings.
9. Overall, the effect of the proposed development on the significance of the DCA would be less than substantial. Paragraph 202 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
10. I therefore conclude that the siting and appearance of the development would have a harmful visual effect on the character and appearance of the local area and cause less than substantial harm to the DCA. Insofar as they are relevant to matters of character and appearance, I have also had regard to Policy 10 of the Erewash Core Strategy (CS) (adopted March 2014) and Policy DC6 of the Erewash Borough Saved Policies Document (SP) (July 2008). These advise that details of height, among other things, are acceptable in terms of the visual impact of the scheme and the location and the design are the least visually intrusive available.

Other Matters

11. The Framework is supportive of high-quality communications, and the proposal would bring some significant benefits in that respect in terms of increasing network coverage. In that context the appellant has pointed to a lack of alternative available sites because of the area that the proposed mast would serve and that transmitters for the 5G network cannot be placed on existing masts which transmit older wireless signals and that there are constraints to placing antennae on buildings.
12. There is clear need for, and importance of, the rollout of the 5G network. The Framework is clear in paragraph 114 that the provision of high-quality

communications infrastructure is essential for economic growth and social well-being. It also outlines that the expansion of electronic communications networks, including next generation mobile technology, should be supported. The proposal would facilitate 5G coverage and I have had regard to the public benefits of this technology to local residents and businesses in the area. Cumulatively, these factors and public benefits weigh in the scheme's favour.

13. I have also taken into account that the scale of the mast, which is said by the appellant to be the minimum size possible to accommodate multiple-generation technologies. I acknowledge that telecommunications equipment is now a common feature of the built environment and the appellants have taken the opportunity to choose suitable colours for the equipment to aid in its integration. However, I have found that the proposal would harm the character and appearance of the local area and the setting of a designated heritage asset in spite of these efforts.
14. Moreover, the information that I have with regards to alternative sites is of a limited nature, especially as to whether alternative locations would be as prominent, harmful to the visual amenity of the area or the DCA. The Framework states in paragraph 117 that applications for electronic communications development should be supported by the necessary evidence to justify the proposed development. Such evidence is lacking as it pertains to alternative sites in this case.
15. My attention is drawn to a mast proposal which was allowed on appeal¹ that is evidently similar to the scheme before me. However, I do not have any substantive information on this. In any event, I have assessed the proposal on its own merits.
16. I acknowledge the letter from the Department for Digital, Culture, Media and Sport offering support for proposals of this type. Given the changing work patterns, including increasing numbers of home workers, the need for suitable telecommunications infrastructure has become very apparent in many people's lives during the pandemic and this carries some weight in favour of the proposal. I have attributed the necessary weight to these arguments but they do not outweigh the harm as detailed above.
17. I have had regard to concerns raised by the appellant about the way that the Council handled the scheme, particularly regarding the request for pre-application advice, which was not forthcoming. However, this does not affect the planning merits of the case. I have considered this appeal proposal on its own merits. Accordingly, neither that, nor any other matter is sufficient to outweigh the harm that would result.

Conclusion

18. For the foregoing reasons, and having taken account of all relevant material considerations, I conclude that the appeal should be dismissed

C McDonagh

INSPECTOR

¹ APP/G5180/W/21/3276905