



Appeal Decision

Site visit made on 10 May 2022

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 June 2022

Appeal Ref: APP/P4605/W/21/3288119

Lyndon Green, Birmingham B26 1RL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by CK Hutchinson Networks (UK) Ltd against the decision of Birmingham City Council.
 - The application Ref 2021/08279/PA, dated 18 September 2021, was refused by notice dated 2 November 2021.
 - The development proposed is 15.0m Phase 8 Monopole C/W wraparound Cabinet at base and associated ancillary works.
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Decision

1. The appeal is allowed and prior approval 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 a 15.0m Phase 8 Monopole C/W wraparound Cabinet at base and associated ancillary works at Lyndon Green, Birmingham, B26 1RL, in accordance with the application Ref 2021/08279/PA, dated 18 September 2021, and the details submitted therewith.

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. Saved Policies 8.55 to 8.55C of the Birmingham Unitary Development Plan (2005) were superseded on adoption of the DPD. The appeal process has afforded the main parties suitable opportunity for comment on the implications of that policy change. The principle of development is in any case established by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) and as such a determination does not have to be made in accordance with the development plan. I have nevertheless had regard to policies in so far as they are a material consideration relevant to matters of siting and appearance.
3. There is no dispute between the main parties that the proposal satisfies the limits to permitted development set at Paragraph A.1 to Class A of Part 16 of the GPDO. Paragraph A.3 requires that before development can commence a determination be made as to whether prior approval will be required as to the siting and appearance of the development.

Main Issue

4. The main issue is therefore whether the siting and appearance of the proposed development would be acceptable with specific regards to a) the character and

appearance of the area; and b) the living conditions of nearby occupiers with specific regard to outlook.

Reasons

Character and Appearance

5. The appeal site is a grassed embankment adjacent to the footway on the corner of Barrows Lane and Garretts Green Lane, which are relatively busy highways, where they meet at a roundabout. A terrace of shops first floor residential accommodation is located adjacent to the appeal site. The immediate area is otherwise generally residential in nature and is characterised principally by single and two storey semi-detached properties.
6. There are also numerous streetlighting columns, road signs, telegraph poles and overhead lines close to the appeal site and in the surrounding area. Trees and hedgerows in the surrounding area contribute to a verdant character.
7. The proposal is intended to provide new 5G network coverage to the residential area in and around Barrows Lane. The proposed development would be of functional appearance, typical of telecommunications equipment seen in urban areas generally.
8. The height of the proposed monopole would be some 5 metres taller than nearby existing street lights and telegraph poles. Whilst the proposal would be read as being grouped with this existing street furniture against a backdrop of commercial uses when travelling toward the roundabout from Ollerton Road and south along Barrows Lane, it would be noticeably taller and wider than the existing street furniture, and it would be taller than neighbouring buildings. Additionally, when travelling towards the roundabout from Garretts Green Lane and north along Barrows Lane the proposal would be read against a backdrop of trees and residential dwellings.
9. Due to its height and prominent siting within the footway, the proposal would be readily visible from various points along Barrows Lane, Garretts Green Lane and Ollerton Road. Given its height and width, and relatively prominent siting, the proposed monopole would be somewhat at odds with the prevailing smaller scale residential nature and verdant character of the area.
10. The siting and appearance of the proposal would be moderately harmful to the character and appearance of the surrounding area.
11. In so far as they are material to the consideration of the main issue, the proposed development would be contrary to the approaches of Policy DM16 of the DPD, Policies PG3 and TP27 of the Birmingham Development Plan (Part of Birmingham's Local Plan) (2017) (LP) and the guidance contained within the Telecommunications Development Mobile Phones Infrastructure Supplementary Planning Document (2008) (SPD), which seek, amongst other things, to ensure that development that responds to the local area context and are sited to minimise impact on visual amenity.

Living Conditions

12. The appeal site is close to a number of residential properties, particularly those on the corners close to the roundabout and above the commercial uses

adjacent to the site . There are windows in most of these properties that would have views of the appeal site.

13. Although the proposed development would, by virtue of its location and height, be visible, due to the location of the proposed monopole, on the corner of a road and on a roundabout, any views from nearby properties would be oblique. I also accept that any view would be partly softened by the backdrop of either the commercial uses and existing street furniture and nearby trees. I therefore consider that the occupiers' eye would not typically be drawn to its full height. Thus, the siting and scale of the structure would not detrimentally affect their outlook, or lessen the enjoyment of current and future occupiers' use of their rear gardens. Given also that any view and thus outlook would be towards what would be a contextually slim profile structure, allowing wider views of a mixed nature around and about it.
14. The siting and appearance of the proposal would not therefore result in harm to the living conditions of nearby residential occupiers, with specific regard to outlook. As such, and in so far as they are material to the main issue, the proposal would be in accordance with the approaches of Policy DM16 of the DPD, Policies PG3 and TP27 of the LP and the guidance contained within the SPD, which seek, amongst other things, to ensure that development is sited to minimise impact on residential amenity.

Alternative Sites

15. Paragraph 114 of the Framework states that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning decisions should support the expansion of electronic communications networks, including next generation mobile technology, such as 5G. Applications for telecommunications development should be supported with the necessary evidence to justify the proposal in accordance with paragraph 117 of the Framework. It is evident from the appellants submission that there is a need for improved network coverage in the area. The proposal would provide significant benefits through the upgrade to digital telecommunications in this area allowing for additional coverage and capacity.
16. The appellant has supplied information and maps regarding the site selection process and has explored several other siting options. After due consideration all were discounted for various reasons including pavements being too narrow, the proximity of residential properties, obstruction of and by junction visibility splays and tree canopies. The evidence indicates that there are also no readily identifiable mast/site sharing opportunities or suitable buildings or other structures within the intended cell area. In particular, existing mast infrastructure within the wider area would appear not to be capable of hosting additional equipment which could extend into the target area.
17. There is no substantive evidence that challenges the rationale for discounting the alternatives that have been considered and I have no robust evidence before me to suggest that there would be other more suitable sites. The lack of realistic alternative options to deliver much needed improved coverage and capacity is a consideration which weighs strongly in favour of the development. To the extent that it would be sufficient to justify it against the moderate harm that would arise from the siting and appearance of the proposal.

Other Matters

18. Local residents have raised concerns regarding the potential for the additional street furniture to attract graffiti and the potential negative impact on nearby businesses. I have limited evidence before me to understand how the proposed development would detrimentally affect businesses or indeed attract graffiti. In any event the GPDO requires that proposed developments submitted under Part 16 are assessed on the basis of their siting and appearance.

Conditions

19. Development permitted under Class A Part 16 is subject to standard conditions, including a time limit for implementation, a requirement that development is carried out in accordance with the submitted details, and that it is removed when it is no longer required for electronic communications purposes. It is therefore unnecessary to impose the additional conditions suggested by the Council. material consideration relevant to matters of siting and appearance

Conclusion

20. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

Tamsin Law

INSPECTOR