



Appeal Decision

Site visit made on 14 June 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2022

Appeal Ref: APP/A0665/W/22/3290419

The Port Arcades, 54 Mercer Walk, Cheshire CH65 0AP, (340214, 376188)

- 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 MBNL against the decision of Cheshire West and Chester Council.
 - The application Ref 21/03958/TEL, dated 15 September 2021, was refused by notice dated 21 December 2021.
 - The development proposed is 20m NTQ [notice to quit] proposed telecommunications installation and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the time of the Council's decision, amendments have been made to Part 16 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) relating to Communications. However, the amendments made under The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2022 (SI 2022/278) do not vary the requirements in relation to the prior approval for the development proposed.
3. The provisions of the GPDO 2015, under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require that 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 Class A of Part 16 do not require regard be had to the development plan. 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 the matters of siting and appearance.

Main Issues

5. The main issues are the effect of the siting and appearance of the proposed installation on the character and appearance of the locality 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. The site lies within a triangular landscaping strip of bushes and trees of modest overall height. The vegetation lies between two surfaced car park areas bordered by housing, commercial and community uses. The strip forms part of the edge landscaping to the car parking areas associated with Ellesmere Port Market and an Aldi store.
7. The proposal would introduce a new 20m high shared mast designed to appear as a tall cypress tree. A bank of 6 ground cabinets would be sited a short distance to the northwest. A single cabinet located west of the mast would lie within the area of a 3m high supported gantry about the lower part of the mast. The site would be bordered by mesh security fencing topped with barbed wire.
8. The proposal would remove about half of the existing landscaping within the triangular area between the car parks. The height of the mast would stand significantly taller than the remaining trees within the landscaped space. This would make it highly prominent in the locality. Although there are larger trees within the edge of a school playing field nearby, these appear as a separate group and would also be far out-scaled by the height of the proposed mast.
9. The relative isolation of the position between the open areas of the flanking car parks and the unscreened area of the utilitarian apparatus, gantry and security fencing about the mast's base would serve to draw the eye. Consequently, the attempts to 'camouflage' the proposed mast would be largely undermined by the stark, unmitigated appearance of the base compound in a highly visible location. Notwithstanding the mixed-use nature of the area, the effect would be to introduce discordant and incongruous features to the detriment of the visual amenity of the locality.
10. In contrast to the slender appearance of the freestanding vertical utilities within the parking areas, including lamp posts, CCTV masts and freestanding signage, for example, the significant broader diameter of the 'tree' would increase its visibility and reduce the capacity for its presence to be moderated by the space about it. Even accounting for the distance to the nearest residential properties on the opposite side of Shrewsbury Car Park, it would be a significant and dominant feature in the outlook from those properties. Taken with the loss of the landscaping, the overall scale of the mast and the introduction of the supporting equipment would contrast starkly with the wider character and appearance of development in the area.

Other Matters

11. Paragraph 114 of the Framework sets out the objectives for communications infrastructure. It states that: 'Advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections.'
12. Policy DM18 of the Cheshire West and Chester Local Plan supports the principle of improved telecommunications. To minimise the number of masts, evidence of the investigation of mast sharing or utilising existing structures and buildings is required. This is consistent with Paragraph 117 of the Framework for the

- proposals to be supported by the necessary evidence to justify the siting of the development.
13. In support of the proposed scheme the appellant has referred me to a number of alternative locations considered prior to choosing the site. In accordance with the hierarchy to the approach for siting new masts set out in the Framework, these relate mainly to building mounted scenarios.
 14. The level of information on the alternative sites and the extent of the search area is limited. I recognise that the majority of the higher buildings in the locality are of only 2 or 3 storeys (or equivalent) and therefore of limited value in providing greater areas of coverage.
 15. I also note that the proposal would facilitate use by 2 operators and is the minimum operational height for the intended coverage. However, the site lies in an area of considerable opportunity for ground-based masts that would not require the removal of existing landscaping, or where siting could make best of existing or proposed landscaping.
 16. Whilst the approach of a single mast to serve 2 operators might limit the effects of a proliferation of masts, where this results in significant visual impacts due to the necessity to utilise a large diameter arrangement, I am not persuaded that it results in the minimum overall harm in the context of the locality. In the specific circumstances of the case, I find this is a benefit of limited weight.
 17. In support of the proposal, the appellant refers me to the strong support for improved telecommunications in the Framework and highlighted in other Government strategies. The proposal would potentially provide significant social and economic benefits through the improvement of bandwidth, system capacities and the delivery of next generation coverage. It would enable a range of uses improving health and wellbeing, facilitate new technologies and innovation, and enable comprehensive coverage in an area currently identified as having poor connectivity. This could enable significant improvements for private and business users. These are matters that weigh in favour of the proposals.
 18. The lack of objections from statutory consultees, or other parties, is not a matter in favour of the development.

Planning Balance

19. For the reasons set out above, I have found that the mast would cause a significant degree of harm to the visual amenity of the area and contrast with the character and appearance of development in the locality. I also find the evidence of the survey effort in regard to other potential sites in the search area to be limited. It would conflict with Policy DM18 of the Cheshire West and Chester Local Plan as it requires telecommunications installations to be sympathetically designed, minimise the impacts of the development and avoid an adverse impact on the character and appearance of the area. It would also conflict with the Framework as it seeks similar aims.
20. Even when weighed against the considerable public benefits that would arise from the proposed improvement to telecommunications infrastructure and associated social and economic benefits, I conclude that the significant harm arising would not be outweighed in the particular circumstances of the case.

Conclusion

21. For the reasons given, and having regard to all other matters raised, the appeal should be dismissed.

R Hitchcock

INSPECTOR