



Appeal Decision

Site visit made on 23 June 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 12th July 2022

Appeal Ref: APP/P4605/W/21/3288570

**Land at the junction of Warren Farm Road and Brackenbury Road,
Kingstanding, Birmingham B44 0PX**

- 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 CK Hutchison Networks (UK) Ltd against the decision of Birmingham City Council.
- The application Ref 2021/06518/PA, dated 21 July 2021, was refused by notice dated 9 September 2021.
- The development proposed is the installation of a 15 metre high monopole supporting 6 no. antennas and 2 no. transmission dishes, 4 no. equipment cabinets and development works ancillary thereto.

Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of the installation of a 15 metre high monopole supporting 6 no. antennas and 2 no. transmission dishes, 4 no. equipment cabinets and development works ancillary thereto at land at the junction of Warren Farm Road and Brackenbury Road, Kingstanding, Birmingham B44 0PX in accordance with the terms of the application Ref 2021/06518/PA, dated 21 July 2021 and the plans submitted with it including: 002 Site Location Plan BHM13637_Planning_Rev_C dated 14 July 2021; 100 Existing Site Plan BHM13637_Planning_Rev_C dated 14 July 2021; 150 Existing Site Elevation BHM13637_Planning_Rev_C dated 14 July 2021; 215 Proposed Site Plan BHM13637_Planning_Rev_C dated 14 July 2021; and 265 Proposed Site Elevation BHM13637_Planning_Rev_C dated 14 July 2021.

Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO 2015), 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.

Planning Policy

3. The principle of development is established by the GPDO 2015 and the provisions of Schedule 2, Part 16, Class A of the GPDO 2015 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 (Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.

Main Issues

4. The main issues are the effect of the siting and appearance of the proposed installation 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

5. The appeal site is an island feature in the highway on Warren Farm Road, at the junction with Brackenbury Road. Lampposts and tall trees are sited on the island, with a telegraph pole nearby. The area is predominantly residential in nature, with dwellings surrounding the immediate vicinity of the site.
6. The proposed monopole would reflect the slim, vertical rhythm of the nearby lampposts and telegraph pole but it would be distinguished by its greater height. While this height has been reduced from previous applications and is required for operational and technical reasons, it would be unduly prominent in this residential context. As a result, the proposed monopole would fail to visually relate to the surrounding built development and would therefore appear out of place.
7. Due to its presence at a junction, the site is a highly visible location in the immediate area. Combined with the height of the monopole, the positioning of the proposal at the site would result in a dominant addition to the streetscene, readily visible by pedestrians, vehicular users, and residents of surrounding dwellings. Against the residential backdrop, it would read as an incongruous and jarring feature that would detract from the character of the immediate vicinity.
8. While trees are present on and nearby the highway island where the site is located, due to the scale of the proposal relative to the amount, height and placement of vegetation, its visual impact would fail to be screened or softened, even acknowledging its proposed green colouring. Overall, I consider that the siting and appearance of the proposal would cause moderate harm to the character and appearance of the area.
9. I acknowledge that features such as the proposal are not uncommon within urban settings, and have had regard to the appeal decision provided.¹ However, I note that the site in that instance was characterised by a mix of residential and commercial properties. The appeal site is surrounded exclusively by residential uses against which the proposal would appear out of place. A further appeal decision² has been referenced but the sections quoted by the appellant relate to living conditions, which has not been cited as a main issue in this appeal.
10. The appellant has referred to revised guidance in Wales but, due to the location of the proposal this is not applicable to the appeal. Reference has also been made to various social and economic benefits but these have not been taken into account in considering the matters of siting and appearance.
11. For the above reasons, the siting and appearance of the proposal would cause moderate harm to the character and appearance of the surrounding area.

¹ APP/Z4310/W/21/3269643

² APP/P4605/W/21/3277173

Suitable Alternatives

12. Paragraph 117 of the Framework advises that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being, and that planning decisions should support the expansion of electronic communication networks. The appellant has submitted evidence demonstrating the area surrounding the appeal site does not have the required 4G or 5G capacity to meet current and projected demand, which would be addressed by the proposal.
13. The appellant has set out the sequential approach followed before seeking prior approval. There is dispute between the main parties as to whether the possibility of erecting antennas on an existing building, mast or other structure has been adequately explored. I am mindful of the residential nature of the immediate area, which would limit the potential for such possibilities. In any event, the appellant's evidence explains the location of the search area, identifying the Kingstanding Leisure Centre rooftop and an existing telecommunication site, which are discounted with reasonable justification.
14. Evidence of the sequential approach also covers the consideration of alternative ground based sites. I note that, at application stage, the appellant had not considered sites previously suggested by the Council. These have since been considered and included within the appeal submissions, which the Council has had the opportunity to comment on. Reasonable justification for the discounting of these sites has also been provided and no further sites have been suggested by the Council. Accordingly, there is no substantive evidence before me to indicate that there are other more suitable alternative sites for the proposal.
15. I have concluded that the siting and appearance of the proposal would result in a moderate level of harm to the character and appearance of the area. However, the appellant has adequately investigated the possibility of alternative sites and there is no substantive evidence suggesting the proposed siting is not the best available due to technical and operational constraints. This attracts significant weight in favour of the scheme given the importance attached to supporting the expansion of electronic communications in the Framework.
16. Overall, I consider that the absence of a more suitable alternative site means that the need for the installation to be sited as proposed taking into account any suitable alternative outweighs the harm that would occur to the character and appearance of the area due to the siting and appearance of the proposal.

Other matters

17. The mast would be accompanied by 4 equipment cabinets that are permitted development. Therefore, although these cabinets are related to the proposed mast, the effect of the siting and appearance of these on the character and appearance of the area has limited bearing on the main issue. In any event, I noted on my site visit that similar green coloured cabinets are located on the surrounding footpath network, such that the addition of those proposed would not appear out of place.
18. Concerns have been raised about potential effects on health. However, the appellant has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). In these circumstances, the Framework advises that health safeguards are not something which a decision-maker should determine. No sufficiently authoritative evidence has been provided to indicate that the ICNIRP

guidelines would not be complied with or that a departure from national policy would be justified.

19. Concerns have also been raised regarding potential effects on highway safety. However, the positioning of the proposal would ensure that it would be adequately set back so as not to unduly restrict visibility or represent a hazard. In addition, while reference has been made to a potential effect on trees, the main parties agree that the proposal would not result in undue harm in this regard. Based on the evidence before me, I have no reason to disagree. The proposal would be outside of both the canopy spread and root protection area of nearby trees.

Conditions

20. Any planning permission granted for development under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2), which specify that the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin not later than the expiration of 5 years beginning with the date on which the local planning authority received the application, and must be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.
21. Notwithstanding its conclusion regarding the lack of impact of the proposal on trees, the Council has stated that contributions should be sought if trees would be removed. I have no evidence before me as to how this would be secured. In any event, the GPDO 2015 does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators contained within it.

Conclusion

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

C Rafferty

INSPECTOR