



Appeal Decision

Site visit made on 28 June 2022

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2022

Appeal Ref: APP/P4605/W/21/3289600

The Radleys, Tile Cross, Birmingham B33 0HZ

- 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 CK Hutchinson Networks (UK) Ltd against the decision of Birmingham City Council.
 - The application Ref 2021/07925/PA, dated 5 September 2021, was refused by notice dated 1 November 2021.
 - The development proposed is a 15.0m Phase 8 Monopole C/W wraparound Cabinet at base and associated ancillary works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (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.
3. The Council has referred in its decision notice and officer's report to Policy TP46 of the Birmingham Development Plan (2017) (BDP), Policy DM15 of the emerging Development Management in Birmingham Development Plan Document (DMB) and saved Policy 8.55-8.55C of the Birmingham Unitary Development Plan (2005) (UDP). It also referred to the National Planning Policy Framework (the Framework) and other supplementary documents. I am aware however that since the determination of the application, the DMB has been formally adopted in December 2021 with its policies replacing those of the UDP.
4. However, the principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. Nonetheless, although not determinative, I have taken account of the above-mentioned policies and supplementary documents in so far as they are relevant to matters of siting and appearance. Similarly, the Framework is also a material consideration and includes a section on supporting high quality communications.
5. The appellant considers that the installation of the proposed cabinets on their own constitutes permitted development, and hence could be carried out on site

without prior approval. Notwithstanding this position, this is not for me to determine as part of the appeal. I have therefore assessed the scheme based on the description of the development and the plans submitted, which for clarity, includes the proposed monopole, wrap around cabinets and ancillary equipment as indicated on the proposed plans.

Main Issue

6. The main issue is the effect of the siting of the proposal on the safe operation of Birmingham International Airport.

Reasons

7. The appeal site is part of a grass verge on the north side of The Radleys, with a backdrop of trees to the north and a railway bridge located a short distance to the east. The surrounding area is predominately commercial and industrial in character with factories and car garages located nearby. Approximately 500 metres to the south of the site is Birmingham International Airport runway.
8. There are a number of vertical features in the immediate vicinity of the appeal site, including streetlights, road signs and an existing mast close to the nearby railway bridge. These existing features, along with the single storey aerospace factory buildings immediately opposite the appeal site to the south, are all of modest height. The proposed monopole would be significantly taller than the immediately surrounding built environment.
9. A previous application for prior approval (Ref 2021/05448/PA) was refused at the site in relation to the installation of a 20 metre Phase 8 monopole with wraparound cabinet at base and associated ancillary works. The appeal proposal seeks a lower monopole measuring 15 metres in height, however the Council still consider that the proposal would pose a serious risk to the safe operation of Birmingham International Airport. Birmingham International Airport Limited were consulted on the application and objected on that basis.
10. These concerns relate to the location of the proposed mast being within the protected surfaces of take-off climb (RWY33) and approach (RWY15). These define the airspace around aerodromes that are to be maintained free from obstacles in order to allow aircraft travelling in and out of the airport to operate safely. The mast would penetrate the take-off climb surface for runway 33 by approximately 2.98 metres.
11. The appellant has provided an Instrument Flight Procedure (IFP) Safeguarding Assessment of the proposed mast which concluded that the mast would not impact the instrument flight procedures for the Airport. This conclusion however is caveated by the fact that as no ground elevation details were provided, the co-ordinates to establish the elevation of where the mast would be sited were taken from a mapping system. Furthermore, it is confirmed in the assessment that the negative effects of 5G frequencies to aircraft onboard avionics equipment are unknown at this stage.
12. Accordingly, notwithstanding the contents of the IFP Safeguarding Assessment, I do not consider that it has been sufficiently demonstrated that the proposal would not have a negative impact upon the safe operation of the airport. Although the assessment concludes that the proposed mast would have no impact, it would be noticeably taller than the surrounding built environment. I observed during my site visit that the existing buildings and structures within

the immediate vicinity of the runway had been designed to be as low lying as possible. This provides additional margin for error for any aircraft landing or taking off. Therefore, even if it was demonstrated beyond any doubt that the proposed mast would fall marginally outside of the take-off climb surface for runway 33, I find that by virtue of its height, the proposed mast would represent an unacceptable form of development in this location.

13. Additionally, given the proximity of the proposed mast to the airport, the failure of the assessment to provide assurances that the 5G frequencies that would be transmitted by the mast would not have a negative effect upon or interfere with the onboard avionics of aircraft is of further concern.
14. I therefore conclude that, having regard to its siting, the proposed development would pose a risk to the safe operation of Birmingham International Airport.

Alternative sites

15. For a new mast or base station paragraph 117 c) of the Framework requires the developer to submit evidence that they have explored the possibility of erecting antennas on an existing building, mast or other structure. The appellant states that the cell search area is extremely constrained with options limited, and that the proposed location is the only viable option. The appellant has considered and discounted ten other sites, which are listed and described.
16. Whilst I recognise that the 5G cell search area is constrained, the level of detail for the discounted options is extremely limited and without a full or detailed justification for each site. For example, some of the sites have been discounted due to 'overlooking residential properties', however no information has been provided to specifically detail their proximity to residential properties and why that would result in unacceptable harm. Particularly given the sensitive location of the proposed site and the safety implications that arise from it, it has not been sufficiently demonstrated that the discounted sites would be more harmful.
17. The level of detail before me for each alternative site is relatively limited and the reasons for dismissing them lacking justification. I am therefore not satisfied that a thorough enough review of possible site options within the cell search area has been undertaken to demonstrate that the site is the only viable option.
18. Accordingly, the harm I have identified that would be caused to the safe operation of Birmingham International Airport is not outweighed by the needs for the installation to be sited in the proposed location.

Other Matters

19. The appellants statement of case makes reference to the Council being concerned about the impacts of the proposed installation on the character and visual amenity of the area. The Council however has confirmed that they do not consider that the proposal would have a detrimental impact upon the visual and residential amenity of the area. I also find that the proposal would not have a detrimental impact upon visual and residential amenity, however this does not alter my findings in relation to the negative impact that the proposal would have on the safe operation of Birmingham International Airport.

20. The appellant refers to a lack of Council and Ward Councillor response to pre-application consultation. The Council dispute this and have provided evidence that the pre-application enquiry was not registered and was returned to the appellant. In any event, that is a matter for the appellant to address with the Council and does not alter my findings with regard to the negative impact of the proposal on the safe operation of Birmingham International Airport.

Planning Balance and Conclusion

21. Paragraph 114 of the Framework supports the expansion of electronic communications networks, including next generation mobile technology. There would be social and economic benefits from the proposal in these regards, which would facilitate the provision of 5G communications, which would help the delivery of economic growth, as well as enhancing local facilities and services via better connectivity and communication. I attribute moderate positive weight to these benefits.
22. However, these benefits are outweighed by the harm I have identified above to the safe operation of Birmingham International Airport, to which I attribute significant weight. In addition, the lack of a robust alternative site search has failed to demonstrate the need for the installation to be sited as proposed and that the benefits could not be achieved in a less harmful location.
23. For the reasons given above, I conclude that the appeal should be dismissed.

David Jones

INSPECTOR