



Appeal Decision

Site visit made on 19 July 2022

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th September 2022

Appeal Ref: APP/P4605/W/21/3289891

Land at Moseley Road, Balsall Heath, Birmingham B12 9BX

- 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 'GPDO').
- The appeal is made by Cornerstone and Telefónica UK Limited against the decision of Birmingham City Council.
- The application, Ref 2021/02583/PA, dated 22 March 2021, was refused by notice dated 1 July 2021.
- The development proposed is the installation is a 17.5m high Orion street pole supporting 6No. antennas, together with 1No. ground-based equipment cabinet and ancillary development.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. During determination of the application the proposal was amended and the height of the pole reduced from 20 metres to 17.5m. Hence the description above is taken from the Council's decision notice as it reflects the agreed revised scheme, which is the subject of this appeal.
3. During an unaccompanied site visit, it became apparent there were discrepancies with the plans that brought into question the accuracy of the pole's location. The parties were invited to address the matter and amended plans have now been submitted. I shall therefore base my decision on revised drawings 100 Rev A; 200 Rev B; 201 Rev C; 300 Rev B, and 301 Rev D all from pack issue D.
4. Since the application was determined, the Council adopted the Development Management in Birmingham Development Plan Document (the 'DMB Plan') on 7 December 2021. The Council confirms this document replaces the Saved Policies in the Birmingham Unitary Development Plan 2005 (the UDP). As a result, DMB Plan Policy DM16 (Telecommunications) replaces Saved Policies 8.55-8.55C.
5. Since the application was determined the National Planning Policy Framework (the 'Framework') was revised in July 2021. Policies that are material to this decision have not fundamentally changed in the revised Framework and both parties refer to the 2021 version in their appeal Statements. I have had regard to the latest version in reaching my decision.

Procedural Matters

6. The principle of development is already established by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO'). The provisions of the GPDO require telecommunication proposals under Schedule 2, Part 16, Class A to be assessed solely on the basis of the proposal's siting and appearance, taking into account any representations received. Policies of the development plan and Framework are taken into account but only insofar as they are material considerations relevant to matters of siting and appearance. I have determined the appeal on this basis.

Background

7. Cornerstone deploys and operates networks for mobile network operators Vodafone Limited and Telefónica UK Limited for their 2G, 3G and 4G coverage. 5G coverage requires smaller cells and mast sharing is not always possible due to the different technology spectrums licensed to the operators which can require different infrastructure.
8. The existing nearby Vodafone and Telefónica base station street pole mast, in front of the timber yard south of the appeal site and on the opposite side of Moseley Road, cannot be upgraded to accommodate each operator's requirements. As a result, the existing base station mast will remain in use by Vodafone for their current and future network coverage requirement, but a new base station and mast is needed for Telefónica to replicate their existing coverage plus 5G, hence the appeal proposal.

Main Issues

9. The main issues are:
- The effect of the siting and appearance of the proposal on the character and appearance of the area,
 - The effect of the siting and appearance of the proposal on the setting of the nearby Grade II listed buildings 360-363 (Nos. 360-363) and 356 Moseley Road (No.356), and
 - If any harm would occur whether this is outweighed by the needs for the installation to be sited as proposed taking into account any suitable alternatives.

Reasons

Character and appearance

10. This part of Moseley Road is predominantly commercial with some light industry and a mix of period and newer buildings, mostly 2-3 storeys in height. Whilst most are close to the back edge of the pavement, some are set back with forecourts. The appeal site is public footpath (highway maintained at public expense) on the western side of Moseley Road situated in front of a flat-roof car repair garage and its forecourt, which occupies a wide open frontage. The proposed pole and cabinets would sit on the pavement approximately in the centre of the garage frontage. There are a number of mature trees along the road at varying intervals, but none directly outside the garage on the same side of the road, making the site more open and prominent.

11. Along Moseley Road, existing vertical street furniture is in the form of approximately 9m high lamp posts. Due to the trees and the slimline nature of the lamp posts, they are fairly unobtrusive in the street scene. At 17.5m high the proposed grey monopole would be significantly taller than neighbouring lamp posts, neighbouring trees and the building behind. It would also be substantially thicker and bulkier than the existing nearby lamp posts. There is no substantial screening behind the pole such that it would protrude beyond the height of the garage building and would dominate the wide frontage. Whilst the antennas and dishes would not be shrouded for technical operational reasons, they would nonetheless be a greater visual intrusion silhouetted against the sky. The trees either side of the garage frontage would help lessen some of the visibility of the installation when approaching in either direction, but this would be short-lived as this stretch of pavement is wide and open. Overall, the pole would be unduly prominent within the street frontage and visually detrimental to the street scene, compounded by the presence of a large cabinet close to its base.
12. Paragraph 114 of the Framework recognises the importance of advanced, high quality and reliable communications infrastructure to economic growth and social wellbeing, and that planning decisions should support the expansion of networks. However, it goes on to advise that the number of masts and sites for installations should be kept to a minimum consistent with the needs of customers and efficient operation of the network, and existing masts, buildings and other structures should be utilised where possible. Where new sites are required, the Framework states that the equipment should be sympathetically designed and camouflaged where appropriate.
13. On my site visit I observed another base station, street pole and cabinets on the pavement beside a building, just south of the junction of Upper Balsall Heath Road with Moseley Road, on the same side of the road as the appeal proposal. The proposal would result in three telecommunication installations within a short stretch of Moseley Road. This proliferation of installations would contribute to overall street clutter and further detract from the character and appearance of the area.
14. Whilst telecommunication installations are not uncommon features in urban areas, each needs to be assessed against the particular site context and surroundings it is to be placed in. I also appreciate that the monopole needs to be tall enough to clear buildings and trees and robust enough to take the necessary antennae and infrastructure. However, in this instance, the siting and appearance of the monopole and cabinet would result in a visually intrusive, incongruous and overly dominant feature in the street scene that would harm the character and appearance of the area.
15. In so far as they are material to siting and appearance, the proposal would be contrary to BDP Policy PG3 and DMB Plan Policy DM16. These collectively seek to ensure, amongst other things, that development and high quality communications infrastructure are sited and designed to respond to the character and appearance of the surrounding area to minimise its visual impact. It would also be contrary to the Council's 2008 Supplementary Planning Document 'Telecommunications Development: Mobile Phone Infrastructure' (the 'SPD') which advises that installations should blend in with the existing townscape, their height is relative to surrounding buildings and structures,

locations viewed against the skyline and open land should be avoided, and street-based masts should not be prominent in the street scene.

Setting of nearby listed buildings

16. Nos.360-363 and No.356 are circa 1830-1840. They form part of a non-uniform terrace of properties diagonally opposite to the appeal site, approximately 37-50 metres away.
17. No.356 is further from the appeal site and is a painted brick villa with a central flight of steps up to a central door flanked by a well-proportioned Greek Doric fluted column porch. Adjacent are Nos. 360-363, which turn the corner onto Ombersley Road. They are a pair of semi-detached stucco faced two-bay, two storey villas. In the official listing their front elevations are described as having been given more architectural detail than normal for modest villas of this type and have "considerable sophistication". The significance of all of these buildings derives principally from their age and architectural interest.
18. The properties are set back from the road with pavement trees in front. Some of the buildings appear to be in educational use now. The residential context and setting of these period Villas has been eroded over time with the erection of a number of unsympathetic buildings in the immediate vicinity of them and the current mixed commercial/light industrial nature of this part of Moseley Road and behind the appeal site. There would be some oblique intervisibility between the proposed development and the listed buildings, but this intervisibility already exists to a greater extent between the garage building behind the appeal site and the listed buildings. Hence I find the setting of the listed buildings is limited and confined to the immediate stretch of Moseley Road in front of them. Consequently, I am satisfied that the siting and appearance of the proposed development would not harm the setting or significance of the listed buildings.
19. In so far as it is relevant, the proposal would accord with BDP Policies PG3 and TP12, and DMP Policy DM16. Collectively these seek to ensure that telecommunication development is suitably located including within the historic environment. It would also accord with the SPD as it would not adversely affect the setting of the nearby listed buildings.

Alternative sites

20. The social and economic benefits arising from the proposed telecoms installation have effectively already been recognised by the scope to grant permission under Article 3(1) of the GPDO. The GPDO is clear that the only considerations should be siting and appearance of the proposal. However, there is scope to consider the need for the proposal to be sited in the proposed location.
21. The appellant has looked at and discounted a number of other sites for a variety of reasons. A number of factors to be considered in selecting a viable site include locations with the target coverage area and need for antennas and transmission dishes to operate without infringement. The appellant advises there are no suitable buildings upon which to erect antennas, and that other street locations are unsuitable, due to the presence of factors such as the presence of underground services, site too prominent, pavement too narrow, or building not tall enough.

22. The appellant further states that the operator suggests the new site should be within 250m of the established base station for operational reasons and seamless replication of existing coverage. A number of the sites have been discounted for being "too far removed from the existing base station", including reference to sites that would otherwise be available along Sherbourne Road East and in the area. However, these sites would appear to be within the suggested 250m distance of the existing base station. Hence it is unclear why they are deemed "too far away". I have not been provided with any maps showing the search area or its size or the gaps in the coverage. There is also no mention of whether mast sharing has been fully explored at the other base station near the Upper Balsall Heath Road/Moseley Road junction.
23. I am therefore not satisfied that a thorough enough review of possible site options has been conducted to demonstrate that the appeal site is the only viable option. The lack of information and criteria for site searches makes it difficult to understand how or why the choice of the appeal site was arrived at. I am therefore unable to meaningfully assess alternative locations and therefore the acceptability of the proposed location.
24. Accordingly, the harm I have identified to the character and appearance of the area is not outweighed by the needs for the installation to be sited in the proposed location. The lack of harm to the setting of the nearby listed buildings carries neutral weight in my consideration of the proposal.

Other Matters

25. The proposed installation would comply with health safeguards and guidelines published by the International Commission on Non-Ionizing Radiation Protection, but this would not outweigh the harm I have identified.
26. The Highway Authority has no objections. I also understand that Network Rail submitted a holding objection due to the site's proximity to the railway. As the Council was refusing the application it did not request an Asset Protection Questionnaire. As I am also minded to refuse, I have not pursued this matter.
27. Both parties draw my attention to a number of appeal decisions. Some are in Birmingham, and some are in other parts of the country. Whilst there are plans of some of them, I have not been provided with full details. Other appeal decisions are capable of being material considerations, however all decisions turn on their own particular circumstances based on the facts and evidence before those Inspectors at the time. Therefore I am unable to make any meaningful comparisons with the appeal proposal before me, which I must determine on its own merits.
28. The appellant refers to the Council not responding to pre-application consultation. That is a matter for the appellant to address with the Council. It does not alter my findings with regard to the siting and appearance and the resultant detrimental impact on the character and appearance of the area.

Conclusion

29. For the reasons given above I conclude that the appeal should be dismissed.

K Stephens
INSPECTOR