



Appeal Decision

Site visit made on 2 August 2022

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th October 2022.

Appeal Ref: APP/P4605/W/22/3294083

Bristol Road, Birmingham B31 1FL

- 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 MBNL against the decision of Birmingham City Council.
- The application Ref 2021/10812/PA, dated 17 December 2021, was refused by notice dated 15 February 2022.
- The development proposed is 20.0m high EE/H3G Phase 7 Streetworks Pole and associated ancillary works.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In its Appeal Statement, the Council rescinded its second refusal reason relating to the cumulative effect of 2 telecommunication monopoles on the same stretch of grass verge. This was based on the Council's misunderstanding from the appellant's Appeal Statement that the proposal would replace the existing monopole and cabinets that are already installed¹ on the grass verge.
3. Following clarification, the appellant has confirmed that the proposed telecommunications installation would not replace the existing monopole and its 4 cabinets, but would be in addition to them. If the proposed development was allowed, this would result in 2 monopoles and a total of about 11 cabinets sited in close proximity to each other on the same stretch of grass verge, as clearly shown on the submitted plan. The parties have been given the opportunity to comment. The Council has submitted an Addendum to its Appeal Statement in which it defends its second refusal reason.
4. During determination of the appeal a new "Birmingham Design Guide Supplementary Planning Document" (the SPD) was adopted². From it, Design Principle 24 (Design of telecommunications infrastructure) replaces the Council's previous 2008 Supplementary Planning Document 'Telecommunications Development: Mobile Phone Infrastructure'.

Procedural Matters

5. The provisions of Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

¹ Prior approval application LPA ref: 2020/03248/PA granted 18 June 2020.

² Adopted 6 September 2022

(the 'GPDO') require the local planning authority and therefore the Secretary of State 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 this basis.

6. The principle of development is established through the grant of permission by Article 3(1) of the GPDO. Consequently the prior approval application is not determined against the development plan. However, policies in the development plan and the National Planning Policy Framework (the 'Framework') may be relevant but only in so far as they relate to matters of siting and appearance.

Main Issues

7. The Council's second reason for refusal is concerned with the cumulative effect of two poles and their associated cabinets on the character and appearance of the area. To avoid unnecessary duplication, I have combined this with the first reason for refusal.
8. In light of this, the main issues are:
 - The effect of the siting and appearance of the proposal on the character and appearance of the area, taking into account the cumulative effect with the existing nearby telecommunication installation,
 - The effect of the siting and appearance of the proposal on the living conditions of occupiers of nearby properties with particular regard to outlook, 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 alternative suitable sites.

Reasons

Character and appearance

9. The appeal site forms part of a grassed verge adjacent to the footway on the east side of Bristol Road, which is a busy dual carriageway and main route into and out of Birmingham. Behind the site and grass verge is the open grassed area in the grounds of commercial premises 'Reynolds & Reynolds', enclosed by metal railings. There are residential properties some distance away either side of the site and diagonally opposite. Directly opposite to the site, on the other side of Bristol Road, is a two storey parade of shops/commercial premises on the ground floor with residential flats above, and Nos. 1183–1185 sit approximately mid-way along the parade. The area is therefore mixed residential and commercial. This part of Bristol Road is relatively verdant with mature trees along parts of the central reservation of Bristol Road and behind the appeal site up to about 25m in height.
10. The proposed 20m high monopole and wrap-around cabinet together with the other 6 proposed cabinets would be sited on the grass verge close to the back edge of the pavement. There is also a regular arrangement of vertical street furniture with approximately 12m high red slimline streetlighting columns. Although the monopole would be taller than them, it would be seen mainly

against the backdrop of mature trees. This potentially reduces the prominence of the installation in the overall streetscene.

11. The Council has previously considered the grass verge a suitable location for a similar height monopole and cabinets following the approval of the aforementioned prior notification application³. The Council states in its evidence that no prior approval was required for [siting and appearance] of this monopole, which is painted dark green.
12. The proposed monopole would be 'Goose Grey white' and this would make it unduly conspicuous when the installation would be set against a substantial green backdrop of trees for much of the year. The appellant is amenable to a different colour and I could condition that the monopole and cabinets are painted dark green, similar to the existing adjacent monopole.
13. However, the proposed development would be sited in very close proximity to the existing 20m high 5G telecommunication mast with its cabinets. The cumulative effect of two tall monopoles and some 11 cabinets in total would introduce an overbearing and over dominant form of development in close proximity to the pavement and people and driving walking past. A number of cabinets would also be in front of and very close to the bench on the grass verge. This would be particularly overbearing to anyone sitting there.
14. The cumulative effect of the siting and appearance of the proposal in close proximity to an existing installation would add street clutter and be unduly obtrusive and visually dominant in the street. This would cause harm to the character and appearance of the area.
15. In so far as they are relevant, the proposal would be contrary to Policy DM16 of the Development Management in Birmingham Development Plan Document (the Management Plan) and Policy PG3 of the Birmingham Development Plan (the Development Plan). These collectively seek to ensure that telecommunication infrastructure is sited and designed to minimise the impact on the character and appearance of the surrounding area and respond to local area context. It would also be contrary to the new SPD Design Principle 24, which seeks to ensure that the cumulative impact of installations is also considered where existing infrastructure is present.
16. The appellant has been given Notice to Quit (NTQ) a site at North Worcestershire Golf Club, approximately 580m metres north of the appeal site. I appreciate that the proposal would be a replacement facility to deliver the continued service and operational requirements associated with providing 5G coverage, and it would not represent an increase in telecommunication infrastructure to the area as a whole. Nonetheless, it would still represent an increase in telecommunication infrastructure to one short stretch of grass verge along this part of Bristol Road.

Living conditions of occupiers of nearby residences

17. The Council identifies the nearest properties that would be affected are the first floor flats on the opposite side of Bristol Road above the parade of shops, approximately 38 metres away from the appeal site.

³ Applicant/operator not disclosed

18. The front windows of the flats would directly face the proposed development, and indeed already face towards the existing pole. There are few trees in the central reservation between the site and the flats, unlike along other parts of the Bristol Road, such that occupiers would see the proposal.
19. However, residencies would look across four lanes of a busy dual carriageway and a grassed central reservation. Owing to the pattern of development in the area and other existing street furniture along Bristol Road, including street lighting columns on both sides of the road, occupiers of the flats already experience a varied outlook.
20. The proposed monopole would be set against a mature tree backdrop which runs along the grass verge such that the installation would not be a standalone isolated vertical structure. Taking into account the intervening separation distance the monopole would appear relatively slimline compared to the width of the tree canopies. These trees also truncate views beyond the appeal site towards the Reynolds & Reynolds building.
21. Due to these various features, the proposal would cause no meaningful obstruction to views from these front windows. Furthermore, it would not create a significantly enclosing effect to occupiers in these front rooms. Hence I find the development would have no overbearing effect on occupiers of the residences whose windows face towards the proposed mast.
22. Views of the development from other nearby residential properties would be at a more oblique angle and hence would be much more limited. As a result, there would be an even less overbearing effect on occupiers of these other properties.
23. I am satisfied that the siting and appearance of the proposal would not result in harm to the living conditions of nearby residential occupiers with regards to outlook, even taking into account the monopole that has already been installed on the grass verge by another operator.
24. In so far as it is relevant to siting and appearance, the proposal would not conflict with Management Plan Policy DM16 and Development Plan PG3. These collectively seek to ensure telecommunications infrastructure is sited and designed to minimise its impact on, amongst other things, residential amenity. It would also accord with the Council's new SPD to minimise the impact on the amenity of adjacent uses.

Alternative sites

25. For a new mast or base station the Framework requires the developer to submit evidence that they have explored the possibility of erecting antennas on existing buildings or other structures, or considered mast sharing.
26. Following a NTQ, the appellant has looked at, and discounted, 7 sites for a variety of reasons. I have not been presented with any substantive evidence to indicate how the appeal site and the alternative sites would fill any coverage gaps, nor have I been advised of the size of the search area, apart from that it covers a small radius. The level of detail for each alternative site is somewhat scant and the reasons for dismissing them lacks detailed justification. For example, site D6 Hoggs Lane is discounted because 'the height of this installation is 20 metres' without any explanation of why this makes the site

- unsuitable, or why the proximity to the adjacent Tenby Tower makes sites D4 and D5 unsuitable.
27. There is nothing to indicate why commercial buildings in the area, such as the Reynolds & Reynolds building behind the appeal site, is not suitable for a possible building-mounted installation, or whether or not there could be mast-sharing with the existing monopole already installed on the grass verge next to the appeal site.
28. I am therefore not satisfied that a thorough enough review of possible site options within the search area has been conducted to indicate there are not potentially alternative locations. This therefore makes it difficult to understand how or why the choice of the appeal site was arrived at and that it is the only viable option.
29. I am aware that there would be some social and economic benefits from the installation, but the GPDO is clear that the potential wider benefits should not be taken into account when considering siting and appearance. The proposal would meet health safeguards and comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP).
30. Nonetheless, the harm I have identified to the character and appearance of the area arising from the cumulative effect of two telecommunication installations side by side on the grass verge is not outweighed by the need for the installation to be sited in the proposed location. The lack of harm to living conditions of occupiers of nearby residences carries neutral weight in my deliberations.

Other Matters

31. The appellant refers to the Council and other consulted bodies not responding to pre-application consultation. That is a matter for the appellant to address with the Council and those bodies concerned. 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

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

K Stephens

INSPECTOR