



Appeal Decision

Site visit made on 1 November 2022

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2022

Appeal Ref: APP/P4605/W/22/3300678

Land at Frogmill Road, Frankley, Birmingham B45 0JJ

- 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 Hutchison Networks (UK) Ltd against the decision of Birmingham City Council.
 - The application Ref 2021/09511/PA, dated 5 November 2021, was refused by notice dated 14 December 2021.
 - The development proposed is the installation of a 15 metre monopole supporting 6 no. antennas, 4 no. equipment cabinets and development works ancillary thereto.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During determination of the appeal the Council adopted the 2022 Birmingham Design Guide¹ (the Design Guide) that includes Design Principle 24 (Design of telecommunications infrastructure). This replaces the 2008 Supplementary Planning Document 'Telecommunications Development: Mobile Phone Infrastructure'. The parties have been given the opportunity to comment.
3. The refusal reasons refer to Policy DM16 (Telecommunications) of the Development Management in Birmingham SPD. It is clear from the Council's submitted policy extracts and documentation that 'SPD' is a typographical error and should read 'DPD' for Development Plan Document. The Development Management in Birmingham DPD (hereafter referred to as the 'DMB') was adopted in December 2021.

Procedural Matters

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

¹ Adopted September 2022

development plan and the National Planning Policy Framework (the 'Framework') may be relevant but only insofar as they relate to matters of siting and appearance.

Main Issues

6. 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 living conditions of occupiers of nearby properties with particular regard to outlook, 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 alternative sites.

Reasons

7. CK Hutchinson Networks (UK) Ltd are a licensed operator of an electronic communications network. The proposed development is for Hutchinson 3G UK Limited (trading as '3') to provide new 5G coverage together with enhanced 4G coverage in this area of Birmingham. It is part of a major upgrade to the national network to provide additional coverage and capacity and to cater for an increase in demand for data services in the next few years. The COVID-19 pandemic has also highlighted the increased reliance on digital connectivity. The appellant is proposing a new base station and monopole.

Character and appearance

8. The appeal site is located on highway land along Frogmill Road south east of the junction with Radnor Close. The site would be on grass verge between the road and the pavement and close to a bus stop. The area is predominantly residential with a mix of single, two and three storey development in the general vicinity.
9. Frogmill Road is on an incline, rising up from the south as it progresses northwards in a relatively straight main route through the estate, with roads and cul-du-sacs branching off. The very slim reddish/brown streetlight columns, approximately 10m tall, provide a visual but unobtrusive rhythm of vertical street furniture. Houses are generally set back from the road and there are gaps in the built form and there is a nearby area of open space. The topography and these various factors combine to give this part of Frogmill Road an open and spacious character such that the appeal site is exposed and highly visible.
10. The proposed 15m high grey monopole with its wrap-around cabinet at its base and 3 other green cabinets alongside would be sited centrally within the grass verge. A row of slabs would be placed in front of the installation. The monopole, with its exposed antennas, would be significantly taller and bulkier than the streetlighting columns and about twice as tall as the nearest adjacent housing. Due to the open nature of Frogmill Road, the tall thick mast would be unduly conspicuous.

11. Furthermore, the incline of Frogmill Road and lack of tall structures/buildings as a backdrop would make the monopole appear even more imposing and the exposed antenna would appear an intrusive addition against the open skyline. The nearby mature tree on the open space to the east would not provide any meaningful backdrop or screening. Hence, the monopole would be seen from further afield approaching along Frogmill Road and not just confined to a localised effect. The lack of objections from the local community does not diminish the harm I have identified.
12. Whilst telecommunication installations are not uncommon features in suburban areas, each needs to be assessed against the particular site context and surroundings it is to be placed in. I appreciate that the monopole needs to be tall enough to clear buildings and trees and robust enough to take the necessary antennae and infrastructure, and that the appellant has chosen a slimline design. However, in this instance, the siting and appearance of the monopole and cabinets 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.
13. In so far as it is material, the proposal would be contrary to Policy PG3 of the Birmingham Development Plan (the BDP) and DMB Policy DM16. These collectively seek to ensure development, including telecommunications, is sited and designed to minimise impact on the character and appearance of the surrounding area, that development responds to local context and that streets and spaces are attractive. It would also be contrary to Design Principle 24 of the Council's Design Guide, which expects telecommunication infrastructure to be of a size appropriate to its surroundings to minimise the visual and physical impact on the character of the surrounding area.

Living conditions

14. The Council's Design Guide Principle 24 lists residential areas as more sensitive locations where telecommunication installations should be carefully sited to minimise the impact on residential amenity, often associated with perceptions of harm and concerns about health risks. The Council identifies the nearest affected properties would be 1 and 6 Radnor Close (Nos.1 and 6) and 7 Coriander Close (No.7).
15. The nearest of these is No.7 some 19m away. It is located at the end of a cul-de-sac and is orientated side-on to the appeal site behind a wall and an overgrown vegetated verge. Views from any rear first floor windows would tend to be oblique rather than front on, and therefore the mast would not be unduly overbearing. From parts of the rear garden the nearby mature tree would provide some seasonal screening at close quarters.
16. No.1 is located some 22m away from the appeal site on the opposite side of Frogmill Road. It is side-on to the appeal site with a single first floor window that would face obliquely towards the proposed pole. The window would appear to be either a landing window or a secondary window to a front or rear room. The rear garden would be further away. The proposed mast would not be immediately in front of habitable windows or immediately adjacent gardens and due to the separation distance would not be unduly overbearing.
17. No.6 is even further away at some 45m. It forms part of a terrace of 3 properties at an angle to Frogmill Road and set back a substantial distance

from it behind a wide grassed verge. There is a hedge around the front of the property that would significantly limit views of the proposal from front ground floor windows. At first floor, the 45 metre separation distance and angle of view would mean the proposed mast would not be unduly overbearing.

18. Whilst occupiers of these properties may see the mast at times, due to the angles of view and separation distances the proposed monopole would not cause any meaningful obstruction to views from windows or gardens, nor would it have a significantly overbearing effect on occupiers of these residences. I am satisfied that the siting and appearance of the proposal would not result in harm to the living conditions of identified nearby residential occupiers with regards to outlook.
19. In so far as it is material to siting and appearance, the minimal impact on residential amenity means there would not be conflict with the DMB Policy DM16. Similarly, it would not be contrary to Design Guide Principle 24.
20. To meet health safeguards and as advised by the Framework, 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).

Alternative sites

21. The social and economic benefits arising from proposed prior approval telecoms installation have effectively been recognised by the scope to grant permission under Article 3 of the GPDO. Therefore whilst potential wider benefits may well exist, they are not taken into account. 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.
22. The Framework recognises the importance of advanced, high quality and reliable communications infrastructure to economic growth and social wellbeing, and states planning decisions should support the expansion of networks, including next generation mobile technology such as 5G.
23. The Framework goes on to state that the number of masts and sites for installations should be kept to a minimum, and the use of existing masts, buildings and other structures should be encouraged. Where new sites are required the equipment should be sympathetically designed and camouflaged where appropriate. For new masts or base stations the applications should include evidence that the developer has explored the possibility of erecting antennas on an existing building, mast or other structure.
24. Policy DM16 similarly seeks to promote the development of advanced, high quality communications infrastructure to support economic growth and more accessible, inclusive communities. However, in doing so the Policy also requires new telecommunication proposals to evidence that opportunities for mast or site sharing has been explored and that there are no suitable alternative sites in the locality, including the rection of antennae on existing buildings or other suitable structures.
25. The appellant states there are no other existing structures – either masts or buildings – capable of accommodating the proposal. The appellant has listed 6

sites they have considered and discounted for a number of reasons. Hence the appellant concludes there is a need for a base station and monopole.

26. I saw there were other areas of grass verge set further from residential properties, but the appellant does not explain what unacceptable distances from residential properties would be, when the proposal is also close to residential properties. This therefore makes it difficult to understand how or why the choice of the appeal site was arrived at. Hence, I am not satisfied that a thorough enough review of possible site options within the search area has been conducted.

Other Matters

27. The appellant provides two appeal decisions where Inspectors have allowed telecommunication monopoles. The appeal for Walsall Road in Sutton Coldfield involved the upgrade of an existing base station by replacing the existing monopole with a taller one. This is not the same scenario as the appeal proposal before me. The appeal decision for Mill Street in Liverpool found no harm to the character and appearance of the area. That may be so, but this appeal is not in Liverpool. I have not been provided with full details of either case and therefore I am unable to make any meaningful comparisons with the appeal proposal before me. All decisions turn on their own particular circumstances based on the facts and evidence before the decision-maker at the time, and I must determine the appeal on its own merits.

Conclusion

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

K. Stephens
INSPECTOR