



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: 24 November 2022

Appeal Ref: APP/P4605/W/22/3299624

Bordesley Green, Birmingham B9 5PQ

- 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 2021/09865/PA, dated 12 November 2021, was refused by notice dated 23 December 2021.
- The development proposed is 16.0m Phase 8 Monopole C/W wrapround cabinet at base and associated ancillary works.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The refusal reasons cite Policy DM16 of the Development Management in Birmingham DPD 2019. It is clear from the submitted evidence and policy extracts that the Council means to refer to the Development Management in Birmingham DPD (the 'DMB') that was adopted on 7 December 2021 and not dated 2019.
3. Policy TP27 of the Birmingham Development Plan 2017 (the 'BDP') is cited in the Council's first and third reasons for refusal. Policy TP27 relates to the creation of sustainable neighbourhoods arising from *new housing* and *residential development* [my emphasis]. The proposal is for a telecommunications installation, not for new housing, hence Policy TP27 is not relevant.
4. During determination of the appeal the Council adopted the Birmingham Design Guide¹ (the 'Design Guide') that includes Design Principle 24 (Design of telecommunications infrastructure). This replaces the 2008 'Telecommunications Development: Mobile Phone Infrastructure' Supplementary Planning Document. The parties have been given the opportunity to comment.

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) (the 'GPDO') require the local planning authority and therefore the Secretary of State to assess the proposed development solely on the basis of

¹ Adopted September 2022

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 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. However, I have had regard to policies in the development plan, the Council's Design Guide and the National Planning Policy Framework (the 'Framework') only insofar as they are a material consideration relevant to matters of siting and appearance.

Main Issues

7. 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,
- The effect of the siting and appearance of the proposal on nearby nursery schools, 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

8. Three UK are the in process of building out the UK's fastest 5G network using a mixture of upgrades of existing sites and the building of new sites. Due to the higher frequencies used in 5G technology radio frequencies do not travel as far, the cell areas tend to be smaller and not all existing sites can be upgraded. In this area there is an acute need for a new mast.

Character and appearance

9. The appeal site is located on highway land that forms part of a wide pedestrianised pavement area on the corner of Bordesley Green and Finnemore Road outside a two-storey convenience store with flats above. The area is predominantly two-storey residential terraced and semi-detached housing along Bordesley Green and along the roads leading off it, with a parade of commercial and retail units either side of this part of Bordesley Road near to the roundabout. Finnemore Road and this part of Bordesley Green are tree-lined. The area of open pavement space appears to be part of a planned area in front of the convenience store and creates a large, spacious and striking corner location.
10. The proposed 16m high monopole, with its wrap-around cabinet and three other cabinets, would be sited fairly centrally in the open pavement space in front of the convenience store. During my visit, I saw that Bordesley Green was a busy road, with pedestrians as well as people stopping to park to visit the commercial premises, including the convenience store. I saw that the open pavement area was well used by people visiting the store and passing by, as well as lingering to speak to each other.

11. Existing street lighting columns are slimline and just over 6m in height. The proposed monopole would be thicker and bulkier than them. It would also be more than double their height, as well as double the height of the convenience store building and significantly taller than any nearby trees. The combined height, bulk and scale of the monopole and array of cabinets would visually and physically dominate the space, especially as people walk past or approach the monopole and the cabinets close up. From my site observations, the proposal would not be as well screened as the appellant asserts. I find the proposal would add substantial clutter to the pavement area, which is relatively free of street furniture save for low-key concrete bollards around the outer edge of the pavement. The proposal would be unduly visible, prominent and an incongruous feature to the middle of the pavement on this corner location and to the street scene.
12. I accept that the width of the open space in front of the convenience store would provide sufficient space for the free-flow of pedestrians, and that the Highway Authority raises no objection. However, this would not mitigate against the harm I have identified. I accept that telecommunication installations are not uncommon features in urban areas. However, each needs to be assessed against the particular site context and surroundings it is to be placed in. Even if the cabinets are within permitted development allowances, their installation in association with the siting and appearance of the mast would result in a visually intrusive, incongruous and overly dominant feature in the street scene that would significantly detract from the character and appearance of the area. Changing the colour of the cabinets or the mast would make little difference to the siting, form and height to offset the harm.
13. In so far as it is material, the proposal would be contrary to DMB Policy DM16 and BDP Policy PG3. These collectively seek to ensure the impact on the character and appearance of the surrounding area is minimised, that development responds to local context and that streets and spaces are attractive. It would also be contrary to the Council's Design Guide for similar reasons.

Living conditions

14. According to the Council's evidence there would be about 10.3-11.7 metre separation distance between the mast and the windows of habitable rooms of the flats above the convenience store. The mast would be clearly seen at this distance and location, especially from first floor level where the habitable rooms would be. Being first floor flats there would be no ground floor habitable rooms offering a different outlook for occupiers.
15. The mast would be thicker and taller than the surrounding lamp posts. It would be viewed at close quarters because it is on the open space directly in front of the building, without intervening roads or any other street furniture to reduce the prominence of the mast in the street scene outside the windows of habitable rooms. The nearby tree would have a negligible effect on offering any meaningful screening and as the mast would rise above the tree it would be even more imposing at such a close vantage point. As a result, the siting and appearance of the proposal would have an overbearing effect on occupiers of these habitable rooms and would unacceptably harm their living conditions with regards to outlook.

16. In so far as it is material, the proposal would be contrary to DMB Policy DM16 and BDP Policy PG3, which collectively seek to provide attractive environments and minimise the impact on residential amenity. It would also be contrary to the Council's Design Guide.

Proximity to nursery schools

17. St Paul's Day Nursery and Hamd House Nursery are the nearest educational institutions at about 200m from the site. Existing local and national policy does not preclude the siting and appearance of a telecommunication installations based on their proximity to a school. DMB Policy DM16 makes no reference to the location of telecommunication installations in proximity to schools or 'sensitive locations' or them being avoided. It does, however, expect applicants to demonstrate that opportunities have been explored for mast sharing and that no suitable alternatives exist.
18. The Council's recently adopted Design Guide states that the grounds of education and health institutions are 'most sensitive' locations and installations should be avoided. The proposal would not be within the grounds of an educational institution – it would be on highway land on a pavement outside a shop. The Design Guide refers to further new Council guidance in the Healthy Living and Working Manual and that telecommunications infrastructure in these most sensitive locations will only be accepted if it can be demonstrated that there are no other suitable sites in less sensitive areas.
19. The Framework makes no reference to 'sensitive locations' being avoided per se and places no requirement on telecommunication installations to avoid schools. However, paragraph 117a the Framework does require an applicant's supporting evidence to include the outcome of consultations, in particular where a mast is to be installed near a school or college, although there is no definition of what distance is considered 'near'.
20. According to the appellant's submitted Site Specific Supplementary Information they consulted St Paul's Day Nursery and Hamd House Nursery by letter prior to the submission of the application. The response is stated as being 'N/A', so it is unclear whether these institutions did not make comments or whether what they said was deemed not applicable. The Council's delegated report makes no reference to any consultation responses from either of these educational institutions. I shall deal with alternative sites below.

Alternative sites

21. Telecommunications technology has evolved over the years and people are using and demanding more of their mobile phones and other wireless technology. The Framework is a material consideration and recognises the importance of advanced, high quality and reliable communications infrastructure to economic growth and social wellbeing, and planning decisions should support the expansion of the electronic communications networks including 5G technology.
22. The Framework states that the number of masts and sites should be kept to a minimum and use of the existing masts, buildings and other structures should be encouraged. 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.

23. I appreciate that the mast needs to be tall enough to ensure suitable coverage within the cell and provide connection between the cells. I am also advised that the mast is required to ensure mast sharing can be facilitated and remove the need for future additional masts in this location, but I have no evidence before me about future mast sharing to be sure the installation would do this.
24. The appellant states that mast sharing opportunities are not available and the site search is very constrained and covers a small radius. As a result, only viable solutions from a planning and radio coverage perspective have been put forward. These amount to 4 sites that have been discounted 'from a radio perspective' or 'highway safety' concerns. The level of detail for the discounted options is somewhat scant and lacks sufficient information to be able to fully understand the reasons for their unsuitability when compared to the appeal site's location. I saw other areas of grass verge and commercial premises within the site search area, but there is little substantive evidence before me to suggest these have been considered and are not potentially alternative locations.
25. I am therefore not satisfied that a thorough enough review of possible site options within the search area has been conducted. This therefore makes it difficult to understand how or why the choice of the appeal site was arrived at. Accordingly, the harm I have identified to the character and appearance of the area and to the living conditions of occupiers of the flats above the convenience store are not outweighed by the needs for the installation to be sited in the proposed location. As far as it is relevant, the proposal would be contrary to DMB Policy DM16 and the Council's Design Guide, whose aims are outlined above.
26. 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.
27. In terms of the potential effects on health the appellant has provided a certificate, in accordance with the Framework, to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP).

Conclusion

28. The siting and appearance of the proposed development would cause harm to the character and appearance of the area, and harm the living conditions of nearby occupiers of the flats above the convenience store with regards to outlook.
29. For the reasons given above I conclude that the appeal should be dismissed.

K Stephens
INSPECTOR