



Appeal Decision

Site visit made on 22 November 2022

by Helen Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2022

Appeal Ref: APP/P4605/W/22/3302352

Cromwell Lane, Bartley Green, Birmingham B31 1GA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town & 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 2022/02804/PA, dated 28 March 2022, was refused by notice dated 24 May 2022.
 - The development proposed is a 15.0m Phase 9 super slimline monopole and associated ancillary works.
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Decision

1. The appeal is dismissed.

Preliminary 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 this basis.
3. In its decision, the Council has referred to Policy PG3 of the Birmingham Development Plan 2031 (adopted 2017) (BDP) and Policy DM16 of the Development Management in Birmingham Development Plan Document (adopted 2021) (DPD) as well as the National Planning Policy Framework (the Framework). However, the principle of development is established by the GPDO 2015 and Part 16, Class A does not require regard to be had to the development plan. I have had regard to the development plan and the Framework only in so far as they are a material consideration relevant to matters of siting and appearance.
4. The Council and the appellant have made reference to a previously refused scheme for a phase 8 monopole, which is wider than the monopole proposed here. I have assessed this appeal on the basis of the details before me, rather than by comparison to a previously refused scheme.

Main Issues

5. The main issues are the effect of the siting and appearance of the proposed installation on i) the character and appearance of the area, and ii) the sensitive location near dwellings and a park, and, if any harm would occur, whether it is outweighed by the need for the installation to be sited as proposed, taking into account any suitable alternatives.

Reasons

Character and appearance

6. The site is located within a relatively wide grass verge situated between the roadway and the walkway on the north side of Cromwell Lane. There are no buildings on the north side in this section of Cromwell Lane and there is a row of individual trees spaced out along the grass verge. Beyond the walkway is an area of mature trees and bushes with the large open space of Senneleys Park beyond that. The site is opposite the T junction with Moors Lane which has wide areas of grass on each corner, containing mature trees, one of which is protected. There are dwellings along the south side of Cromwell Lane and along the end of Moors Lane, but they are set back from the road, behind wide grass verges. As a result, the area has a quiet residential character with an open and verdant appearance.
7. There is a modest streetlight close to the proposed site and a small, low, street name sign. There is also a modest streetlight on the corner of Moor Lane opposite the site, but the streetlights in the area are well spaced out. As such, other street furniture in the area is sparse and unobtrusive, leaving grass verges open and uncluttered.
8. The proposal would result in a 15m high monopole and associated equipment cabinets being located within the grass verge. Despite being referred to as a super-slim design, the monopole would be significantly wider and taller than the nearby streetlight and the section towards the top containing the antennas would be particularly prominent. Regardless of whether or not they require approval, the proposed cabinets would introduce clutter, in addition to the monopole base, in an area which is currently open and relatively free of street furniture.
9. The trees in the verge and beyond it would provide some screening for the monopole from some perspectives and provide the backdrop against which it would be viewed. However, this would only apply to the bottom two thirds. As the height would be significantly taller than surrounding trees the prominent top section of the monopole would break the skyline. The site is located in a long relatively straight section of Cromwell Lane meaning the top of the monopole would be highly visible on the approach from both directions as well as when travelling down Moors Lane. The land rises through the area of trees and on into Senneleys Park, which would increase the prominence of the proposal against the skyline when viewed from that perspective.
10. As a consequence of the factors set out above, the siting and appearance of the proposal would be highly prominent and visually intrusive within the streetscene. It would be an incongruous addition within the open, uncluttered, natural and verdant character and appearance of the area.

Sensitive location

11. The Council contend that the location is sensitive, due to being in close proximity to Senneleys Park and residential accommodation. They state that the area of trees between the site and the park has been designated as a potential site of importance for biodiversity. I have been presented with no information on the justification for such a designation, or exactly why the designation would make the site unsuitable for the proposal. Consequently, I can afford this little weight in my reasoning.
12. The proposal would be visible from nearby dwellings, but the separation distance, and some intervening screening from trees, would be sufficient to mitigate the impact on outlook to an acceptable degree. The site is not within a conservation area or near listed buildings.
13. As such, while I have found that the impact of the proposal on character and appearance would be unacceptable, I have been presented with no substantive evidence which would lead me to conclude that the location is particularly sensitive with regard to its proximity to dwellings and a potential site of importance for biodiversity. The visual impact of the proposal on Senneleys Park has been assessed under character and appearance.

Alternative sites

14. The Government's support for such proposals is clear with paragraph 114 of the Framework establishing that decisions should support the expansion of electronic communications networks including next generation mobile technology such as 5G. However, the conditions set out under A.2(1)(b) of Part 16, Class A of the GPDO require that the visual impact of the proposal on an area is minimised, so far as practicable. Paragraph 115 of the Framework states that new equipment should be sympathetically designed and camouflaged where appropriate.
15. The pole and cabinets could be coloured to help them assimilate with the natural background. This would lessen the visual impact to an extent but would not alter the fundamental issue of scale, height and siting, particularly with regard to the section of monopole that would break the skyline.
16. In addition, paragraph 117c requires that for a new mast, the applicant must provide evidence that they have explored the possibility of erecting antennas on an existing building, mast or other structure. These National policy elements are closely reflected in the requirements of Policies DM16 and DM46 of the DPD. Therefore, taking into account my finding of harm regarding character and appearance, I need to consider the availability of suitable alternative sites which are potentially less harmful in terms of siting and appearance.
17. The appellant has set out the need for the proposal to fill a gap in coverage in the area. A map of the cell search area has been provided, which I have no reason to question and I accept that the area and the options are constrained by the requirements of 5G. I am aware of the sequential site selection process¹ and have taken it into consideration.

¹ As set out within the Code of Practice for Wireless Network Development in England (2022).

18. The appellant has stated that there are no suitable structures or properties that would support a rooftop site or share upgrade installation within the designated search area and that opportunities for sharing have been investigated and exhausted. However, they have provided no evidence on the possibilities that were explored or why they were discounted.
19. Brief outline information has been provided on a number of potential alternative sites for new masts which were considered. All were discounted due to proximity to residential properties. No detail on the precise locations, or an estimate of the proximity to dwellings has been provided to enable any consideration of likely harm. Consequently, I am unable to consider if the discounted options would have been more or less harmful overall than the proposal.
20. While I note that the Council has not suggested alternative sites, the issues identified above place doubt over whether alternative site options have been fully and properly considered. Therefore, I do not have clear and persuasive evidence that, in all likelihood, there are no sites available which are more suitable and less harmful.

Other Matters

21. While I acknowledge that there would be various social and economic benefits, this appeal relates to prior approval, where the benefits of telecommunications have effectively been recognised by the grant of permission under Article 3(1) of the GPDO. The GPDO is clear that the only considerations should be the siting and appearance of the proposal. Therefore, the potential wider benefits of the proposed development have not been taken into account.

Conclusion

22. The need for an installation to provide coverage in this area weighs in favour of the appeal. However, I am in no doubt that the proposed siting and appearance would be harmful to the character and appearance of the area. It has not been demonstrated that less harmful alternatives have been fully explored. Consequently, the need for the installation in this location does not outweigh the harms identified. For the reasons given above, the appeal is dismissed.

Helen Davies

INSPECTOR