



Appeal Decision

Site visit made on 15 November 2022

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th December 2022

Appeal Ref: APP/P4605/W/22/3299156

Robin Hood Crescent, Hall Green, Birmingham B28 0BH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by MBNL against the decision of Birmingham City Council.
 - The application Ref 2022/02039/PA, dated 3 March 2022, was refused by notice dated 27 April 2022.
 - The development proposed is NTQ Proposed telecommunications installation for proposed 20.0m high EE/H3G Phase 7 streetworks pole on root foundation and associated works.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1), Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a 20 metre high EE/H3G Phase 7 streetworks pole on root foundation and associated works, at Robin Hood Crescent, Hall Green, Birmingham B28 0BH, in accordance with the terms of application Ref 2022/02039/PA, dated 3 March 2022, and the plans submitted with it including 002 site location plan, 215 Proposed site plan and 265 proposed site elevation.

Preliminary Matters

2. During determination of the appeal the Council adopted the Birmingham Design Guide¹ (the Design Guide) as a new Supplementary Planning Document. It sets out a number of Design Principles and is accompanied by City Notes found within five City Manuals. The Design Guide replaces the 2008 Supplementary Planning Document 'Telecommunications Development: Mobile Phone Infrastructure'. The Council draws my attention in particular to Design Principle 24 and City Notes LW-55, 56 and 57. The parties have been given the opportunity to comment.

Procedural Matters

3. 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 telecommunications development solely on the basis of its siting and appearance taking into account any representations received. My determination of the appeal has been made on this basis.

¹ Adopted September 2022

4. 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 insofar as they relate to matters of siting and appearance.

Main Issues

5. The main issues are the effect of the siting and appearance of the proposal on:
 - the character and appearance of the area, and
 - the living conditions of occupiers of nearby properties with particular regard to outlook.

Reasons

6. The applicant has been issued with a Notice to Quit an existing site located at Centre Court in Hall Green. This building is being redeveloped into residential flats and the landlord requires vacant possession. Hence a site for a replacement mast and equipment is needed. Whilst the proposal may well be a replacement facility within the area, it would still amount to a new installation in this location.
7. The proposal will provide comprehensive digital coverage with 5G installation to facilitate significantly improved connectivity. The target coverage area is Hall Green. 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. Where new sites are required the equipment should be sympathetically designed and camouflaged where appropriate. For new masts or base stations the applications should also include evidence that the developer has explored the possibility of erecting antennas on an existing building, mast or other structure.

Character and appearance

8. The appeal site comprises an area of grass set about 2.8 metres back from the highway edge, along a short section of Robin Hood Crescent on the northern side of an island of green space with mature trees and vegetation. The site is located within a predominantly residential area of mainly inter-war two storey housing, with some single storey bungalows nearby. The grassed area is bound by the A4040, Petersfield Road and Robin Hood Crescent, but there is no pavement alongside the site. The appeal site would face towards the Marion Way Play Area on the opposite side of this part of Robin Hood Crescent, beyond which is the railway line and embankment.
9. The existing vertical street furniture along this short stretch of Robin Hood Crescent is limited and comprises two slim streetlighting columns, about 7 metres tall. However, these are on the opposite side of the road to the appeal site and are inconspicuous. Consequently, the proposed installation would not disrupt any obvious vertical street furniture pattern.
10. The existing trees and vegetation of the green space island would provide a substantial backdrop and screening to the proposed 20 metre tall monopole

and the 6 cabinets of varying sizes that would be aligned in a linear form either side of the pole and its wrap-around cabinet. The surrounding vegetation would provide some form of screening around three sides of the site, screening the cabinets and most of the pole from view, such that the site would not occupy an exposed location. Furthermore, this short section of Robin Hood Crescent has no properties on it and is not a main thoroughfare and therefore views of the development would be largely localised.

11. Nonetheless, the monopole would be substantially taller than most of the background trees, which are approximately 13 metres in height, such that it would break the skyline. However, there are some taller trees in the wider grassed area and there are mature trees along the A4040. The overall variety of vegetation and tree heights in the surrounding area would provide a varied skyline, such that the monopole would not be unduly harmful in this regard. As a significant amount of the monopole and cabinets would be well screened for the most part, the proposal would not be unduly prominent in the street scene or in the area as a whole.
12. I saw that the Marion Way Play Area was opposite the site and I understand from local residents' comments that it is well used. I saw the play area had a number of pieces of play equipment and appeared to be well-maintained, but for the most part was a naturalistic area of grass with trees, including along the boundary with Robin Hood Crescent. The Council has not identified the play area as an area of 'High Quality Open Space' that Design Guide Principle 24 and the associated City Notes LW-55, 56 and 57² identify as 'more sensitive' locations, along with residential areas. In 'more sensitive' locations new installations may be acceptable but should be carefully sited and designed to minimise the impact on the visual amenity of the area. With the tree cover around the play area, the separation distance and the monopole and equipment being set back from the road, I consider the proposal would not significantly affect the amenity value of users' enjoyment of the play area.
13. Concerns have been raised by some local residents about the potential effects on health, especially considering the site's location in a residential area and close to a children's play area. In accordance with 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). No sufficiently authoritative evidence has been provided to indicate the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified, and the Council does not raise public health concerns.
14. For the above reasons, I conclude that the siting and appearance of the proposal would be acceptable and that no significant harm would be caused to the character and appearance of the area. In this respect, the development would accord with the siting, character and appearance requirements of Policy DM16 of the Development Management in Birmingham DPD (the DMB), which seeks to ensure telecommunications infrastructure is sited and designed in order to minimise impact on visual amenity and the character and appearance of the surrounding area. It would also meet the general guidance in the Design Guide which expects telecommunication infrastructure to be of a size

² From the Healthy Living and Working Places City Manual, part of the Birmingham Design Guide, dated September 2022

appropriate to its surroundings to minimise the visual and physical impact on the character of the surrounding area.

Living conditions

15. The nearest residential properties to the appeal site are two bungalows, Nos.37 and 39 Robin Hood Crescent, near the bend in the road that leads to Marion Way, a residential cul-de-sac. The bungalows are set back from the road behind front gardens and driveways and are about 32 metres away from the site. Any habitable rooms on the front elevations would look towards the side of the island of green space, and not directly face the installation. The existing vegetation and trees would screen much of the cabinets and the lower half of the monopole from view. Whilst the monopole would be taller than the immediate trees, the separation distance and intervening road and vegetation would ensure the monopole did not cause any meaningful obstruction to views from these front habitable windows, nor create a significantly enclosing effect to occupiers in these rooms.
16. Hence I find the development would not have an overbearing effect on occupiers of these residences. I am therefore satisfied that the siting and appearance of the proposal would not result in harm to the living conditions of the occupiers of these properties with regards to outlook.
17. In so far as it is relevant to siting and appearance, the proposal would not conflict with DMB Policy DM16 which seeks 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 Design Guide about minimising the impact on the amenity of adjacent uses.

Other Matters

18. As I have concluded that the proposal's siting and appearance would not cause harm, there is no need for me to consider other sites.

Conditions

19. The Council has suggested 4 conditions that include the monopole and cabinets are coloured green and that trees are protected during construction. However, the GPDO does not provide any specific authority for imposing additional conditions beyond the deemed conditions set out in Paragraphs A.2(2), A.3(9) and A.3(11) of the GPDO. These specify that development must be carried out in accordance with the details submitted with the application; must begin within 5 years from the date on which the local planning authority received the application, and must be removed as soon as reasonably practicable after it is no longer required and the land restored to its condition before the development took place. Consequently I have not imposed the colour and tree protection conditions.

Conclusion

20. For the reasons given above, the appeal is allowed and prior approval is granted.

K. Stephens
INSPECTOR