



Appeal Decision

Site visit made on 29 November 2022

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th December 2022

Appeal Ref: APP/P4605/W/22/3299188

War Lane, Birmingham B17 1RP

- 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 & 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 2022/02399/PA, dated 15 March 2022, was refused by notice dated 12 May 2022.
 - The development proposed is described as a 'NTQ proposed telecommunications installation: 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) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of a 20.0m High EE/H3G Phase 7 Streetworks Pole on root foundation and associated works at War Lane, Birmingham B17 1RP, in accordance with the application ref: 2022/02399/PA, dated 15 March 2022, and the plans submitted with it including drawing Nos 1652117_BHM862_93912_M001 Issue A (215 Proposed Site Plan) and 1652117_BHM862_93912_M001 Issue A (265 Proposed Site Elevation).

Preliminary Matters

2. 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 GPDO), planning permission is granted for the installation, alteration or replacement of any electronic communications apparatus subject to limitations and conditions.
3. The provisions of the GPDO require the local authority to assess proposed development solely based on its siting and appearance, taking account of any representations received. My determination of this appeal has been made on the same basis.
4. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A do not require consideration of the development plan. I have had regard to the policies of the development plan and related guidance only in so far as they are factors relevant to matters of siting and appearance, therefore.

5. It has been suggested that the proposed cabinets do not require prior approval. Nevertheless, they are shown on the submitted plans and included in the description of development. Therefore, I have considered them as part of the appeal scheme.
6. I have amended the description of development used in my decision from that set out in the banner heading above, which has been taken from the planning application form. The amended description leaves out wording that is unnecessary to describe the development.

Main Issue

7. I consider the main issue to be the effect of the siting and appearance of the proposed installation on the character and appearance of the area, and on the living conditions of nearby residential occupiers having particular regard to outlook.

Reasons

8. The appeal site is a grassed area, intersected by paths, adjoining a pavement on a busy road close to the roundabout junction of War Lane. It is in an urban location with, predominantly, built-up surroundings that include residential, commercial and community buildings. Vertical structures including lighting columns, a pole mounted CCTV camera, and road signs are found in the adjoining streets.
9. The development would be screened by a nearby tree in some views, particularly when it is in leaf. In addition, nearby buildings, bus shelters, and other vegetation, including a tree on the roundabout, would obstruct views of the proposal from parts of the adjoining streets. However, the pole would be readily visible when approaching the site along War Lane and at the roundabout junction.
10. As it would be seen amongst many existing vertical structures and in proximity to buildings and trees, the pole would not stand out as an isolated or unduly exposed structure, even though it would be close to the busy junction. The upper part of the pole would protrude above the nearby tree and so would be visible against the sky. However, there are several nearby lighting columns that are tall, in prominent roadside locations and which also stand out against the sky. Whilst the proposed pole would be taller and wider than these lighting columns, I am not of the view that it would appear alien or unexpected even when the siting of the development on an open green area is taken into consideration. The green area would continue to provide visual relief to its built-up surroundings, notwithstanding the introduction of the proposed development, and would remain a largely open feature that positively contributes to the street scene.
11. The proposed number of cabinets would be extensive resulting in a row of them along the footpath's edge but there are existing cabinets near to the site and they are typical of the form of structures seen on roadsides. As such they would not appear as incongruous features on the grass verge and would not lead to undue visual clutter. Thus, the proposal, when considered as a whole, would avoid causing material harm to the character and appearance of the area.

12. The appeal site is at a slightly lower level relative to residential flats situated to the east, that face onto Lordswood Road, and is separated from such flats by the wide highway and part of the grassed area where it is located. Whilst the proposed pole would be a tall installation and the antennas at the top would add some bulk, it would overall appear as a narrow, slimline feature.
13. Given the form of the pole, the slight levels difference and the degree of separation to the flats, I do not find that it would be an overbearing or intrusive feature that would unacceptably affect the outlook of the flat occupiers to the detriment of their living conditions. Likewise, given their scale and siting, the cabinets would also not harm the living conditions of any neighbouring occupiers.
14. In conclusion, the siting and appearance of the proposed installation would have an acceptable effect upon the character and appearance of the area, and on the living conditions of nearby residential occupiers having particular regard to outlook. Insofar as it is a material consideration, the proposal would comply with Policy DM16 of the Development Management in Birmingham Development Plan Document, which amongst other provisions, seeks to minimise impact on the character and appearance of the surrounding area and protect outlook for neighbouring properties. It would also satisfactorily accord with the guidance in the Telecommunications Development: Mobile Phone Infrastructure Supplementary Planning Document (2008), which states that open locations should be avoided, and telecommunication equipment should not be prominent in the street scene or appear as an obtrusive addition.

Other matters

15. Concern has been expressed about the impact of the proposal on the nearby tree, however no evidence has been submitted to demonstrate that the proposed development would be likely to risk its health and I witnessed nothing upon my inspection to lead to a position otherwise. Furthermore, no objection has been forthcoming from the Council's Tree Officer.
16. The National Planning Policy Framework (July 2021) (the Framework) seeks to minimise the number of such sites and encourages the use of existing masts and buildings for new equipment. However, in this case there is evidence that such options have been explored and discounted for specified reasons. Also, as I have identified that the siting and appearance of the proposed development would be acceptable, it is unnecessary for me to consider the detailed merits of any potential alternative site. Consequently, the proposal, which would support the expansion of high-quality electronic communications networks, would accord with the Framework in respect of new telecommunications sites. This is notwithstanding that there is already a mast in Harborne.
17. Concerns have been raised about potential effects on health and wellbeing. However, 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). In these circumstances, the Framework advises that health safeguards are not something which a decision-maker should determine. No sufficiently authoritative evidence has been provided to indicate that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified.

18. In relation to effects arising from construction, such as obstruction of the highway, any disruption would realistically be limited and for a short duration only. Concerns that the proposed development would result in interference with existing electronic equipment in the surrounding area have not been substantiated and I have no reason to conclude that this would be the case.
19. Although concerns have been raised about the loss of property values that may result from the proposed installation, there is no evidence to suggest that this would be the case and, in any event, planning is concerned with land use in the public interest. As such, any possible influence on house prices is not a material factor in the determination of this appeal.

Conditions

20. Any planning permission granted for telecommunications apparatus under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2), which specify that the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin not later than the expiration of 5 years beginning with 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 for electronic communications purposes and the land restored to its condition before the development took place.

Conclusion

21. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

Elaine Moulton

INSPECTOR