



Appeal Decision

Site visit made on 10 January 2023

by S R G Baird BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 January 2023

Appeal Ref: APP/R0660/W/22/3291564

Marks & Spencer, 33 Mill Street, Macclesfield, Cheshire SK11 6NE

- 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 Cheshire East Council.
 - The application Ref 21/6030M, dated 18 November 2021, was refused by notice dated 17 January 2022.
 - The development proposed is a NTQ telecommunications rooftop installation and associated ancillary works.
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Preliminary Matters

1. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority (lpa) to assess the proposed development solely based on its siting and appearance, considering any representations received. The appeal has been determined on the same basis.
2. The decision notice refers to policies of the Cheshire East Local Plan Strategy (CELPS) and saved policies of the Macclesfield Borough Local Plan (MBLP). The MBLP has been superseded by the Site Allocations and Development Policies Document (SADPD) adopted in December 2022. The relevant policy of the CELPS is SD 2 and the relevant policies of the SADPD are GEN 1 and INF 8.
3. There is no requirement to have regard to the development plan as there would be for any development requiring planning permission. Nevertheless, policies of the CELPS and the SADPD are material considerations as they relate to issues of siting and appearance. Similarly, the National Planning Policy Framework (Framework) is also a material consideration. The appellant was given the opportunity to comment on the updated development plan context.

Decision

4. 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 NTQ telecommunications rooftop installation and associated ancillary works at land at Marks & Spencer, 33 Mill Street, Macclesfield, Cheshire SK11 6NE in accordance with the terms of the application Ref 21/6030M, dated 18 November 2021, and the plans submitted with it.

Main Issue

5. The effect on the character and appearance of the area.

Reasons

6. As to siting and appearance, the lpa acknowledges, given the screening provided by other buildings, that there would be limited opportunities to view the equipment from the nearest main shopping areas. Where views would be available, they would be restricted to short distance views. A tour of the adjoining streets confirms this.
7. For the most part telecommunications equipment is utilitarian in construction and appearance, and the lpa accepts the need for the antennas and dishes to be unobstructed. It is not unusual for equipment of the type proposed to be found on rooftops within town centres. In assessing visual impact, the elevation drawings, whilst an accurate representation of the building, give a misleading impression of what might be seen. To obtain the view shown on the drawing "Proposed Shared Elevation A", the viewer would need to be hovering some distance above the ground. For most of the limited and dynamic views available, the viewer at street level would only obtain glimpses of the upright antennas and dishes against the sky. Most of the equipment, especially the cabinets would be obscured by the angle of view or where seen, glimpsed against the backdrop of the building. This latter point is demonstrated by the very localised views of existing cabinets (HVAC) set against a brick wall on the main roof level. In this context, disguise or screening of the proposed equipment would neither be necessary nor effective.
8. Both the development plan and the Framework expect evidence to justify the application. The lpa expresses concern about the robustness of the operator's assessment of alternative locations and in particular a failure to assess the suitability of the Grosvenor Multi-Storey Car Park as a location. That said, as in this case, where no harm would occur, there is no need to consider the other sites that have been assessed. Neither the Framework nor the Order require the operator to select the best feasible siting.
9. Drawing above together, in terms of siting and appearance the proposed equipment, would not appear incongruous or visually obtrusive. The proposal would not have an unacceptable effect on the character and appearance of the host building or the surrounding area or conflict with the development plan, or the Framework taken as a whole.

Conditions

10. Any planning permission granted for the development 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 lpa otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin no later than the expiration of 5 years beginning with the date on which the lpa received the application, and must be removed as soon as reasonably practicable after it is no longer required for electronic communications.

Conclusion

11. For the reasons given above, and having regard to all other matters raised, the appeal is allowed, and prior approval granted.

George Baird

Inspector