



Appeal Decision

Site visit made on 9 March 2023

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2023

Appeal Ref: APP/P4605/W/22/3305030

Area of Grass Verge, Court Lane, Short Heath, Birmingham B23 5RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 Hutchison Networks (UK) Ltd against the decision of Birmingham City Council.
 - The application Ref 2022/03987/PA, dated 16 May 2022, was refused by notice dated 6 July 2022.
 - The development proposed is the installation of a 15 metre high monopole supporting 6 no. antennas, 4 no. equipment cabinets and development works ancillary thereto.
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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 the installation of a 15 metre high monopole supporting 6 no. antennas, 4 no. equipment cabinets and development works ancillary thereto at land at Area of Grass Verge, Court Lane, Short Heath, Birmingham B23 5RG in accordance with the terms of the application Ref 2022/03987/PA, dated 16 May 2022, and the plans submitted with it including: 002 Site Location Plan (Issue A); 215 Proposed Site Plan (Issue A); and 265 Proposed Site Elevation (Issue A).

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 the same basis.
3. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A do not require regard be had to the development plan. Consequently, I have taken into account the policies of the development plan and the National Planning Policy Framework (the Framework) as material considerations but only insofar as the policies relate to matters of siting and appearance.
4. In the interests of clarity, the appeal site address in the heading and Decision above is taken from the appellant's appeal form rather than their original application form.

Main Issue

5. The main issue is the effect of the siting and appearance of the proposed installation on the character and appearance of the area.

Reasons

6. The appeal site comprises a grassed area bound by Court Lane, Jerry's Lane and Harcourt Road. Opposite the appeal site, Court Lane adjoins Short Heath Park. The park is bound by substantial, regularly spaced trees. Court Lane is otherwise lined by relatively regularly spaced street trees within its grass verges. Even when not in leaf, these provide a vertical emphasis in the street scene. Within the appeal site are five smaller but well established trees that are spread across the site. Therefore the appeal site itself is not without some vertical emphasis.
7. The appeal site is separated from surrounding roads by a footpath that circles the site along with a grass verge. Furthermore, the proposed mast and cabinets would be set back within the site. This would limit its prominence in views for road users and pedestrians travelling along Court Lane as well as on Jerry's Lane and Harcourt Road. The mast would be taller than trees within the appeal site and other trees in the vicinity. Therefore existing trees would not screen the proposal at height. However, in longer views, the proliferation of street trees would have a greater screening effect. Moreover, whilst having a functional appearance, the proposed monopole would not appear alien or unexpected given the presence of many existing vertical structures.
8. In views towards Short Heath Park, the park's substantial boundary trees would form a backdrop to views of the proposal. Given the maturity of those trees and their substantial canopies, even when the trees are not in leaf they would help soften views of the appeal scheme. The proposal would be visible on exiting Short Heath Park via the gates opposite the appeal site. However, the proposal would not appear stark due to the presence of established smaller trees around the base of the mast.
9. The footprint of the appeal scheme would be small relative to the area of grass verge in which it is proposed. Therefore the role of the green space as a visual transition from parkland to residential would be retained. Furthermore, the proposal would not inhibit footfall between the two areas. No robust evidence before me indicates otherwise. The proposed black finish for the mast and cabinets would be in keeping with the colour of existing lamp posts. This would help to visually integrate the proposal with the existing site context.
10. In conclusion, even taking into account that the appeal site is on slightly elevated ground in comparison to surrounding pavements and roads, for the above reasons the proposal would not appear overly prominent or visually intrusive, and would not cause harm to the character and appearance of the area. Insofar as it is a material consideration, the proposal would accord with Policy PG3 of the Birmingham Development Plan (January 2017). This generally seeks to ensure new developments are suitably designed, including reinforcing or creating a positive sense of place.
11. Similarly, it would accord with Policy DM16 of the Development Management in Birmingham Development Plan Document (December 2021). This relates specifically to telecommunications development and also seeks to ensure

proposals minimise impacts on the character and appearance of their surroundings, as well as residential amenity. Further, I find no conflict with the Birmingham Design Guide SPD (2022) (Design Guide), including design principle 24 which seeks to ensure telecommunications equipment is appropriate for the character of the area. Also, in providing new 5G coverage the proposal would help deliver advanced, high quality and reliable communications infrastructure which is supported by paragraph 114 of the Framework.

12. Consequently, I consider that the siting and appearance of the proposal would be acceptable. As I have found no harm in respect of siting and appearance, it is not necessary for me to go on to consider the suitability of alternative locations.

Other Matters

13. I note that the Design Guide classifies residential areas as more sensitive to telecommunications development. I also note concerns raised by local residents in relation to the effect of the proposal on their outlook. However, a good degree of set back would be achieved between the proposal and the nearest houses. In addition, whilst wider than the existing lamp posts the proposed mast would nonetheless appear as a relatively narrow, vertical feature. It would thus occupy a small proportion of views from nearby houses. Accordingly I find that the proposal would not unacceptably harm the outlook for the occupants of nearby properties.
14. Concerns have also been raised about potential effects on health. 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.

Conditions

15. Notwithstanding the Council's suggested conditions, the Order does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators contained within it. These specify that the development must be carried out in accordance with the details submitted with the application, begin within 5 years of the date of the approval and 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

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

Rachel Hall

INSPECTOR