



Appeal Decision

Site visit made on 11 April 2023

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th May 2023

Appeal Ref: APP/T2405/W/22/3309408

Turnbull Drive, Braunstone Town, Leicester LE3 2JW

- 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 and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by CK Hutchison Networks (UK) Ltd against the decision of Blaby District Council.
 - The application Ref 22/0704/TEL, dated 7 July 2022, was refused by notice dated 15 September 2022.
 - The telecommunications installation proposed is 5G telecoms installation: 15m street pole and 3 additional ancillary equipment cabinets and associated ancillary 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 GPDO for the siting and appearance of 5G telecoms installation: 15m street pole and 3 additional ancillary equipment cabinets and associated ancillary works at Turnbull Drive, Braunstone Town, Leicester LE3 2JW in accordance with the terms of the application Ref 22/0704/TEL, dated 7 July 2022, and the plans¹ submitted with it: 002 Site Location Plan; 215 Proposed Site Plan; 265 Proposed Site Elevation.

Preliminary Matters

2. In the interests of clarity and correctness, I have used the site address as given by the Council when publicising the application/appeal and issuing its Decision Notice. This is as opposed to the site address given on the application form. I am content that no party is prejudiced by me taking this approach.
3. The principle of development is established by the GPDO. Even so, Schedule 2, Part 16, Class A, Subsection A.3 requires, amongst other provisions, a developer to apply for a determination as to whether prior approval will be required as to the siting and appearance of the development. I shall have regard to the policies of the development plan and the National Planning Policy Framework (July 2021) (the Framework) only in so far as they are material considerations relevant to matters of siting and appearance.

¹ each referenced BLY21750_BLY067_86359_LE7197_GA_REV B

Main Issue

4. Whether or not the siting and appearance of the proposed development is acceptable, having particular regard to its effect upon highway safety and the movements of pedestrians.

Reasons

5. It is proposed that a street pole and associated equipment cabinets (the equipment) be placed within an area of grassed verge that comprises highway land. The equipment would be positioned to the northern side of Turnbull Drive (the Drive) adjacent to a footpath that runs parallel to it (the footpath). To both the east and west of where the equipment would be sited, the Drive junctions with Kingsway. During my inspection, I observed regular traffic movements along the Drive and along both arms of Kingsway at speeds seemingly befitting of the 30mph speed limit that applies to these routes.
6. It is important to note that the equipment would occupy a stepped back position relative to the Drive and would be set away from any nearby highway junction. On this basis, having factored in my own on-site experiences, there is little potential for the equipment to interfere with available visibility for motorists (or cyclists) when negotiating either of the junctions where Kingsway meets the Drive's northern side.
7. Interested parties have drawn my attention to existing telecommunications equipment installed in proximity to a roundabout where Kingsway meets Narborough Road South. However, the circumstances are not directly comparable to those before me. Indeed, greater distances of separation from neighbouring carriageways would be achieved by the appeal proposal. Thus, this other apparatus, which does not share a visual relationship with where the equipment would be installed, is of limited relevance to my considerations.
8. It has been indicated by interested parties that, in-part due to the busyness of the Drive and Kingsway, it would be unsafe to install and maintain the equipment. However, such suggestions have not been robustly substantiated. Moreover, whilst I observed regular traffic movements and acknowledge the potential for some trips to be made by large-sized vehicles including buses, there is no clear evidence to suggest that the equipment's installation or subsequent maintenance would be likely to prejudice highway safety. I also observed the existence of on-street parking opportunities close to the site that could seemingly be utilised safely by maintenance engineers. It has not been clearly demonstrated otherwise.
9. The equipment would be positioned adjacent to the footpath, which I experienced to be of wide specification and surfaced to a high standard. Whilst future maintenance activities would be required on a likely infrequent basis, it has not been clearly demonstrated that such activities would necessarily prevent pedestrians from passing along the footpath. In any event, on realistically rare occasions where free-flowing pedestrian movements along the footpath could be hindered, a footpath of similar specification runs parallel to the southern side of the Drive and serves as a potential alternative route. As such, the equipment would not cause undue obstructions for footway users nor prejudice their safety. As a further note, whilst an interested party has made reference to an agreement to widen the footpath, there is nothing before me to

demonstrate that the equipment's installation would interfere with any agreed future scheme of widening works.

10. For the above reasons, the siting and appearance of the proposed development, having particular regard to its effect upon highway safety and the movement of pedestrians, would be acceptable. The proposal satisfactorily accords with Policy CS2 of the Blaby District Local Plan (Core Strategy) Development Plan Document (February 2013), Policies DM1 and DM8 of the Blaby District Local Plan (Delivery) Development Plan Document (February 2019) and with the Framework in so far as these policies seek to secure a high-quality environment and that development should only be prevented on highways grounds if there would be an unacceptable impact on highway safety.

Other Matters

11. The equipment would occupy a visible location adjacent to a grassed area of open space and the intended street pole would rise to 15m in height. Nevertheless, the pole's intended positioning in proximity to planting would assist in providing a degree of partial screening from a range of potential vantage points. Furthermore, the equipment, to be coloured dark green, would be viewed in the context of various items of modern street furniture, including signage, cabinet boxes, vertical streetlighting columns and telegraph poles. Thus, particularly when factoring in the slimline specification of the proposed street pole and the ancillary small-scale nature of the proposed cabinets, the equipment would avoid causing material harm in a visual impact sense. This finding is not inconsistent with the views of the Council.
12. Concerns have been raised about potential effects on human health, as well as the health of local wildlife. 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. There is also no clear reason to consider that the development would prejudice children playing on the area of open space that the equipment would be sited alongside.
13. I have noted reference to possibly damaged underground sewage pipes running along Kingsway that have, I understand, led to instances of flooding and ground sinkage. However, where the equipment would be sited, I observed seemingly stable ground conditions. Moreover, any possible threat to the stability of the intended street pole has not been clearly substantiated.
14. Interested parties have referred to a legal covenant that allegedly forbids development on green space situated along Kingsway. However, this is a civil/legal matter of no direct material relevance to the outcome of an appeal that relates purely to a prior approval process specific to the siting and appearance of proposed apparatus. It is thus not necessary for me to explore this matter any further here. The potential effect upon nearby property values has been separately raised. However, such considerations are also not material to the outcome of this appeal.
15. References have been made to potential alternative locations for the equipment. However, 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. It is relevant to note here that the appellant's search area was necessarily constrained in size to ensure that the equipment would complement the existing network and thus support high quality communications and digital connectivity.

Conditions

16. Any planning permission granted for electronic communications 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.
17. Whilst the Council has suggested further conditions, the GPDO does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators as referenced above.

Conclusion

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

Andrew Smith

INSPECTOR