



Appeal Decision

Site visit made on 17 May 2023

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 22 May 2023

Appeal Ref: APP/C3105/W/22/3308356

Land at Lords Lane, Bicester, Oxfordshire

- 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 and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by C K Hutchison Networks (UK) Limited against the decision of Cherwell District Council.
 - The application Ref 22/01908/TEL56, dated 25 June 2022, was refused by notice dated 22 August 2022.
 - The development proposed is described as "proposed 5G telecoms installation: H3G street pole and additional equipment cabinets".
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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, for the siting and appearance of a proposed 5G telecoms installation comprising H3G street pole and additional equipment cabinets, on at land at Lords Lane, Bicester, Oxfordshire, in accordance with the application Ref 22/01908/TEL56, dated 25 June 2022, subject to the following condition:
 - 1) The development shall be carried out in accordance with the following approved plans: 002 Site Location Plan and 215 Proposed Site Plan.

Preliminary matters

2. Under the relevant provisions of the 2015 Order, the proposed development constitutes permitted development, subject only to prior approval with regard to matters of siting and appearance only. My decision is made on this basis.
3. In the plans provided to me, there appears to be a minor discrepancy between the submitted site plan and elevation drawing, with regard to the siting of the proposed equipment cabinets. This discrepancy does not appear to affect the siting of the mast. In the absence of any further clarification, I have treated the scheme as shown on drawing No 215, Proposed Site Plan, as the definitive proposal with regard to siting.

Main issue

4. Having regard to the Council's reason for refusal, and the other submissions before me, the main issue is the effect of the proposed mast on living conditions at nearby properties, with particular regard to matters of outlook and visual impact.

Reasons for decision

5. The proposed mast and cabinets would be sited on the grassed highway verge adjacent to Lords Lane, which forms part of the A4095 Bicester Ring Road, at its junction with Lucerne Avenue. To the south of Lords Lane is the Bure Park residential area, which includes Lucerne Avenue and Germander Way. In this part of the estate, the properties are mostly arranged in small groups, around shared driveways or courtyards, with no direct access from Lords Lane. The edges of the housing area are landscaped with hedgerows and tree belts, and there is further tree planting along the highway verges.
6. On my visit I saw that, in the vicinity of the appeal site, the boundary hedge is about 6m tall, and quite broad and dense. The nearby trees are of varying heights, with some a good deal taller, although spaced with gaps between in some cases. All were in full leaf, and although this would be different in winter, it seems to me that even then, the hedge in particular would be likely to continue to provide a considerable amount of screening, due to its breadth and density.
7. The mast now proposed would be taller than either the hedge or the trees. But nevertheless, for the reasons already explained, it seems to me that the screening role that they play would be likely to be highly effective in relation to many potential viewpoints, and especially those closest to the site itself. In addition, as well as providing screening, I saw that the vegetation has the effect of creating a clear visual and physical separation between the housing areas and the roadside environment of Lords Lane. This sense of separation is further reinforced by the design and layout of the dwellings, with the main focus being directed inwards towards the shared, enclosed spaces of the access ways, rather than beyond.
8. The nearest property to the site is No 1 Germander Way. From the first floor windows in the property's front elevation, the top part of the new mast would be potentially visible above the hedge, albeit filtered by the trees. However, the angle of view would be oblique, and the two windows in question are dormers, and therefore likely to have a somewhat restricted field of view. At ground floor level, views towards the appeal site are obstructed by the projecting garage, as well as the hedge and trees behind. The property's rear windows face away from the development. The two side windows face directly into the hedge, and thus appear to afford no outward view at all. The top of the mast would be likely to be visible from part of the rear garden, but from the remainder it would be hidden by the house itself. The mast would in any event have a slim, neat design and inoffensive appearance. Overall, given the limited nature of the views obtainable, together with the filtering effects of the vegetation, and the physical and visual separation that I have referred to, it seems to me that the development's impact on the outlook from No 1, and on living conditions at the property, would be no more than slight.
9. No 3 Germander Way would have a similar relationship to the development, but at a slightly greater distance, and with No 1 in between. Any views of the mast from the property's first floor windows would be even more oblique. No views would be possible from the rear garden. The considerations applying to No 31 are again similar. In none of these cases would living conditions be significantly affected.

10. Partial views of the top of the mast would also be visible on the approach to all three properties, along their respective shared driveways, but the effects on these semi-public spaces would not amount to an impact on living conditions, which forms the basis for the Council's reason for refusal.
11. Some properties in Lucerne Avenue would also have potential views towards the development, but at a greater distance, and with substantial trees intervening. In my view, none of these dwellings would suffer any undue impact.
12. Having regard to all of the above, I find that the proposed mast would have, at most, only a slight adverse impact on the outlook from No 1 Germander Way, and no significant effects on any other properties. In my judgement, the effect would be neither unduly imposing nor overbearing. Living conditions would thus be materially unharmed. In this respect no conflict would arise with Policy ESD15 of the 'Cherwell Local Plan 2011 – 2031' which seeks to protect the character of the built environment, including residential amenity.

Other matters

13. The Council has drawn my attention to saved Policy C39 of the earlier Cherwell Local Plan, adopted in November 1996, relating to telecommunications structures. This policy provides that permission for such developments will normally be granted, provided that various criteria are met. In the present case, the most relevant criteria are that it is not possible to share existing facilities, or to make use of an existing building or structure. The appellants submit that these options are not available as alternatives to the appeal proposal, and their contentions on these matters have not been challenged. The policy contains no requirements as to effects on neighbouring occupiers. From the evidence before me, the appeal proposal appears to comply fully with Policy C39.
14. The appellants have also presented evidence of the need for the proposed development, to assist in the roll-out of advanced 5G mobile communications services to consumers; and also regarding the area of search, and the other alternative locations considered, as well as the reasons for preferring the present appeal site. This evidence is again substantially unchallenged. The National Planning Policy Framework (the NPPF), at paragraph 114, provides support in principle for such developments, in the national interest.
15. The appeal scheme is accompanied by a declaration of conformity with the guidelines of the International Commission on Non-Ionizing Radiation Protection (ICNIRP), with regard to the safeguarding of human health. I note that a legal challenge relating to this issue is to be considered by the Courts, but in the absence of any resolution to that matter, NPPF paragraph 118 makes it clear that such a declaration should be regarded as sufficient.

Conclusion

16. For the reasons given above I conclude that, in terms of its siting and appearance, the proposed development would cause no significant harm to living conditions or residential amenities at any nearby properties.
17. The development would also comply with the relevant development plan policies, and advance the NPPF's aims for the expansion of advanced telecommunications networks, in the national interest.

18. A condition specifying the approved plans is necessary, to ensure certainty as to the details of the development that is permitted. For the reasons set out elsewhere in this decision, those plans are limited to the submitted location and site plans.
19. Subject to this condition therefore, the appeal is allowed, and approval to the proposed siting and appearance is granted.

J Felgate

INSPECTOR