



Appeal Decision

Site visit made on 2 May 2023

by Helen Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2023

Appeal Ref: APP/P4605/W/22/3311452

Land at Wellington Street Park, Wellington Street, Birmingham B18 4NR

- 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 (as amended).
 - The appeal is made by EE Limited against the decision of Birmingham City Council.
 - The application Ref 2022/04358/PA, dated 27 May 2022, was refused by notice dated 19 July 2022.
 - The development proposed is described as “electronic communications mobile cellular base station consisting of a 20m high phase 5 pole, 3no antennas, 2no 300mm dishes, 3 cabinets and associated ancillary development.”
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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 electronic communications mobile cellular base station consisting of a 20m high phase 5 pole, 3no antennas, 2no 300mm dishes, 3 cabinets and associated ancillary development at Land at Wellington Street Park, Wellington Street, Birmingham B18 4NR in accordance with the terms of the application Ref 2022/04358/PA, dated 27 May 2022, and the plans submitted with it.

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 of the GPDO do not require regard to be had to the development plan. I have had regard to the policies of the development plan and the National Planning Policy Framework (Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.

Main Issues

4. The main issues are the effect of the siting and appearance of the proposed installation on:

- the character and appearance of the area; and
- if any harm would occur, whether this is outweighed by the need for the installation to be sited as proposed, taking into account any suitable alternatives.

Reasons

Character and Appearance

5. The appeal site comprises an area of mounded grass located at the back of a pedestrian footway along Wellington Street, near to the junction with Franklin Street. The site is situated on the edge of Wellington Street open space playground and multi-use games court. This gives the area a relatively open aspect.
6. The surrounding area consists of industrial uses, a prison, school, and residential properties on adjoining roads. The appeal site is located opposite a row of industrial buildings on Wellington Street and a railway line runs to the rear of these buildings.
7. The proposed monopole mast and associated equipment would be sited on the appeal site between the footway and the grass mound. Whilst there are vertical features in the immediate vicinity of the appeal site, the proposed monopole mast would be considerably taller than the existing street furniture in this section of Wellington Street. It would be evidently thicker than the existing streetlighting, and the antenna apertures at the top of the mast would add to the bulk of the structure at its highest point. The substantial height of the pole would be further pronounced by its prominent position on the edge of the grass mound and near to the junction with Franklin Street. The siting and appearance of the proposal would therefore appear at odds with the open character of the grass mound and the area of open space behind.
8. In addition, the proposed monopole mast and associated cabinet equipment would result in an increase in ground coverage compared to the existing situation. This would further contribute to the visual clutter and dominance of the proposal as perceived by passing drivers and pedestrians.
9. However, due to the rising land levels along Franklin Street and within the open space itself, views of the proposal would be localised. It would be seen within the context of a background of industrial buildings, and the vertical emphasis of the nearby streetlighting when approaching along the carriageway and footways. In addition, when viewing the proposal from the open space, the large over hanging railway line poles and lattice infrastructures are clearly visible. Furthermore, views from Foundry Road and the school would be partially obscured by trees and the nearby basketball court which is sited in a more elevated position than the appeal site.
10. In reaching the above findings, I have taken account of paragraph 115 of the Framework which states that where new sites are required (such as for new 5G networks), equipment should be sympathetically designed and camouflaged where appropriate. In that regard, the design of the proposal reflects its intended function and there is no evidence before me that it has not been designed as sympathetically as possible in this location. However, such material considerations of themselves do not prevent the harm I have identified.

11. For the reasons given, the proposal would cause harm to the character and appearance of the area. As such, the proposal would fail to accord with the design objectives of the Framework. In addition, the proposal would be contrary to Policy PG3 of the Birmingham Development Plan (2017). Amongst other things, this policy seeks to ensure new development creates a positive sense of place and responds to site conditions and the local area context. The proposal would be contrary to Policy DM16 of the Development Management in Birmingham Development Plan Document (2021), which amongst other things, seeks to minimise impact on the character and appearance of the surrounding area. It would also conflict with the guidance in the Council's 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.

Need

12. The proposal would address a gap in coverage and provide improved data coverage for travellers on the adjacent railway line. Furthermore, it would help to facilitate increased digital communications for the surrounding area, which would benefit the needs of residents, visitors and businesses. The site would also form part of the new 4G Emergency Services Network that will be used by the emergency services (including the Police, Fire and Ambulance services) to communicate.
13. Paragraph 117 of the Framework explains that applications for telecommunications development, including prior approval, should be supported with the necessary evidence to justify the proposed development. This should include for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure.
14. I have had regard to the appellant's evidence which details the reasons for discounting sites including that they would be too far from the target area, technical suitability, impact on pedestrian flow, access and servicing would not be feasible, and the adverse effects on residential amenity.
15. The appellant also states that there are no viable existing telecommunication installations for the operator to share, and there are no suitable tall buildings, or structures within the target coverage area that would fit the bespoke and fixed coverage requirements. I also acknowledge the constrained cell area and the operational need for connectivity along the railway line.
16. The evidence indicates that the appeal site is the least harmful location within the cell area of the siting options explored by the appellant. I also note that there have been no objections to the proposal from local residents or from the school. Although the Council has suggested an alternative location to the southwest of Wellington Street, I observed that due to the fairly flat topography and reduced width of the open space at this section of the park, an alternative site here would be close to the nearby residential properties and would therefore appear more visually prominent than the proposal before me. Consequently, there is no information before me to indicate that there are suitable alternative sites to provide the required coverage that could otherwise avoid the harm I have identified with respect to the character and appearance of the area.

17. As such, the proposal would accord with the aims of the Framework, as set out above, which requires evidence to demonstrate that alternative sites have been explored.

Other Matters

18. 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). According to the Framework, it is not necessary to determine health safeguards where the proposal meets these guidelines.

Planning Balance

19. Whilst the proposal would cause harm to the character and appearance of the area, in my view the level of harm would be moderate given the compact scale of the development and its prominence in only localised views due to land level changes and the presence of intervening screening features in more distant views. Paragraph 114 of the Framework states that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Furthermore, planning decisions should support the expansion of electronic communications networks.
20. Given the need for the installation, which weighs in favour of the proposal, a balance needs to be carried out against any harm identified. The proposal would provide economic and social well-being benefits as indicated by the appellant, and I am satisfied that the appellant has demonstrated that the appeal site is the least harmful location available through which these benefits could be facilitated. In that context, the need for the installation to be sited in the location as proposed to provide improved network coverage and capacity to meet the needs of the nearby railway line, emergency services, local community and businesses and the absence of any more suitable alternatives, weigh considerably in favour of the proposal.
21. On balance, I conclude that the benefits provided by the improved network coverage and capacity for the adjacent section of railway line, and emergency services, local community and businesses would significantly outweigh the moderate harm caused by the siting and appearance of the proposed mast to the character and appearance of the area.

Conditions

22. Any planning permission granted for 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 local planning authority otherwise agree in writing, be carried out in accordance with the details submitted with the application. It 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.
23. The Council's Regulatory Services has suggested that an additional condition be imposed should approval be granted. This relates to noise levels for plant and machinery. In addition, the Council's Transportation team has suggested

additional conditions requiring highway works to be at the applicants' expense and a requirement for a licence. However, the GPDO does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators contained within it. Consequently, I have not imposed the suggested conditions. Based on the evidence presented, I do not consider that the suggested conditions are so fundamental that without the conditions it would be necessary to dismiss the appeal.

Conclusion

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

Helen Smith

INSPECTOR