



Appeal Decision

Site visit made on 16 May 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 June 2023

Appeal Ref: APP/W2465/W/22/3312700

Glenfrith Way Street Works, Glenfrith Way, Leicester LE3 9QQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval under Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Thomas Gallivan of CK Hutchison Networks (UK) Ltd against the decision of Leicester City Council.
 - The application Ref 20221924, dated 28 September 2022, was refused by notice dated 8 November 2022.
 - The development is described as “proposed 5G telecoms installation: H3G 18m street pole and additional equipment cabinets”.
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Decision

1. The appeal is dismissed.

Procedural 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. Nevertheless, I have had regard to the policies in the Leicester City Local Development Framework Core Strategy, adopted 2014 (CS) and the National Planning Policy Framework (‘the 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 setting of the non-designated heritage assets (NDHAs) of Gilroes Cemetery, its crematorium and chapels and, if any harm would occur, whether it is outweighed by the need for the installation to be sited as proposed, taking into account any suitable alternatives; and
 - the effect of the siting of the proposed installation on highway safety.

Reasons

Setting of NDHAs

5. To the east of the appeal site is Gilroes Cemetery. The cemetery, together with the crematorium and chapels sited within, are identified within the Council's Local List of local heritage assets¹ and therefore comprise NDHAs. Gilroes Cemetery is an excellent representative of a late 19th/early 20th century municipal cemetery and was designed by the nationally recognised Leicester-based architectural firm Goddard & Co. The crematorium and chapels comprise a pair of linked mortuary chapels with a crematorium to the rear that were designed by the same architects as the cemetery and constructed at the same time. They are the focal point of the cemetery. The cemetery and associated buildings are therefore of historic interest and have group value and social/communal value.
6. The crematorium and chapels building is positioned at the end of a central, tree-lined avenue towards the north of the cemetery. Surrounding this building is a large area used for burials that is subdivided into smaller rectangular sections by single width tree-lined roads and narrow paths extending from the central avenue. The boundaries of the cemetery are densely planted with trees. The cemetery has a verdant and green character and appearance that is substantially screened from the surrounding built development, creating a tranquil environment largely devoid of buildings and structures other than those associated with the cemetery.
7. It is proposed to erect an 18m high monopole in close proximity to the western boundary of Gilroes Cemetery. The proposed monopole would have different shaped antennas positioned towards the top that would exacerbate its prominence. Limited information has been provided regarding the monopole's proposed design and why a slimline design would not be acceptable. The proposed monopole would be sited towards the end of a single width tree-lined road within the cemetery, which provides a direct view towards the crematorium and chapels building and to an area where people congregate. The gravestones within this part of the cemetery are lined almost on a north-south axis with the inscriptions on the eastern side. Therefore, visitors to the graves would face towards the proposed monopole.
8. While it is noted that the western boundary is heavily planted with trees, the proposed monopole would be taller and largely comprise deciduous species. Therefore, the mast would be highly visible from within the cemetery all year round and even more conspicuous during the winter months when the leaves have fallen from the trees. Furthermore, the monopole would be within the line of sight of the crematorium and chapels building when looking in a westerly direction from the northeast/east of the cemetery. The utilitarian appearance of the proposed monopole would be incongruous and alien to the surrounding leafy character and setting of the Gilroes Cemetery NDHA and to the setting of the crematorium and chapels NDHA.
9. Insofar as they are a material consideration, the proposed development would be contrary to the aims of Policies CS03 and CS18 of the CS which, amongst other things, seek to protect and enhance the historic environment including the character and setting of designated and other heritage assets, be

¹ Leicester City Council Local Heritage Asset Register 2022

appropriate to the local setting and context, and take into account Leicester's history and heritage.

10. Weighing developments that indirectly affect NDHAs, paragraph 203 of the Framework requires a balanced judgement having regard to the scale of any harm or loss and the significance of the heritage asset.
11. The Framework supports high-quality communications infrastructure, and considers that advanced, high quality, reliable communications infrastructure is essential for economic growth and social well-being. I also note that policies and decisions should support the expansion of the communications networks, and that the delivery of 5G infrastructure is specifically referenced. I have also been directed to communication from the Government² that details their commitment to support the deployment of gigabit broadband across the country and the critical role local authorities have in delivering it.

Suitable Alternatives

12. Paragraph 117 of the Framework requires telecommunications development to be supported by evidence to justify it including, if proposing a new telecommunications mast, evidence that there are no existing buildings, masts or other structures on which the proposed apparatus can be sited. I acknowledge that the technical and operational requirements of the 5G service means that the target service area can be small. I also accept, for technical and operational reasons, that the potential to erect antennas on existing buildings, masts or other structures can be limited and subject to constraints.
13. The appellant has identified five alternative sites that were discounted in favour of the appeal site. The Council consider the reasons for discounting sites 1-4 seem plausible however, they note the absence of comments relating to a listed building in respect of sites 1, 2 and 5 and limited information in respect of the proximity of the previously mentioned NDHAs. Therefore, the reasons for discounting the alternative sites and favouring the appeal site is not comprehensive.
14. The Council has suggested an alternative site at Leicester Water Centre further north along Glenfrith Way than the appeal site that is a similar distance from the nominal point and does not appear to have been explored. This alternative site is positioned further away from the NDHAs and is commercial in appearance. Consequently, I am not convinced that all other options are unavailable or unsuitable for the proposed development.

Highway Safety

15. The appeal site comprises a grass verge adjacent to Glenfrith Way (the A563) which, along this part of the road, comprises a dual carriageway with a speed limit of 40mph and a traffic-controlled intersection with the entrance/exit to Glenfield Hospital. 'Keep Clear' markings and double yellow lines are present on the road in front of the appeal site. A pavement is located between the grass verge and the boundary to the cemetery and a pedestrian crossing is positioned in proximity of the appeal site.

² Letter dated 27 August 2020 from the Department for Digital, Culture, Media & Sport and Ministry of Housing, Communities & Local Government

16. It is unclear from the information before me, whether vehicles associated with the installation and maintenance of the proposed equipment could park in locations that would not impede the free flow of traffic, including ambulances serving the hospital. Therefore, it has not been demonstrated that the siting of the proposal would not be harmful to highway safety.
17. Insofar as they are a material consideration, the proposed development would be contrary to the aims of Policy 14 of the CS which, amongst other things, seeks to develop and maintain a transport network that will accommodate the impacts of new development. It would also be contrary to the Framework which seeks to prevent development on highways grounds if there would be an unacceptable impact on highway safety.

Other Matters

18. The proposal would meet the International Commission on Non-Ionising Radiation Protection guidelines and I acknowledge that the development would be grey to aid its assimilation into the surrounding area. However, an absence of harm in relation to these matters weighs neither for nor against the appeal proposal.
19. I have been directed to an appeal decision³ against the Council of the London Borough of Southwark that allowed a 20m high monopole. Other than the appeal reference number, I have been provided with limited information. Notwithstanding this, I note that the Council refused the application on the grounds of excessive clutter on the footway resulting in disruption to pedestrians, which differs to the main issues associated with this appeal. Therefore, the appeal is not of direct relevance. Furthermore, each case must be determined on its own merits.

Balance and Conclusion

20. The Framework and the Government provides support for advanced, high quality, reliable communications infrastructure as essential for economic growth and social well-being. I have had regard to the rationale for the proposed monopole on the appeal site and the alternative sites put forward. However, I have found that the justification for discounting alternative sites and favouring the appeal site was not comprehensive, and a site suggested by the Council has not been explored. Therefore, I am not convinced that other options are unavailable or unsuitable. Furthermore, I have identified that the proposal would harm the setting of two NDHAs and insufficient information has been provided that the proposal would not harm highway safety.
21. The Framework identifies a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. The harm to the setting of the NDHAs would be significant. Accordingly, based on the evidence before me, the identified harm to the setting of the NDHAs is not outweighed by the need for the installation to be sited in the proposed location.
22. For the reasons given above, I conclude that the appeal should be dismissed.

A Berry

INSPECTOR

³ Appeal Ref: APP/A5840/W/20/3254830