



Appeal Decision

Site visit made on 11 July 2023

by A Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 August 2023

Appeal Ref: APP/Z4310/W/23/3315437

Mill Lane street works, Mill Lane, Liverpool L15 8LY

- 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 & Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Gallivan, CK Hutchison Networks (UK) Ltd against the decision of Liverpool City Council.
 - The application Ref 22PT/2834, dated 19 October 2022, was refused by notice dated 12 December 2022.
 - The development proposed is 5G telecoms installation: H3G 15m street pole and additional equipment cabinets.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's name in the banner header above is taken from the application form. A slightly different name is provided on the appeal form although the appellant's address is the same on both forms. I am satisfied the applicant and the appellant are the same and that the appeal is made by an appropriate body.
3. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 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.
4. The appellant provided an Arboricultural Report¹ (AR) at the outset of the appeal. Notwithstanding the provisions of Schedule 2, Part 16, Class A, Paragraph A.3(9)(b) of the GPDO, this document serves principally to provide greater detail relative to the Council's objection to the scheme, rather than significantly altering the nature of the proposal. Although an appeal should not be used to evolve a scheme, interested parties, including the Council, have had the opportunity to comment on the AR. I am satisfied that no prejudice would occur to any party as a result of my consideration of its content and have determined the appeal on that basis.
5. It has been suggested by the appellant that the proposed cabinets do not require prior approval. Nevertheless, they are shown on the submitted plans

¹ Sylvanarb Arboricultural Consultants Arboricultural Report Re: SA/2124/23 dated 24 April 2023

and included in the description of development. Therefore, I have considered them as part of the appeal scheme.

Planning Policy

6. The Council has referred to development plan policies in its decision notice. However, 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. Therefore, I have had regard to the policies of the development plan 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

7. The main issues are the effect of the siting and appearance of the proposed installation on:
 - the living conditions of nearby residential occupiers, with particular regard to outlook;
 - pedestrian movement and safety on Mill Lane;
 - trees; and
 - if any harm would be caused in these regards, whether this is outweighed by the need to site the installation in the location proposed, taking into account any suitable alternatives.

Reasons

Living Conditions

8. The rear elevations of Nos. 2, 4 and 6 Crossley Drive face the proposed development. The rear gardens of these residential properties are of moderate depth and are bound by a high stone wall adjacent to Mill Lane, which is on the rise of a hill. The proposed monopole would be wide and tall and would be imposing when viewed from the rear windows of these properties and particularly from within the rear gardens.
9. Whilst trees within the rear gardens of the dwellings would offer some screening of the proposed monopole when in leaf, the proposal would be clearly visible during the winter months when not in full leaf. Given the height and proximity of the monopole and the gap in tree cover to the rear of 4 Crossley Drive (No.4) it would form a highly conspicuous feature which would dominate the direct outward view from within the rear-facing rooms and the rear garden of this property.
10. Even though a streetlight is located within the pavement on Mill Lane, at the rear of No.4, the proposed monopole would be wider and taller than the streetlight. I find that the structure would tower above the stone boundary wall and result in an overbearing and intrusive feature that would unacceptably affect the outlook of the occupiers of this dwelling, to the detriment of their living conditions.
11. Although the proposed monopole would be visible from the rear windows and gardens belonging to Nos. 2 and 6 Crossley Drive, the view would be filtered by

the tree canopies. Moreover, the rear windows of these dwellings are angled away from the appeal site, therefore the monopole would be seen obliquely, and it would not dominate the whole view. The proposed cabinets would not be sufficiently large to have an overbearing presence in views from nearby residential windows or gardens.

12. However, on the above basis, the proposed development, through its siting and appearance, would harm the living conditions of occupiers of No.4, with particular regard to outlook. In so far as they are a material consideration, the proposal would be contrary to Policies UD1 and UD2 of the Liverpool Local Plan 2022 (LLP) which together, amongst other matters, seek development that is of high quality design that provides a good outlook for existing development.
13. The Council's decision notice also references Policy STP4 of the LLP. As this policy refers to balancing national priorities against adverse impacts, I will consider this later in my decision.

Pedestrian Movement and Safety

14. The proposed development would be located along a pavement of reasonable width and currently wide enough to allow the easy passage of pedestrians, pushchairs and people in wheelchairs. However, there would be two other equipment cabinets, a streetlight, a litter bin and a covered bus stop located close to the proposed development. The proposed cabinets and monopole would be positioned between the other street furniture, slightly forward of the boundary wall at the inner side of the pavement.
15. Although the area was not particularly busy at the time of my site visit on a weekday lunchtime, this represents a snapshot in time. Given its location close to Wavertree Cricket Club, a playing field, a bowling club, church and primary school, I would expect there are times when Mill Lane pavement is busy with people, particularly for those waiting at the bus stop.
16. Due to the position of the cabinets and mast, they would project a greater degree into the footway than the existing adjacent cabinets, and they would occupy a significant footway length. Therefore, the available space for pedestrians would be reduced. While a good width of pavement would be retained between the proposed development and the outer edge of the pavement, the proposal would obstruct the current clear passage between the bus stop, litter bin and streetlight on the outer edge of the pavement and the existing cabinets along the inner edge of the pavement. Pedestrians, wheelchair users and those with pushchairs would therefore be required to weave between the street furniture on this stretch of pavement.
17. I find that it would cause significant detriment to pedestrian safety. Even if the proposed cabinets benefit from permitted development rights not requiring prior approval under the GPDO, it is not put to me they would be installed, were the mast not to be permitted.
18. There is no objection from the Highway Authority. Nevertheless, based upon the evidence before me and what I saw, the proposed new mast in this specific location, and exacerbated by the cabinets would be significantly prejudicial to pedestrian movement and safety. Conditions could not mitigate the harm.
19. Therefore, I conclude the siting of the development would result in unacceptable effects on pedestrian movement and safety on Mill Lane. Of

relevance to the siting of the development, I have had regard to Policy TP6 of the LLP which includes requirements for all new development to provide a well-designed pedestrian environment and to demonstrate best practice in design for pedestrians by ensuring a fully accessible layout for pedestrians.

Trees

20. The proposed monopole would be located close to several trees in the rear gardens of Nos. 2,4 and 6 Crossley Drive. A substantial stone wall separates the trees from the appeal site and the monopole would be sited in a small gap between trees. The Council's Tree Officer has raised concerns regarding potential harm to these trees which may require frequent pruning.
21. I observed at my site visit that the trees contributed positively to the verdancy and character of the street scene. The AR provided confirms the Council's Tree Officer view that the root protection areas of the trees would not be affected by the proposed development and I have no reason to disagree. The AR also indicates that the height and canopy spread of the trees in relation to the position of the monopole and the level of service coverage required would not necessitate pruning, other than lower lateral growth from two trees which could periodically be carried out from the public highway.
22. Based on the evidence before me, I conclude that it is unlikely that there would be significant harm to the trees that would result in their loss or decline. Therefore, the proposal would comply with Policy GI9 of the LLP which is a material consideration in so far as it seeks that an Arboricultural Impact Assessment and Arboricultural Method Statement must be submitted for development within 3m of the outer extent of a tree canopy to ensure that existing trees are protected and integrated within new development.

Alternative Sites

23. Paragraph 117 of the Framework advises that applications for electronic communications development should be supported by the necessary evidence to justify the proposed development. For a new mast or base station, this includes evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure.
24. The appellant has outlined their sequential approach to site selection within the designated search area. Only a desktop survey was undertaken in the search for a suitable mast sharing or rooftop opportunity and 6 ground-based sites in the search area were considered and discounted following a physical inspection of the area by the appellant. These sites were also close to residential properties or on narrow pavements. From my observations on site, I would agree that most of these alternatives were more harmful than the appeal site.
25. However, no detailed information has been provided to fully corroborate the reasons why the vicinity of D1 was rejected, other than due to narrow pavements. I saw that there is a triangular bollard section of pavement in this location and it is unclear whether different positions for the equipment in this area were considered. Furthermore, the Council assert that Wavertree Cricket Club adjacent to D1 could potentially accommodate the proposal. The appellant has not sought to rule out this suggestion for any reason. As such, I am unconvinced that the appeal site represents the only feasible location for the proposal.

26. I acknowledge that equipment is required to provide improved 5G coverage and capacity in the area and the type of installation proposed is the optimum design solution for deploying 5G technologies and the height at 15 metres is the lowest that would work effectively. It is noted that, as with all 5G cells, the relevant search area is very constrained and that in this case, the designated search area covers what is largely a densely populated residential area.
27. Nonetheless, when noting the visual sensitivities that would apply to a monopole erected within such close proximity to residential properties, it is reasonable to require clear and comprehensive supporting evidence.
28. Given the evidence before me, having regard to Framework paragraphs 115 and 117 c), I am not satisfied that there is clear or persuasive evidence that there is no likelihood of a more suitable and reasonably available alternative site within the target coverage area, or therefore that the appellant has provided the necessary evidence with regard to alternative sites to justify the proposed development.

Other Matters

29. The proposal would support the expansion of communications networks, including 5G which would have economic, social, health, educational, well-being, and sustainability benefits. However, the relevant provisions of the GPDO indicate that only matters of siting and appearance should be considered. These benefits of the scheme are not factors to take into account as these are already recognised through permitted development rights.
30. A concern has 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.

Conclusion

31. Whilst I have not found any harm arising from the proposal in relation to trees, I have found that the proposal would be harmful to pedestrian movement and safety on Mill Lane and to the living conditions of occupiers of No.4 Crossley Drive, with particular regard to outlook.
32. Although options for siting the monopole are limited by technical and operational constraints, it has not been demonstrated that the need to site the development in the location proposed would outweigh this harm. Policy STP4 of the LLP requires the contribution of new infrastructure to national priorities and locally identified requirements to outweigh the adverse impacts. Given my conclusions, the proposal would conflict with this policy.
33. For the reasons set out above, I conclude that the appeal should be dismissed.

A Veevers

INSPECTOR