



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: 9 August 2023

Appeal Ref: APP/Z4310/W/23/3315421

Rose Lane street works, Rose Lane, Liverpool L18 5HJ

- 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 CK Hutchison Networks (UK) Limited against the decision of Liverpool City Council.
 - The application Ref 22PT/2826, dated 17 October 2022, was refused by notice dated 24 November 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 name of the appellant in the banner heading above differs from that on the planning application form, although the company name is the same. The appellant has clarified that the correct name is the company name used on the application and appeal forms. I have therefore proceeded on this basis.
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. It has been suggested by the appellant that the proposed cabinets do not require prior approval. Nevertheless, they are shown on the submitted plans and included in the description of development. Therefore, I have considered them as part of the appeal scheme.

Planning Policy

5. 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

6. The main issues are:

- the effect of the siting and appearance of the proposed installation on the character and appearance of the area;
- the effect of the siting and appearance of the proposed installation on trees;
- whether there would be interference with air traffic services, instrumentation or other electrical equipment; 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

Character and appearance

7. The appeal site is located on a pavement on Rose Lane, opposite a row of two-storey residential properties and adjacent to a supermarket car park that is bound by a row of trees along Rose Lane. The surrounding area is mixed in character being close to a predominantly residential area, a large supermarket and the junction with Mather Avenue with its commercial area to the north. Rose Lane is a tree-lined street which contributes positively to the verdant character and appearance of the immediate area.
8. The pavement is relatively wide in the immediate vicinity of the appeal site and includes several street trees, street lighting columns, a litter bin and a covered bus stop nearby. At the time of my site visit, albeit a snapshot in time, I observed that cars were parked on the pavement. Indeed, one car was parked wholly on the pavement in the same location as the appeal site, although there was space for pedestrians to pass between it and the boundary wall at the back edge of the pavement. I also observed that the pavement was well used by pedestrians in both directions.
9. The proposed monopole would be positioned close to three integrated base cabinets that would all be located reasonably centrally on the pavement. The height of the proposed monopole would be significantly taller than the surrounding trees and buildings and would be excessive in this location, directly opposite residential properties. Furthermore, the column width would be bulky in comparison to the streetlighting and signage poles close by. Together with the base cabinets the installation would appear as incongruous features within their immediate surroundings.
10. I acknowledge that the site is not within an area with a statutory designation such as a conservation area and is not directly adjacent to sensitive receptors. The surrounding trees would provide some screening in views along Rose Lane and Mather Avenue and act as a backdrop to the equipment and mast, although this would be reduced during the winter months when not in full leaf.
11. Nevertheless, the monopole would be visible from the junction with Reedale Road and above the adjacent tree canopies from the surrounding area. The proposal would starkly contrast with the domestic scale and appearance of development along Rose Lane and the open skyline of the adjacent car park. In addition, the cumulative presence of the equipment cabinets would add bulk to

the proposal and undermine the softening effect of the greenery in the street scene. The proposal would therefore fail to integrate into its surroundings and would detract from the positive qualities of this part of Rose Lane to the detriment of the character and appearance of the area.

12. In so far as it is a material consideration, conflict would therefore arise with Policy H7 of the Liverpool Local Plan 2022 (the LLP) which amongst other matters, requires regard to be had to the character of the area.
13. The Council's decision notice also references Policy STP4 of the LLP in each reason for refusal. As this policy refers to balancing national priorities against adverse impacts, I will consider this later in my decision.

Trees

14. The proposed development would be located in proximity to several trees. The Council's Tree Officer has raised concerns regarding potential harm to these trees, yet no tree survey or arboricultural impact appraisal has been submitted by the appellant. Without such information, I cannot be certain that the health and welfare of the established trees has been fully taken into consideration for the siting of the monopole and equipment. This is a particular concern given the importance of the trees to the screening of the car park and to their positive contribution to the verdant tree-lined character of Rose Lane.
15. For this reason, I find the proposal would conflict with Policy GI9 of the LLP insofar as it is a material consideration and Paragraph 117 of the Framework. Together these seek, amongst other things, for proposals to be supported by evidence to address the impact on trees through an arboricultural impact assessment and arboricultural method statement.

Interference

16. To comply with Paragraph 116 of the Framework, local planning authorities should ensure they have evidence to demonstrate that electronic communications infrastructure is not expected to cause significant and irremediable interference with other electrical equipment, air traffic services or instrumentation operated in the national interest.
17. On the basis of the evidence before me, the Civil Aviation Authority were not notified by the appellant of the proposal prior to submitting the application. Liverpool Airport Limited has concerns over the lack of assurance from the appellant that the location of the proposed 5G capability is compatible with the radar operation at Liverpool Airport, as required by Ofcom procedures and given its proximity to the airport. Further information was clearly requested from the appellant in order that verification of protection thresholds could be undertaken. No such information has been provided.
18. While Ofcom may be the appropriate regulatory body that deals with interference issues relating to an operator's licence, without the assessment to satisfy the consultee, I cannot be certain that protection thresholds are not breached, and radar safety is not compromised. As a result, I find that the appeal proposals are contrary to the requirements of paragraph 116 of the Framework, referred to above.

Alternative Sites

19. There is a clear need for, and importance of, the rollout of the 5G network. Paragraph 117 of the Framework states, among other things, that applications for electronic communications development (including applications for prior approval under the GPDO) should be supported by necessary evidence to justify the proposal. Where this is in relation to a new mast or base station, this evidence should include that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure.
20. As well as the appeal site, several alternative sites have been considered to accommodate the proposed development. These were discounted for various reasons, including visibility issues, narrow pavements and proximity to residential properties. I acknowledge that, as with all 5G cells, the relevant search area would be constrained. However, D5 would be located along a busy two lane carriageway with wide pavements, grass verges and a central reservation. From my observations, a potential opportunity may be suitable along Mather Road which already includes tall streetlighting columns or within the supermarket car park close to the existing tall commercial signage.
21. Furthermore, I note the appellant states no mast/site sharing or existing building/structures were identified following a desktop survey of the area, yet no indication of which existing structures or rooftops in the search area were considered has been provided. The Council suggest that there are buildings and masts in the area, such as the Tesco supermarket building and masts along Menlove Avenue that could be given consideration. Other options have been put forward by interested parties. The appellant has not sought to rule out these suggestions for any reason. As such, I am therefore unpersuaded from the available evidence that the appeal site is necessarily the least harmful in terms of its siting and appearance. Furthermore, I cannot be certain that the harm would be equivalent or worse on a site elsewhere.
22. On the information before me and from my site visit, the evidence does not convincingly demonstrate that a thorough review of possible options within the cell search area has been carried out or that the appellant has adequately explored whether there may be less harmful alternative sites.

Other Matters

23. Concerns have 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.
24. I have had regard to other matters raised by interested parties, however, given my conclusions on the main issues, it is not necessary to explore them in further detail.
25. I appreciate that the appellant sought pre-application advice from the Council before submitting the application, although I have not been provided with any

substantive evidence that a response or support for the proposed location was received. Nonetheless, I have only had regard to the planning merits of the proposal that is before me.

Planning Balance

26. For the reasons given, I have found that the siting and appearance of the proposed installation would have a harmful effect on the character and appearance of the area and it has not been demonstrated that the proposal would not harm the health of nearby trees or interference with air traffic services, instrumentation or other electrical equipment. Moreover, it has not been demonstrated that this harm is outweighed by the need for the installation to be sited as proposed, taking into account any suitable alternatives.
27. Policy STP4 of the LLP requires the contribution of new infrastructure to national priorities and locally identified requirements to outweigh the adverse impacts. Given the above, and in so far as it is a material consideration, the proposal would conflict with this policy.
28. The government is committed to supporting the deployment of next-generation mobile infrastructure. In this regard, whilst I recognise the general social and economic benefits, those benefits have effectively been recognised by the grant of permitted development rights in the GPDO. Hence, they do not carry additional weight when considering matters of siting and appearance as part of the prior approval process. In any event, the advantages of the proposal and other arguments advanced in support of the scheme do not outweigh the harm I have identified above.

Conclusion

29. For the reasons given above, the appeal should be dismissed.

A Veevers

INSPECTOR