



Appeal Decision

Site visit made on 11 July 2023

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2023

Appeal Ref: APP/N4720/W/23/3320275

Adopted highway land at the junction of Stainbeck Avenue/Stainbeck Road, Stainbeck Avenue, Leeds, West Yorkshire LS7 2QU

- 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 Cornerstone against the decision of Leeds City Council.
 - The application Ref 22/06282/DTM, dated 7 September 2022, was refused by notice dated 21 October 2022.
 - The development proposed is described as: 'the proposed installation of telecommunications base station consisting of proposed 20m VF Hutchinson apollo A12RV2 pole, accommodating 6no. VF antennas, 1no. VF GPS module, with 2no. VF Lancaster XES cabinets and 1no. VF SFMC cabinet, along with ancillary equipment and apparatus thereto.
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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 the proposed installation of telecommunications base station consisting of 20m VF Hutchinson apollo A12RV2 pole, accommodating 6no. VF antennas, 1no. VF GPS module, with 2no. VF Lancaster XES cabinets and 1no. VF SFMC cabinet, along with ancillary equipment and apparatus thereto on adopted highway land at the junction of Stainbeck Avenue/Stainbeck Road, Stainbeck Avenue, Leeds, West Yorkshire LS7 2QU in accordance with the terms of the application, Ref 22/06282/DTM, dated 7 September 2022, and the plans submitted with it including, Site Location Drawing No. 100 Rev A, Proposed Site Layout Drawing No. 201 Rev A and Proposed South-East Elevation Drawing No. 301 Rev A.

Procedural Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO 2015), 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 provisions of Schedule 2, Part 16, Class A of the GPDO 2015 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 (the Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.

4. The decision notice cites amongst others, Policy BD of the Leeds Unitary Development Plan (Review 2006) (UDP). However, the Council have confirmed that this referred to Policy is indeed BD5, and I have assessed the appeal accordingly.

Main Issue

5. The main issue is 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

6. The appeal site is located on a wide area of pavement occupying a corner position at the road traffic junction where Stainbeck Avenue meets Stainbeck Road. Stainbeck Avenue is part of a busy road network, and the appeal site is directly adjacent to the traffic lights. Consequently, the site is highly visually prominent from public vantage points. The surrounding area is predominantly residential, and a number of properties are located directly opposite the site. There are also a small number of commercial uses located nearby along Stainbeck Road. A small wedge-shaped area of open land is located to the rear of the appeal site which has mature trees along its boundary wrapping around both Stainbeck Avenue and Stainbeck Road. This area is enclosed by a mid-height metal fence and brick pillars. The area provides a verdant character, a sense of openness and visual relief to the street scene which is otherwise characterised by residential and commercial buildings. The surrounding roads contain a number of street trees and street furniture including streetlights, traffic lights, road signs, bus shelters and equipment cabinets.
7. The proposed development would be located on the pavement directly in front of the trees and boundary fencing. It would therefore be visible from the nearby residential properties as well as the main roads. The 20-metre high monopole would exceed the height of the adjacent trees. This, along with its overall width which would be greater than other features in the area, would affect the sense of openness and visual relief to the street scene. This would result in the monopole being a visually prominent within this otherwise open and verdant setting. It would dominate the street scene even if painted a different colour. I appreciate that the design is utilitarian, and typical of communications masts. However, this does not mean that it would not be harmful.
8. The residential properties located directly opposite the site have several windows located at ground and first floor level providing for clear and open views of the site. The close proximity of the appeal site to these residential properties coupled with the overall height and width would appear imposing to existing occupiers. Given the area of open land to the rear and presence of trees along the boundaries, I am not persuaded that the development would be seen in the context of surrounding suburban buildings, particularly when viewed from the properties opposite.
9. The reason for refusal refers to the lack of an Arboriculture Impact Assessment. However, the appellant has adequately demonstrated that no works to the trees are proposed because the height of the antennae would extend above the tree line.

10. For the reasons given above, I find that the proposed development by reason of its siting and appearance would result in harm to the character and appearance of the area. Whilst not determinative, the proposal would be contrary to Policy P10 of the Leeds City Council Core Strategy (as amended by the Core Strategy Selective Review 2019) and Policies GP5 and BD5 of the UDP which together, amongst other matters, seek to provide good design appropriate to its surroundings.
11. Paragraph 117 of the Framework requires applications to be supported by the necessary evidence to justify the proposed development. The appellant has followed a sequential approach in relation to their site selection including consideration of site sharing and use of existing structures. The evidence indicates that the site area is highly constrained for technical reasons including overlap of coverage.
12. I have had regard to the location of the alternative sites explored by the appellant and the explanation on why these were discounted as well as taking into account third party suggestions regarding alternative sites. The appellant has provided adequate justification for discounting other sites and there is no counter evidence before me which would lead me to come to a different conclusion.
13. Based on the evidence before me, I am satisfied that other alternative siting solutions have been adequately explored by the appellant and have been found to have been unsuitable for the proposal. Furthermore, there is no compelling case for other sites that have been put forward by a local resident. This would still be the case even taking into account the concerns raised in relation to the overall height and its harmful effects on character and appearance.

Other Matters

14. I note the Council's suggestions regarding the reduction in height and appreciate that lower masts may be located elsewhere. I also note the appellants' response to this and the specific requirements and overall reasoning for the height in this location including the technical difficulties surrounding a possible reduction. Nonetheless, I am determining the scheme that is before me and not a scheme of a reduced height.
15. My attention has been drawn to two previous appeal decisions for similar proposals¹. However, there are material differences between those appeals and the appeal before me in terms of specific location and siting, the character of their surroundings and relationship to nearby residential properties. Therefore, those cases are not directly comparable to the scheme before me.
16. 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.

¹ APP/N4720/W/20/3265690 and APP/P4605/W/21/3271311

17. My attention has been drawn to two legal challenges to 5G rollout with claims made that all development should be paused until the outcome of these legal challenges. However, the details of these challenges are not before me and in any case, I am unaware of any Government advice to do so. Comparisons to the roll out of telecommunications in other countries does not have a bearing on my findings nor does the number of other planning applications lodged. I have determined the current appeal on its own merits and evidence in front of me.
18. There is a lack of evidence before me to indicate that the development proposal is located within an environmentally sensitive location. This would not change my findings in relation to the main issue nor would comments made in relation to insufficient consultation, property prices, capital profits, anti-social behaviour, potential accidents and potential effects on flooding and climate change. There is no compelling evidence before me to justify such matters, and in any case, my considerations are limited to the siting and appearance of the apparatus in accordance with the relevant legislation as set out in the procedural matters above.
19. The exact detailing of the proposed development is as shown on the submitted plans and any approval granted for the 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 includes the removal in the event the equipment is no longer required with the land restored.
20. The Highway Authority are satisfied that the equipment would not obstruct drivers' visibility or the free flow of pedestrians. Based on the evidence in front of me and my own observations on site, I agree with their assessment.

Planning Balance

21. Paragraph 114 of the Framework explains that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections. Policies should set out how high-quality digital infrastructure, providing access to services from a range of providers, is expected to be delivered and upgraded over time; and should prioritise full fibre connections to existing and new developments (as these connections will, in almost all cases, provide the optimum solution).
22. While the proposed development would by reason of its siting and appearance result in harm to the character and appearance of the area, I find that this would be outweighed by the need for the installation and the lack of less harmful alternative sites.

Conditions

23. Any planning permission granted for the 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, 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.

24. The Council have suggested a condition relating to the colour finish of the mast in the interests of visual amenity. However, the Order does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators. Consequently, such a condition should not be imposed although it should be noted that approved drawing no. 301 Rev A indicates a green colour for the pole and antennas.

Conclusion

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

N Teasdale

INSPECTOR