



Appeal Decision

Site visit made on 19 September 2023

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2023

Appeal Ref: APP/T4210/W/22/3309777

Land at junction of Heywood Street & Benson Street, Bury BL9 7EB

- 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 CK Hutchison Networks (UK) Ltd against the decision of Bury Metropolitan Borough Council.
 - The application Ref 68821, dated 23 August 2022, was refused by notice dated 12 October 2022.
 - The development proposed is described as 'proposed 5G 17m telecoms installation: H3G street pole and additional equipment cabinets.'
-

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 a 5G 17m telecoms installation: H3G street pole and additional equipment cabinets at land at junction of Heywood Street & Benson Street, Bury BL8 7EB, in accordance with the application ref: 68821, dated 23 August 2022, and the plans submitted with it including BRY21770_BRY131_88063_BL0391_GA_REV_A Issue A (002 Site Location Plan), BRY21770_BRY131_88063_BL0391_GA_REV_A Issue A (215 Proposed Site Plan), BRY21770_BRY131_88063_BL0391_GA_REV_A Issue A (265 Proposed Site Elevation).

Preliminary Matters

2. 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 GPDO), planning permission is granted for the installation, alteration or replacement of any electronic communications apparatus subject to limitations and conditions.
3. The provisions of the GPDO require the local authority to assess proposed development solely based on its siting and appearance, taking account of any representations received. My determination of this appeal has been made on the same basis.
4. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A do not require consideration of the development plan. Therefore, I have had regard to the policies of the development plan only in so far as they are material factors relevant to matters of siting and appearance.

5. I have taken the address of the appeal site from the Council's decision notice rather than the application form as it is a more accurate description of the location. In addition, I have amended the description of development used in my formal decision from that set out in the banner heading above, which has been taken from the planning application form. The amended description leaves out 'proposed' as this word does not refer to an act of development.

Main Issues

6. The main issues are the effect of the siting and appearance of the proposal on:
- the character and appearance of the area and the living conditions of nearby occupants with particular regard to outlook; and
 - highway safety.

Reasons

Character and appearance

7. The appeal site is located adjoining the busy Heywood Street on a stretch of footpath that lies between Cook Street and Hacking Street. Heywood Street has a mixed commercial and residential streetscape and consists of buildings that are predominantly 2 storeys in height. Directly to the rear of the appeal site is a tall brick boundary wall and a single storey commercial building.
8. Trees are regularly spaced along the footpath creating a rhythm within the street scene which is accentuated by the straight alignment of Heywood Street. There is a limited amount of street furniture within the stretch of footpath containing the appeal site, with just a telegraph pole close by and a lamppost at each end next to the Cook Street and Hacking Street junctions. In the wider street scene, there are lampposts sited at regular intervals along both sides of Heywood Street and traffic signs. The existing street furniture and trees provide a vertical emphasis to the street scape.
9. The cabinets would be sited close to, and seen against the backdrop of, the brick boundary wall. They would not, consequently, be prominent features in the street scene. The upper section of the proposed street pole would protrude above the boundary wall, the nearby trees, and the surrounding buildings. However, from most views the lower section of the street pole would be obscured by, or seen against the backdrop of, the trees. The tree canopies would soften the presence and effect of the street pole upon approach in both directions along Heywood Street and would ensure that it would not be a prominent or visually intrusive feature in the street scene. Furthermore, the limited amount of street furniture and the lack of similar apparatus in the immediate vicinity would ensure that it would not result in visual clutter to the detriment of the character and appearance of the area.
10. The apparatus would be clearly noticeable to those travelling along Benson Street towards Heywood Street, and to the occupiers of properties on Heywood Street opposite to the appeal site. Nonetheless, the prominence of the proposed apparatus would still be mitigated to a degree by its position between trees and against a boundary wall and commercial building. Given the degree of separation and the intervening road, visibility of the proposal would not be so oppressive that it would harm the living conditions of nearby occupants in respect of outlook. In addition, given the presence of existing vertical

structures, albeit of a lower height to the appeal proposal, it would not appear as an alien or unexpected feature in the street scene.

11. I therefore conclude that the siting and appearance of the proposal would not harm the character and appearance of the area or the living conditions of nearby occupants with regard to outlook. Insofar as they are relevant to siting and appearance, the proposal would accord with Policies EN1/2 and EN1/10 of the Bury Unitary Development Plan (UDP). Such policies, amongst other things, seek to ensure proposals do not unacceptably affect character and townscape, and that telecommunications developments have regard to visual and physical impact.

Highway Safety

12. The street trees are positioned close to the kerb on the outer side of the footpath which results in pedestrians walking close to the boundary wall along the stretch containing the appeal site. Due to the siting of the proposed apparatus on the inner side of the footpath, users would have to deviate from the existing desire line in order to navigate past. Nonetheless, the siting of the proposed street pole and base cabinets would not be directly opposite any tree, and would not, therefore, create a pinch point within the footpath. Furthermore, the proposed apparatus would take up a relatively small area of the footway. In the absence of any substantive evidence that demonstrates to the contrary, I consider that sufficient space within the footpath would remain for all users to pass the proposed apparatus and that pedestrians would not have to stray onto the adjoining road at risk to their safety.
13. Accordingly, for the reasons given above, the siting and appearance of the proposal would not have an unacceptable impact on highway safety. Insofar as they are relevant to siting and appearance, the proposals would accord with UDP Policy HT6/2 which seeks to reduce pedestrian/vehicular conflict.

Other Matters

14. As I have found the siting and appearance of the proposals to be acceptable, it is not necessary for me to consider the alternative sites that have been suggested by the Council, or those that have been assessed by the appellant.

Conditions

15. 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. I have not repeated these conditions in my formal decision.
16. The Council have suggested that a condition be imposed stating the development must be begun not later than 3 years beginning with the date of this permission. However, the GPDO does not provide any specific authority to amend the 5-year time limit set out at Paragraph A.3 (11).

Conclusion

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

Elaine Moulton

INSPECTOR