



Appeal Decision

Site visit made on 27 September 2023

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th November 2023

Appeal Ref: APP/P4605/W/23/3318683

Bell Lane, Tile Cross, Birmingham B33 0HS

- 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 Hutchinson Networks (UK) Ltd against the decision of Birmingham City Council.
 - The application Ref 2022/08985/PA, dated 4 December 2022, was refused by notice dated 25 January 2023.
 - The development proposed is described as "the installation of 15m high slim-line monopole, supporting 6 no. antennas, 1 no. wraparound equipment cabinet at the base of the monopole, 2 no. equipment cabinets, 1 no. AC/Transmission cabinet, 1 no. GPS module and associated ancillary works".
-

Decision

1. The appeal is dismissed.

Preliminary 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. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 5 September 2023, replacing the version published on 20 July 2021. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach.

Planning Policy

4. As the appeal relates to a prior approval for a telecommunications development, there is no requirement to have regard to the development plan as there would be for any development requiring an application for planning permission. Nevertheless, Policy PG3 of the Birmingham Development Plan 2017 (BDP), Policy DM16 of the Development Management in Birmingham Development Plan Document 2021 (DPD) and the Telecommunications Development: Mobile Phone Infrastructure Supplementary Planning Document 2008 (SPD) are a material consideration as they relate to issues of siting and

appearance. In particular, they seek, among other things, to ensure development responds to the local area context and is sited and designed in order to minimise impact on the visual and residential amenity, character and appearance of the surrounding area. Similarly, the Framework is also a material consideration, and this includes a section on supporting high quality communications.

Main Issues

5. 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 the living conditions of existing occupiers of nearby properties, with particular regard to outlook, and
- if any harm would occur, whether this is outweighed by the need for the installation to be sited in the location proposed taking into account any suitable alternatives.

Reasons

Character and appearance

6. The appeal site is located on a wide footpath in a predominately residential area, at the corner of Bell Lane and The Radleys. It adjoins a relatively open, grassed residential garden, within which are a number of trees. Deep, grassed verges and street trees give the area an open, spacious and verdant feel. Vertical structures in this area predominately comprise lampposts and telegraph poles. Building heights are relatively low, with two storey residential properties and a nearby commercial unit with a flat roof no higher than the adjacent residential properties. The low building heights, street furniture, trees and deep, grassed verges contribute to the character and appearance of the area.
7. The proposed development would result in an incongruously tall and conspicuous feature, located on a prominent corner, that would be significantly higher than, and contrast markedly with, the relatively low building heights, lampposts and telegraph poles in the locality. It would therefore detract significantly from the character of the area.
8. The proposed mast would be viewed alongside the nearby trees, which would provide some screening when approaching the site along The Radleys, heading towards its junction with Bell Lane, or along Bell Lane, when heading in a broadly south easterly direction. However, as some of the trees fall within land outside the appellant's control, the longevity of these trees is uncertain, particularly given their location in a private garden. Moreover, the evidence before me indicates these trees lose their leaves during winter months. As such, the site would not be effectively screened from views and would become more visible during those months the trees are not in leaf. In any case, and while acknowledging the proposed development would be set back from the highway, the site would still be highly visible when approaching in a north westerly direction along Bell Lane.

9. I accept that this is new technology and acknowledge, for technical reasons, 5G masts cannot be shrouded. I understand the siting and appearance have been driven by coverage requirements and the appellant has sought to minimise the mass and scale of the development by utilising the least intrusive possible design and height for 5G coverage. Nevertheless, the mast would result in an incongruous form of development, at odds with the character of the area.
10. For these reasons, I conclude the siting and appearance of the proposed installation would have an unacceptably harmful effect on the character and appearance of the area. Insofar as they are a material consideration, the proposal would also be contrary to the aims of BDP Policy PG3, DPD Policy DM16, the SPD and the Framework.

Living conditions of existing occupiers

11. The SPD advises, among other things, that locations immediately in front of habitable room windows should be avoided where possible. Although the SPD predates 4G and 5G, its overarching aims seeks to ensure any such telecommunications installation, irrespective of its network requirements, minimises its impact on the visual amenity of the area. This broadly complies with the Framework which seeks, among other things, to ensure equipment is sympathetically designed.
12. There would be views of the proposal from a number of nearby properties, including 455 and 457 The Radleys and 78-84 Bell Lane. These properties have relatively open frontages, with the exception of No 457, which has a hedge on its front boundary. As such, occupants of these properties would likely have relatively clear views of the proposal from ground floor and first floor windows. However, given the extent these properties are setback from the highway, the pavement depths and the intervening highways, the location of the proposed development would not be immediately in front of habitable room windows serving these properties. As such, the visibility of the proposal would not be so oppressive as to result in unacceptable harm to the living conditions of existing occupiers of these properties with respect to outlook.
13. For these reasons, I conclude the siting and appearance of the proposed installation would not have an unacceptably harmful effect on the living conditions of occupiers of nearby properties, with particular regard to outlook. Insofar as they are a material consideration, the proposal would accord with the aims of BDP Policy PG3, DPD Policy DM16, the SPD and the Framework.

Alternative sites

14. The Framework sets out that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being and, in this regard, there is a need to support the expansion of electronic communications networks, including next generation mobile technology, such as 5G. The mast would introduce new 5G coverage to the area, while also ensuring that the latest high quality 3G and 4G service provision can be provided.
15. While acknowledging the need for the proposal, given the harm I have found to the character and appearance of the area, other options that might be available are an important consideration. Paragraph 117 of the Framework requires, for

- a new mast, that evidence is provided that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure.
16. I understand that there are no tall buildings or existing masts in the required coverage area that could be shared by the appellant and there are limited suitable sites across the area with the only land uses being relatively small domestic gardens and public highways.
 17. A recent planning application, reference 2022/05044/PA, was refused by the Council for a 20m streetpole in the same location as the appeal scheme, and a further proposal, reference 2020/01847/PA, located across the railway line, while approved, could not be built following an objection from Birmingham Airport. The appellant asserts these other proposals demonstrates the lack of any more suitable sites.
 18. Notwithstanding these limitations, other locations have been considered by the appellant, which have been informed by the coverage and data demand area and, having regard to 5G, the need to locate the equipment in the area where the service is used.
 19. The appellant provides a number of reasons for rejecting these other sites. However, the evidence before me does not illustrate the hole in coverage, the coverage that could be achieved by the appeal proposal and alternative sites and what additional site, including its location, would be required. While the appellant asserts the search area is small, there is little substantive evidence before me which illustrates its extent.
 20. Alternative site D1 has been discounted as the required coverage would not be achieved. However, this site is within close proximity to the appeal site and alternative sites D2, D3 and D7, which the evidence indicates would provide suitable coverage. There is limited substantive evidence before me which clearly demonstrates why alternative site D1 would not be suitable, when nearby sites are considered to be acceptable in coverage terms.
 21. While the Framework seeks to ensure proposals should be kept to a minimum, I have little substantive evidence before me that demonstrates an additional site, or a more substantial structure in a different location, would result in greater harm than the scheme before me. Overall, the reasons given for discounting other sites are brief and unsupported by sufficient detailed evidence to demonstrate why they would not be viable.
 22. Therefore, in the absence of clear and persuasive evidence as to why alternative sites have been discounted, I cannot establish whether more suitable sites might reasonably be available. Consequently, I am not satisfied, based on the evidence before me, that suitable alternatives have been comprehensively explored, nor that the requirements of paragraph 117 of the Framework have been fully met.

Other Matters

23. There are economic, social, sustainability, environmental, health and educational benefits associated with the delivery of mobile connectivity. The appellant has highlighted the importance of connectivity in terms of public benefit, which they consider cannot be overestimated and is essential for everyday life. Furthermore, I understand there has been significant growth in demand and reliance on mobile connectivity and patterns and manner in which

data is used have also changed. Several reports have been drawn to my attention, including two 2022 OFCOM reports and government documents, extolling the benefits and importance of connectivity, and the current state of delivery of that connectivity. I also understand that the appellant's 4G network is under significant pressure.

24. As set out in the Framework, advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Nevertheless, while acknowledging these benefits exist, the provisions of the GPDO 2015 are clear, and I am only able to consider the matters of siting and appearance.
25. I have considered the appeal decision¹ and costs decision² submitted by the appellant. However, the evidence before me suggests the locational contexts and circumstances were different. In both cases, the Inspector found the character and appearance of the area would not be adversely affected by the development proposed, and in the appeal decision the proposal would replace an existing mast. Consequently, on the evidence before me, these decisions are not directly comparable. In any case, I have determined this appeal on its own merits.
26. The absence of harm in respect of heritage assets or environmental assets carries neutral weight in favour of the proposal.

Conclusion

27. Notwithstanding my conclusions in respect of the living conditions of existing occupiers of nearby properties, the siting and appearance of the proposed installation would have a significantly harmful effect on the character and appearance of the surrounding area and would not be appropriately screened. Given suitable alternatives have not been properly explored, this harm is not outweighed by the need for the installation to be sited as proposed. As such, I find the siting and appearance of the proposed development to be unacceptable.
28. I therefore conclude that the appeal should be dismissed.

S Pearce

INSPECTOR

¹ APP/B5480/W/20/3251086

² APP/G5180/W/16/3151769