



Appeal Decision

Site visit made on 19 September 2023

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Appeal Ref: APP/T5150/W/23/3318182

Lyon Park Avenue, Brent HA0 4HA

- 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 Gallivan (CK Hutchison Networks (UK) Ltd) against the decision of the Council of the London Borough of Brent.
 - The application Ref 22/3894, dated 15 November 2022, was refused by notice dated 3 January 2023.
 - The development proposed is described as 'Proposed 5G telecoms installation: H3G 18m street pole and additional equipment cabinets'.
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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 Proposed 5G telecoms installation: H3G 18m street pole and additional equipment cabinets at Lyon Park Avenue, Brent, HA0 4HA in accordance with the terms of the application, Ref 22/3894, dated 15 November 2022, and the plans submitted with it including: BRT21247_BRT270_88766_NW0710_GA_REV_A Issue A (002 Site Location Plan); BRT21247_BRT270_88766_NW0710_GA_REV_A Issue A (215 Proposed Site Plan); and BRT21247_BRT270_88766_NW0710_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 GPDO 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 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 consideration of the development plan.

5. Nevertheless, Policy DMP1 of the London Borough of Brent Local Plan referred to in the Council's appeal statement is a material consideration as it relates to issues of siting and appearance. Similarly, the National Planning Policy Framework (the Framework) is also a material consideration, and this includes sections on supporting high quality communications. As such, I have had regard to the policies of the development plan, related guidance, and the Framework only in so far as they are factors 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 and whether any harm caused is outweighed by the need for the installation to be sited as proposed taking into account any suitable alternatives.

Reasons

Character and appearance

7. The appeal site is situated centrally on a wide pavement on Lyon Park Avenue, close to its junction with Heather Park Drive. Immediately behind it is a 3 storey pitched roof building, which comprises ground floor retail units, with accommodation above. This large building which fronts both Lyon Park Avenue and Heather Park Drive is designated as a Neighbourhood Parade. The surrounding area also comprises a mix of 2 storey residential properties and community uses.
8. The proposal would involve the installation of an 18 metre high monopole with three further cabinets of varying sizes alongside. The street pole would be positioned at the point in-between retail units, towards the front area of the pavement and would be coloured grey. There are other vertical features in the area, including chimneys, flues and telegraph poles. The pavement is very wide and largely free from other street furniture, creating an uncluttered open aspect.
9. The Council's officer report and statement confirms that the size and position of the monopole was considered to be acceptable. Owing to the site's position near a large scale building, it would not stand tall in isolation. The street trees in close proximity to the appeal site and on the nearby traffic island, alongside the slender form of the street pole, would help to mitigate the height and appearance. Although it would integrate well with its surroundings, it would still be visible to road users and pedestrians or when viewed from nearby properties. However I am satisfied that given the character and appearance of the area that it would not become an unduly prominent focal point.
10. The Council's concerns primarily stem from the scale of the base cabinets being wide and high with two of them attached to each other. The Council has referred to the guidance within the Framework at paragraph 115, that equipment should be sympathetically designed and camouflaged where appropriate. Lyon Park Avenue is recognised as a mixed use area along a busy stretch of road. The introduction of a telecoms installation including cabinets would not be out of character within such a setting and would largely blend in with the area. I consider the Council's suggestion of incorporating some form of artwork to the cabinets could be a positive attribute in some circumstances, but

the GPDO does not provide any specific authority for imposing additional conditions beyond the deemed conditions. In this respect grey would be a suitable colour for such functional infrastructure.

11. I note the absence of objection from the Council's Highway Authority. The space accessible to pedestrians in front and to the rear of the development would retain adequate footways of between 2m to the carriageway and 3m to the shops. I therefore do not consider that pedestrian movement would be harmfully impeded. The Council has raised no objections to the siting of the proposed equipment in relation to the existing street furniture or the street trees, as such I see no reason to disagree on this matter.
12. The cabinets would be positioned in front of a retail unit. The Council considers that the cabinet would create a barrier when viewed from the street. However, given the degree of separation between the cabinets and the retail windows, views of the entire shop front would still be possible from several directions. Although I acknowledge that the cabinets would be high, they would not be very deep. Thus the effect of the cabinets obscuring the shop front would be seen in limited closer range and direct views only. Whilst this would result in a slightly awkward relationship, the retail parade which faces two roads would predominantly remain unaltered. There is no evidence before me that the siting of these would compromise the use of the businesses.
13. It is common for other street furniture such as bus shelters to be positioned in front of retail units. However, I acknowledge this part of the pavement is currently free from other street furniture. The development would add visual clutter and the position of the cabinets and monopole would alter and detract from the open character of it. I therefore find that the siting and appearance of the development would cause some harm to the character and appearance of the area, to which I ascribe moderate weight.
14. Insofar as it is a material consideration, the development would conflict with Policy DMP1 of the Local Plan which requires development to be compatible with their surroundings. Similarly there would be some conflict with the design provisions of paragraph 115 of the Framework.

Alternative sites

15. The need for the installation has been accepted by virtue of the legislation and is not at issue. However, I have found that the proposed siting and appearance would result in some harm to the character and appearance of the area. It is therefore necessary to consider whether other options for siting the equipment may be available, which might have a lesser visual impact.
16. The appellant contends that they have followed the sequential approach, advocated by the Framework, in identifying site options. It is noted that 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. However, the extent and detail of the evidence provided is very brief.
17. The appellant advises the Mast Data Register was examined, but no options for mast/site sharing or existing base structures were found. As such a new ground-based installation was sought with the appellant considering and discounting a number of other sites, which are listed and described. These sites were discounted for a variety of reasons including pavements being too narrow,

impacts upon visibility splays, residential locations, proximity to overhead lines and other cells. The Council have not disputed these conclusions.

18. From my own observations during my site visit, I did not identify any obvious alternatives when visiting the area. It was apparent during my site visit that the discounted sites were in close proximity to residential properties, as is the appeal site. However pavements appeared narrower than those at the appeal site, and extensive on-street parking in the area restricted pavement space. It was very noticeable that properties were mainly 2 storey in appearance and residential in character. Consequently, the location of the appeal site in a more mixed use area, adjacent to a tall building, surrounding tall street infrastructure and in an area with a wide pavement would in this instance provide effective screening for the development as a whole and this weighs in favour of the proposal.

Planning Balance

19. Paragraph 114 of the Framework provides that, amongst other things, planning decisions should support the expansion of electronic communications networks, including next generation mobile technology, such as 5G. The proposal would provide benefits through the upgrade to digital telecommunications in this area, allowing for additional coverage and capacity, including 5G technology in the locality. The wider benefits have effectively been recognised by the grant of planning permission under Article 3(1) of the GPDO and I have had regard to them only insofar as they relate to the siting and appearance in the context of this case. These factors weigh in favour of the proposal. 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).
20. A balance should be struck between visual impact and the need for the proposal to be sited in the proposed location. In these circumstances, the absence of alternative options for the telecommunications development outweighs the moderate harm that I have found would be caused to the character and appearance of the area.

Conditions

21. 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.

Conclusion

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

K Williams INSPECTOR