



Appeal Decision

Site visit made on 13 October 2023

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2023

Appeal Ref: APP/P4605/W/23/3317584

Pavement o/s 190 Reservoir Road, Erdington, Birmingham B23 6DW

- 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 Mr Robert Finnegan of Three (UK) against the decision of Birmingham City Council.
 - The application Ref 2022/08040/PA, dated 26 October 2022, was refused by notice dated 5 December 2022.
 - The development proposed is described as "the installation of a 15m high slim-line monopole, supporting 6 no. antennas, 1 no. wraparound equipment cabinet at the base of the monopole, 1 no. equipment cabinet, 1 no. electric meter cabinets, 1 no. transmission cabinet and ancillary development thereto."
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Decision

1. The appeal is dismissed.

Procedural Matter

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), Policies DM2 and DM16 of the Development Management in Birmingham Development Plan Document 2021 (DPD) and Principle 24 of the Birmingham Design Guide Principles Document 2022 (BDG) are a material consideration as they relate to issues of siting and appearance.

5. In particular, they seek, among other things, to ensure development responds to the local area context, is appropriate to its location, does not result in unacceptable adverse impacts on the amenity of neighbours and is sited and designed in order to minimise impact on the visual and residential amenity and 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

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 the living conditions of occupiers of neighbouring 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 as proposed taking into account any suitable alternatives.

Reasons

Character and appearance

7. The appeal site is located on a grass verge forming part of a wide footpath adjacent to Reservoir Road. Building heights are relatively low, with predominately two storey residential properties opposite the site. Taller buildings within the adjacent hospital grounds are set back from the highway, within landscaped grounds, thus reducing their prominence when viewed from Reservoir Road. Street trees, vegetation, wide pavements, grassed verges and low building heights give the area an open, verdant and spacious feel. Vertical structures in this area predominately comprise lampposts and telegraph poles. The low building heights, street furniture, trees and deep, grassed verges and wide pavements contribute to the character and appearance of the area.
8. Although noting the appellant's assertion that the proposal would result in limited change to the area and 5G installations need to be located where the service is used, the proposed development would result in an incongruously tall, dominant and conspicuous feature, located on a prominent, open and exposed verge. The proposal would be significantly higher than, and contrast markedly with, the relatively low building heights, lampposts, telegraph poles and trees in the locality. It would therefore detract significantly from the prevailing character of the area.
9. The appellant asserts the associated cabinets are permitted development and do not form part of the proposal from a planning consideration perspective. Nevertheless, these structures would not be required if it were not for the proposed monopole. Having regard to the amount, height and siting of the cabinets, in an area which is prominent, open and exposed, they would further draw attention to the proposed monopole, thereby exacerbating its dominance and prominence.

10. I understand the siting and appearance of the proposal has been driven by coverage requirements and, for technical reasons, 5G masts cannot be shrouded. While it is not possible to use a telegraph pole design for 5G, it is noted that the height of the proposed monopole is the lowest possible for 5G and its design, together with that of the cabinets, is relatively simple. Nevertheless, even accounting for its location adjacent to a busy road and accepting that such poles are common in the wider area and throughout the UK, the proposed monopole would result in a dominant and incongruous form of development, in a prominent and open location, at odds with the prevailing character of the area.
11. 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, Principle 24 of the BDG and the Framework.

Living conditions of existing occupiers

12. 122, 123 and 124 Reservoir Road face towards the appeal site and have relatively modest, open front gardens. As such, occupants of these properties would likely have 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 highway, the location of the proposed development would not be within close proximity of these properties and their associated habitable room windows.
13. As such and having regard to the scale and design of the proposed monopole, the proposed development would not be so overbearing as to result in unacceptable harm to the living conditions of existing occupiers of these properties with respect to outlook.
14. 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 DPD Policies DM2 and DM16, Principle 24 of the BDG and the Framework.

Alternative sites

15. 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 proposed development would introduce new 5G coverage to the area, while providing additional capacity on the appellant's 4G network.
16. 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.
17. I understand that there are no tall buildings or existing masts in the required coverage area that could be utilised or shared by the appellant. Similarly, I am

advised that no residential buildings would be suitable for a rooftop installation, nor would it be appropriate to locate a monopole within a domestic garden. In conclusion, the appellant asserts that a street-based solution would represent the best siting options.

18. Notwithstanding these limitations and the small search area, other locations have been considered by the appellant, which have been informed by the provision of coverage and capacity to the surrounding area, existing cells in the wider 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 coverage that could be achieved by the appeal proposal and alternative sites. Alternative sites D3 and D8 have been discounted as the necessary coverage would not be achieved. However, both sites are close to the search area, with alternative site D3 being within close proximity to the appeal site, which I am advised would provide suitable coverage.
20. While acknowledging the small search area, the appeal site is close to other relatively open areas of land that have not been included within the alternative site assessment. I cannot be certain, therefore, whether these other locations have been considered and, if so, the reasons for discounting them. As such, given that there may be alternative sites that could accommodate the proposal which may be less visually intrusive than the appeal site, the analysis by the appellant is not sufficiently comprehensive to show that it has considered all reasonable options. Overall, the reasons given for discounting other sites are brief and unsupported by sufficient detailed evidence to demonstrate why they would not be viable.
21. Therefore, in the absence of clear and persuasive evidence as to why alternative sites have been discounted, and why other nearby areas have not been considered, 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

22. There are substantial public benefits of access to connectivity, including economic, social, sustainability, environmental, health and educational benefits. The appellant has highlighted the importance of connectivity in terms of public benefit, considers this cannot be overestimated, and is essential for everyday life. I understand there has been significant growth in data consumption, especially in urban areas such as the appeal site, and reliance on mobile connectivity. Furthermore, the patterns and manner in which data is used have also changed.
23. Several reports and documents have been drawn to my attention, including a number of OFCOM reports and government documents, extolling the benefits and importance of connectivity, the emphasis on how local government can help to deliver the infrastructure and how the planning process can affect deployment. 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 and compliance with the International Commission on Non-Ionising Radiation Protection carry 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