



Appeal Decision

Site visit made on 7 November 2023

by S Rawle BA (Hons) Dip TP Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14.12.2023

Appeal Ref: APP/P4605/W/23/3323799

Land at Heathfield Road, Birmingham B19 1HA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Care of Agent, Cornerstone against the decision of Birmingham City Council.
 - The application Ref 2022/07866/PA, dated 19 October 2022, was refused by notice dated 12 December 2022.
 - The development proposed is street furniture style mast with antennas and dishes, cabinets and all ancillary development.
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Decision

1. The appeal is dismissed.

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 planning authority to assess the 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. I have had regard to the policies of the development plan only in so far as they are factors relevant to matters of siting and appearance, therefore.

Main Issues

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 on the living conditions of nearby residential occupiers having 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

6. The appeal site lies within a particularly prominent location on a semi-oval shaped area of open land that includes the footpath, a car parking area and hard and soft landscape features, at the intersection of Lozells Road, Heathfield Road, Barker Street and Villa Road. It is located in a mixed urban area comprising commercial, retail and residential uses.
7. The appeal site is located adjacent to the Villa Cross building which creates a focal point at this prominent location and is visible from many public vantage points. There are some vertical features within the vicinity, including lampposts, traffic lights and some trees. However, due to the open appearance and the regularly planted trees there is a sense of spaciousness in front of the Villa Cross building which helps to provide relief from the predominantly urban streetscene. As a result, this open area makes a significant contribution to the character and appearance of the area.
8. The proposed new cabinets are a typical form of structure seen within an urban area. Given their relatively low height and as they would be set against the backdrop of the existing Villa Cross building they would not appear as incongruous features on the pavement and would not lead to undue visual clutter.
9. I am satisfied that the appeal site is not located within a conservation area. However, the proposed 17.5m mast with antennas and dishes would protrude significantly above the Villa Cross building and the vertical features in the vicinity of the appeal site. Given the open appearance of its surroundings and the fact that there would be very little screening from the nearby trees, the pole would be readily visible from many vantage points and would stand out as an isolated and atypical structure. It follows that the proposal would appear as an uncharacteristic and alien feature within the streetscene that would harm the character and appearance of the area.
10. There are residential dwellings in the vicinity that have windows that look towards the proposed development. However, these properties are located some distance away and are separated by roads. As a result, the proposal would not appear as an inappropriately overbearing or intrusive feature that would unacceptably harm the outlook or living conditions of nearby residential occupiers.
11. I note that the National Planning Policy Framework (the Framework) supports the provision of advanced, high quality and reliable communications infrastructure and the Government's support for the rollout of the 5G network. However, the Framework also sets out that new equipment should be sympathetically designed and camouflaged, where appropriate as well as requiring developments to be sympathetic to local character.
12. I accept the appellant has a need to provide the installation within this area which would improve 3G and 4G network coverage and capacity while establishing 5G connectivity. A sequential approach to site selection has been adopted. This involved considering options, including mast and site sharing, using existing buildings and structures and alternative ground-based installations. This process led to the selection of the appeal site location.

13. Based on the available evidence, in relation to the possibility of utilising the existing site or Lozell's Central Mosque, I accept the appellant's position based on the information provided. However, for the other buildings, limited information has been provided to substantiate that they would not be viable. For example, many reasons for discounting each building, refer to the architectural nature of the building and its height and in some cases its peripheral location. However, insufficient compelling evidence in relation to these matters has been provided in order to explain why these buildings are not a viable option.
14. Further, of the nine alternative sites considered, only four were for alternative street locations which referred to various locations along surrounding roads. However, little detailed information has been provided on why these sites have been discounted. Reasons provided include limited pavement widths, the presence of underground and overhead services along with residential development. However, given the generic reasoning provided, it is not clear whether locating the installations on these sites would be operationally impossible or just challenging. Moreover, if development would ultimately be possible on a particular alternative site, it is not clear why the appellant considers it would be more harmful than the proposed location. Therefore, the information provided is insufficiently compelling or robust to show that this is the only site on which the proposed development could be located.
15. I therefore conclude that although the proposal would not have an unacceptable adverse effect on the living conditions of nearby residential occupiers having particular regard to outlook, I nevertheless find that the siting and appearance would have an unacceptable harmful effect on the character and appearance of the area. I am not persuaded that less harmful alternatives have been properly explored and I consider that the need for the installation does not outweigh the harm.
16. In so far as they are material considerations, the proposal would not accord with Policy PG3 of Birmingham Plan 2031 – Birmingham Development Plan adopted January 2017 and Policy DM16 of the Development Management in Birmingham Development Plan Document, December 2021 which seek to ensure that development should reinforce or create a positive sense of place and local distinctiveness that responds to local area context and that telecommunication infrastructure is sited and designed in order to minimise impact on the character and appearance of the area.
17. Moreover, the scheme would be at odds with the Framework which, as set out above, seeks to ensure that new equipment should be sympathetically designed and camouflaged, where appropriate as well as requiring developments to be sympathetic to local character. The proposal would also not comply with the guidance contained in the Birmingham Design Guide – September 2022 which amongst other things seeks to ensure that all telecommunication proposals should be designed to minimise visual impact and intrusion.

Other Matters

18. I have taken account of the numerous appeal decisions that have been brought to my attention. However, considerations of siting and appearance are by their very nature site specific. These other examples involve different sites, some not within the same city and some involving masts of different height than

proposed here. Consequently, they do not have the same relationship with their surroundings and so their impact is materially different. Therefore, the existence of these other examples does not justify harmful development at the appeal site.

19. Further, the appellant highlights the difficulties in securing permission for similar types of development across the city. However, in arriving at this decision, I have determined this appeal on its own particular merits and the appellant's perception of the Council's approach to this and similar proposals has not altered my view that the proposed development would unacceptably harm the character and appearance of the area.
20. 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 decisionmaker should determine. As a result, the fact that the appellant has provided the ICNIRP certificate is a neutral consideration.
21. I note that the appellant considers that the Council did not give appropriate weight to the economic, social and environmental objectives in favour of sustainable development, but these factors have not been taken into account in considering the matters of siting and appearance.

Conclusion

22. For the reasons given above I conclude that the appeal should be dismissed.

S Rawle

INSPECTOR