



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 December 2023

Appeal Ref: APP/C4615/W/23/3322938

Street Works, Pedmore Road, Dudley DY9 8DA

- 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 Gallivan of CK Hutchison Networks (UK) Limited against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P22/1749/PN16A, dated 2 December 2022, was refused by notice dated 12 January 2023.
 - The development proposed is 5G telecoms installation: H3G 16m street pole and additional equipment cabinets.
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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 Issue

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, 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 on a footpath along Pedmore Road within an urban, predominantly residential location. Immediately adjacent to the appeal site is Elizabeth House, a three-storey building comprising residential apartments with

windows overlooking the appeal site. There are some vertical features including lampposts, some trees and a bus-stop located in front of Elizabeth House and a telegraph pole located further down on the other side of the road.

7. Elizabeth House has a frontage to Pedmore Road comprising planting and a low wall. This together with a limited amount of street furniture in the immediate vicinity of the appeal site contributes to the area's openness which defines the character and appearance of the area.
8. The proposed cabinets are low in height and would not appear incongruous being seen in the context of the wall and hedge along the frontage to Elizabeth House. They would not lead to undue visual clutter.
9. However, in contrast, the proposed 16m street pole would protrude significantly above Elizabeth House and any of the vertical features. Given the open appearance of its surroundings and the fact that there would be very little screening from any nearby vegetation and notwithstanding that it would be coloured grey, the pole would be readily visible both from the road and from Elizabeth House and would stand out as an isolated and atypical structure. It follows that the proposal would appear as an uncharacteristic and discordant feature within the streetscene that would unacceptably harm the character and appearance of the area.
10. The National Planning Policy Framework (the Framework) supports the provision of advanced, high quality and reliable communications infrastructure and I also note 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.
11. I recognise the appellant's need to provide 5G coverage within this area. The appellant adopted a sequential approach to site selection which involved considering alternative approaches and locations including mast and site sharing, existing buildings and structures and alternative ground-based installations. The appellant highlights that no mast/site sharing opportunities or existing buildings/structures were identified and that a street pole with associated cabinets is deemed to be the only and most appropriate solution available. However, limited information has been provided to substantiate that finding.
12. The appellant sets out that there was an extremely constrained cell search area, and six other sites were considered and discounted. Most of these seem similar to the appeal site with comparable issues such as being adjacent to the primary school and overlooked by residential housing, but it is not clear why these would be more harmful than the proposed location. Therefore, the information is insufficiently compelling or robust to show that this is the only site on which the proposed development could be located.
13. I therefore conclude that the siting and appearance of the proposal would have an unacceptable effect on the character and appearance of the area. I am not persuaded that less harmful alternatives have been fully explored and I consider that the need for the installation does not outweigh the harm.
14. In so far as they are material considerations, the proposal would not accord with Policy ENV2 of the Black Country Core Strategy adopted February 2011

and Policy D8 of the Dudley Borough Development Strategy adopted March 2017, which among other things seek to ensure that developments preserve and where appropriate enhance local character and that telecommunications installations should be sensitively designed and sited to minimise the impact on the surrounding area.

15. The scheme would also not comply with the Framework which as outlined above sets out that new equipment should be sympathetically designed and camouflaged where appropriate as well as requiring developments to be sympathetic to local character.

Other Matters

16. 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.
17. The appellant considers that the Council did not give appropriate weight to the economic and societal benefits of the proposal. However, these matters have effectively been recognised by Article 3(1) of the Order and have therefore not been taken into account in considering the matters of siting and appearance.

Conclusion

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

S Rawle

INSPECTOR