



Appeal Decision

Site visit made on 21 November 2023

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2023

Appeal Ref: APP/Z4310/W/23/3322893

Warbreck Moor opposite junction with Danehurst Road, Liverpool L9 0HU

- 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 Hutchison Networks (UK) Limited against the decision of Liverpool City Council.
 - The application Ref 22PT/3079, dated 11 November 2022, was refused by notice dated 21 December 2022.
 - The development proposed is a proposed 5G telecoms installation: H3G 18m street pole and additional equipment cabinets.
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Decision

1. The appeal is allowed and planning permission is granted for a 5G telecoms installation: H3G 18m street pole and additional equipment cabinets at Warbreck Moor opposite junction with Danehurst Road, Liverpool, L9 0HU in accordance with the terms of the application, Ref 22PT/3079, dated 11 November 2022, and the plans submitted with it including: LPL21838_LPL440_TBC_L0885_GA_Rev_A Issue A (002 Site Location Plan); LPL21838_LPL440_TBC_L0885_GA_Rev_A Issue A (215 Proposed Site Plan); and LPL21838_LPL440_TBC_L0885_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 the GPDO require the local authority to assess 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. Therefore, I have had regard to the policies of the development plan only insofar as they are factors relevant to matters of siting and appearance.
5. I have taken the address of the appeal site from the Council's decision notice rather than the application form as it is a more accurate description of the

location. In addition, I have amended the description of development to omit 'proposed' as this word does not refer to an act of development.

6. The Government published a revised National Planning Policy Framework (the Framework) on 20 December 2023, replacing the last version. However, as the parts of the Framework most relevant to this appeal have not significantly changed there is no requirement for me to seek further submissions on this latest version. I am satisfied no party would be prejudiced by determining the appeal accordingly.

Main Issue

7. The main issue is the effect of the siting and appearance of the proposals on the character and appearance of the area with particular regard to the impact on trees and the outlook of nearby occupants.

Reasons

8. The appeal site is located adjacent to Warbreck Moor Park and Garden (the park), next to the busy Warbreck Moor, on a stretch of footpath that lies between Heswall Road and Barnston Road. Warbreck Moor is a mixed commercial and residential street and consists of buildings that are predominantly two-storeys in height.
9. Trees are regularly spaced within the park alongside the footpath creating a rhythm within the street scene. A substantial amount of street furniture is present within the locality including lampposts, a telephone booth, cabinets, traffic lights, highway barriers, a bus shelter and a CCTV column. Collectively, these features create a visually active street scape, with the existing street furniture and trees providing a vertical emphasis.
10. The Council is concerned that no confirmation has been provided to demonstrate that the line of sight of the proposed antenna would not be compromised by nearby trees at their mature height, which would be over 15 to 20 metres. I accept that in future there may be a requirement to prune the nearest trees to avoid signal interference. Nonetheless, it would take a significant number of years until the trees are at a height where interference would result in such pressure. Furthermore, such works are likely to be relatively modest and, in my view, would not adversely affect the health or appearance of the trees or result in harm to the character and appearance of the area.
11. The apparatus would be clearly noticeable to the occupiers of nearby residential properties. However, the prominence of the proposed apparatus would be mitigated to a degree by its position close to trees and against the park fence and shrubbery. Given the extent of the separation, the visibility of the proposal would not unacceptably harm outlook and therefore the living conditions of the occupiers of such properties.
12. The upper section of the proposed street pole would protrude above the nearby trees and lampposts. However, from most views, including from within the park, the lower section of the street pole would be obscured by, or seen against the backdrop of, shrubbery and trees. The tree canopies would soften the presence and effect of the street pole from within the park, and upon approach in both directions along Warbreck Moor and other nearby streets. Furthermore, the street pole would be seen in the context of the other nearby

street furniture, albeit of a lower height and less bulky form, as well as the adjacent busy road and mixed surroundings. As a result, the installation would not appear as a prominent or visually intrusive feature in the street scene and would integrate into the Warbreck Moor streetscape in a visually acceptable manner.

13. For the above reasons, I conclude that the siting and appearance of the proposal would not harm the character and appearance of the area with particular regard to the impact on trees and the outlook of nearby occupants. Insofar as they are relevant to siting and appearance, the proposal would accord with Policies STP4, UD1, UD2 and GI9 of the Liverpool Local Plan 2013-2033. Such policies support new infrastructure where their contribution outweighs the potential for adverse impacts, respects local character, is appropriately located, and does not result in the unacceptable loss of trees. The proposal would also accord with guidance within the Framework, including the requirement that equipment on new sites to be sympathetically designed.

Other Matters

14. As I have found the siting and appearance of the proposals to be acceptable, it is not necessary for me to consider the alternative sites that have been assessed by the appellant.
15. Concern has been expressed about the potential effects of the proposed installation on health, in particular due to its location adjoining the park and near to a school. The appellant, however, 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 decision-maker should determine. No sufficiently authoritative evidence has been provided to indicate that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified. For this reason, the potential effects on health is not a determining issue in this case.
16. I also acknowledge the concern that has been expressed regarding the implications of the proposal on highway safety, and to users of mobility aids and pedestrians. However, no objections have been received from the Local Highways Authority (HA). Given the position of the site relative to all junctions and its relatively slender form, and in the absence of any firm evidence to the contrary, I have no reason to conclude that the proposal would result in highway safety due to any impediment to visibility.
17. No objections were raised regarding noise by the Environmental Health Officer (EHO). In the context of the background noise levels from the adjoining busy road, and in the absence of any firm evidence to the contrary, I have no reason to reach a different conclusion to the EHO.
18. The appellant has indicated that there is a need for a new base station to provide effective service coverage and no substantive evidence has been provided to demonstrate otherwise.

Conditions

19. 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. I have not repeated these conditions in my formal decision.

20. The Council have suggested the imposition of a condition requiring that the equipment cabinets are painted dark green and the mast painted grey. However, the GPDO does not provide any specific authority for imposing additional conditions beyond those identified above. In any event, as the nearby lampposts are grey and there are cabinets of a similar colour in the wider area, I find the grey colour that has been specified to be acceptable.

Conclusion

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

Elaine Moulton

INSPECTOR