



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/23/3323233

Central Reservation on Muirhead Avenue near junction with Liddell Avenue, Liverpool L13 0BA

- 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/2781, dated 13 October 2022, was refused by notice dated 31 January 2023.
 - The development proposed is a 5G telecoms installation: H3G 15m street pole and additional equipment cabinets.
-

Decision

1. The appeal is allowed and planning permission is granted for a 5G telecoms installation: H3G 15m street pole and additional equipment cabinets at the central reservation on Muirhead Avenue near junction with Liddell Road, Liverpool L13 0BA in accordance with the terms of the application, Ref 22PT/2781, dated 13 October 2022, and the plans submitted with it including: LPL19727_LPL421_87937_L0786_GA_Rev_A Issue A (002 Site Location Plan); LPL19727_LPL421_87937_L0786_GA_Rev_A Issue A (215 Proposed Site Plan); and LPL19727_LPL421_87937_L0786_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 its impact on nearby trees.

Reasons

8. The appeal site forms part of a wide central reservation on Muirhead Avenue, a busy urban dual carriageway. The central reservation contains lampposts, traffic signs and cabinets. In addition, close to the appeal site, are a number of paths and hard surfaces and a brick wall that surrounds a void to the footpath that passes under the highway. The central reservation is predominantly grassed with a line of trees along its length which, combined with the width of the road, gives the area a spacious feel.
9. I accept that in future there may be a requirement to prune the nearest trees to avoid signal interference. Nonetheless, given the separation between the proposed equipment and the trees, such works are likely to be relatively modest and, in my view, would not adversely affect their health or appearance or result in harm to the character and appearance of the area.
10. The street pole and cabinets would be highly visible in views in both directions along Muirhead Avenue and from nearby side streets. However, its relatively simple linear and compact design would be seen in the context of other street furniture with a vertical emphasis, albeit of a lower height and less bulky form. In appearance the installation would be broadly similar to existing masts located within the Muirhead Avenue central reservation close to its junction with Queens Drive. Whilst such equipment is some distance from the appeal site, their existence would ensure that the proposal would not appear as an alien or unexpected feature in the street scene. Furthermore, the proposed equipment cabinets would be of modest size and extent. As such, they would not result in an undue proliferation of street furniture or a visually cluttered street scene.
11. 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 its impact on nearby trees. Insofar as they are relevant to siting and appearance, the proposal would accord with Policies STP4 and GI9 of the Liverpool Local Plan 2013-2033. Such policies support new infrastructure where their contribution outweighs the potential for adverse impacts, 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 is sympathetically designed.

Other Matters

12. 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.
13. Concern has been expressed about the potential effects of the proposed installation on health and wildlife. 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 or wildlife are not determining issues in this case.
14. The appeal site is separated from the nearest residential properties by the wide highway. Whilst the proposed pole would be a tall installation and the antennas at the top would add some bulk, it would overall appear as a narrow, slimline feature, that would not unacceptably harm outlook and therefore the living conditions of the occupiers of such properties.
15. I acknowledge the concern that has been expressed regarding the implications of the proposal on highway safety. However, no objections have been received from the Local Highways Authority and in the absence of any firm evidence to the contrary I have no reason to conclude that the proposal will cause such harm.
16. Although concerns have been raised about the impact of the proposal on property values such matters fall beyond the scope of the prior approval process to which this appeal relates.

Conditions

17. Any planning permission granted for telecommunications apparatus 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.
18. The Council have suggested the imposition of a condition that requires the provision of an Arboricultural Method Statement and Tree Protection Plan. However, the GPDO does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators. In any event, I do not consider such an additional condition to be necessary to make the development acceptable, given that the equipment is not within the Root Protection Area of any trees.

Conclusion

19. For the reasons given above, the appeal should be allowed, and prior approval should be granted.

Elaine Moulton

INSPECTOR