



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/23/3323229

Junction of Bentham Drive and Bowland Avenue, Liverpool L16 1JW

- 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/3087, dated 11 November 2022, was refused by notice dated 3 February 2023.
 - The development proposed is a 5G telecoms installation: H3G 16m 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 16m street pole and additional equipment cabinets at the junction of Bentham Drive and Bowland Avenue, Liverpool L16 1JW in accordance with the terms of the application, Ref 22PT/3087, dated 11 November 2022, and the plans submitted with it including: LPL21850_LPL429_TBC_L0895_GA_Rev_A Issue A (002 Site Location Plan); LPL21850_LPL429_TBC_L0895_GA_Rev_A Issue A (215 Proposed Site Plan); and LPL21850_LPL429_TBC_L0895_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 Issues

7. The main issues are:

- 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;
- the effect of the siting and appearance of the proposals on pedestrian and highway safety; 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

8. The appeal site forms part of a wide footpath close to the junction of Bentham Drive and Bowland Avenue, both busy urban roads, and at a point where the footpaths to both highways merge. Bentham Drive and Bowland Avenue are residential in character and are lined on both sides with grass verges containing mature, deciduous trees which contribute to an attractive sylvan.
9. The footpaths and grass verges close to the appeal site contain lampposts, traffic signs and road signs. The lampposts and trees are regularly spaced along the two highways creating a rhythm and verticality within the street scene which is emphasised by their relatively straight alignment.
10. It is clear from my site visit and the submitted plans that the proposed street pole and associated cabinets would be situated very close to a tree. The appellant, however, has not submitted an Arboricultural Impact Assessment (AIA) that demonstrates the impact of the proposed installation on the long-term health of that tree. Consequently, I cannot be certain that the equipment could be installed without putting the tree at risk of excessive pruning or removal.
11. Given the number of trees within the street scene, its sylvan character would remain even if the proposals were to adversely affect the health or appearance of the adjoining tree. Nevertheless, the loss of the tree would create a gap which would disrupt the rhythm to the street scape of Bentham Drive and result in a minor erosion of the character of the area.
12. The upper section of the proposed street pole would protrude above the trees and surrounding buildings and would be seen against the sky. During the months when the trees are in leaf, views of the lower section of the monopole

would largely be obscured by, or seen within views of, the trees. Whilst the street pole would be more visible when the branches are denuded, the trees would, nonetheless, provide a transition between its height and that of the surrounding buildings and street features. Moreover, even if the nearest tree was lost or damaged, from my observations during my site visit I consider that the canopies of the remaining trees would soften the presence and effect of the street pole upon approach in all directions.

13. Given its relatively simple linear and compact design the proposed installation would not be seen as an alien or unexpected feature in the street scene or appear dominant in the surrounding area. For the same reasons, it would not result in unacceptable shading within gardens and would not be so close to any nearby dwellings that it would result in an unacceptable impact on their outlook. Furthermore, the limited amount of street furniture and the lack of similar apparatus in the immediate vicinity would ensure that it would not result in visual clutter to the detriment of the character and appearance of the area.
14. For the above reasons, I conclude that the siting and appearance of the proposal would harm the character and appearance of the area due to its impact on a nearby tree. Insofar as they are relevant to siting and appearance, the proposal would be contrary to Policies UD1, UD2 and GI9 of the Liverpool Local Plan 2013-2033 (LP) which seek to ensure that new development respects local character, is appropriately located, and does not result in the unacceptable loss of trees. The proposal would also conflict with guidance within the Framework, including the requirement that equipment on new sites is sympathetically designed.
15. The Council have also referred to LP Policies STP4 and TP6 in their first reason for refusal. I will address LP Policy TP6, below. As LP Policy TP6 does not relate to character and appearance, it is not relevant to this main issue.

Highway Safety

16. The proposed equipment would take up a relatively small area of the footpath and there would remain sufficient space for all users, including those with prams, wheelchairs and mobility scooters, to safely pass. Consequently, even considering that the siting is at a point where two footpaths converge, existing desire lines would be maintained, and all pedestrians would continue to be able to pass around it without undue hindrance. The proposed reduction in the footpath would not, therefore, result in pedestrian conflict or result in them being forced onto the adjoining road.
17. I also note the concern that has been expressed regarding the implications of the proposal due to its position close to a junction where there are frequent accidents. However, no objections have been received from the Local Highways Authority. Given its position relative to the junction 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.
18. Accordingly, for the reasons given above, the siting and appearance of the proposal would not have an unacceptable impact on pedestrian safety. Insofar as they are relevant to siting and appearance, the proposals would accord with LP Policy TP6 which seeks to ensure that development is designed for

pedestrians. It is also in accordance with paragraph 116 of the revised Framework which states that development should create spaces that are safe, secure and attractive and that minimise the scope for conflict between pedestrians, cyclists and vehicles.

Alternative sites

19. The Framework recognises that high quality and reliable communications infrastructure is essential for economic growth and social well-being. It therefore supports the expansion of electronic communications networks. The appellant has indicated that there is a need for a new base station to provide effective service coverage. This has not been contested by the Council.
20. Paragraph 121 of the revised Framework also advises that applications for electronic communications development should be supported by the necessary evidence to justify the proposed development. For a new mast or base station, this should include evidence that the applicant has explored the possibility of erecting antennas on existing buildings, masts or other structures.
21. The proposal is needed to improve digital capacity and provide 5G services to the surrounding area, which has been identified as lacking in connectivity. The Coverage Map provided by the appellant shows that the target area is tightly defined, limited in extent, and residential in nature.
22. Whilst limited in detail the appellant has, nevertheless, provided adequate and persuasive evidence of its network coverage requirements, and its site selection process, listing a number of alternative sites that have been discounted. Although the Council considers that there is a lack of detail and therefore justification for the proposed, it does not dispute the rationale that has been adopted. Nor does the Council identify existing infrastructure that may be upgraded or where site share may be possible, or suggest other sites, such as existing buildings or structures, that might be suitable. Furthermore, no compelling evidence has been provided to undermine the credibility of the size of the search area. Based on the evidence before me I am satisfied that other alternative siting solutions have been adequately explored by the appellants and have been found to be unsuitable for the proposal.
23. I have found that the siting and appearance of the proposal would result in modest harm to the character and appearance of the area. Nonetheless, having regard to all relevant considerations, including national planning policy and the lack of available alternative sites, I consider that the operational and locational needs of the appellant and the enhancement of the local telecommunications network, would outweigh such harm. It would therefore accord with UDP Policy STP4 which supports new infrastructure where their contribution outweighs the potential for adverse impacts.

Other Matters

24. 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.
25. 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.

26. Several interested parties have expressed concerns about the potential noise emissions from the proposed apparatus. However, no objections regarding noise have been received from the Environmental Health Officer (EHO). In the context of the background noise levels from the adjoining busy roads, and in the absence of any firm evidence to the contrary, I have no reason to reach a different conclusion to that of the EHO.
27. Although concerns have been raised about the impact of the proposal on property values, national security, consumption of resources, and energy use, such matters fall beyond the scope of the prior approval process to which this appeal relates.

Conditions

28. 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.

Conclusion

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

Elaine Moulton

INSPECTOR