



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/23/3322967

Junction of West Derby Road and Orphan Drive, Liverpool L13 8AJ

- 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/3153, dated 18 November 2022, was refused by notice dated 6 January 2023.
 - The development proposed is a 5G telecoms installation: H3G 20m 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 20m street pole and additional equipment cabinets at the junction of West Derby Road and Orphan Drive, Liverpool L13 8AJ in accordance with the terms of the application, Ref 22PT/3153, dated 18 November 2022, and the plans submitted with it including: LPL21842_LPL433_TBC_L0889_GA_Rev_A Issue A (002 Site Location Plan); LPL21842_LPL433_TBC_L0889_GA_Rev_A Issue A (215 Proposed Site Plan); and LPL21842_LPL433_TBC_L0889_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 requirement to preserve or enhance the Newsham Park Conservation Area (CA) and the Grade II listed Newsham Park Registered Park and Garden (RPG), including its impact on nearby trees.

Reasons

8. The appeal site is within a wide footpath at the junction of the busy urban dual carriageway of West Derby Road, and Orphan Drive, close to the end of Belmont Drive. It is in the context of a mixed commercial and residential streetscape.
9. West Derby Road has a grassed central reservation and is lined, on the same side as the appeal site, by a grass verge that separates Belmont Drive from the dual carriageway. The central reservation and grass verge both contain mature, deciduous trees as does a grassed area of open space directly to the rear of the appeal site.
10. The area around the appeal site incorporates street furniture including lampposts, traffic lights, a speed camera, traffic signs and other signs, including a park name sign. The existing lampposts regularly spaced along the highway create a rhythm within the street scene which is emphasised by the straight alignment of West Derby Road. Collectively, these features create a visually active streetscape, with the existing street furniture and trees providing a vertical emphasis.
11. The appeal site lies within a CA and RPG. The RPG is a public park that commenced in 1865 to a scheme designed by Edward Kemp. It is one of several 19th century parks in Liverpool. The design includes a pavilion, bandstand, ornamental gardens, lawns, and a lake. Insofar as it relates to this appeal, the significance of the RPG is derived from its association with the designer Edward Kemp, its design, and its social and historic context as a public park. Similarly, the special interest of the CA, which encompasses the entire park and includes many of the surrounding buildings, is derived primarily from the designed Newsham Park and from the adjoining villas constructed around its perimeter.
12. The statutory requirements of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Paragraph 205 of the revised Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

13. Due to the siting of the proposed street pole, it would be partially obscured by the trees along Belmont Drive and West Derby Road and in views from within the RPG. The street pole is designed to exceed the height of the trees in the immediate vicinity. However, even in winter, when out of leaf, the trees would either screen the lower part of the street pole or provide a context such that it would not be seen as a prominent vertical structure within the CA and RPG, or the wider street scene.
14. In views from Belmont Drive and from West Derby Road looking into the RPG, 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. I acknowledge the expressed concerns that the proposed installation would be an eyesore, but such equipment is an increasingly common feature along roadsides and would not be particularly unexpected on this site. In addition, whilst it has been suggested that the proposed installation would be less detrimental if a dark green colour, I find that the muted grey colour as proposed to be acceptable in the context of similarly coloured lampposts.
15. It is clear from my site visit and the submitted plans that the proposed installation, in particular the cabinets, would be situated very close to a tree. The appellant, however, has not submitted an Arboricultural Impact Assessment 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.
16. Nonetheless, even if the tree were removed the tree lined character of West Derby Road would not be materially diminished, given that the affected tree does not form part of the line that flanks West Derby Road. Furthermore, the group value of the remaining trees in the open space adjoining the site would not be materially eroded and the prominence of the proposal in the CA and RPG would not be materially increased. I therefore conclude that even if the tree was removed, the proposal would have a neutral effect on these heritage assets, and would not harm the wider street scape.
17. For the above reasons, I conclude that the siting and appearance of the proposal would preserve the character and appearance of the Newsham Park Conservation Area and the Grade II listed Newsham Park Registered Park and Garden and would not have an unacceptable impact on nearby trees. Insofar as they are relevant to siting and appearance, the proposal would accord with Policies STP4, UD1 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, 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

18. 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.

19. Concern has been expressed about the potential effects of the proposed installation on health. 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.
20. 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

21. 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.

Conclusion

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

Elaine Moulton

INSPECTOR