



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: 29 December 2023

Appeal Ref: APP/Z4310/W/23/3322957

Corner of South Sudley Road and Holmefield Road, Liverpool L19 9DX

- 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/3060, dated 9 November 2022, was refused by notice dated 3 January 2023.
 - The development proposed is a 5G telecoms installation: H3G 20m street pole and additional equipment cabinets.
-

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 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 living conditions of nearby occupants; air traffic control at Liverpool John Lennon Airport; the character and appearance of the area with particular regard to its impact on trees; and the setting of the Grade II Listed Holmefield; 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

Living conditions

8. The appeal site is in a predominantly residential area. It would be separated from the nearest dwelling, 74 Holmefield Road (No 74), only by the width of the footpath. In such a position, the installation would be very close to a well-used part of the garden of No 74, currently containing a trampoline, and to the ground floor and first floor windows in the side elevation of that property.
9. I acknowledge that the proposed street pole is the minimum height necessary to meet the technical requirements, and that the equipment has been designed to minimise its visual impact. However, its 20-metre height combined with its utilitarian appearance and proximity to No 74 would result in the proposed street pole appearing out of scale. Consequently, it would be overly and unacceptably prominent and dominant in views from No 74, thereby harming the living conditions of the occupants.
10. Due to the separation distance to other residential properties, the visibility of the proposal would not be so oppressive in such views to result in unacceptable harm to living conditions. Nonetheless, that does not justify the harm that I have identified to the living conditions of the occupants of No 74.
11. Accordingly, I conclude that the siting and appearance of the proposal would harm the living conditions of the occupants of No 74. Insofar as they are relevant to siting and appearance, the proposal would be contrary to Policies H7 and UD2 of the Liverpool Local Plan 2013-2033, which seek to ensure that new development has no adverse impact on residential amenity and is appropriately located. In this regard there would also be conflict with guidance within the Framework, including the requirement for equipment on new sites to be sympathetically designed.

Air traffic control

12. To comply with paragraph 120 of the revised Framework, local planning authorities should ensure that they have evidence to demonstrate that electronic communications infrastructure is not expected to cause significant and irremediable interference with other electrical equipment, air traffic services or instrumentation operated in the national interest. This is relevant to

the appeal proposal as the site is within an Air Safe Zone for Liverpool John Lennon Airport (the Airport).

13. Based on the evidence before me, the appellant did not notify the Civil Aviation Authority prior to submitting the application. However, during the application process, the Airport's Environment and Safeguarding Advisor raised concerns over the lack of assurance from the appellant that the proposed installation with 5G capability is compatible with the radar operation at the Airport, as required by Ofcom procedures. Further information was requested from the appellant to establish that proposal would not cause unacceptable interference. No such information has been provided.
14. While Ofcom are the appropriate regulatory body that deals with interference issues relating to an operator's licence, without an assessment that satisfies the consultee, I cannot be certain that radar safety would not be unacceptably compromised.
15. Accordingly, the siting and appearance of the proposals could potentially adversely affect air traffic control at Liverpool John Lennon Airport. It is therefore contrary to paragraph 120 of the revised Framework.

Trees

16. The appeal site is part of a grassed verge adjoining South Sudley Road, close to its junction with Holmefield Road. Both sides of Holmefield Road and one side of South Sudley Road, opposite to the appeal site, are lined by trees. Such trees positively contribute to a verdant tree-lined character.
17. I have been supplied with no compelling evidence to suggest that the proposal would be a harmful intrusion into the root protection area of the nearest trees, which are within the grass verge on Holmefield Road or within the garden of No 74. 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. As such there is no basis to conclude that the development would undermine the positive contribution that the trees make to the appearance of the area.
18. 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 trees. Insofar as it is relevant to siting and appearance, the proposal would accord with LP Policy GI9 which seeks to ensure that development does not result in the unacceptable loss of trees. In respect of this main issue, the proposal would also accord with guidance within the Framework, including the requirement that equipment on new sites is sympathetically designed.

Listed building

19. The Grade II listed Holmefield is set within the grounds of what is now the IM Marsh Campus located off Holmefield Road near to the appeal site. Such grounds form the setting of the listed building. Along Holmefield Road, the grounds are enclosed by a line of trees and vegetation behind a wall with metal fencing on top.

20. The boundary treatment and dense tree planting ensure that, even in winter when the deciduous trees are without leaf, the listed building is only glimpsed from Holmefield Road and South Sudley Road. The dense tree planting would also ensure that very little of the proposed street pole would be seen from the listed building. The extent of the separation between the proposed equipment and Holmefield, together with its relatively slender column and headframe would ensure that it would not dominate or erode the setting of the listed building. As a result, it would not lead to a loss of significance of the heritage asset and would preserve its setting.
21. For the above reasons, I conclude that the siting and appearance of the proposals would not harm the setting of the Grade II Listed Holmefield. Insofar as it is relevant to siting and appearance the proposal would be contrary to LP Policy HD1 which seeks to protect heritage. The proposal would also accord with guidance within the Framework including the requirement that development should conserve the historic environment and that equipment on new sites is sympathetically designed.

Alternative sites

22. 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.
23. Paragraph 121 of the revised Framework also advises that applications for electronic communications development should be supported by the necessary evidence to justify the proposals. 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.
24. Whilst limited in detail the appellant has, nevertheless, provided adequate and persuasive evidence of its network coverage requirements, and has listed a number of alternative sites that have been considered. I find that adequate justification has been provided to discount the sites that have been selected.
25. The appellant does not, however, consider and explain why the erection of the proposed equipment within the grounds of the IM Marsh Campus of Liverpool John Moores University, away from the listed Holmefield, is not appropriate. Consequently, it has not been robustly demonstrated that the appeal site represents the least harmful option available to meet the additional coverage and capacity requirements, and so secure the same public benefits.
26. The Framework indicates that planning decisions should support the expansion of electronic communications networks. The proposal is required to address an acute need and to facilitate 5G coverage for the area. I attach positive weight to these benefits and the improved service to users. However, the overall harm caused in respect of the living conditions of the occupants of No 74 and on air traffic control are significant, and the public benefits of the proposal do not outweigh such harm.
27. Accordingly, I am unable to conclude that there would be no preferable alternative option to deliver the required coverage, and social and economic benefits. As such, the proposal would not accord with LP Policy STP4 which

supports new infrastructure where the adverse impacts are not outweighed by their contribution to agreed objectives. The proposal would also be contrary to the guidance within the Framework, including the requirement that equipment on new sites are sympathetically designed, and that it should be designed to avoid significant and irremediable interference with air traffic services.

Other Matters

28. 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.
29. I have had regard to other matters raised by interested parties, however, given my conclusions on the impact of the proposal on the living conditions of the occupants of No 74 and on air traffic control, it is not necessary to explore them in further detail.

Conclusion

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

Elaine Moulton

INSPECTOR