



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: 2nd January 2024

Appeal Ref: APP/Z4310/W/23/3323225

Highway Verge Gardner's Drive, Liverpool L6 8NW

- 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 23PT/0366, dated 11 February 2023, was refused by notice dated 23 March 2023.
 - The development proposed is a 5G telecoms installation: H3G 15m 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. Policy STP5 of the Liverpool Local Plan 2013-2033 (LP) has been referenced in the decision notice. However, whilst I have not been provided with a copy of that policy, I am aware from another recent appeal that Policy STP5 relates to developer contributions. Consequently, it is not relevant to this appeal.
6. 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.

7. 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

8. 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 Newsham Park Conservation Area (CA) and the Grade II listed Newsham Park Registered Park and Garden (RPG);
- the effect of the siting and appearance of the proposals on the setting of the Grade II listed buildings, Newsham House (Judge's Lodgings) and Newsham Park Hospital; 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

9. 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. The list entry identifies that the principal entrance is from Sheil Road giving access to Gardner's Drive, a 7m carriage entrance flanked by two pedestrian entrances set between brick piers with stone detailing.
10. 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.
11. 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.
12. The appeal site is within the footpath adjoining the wide Gardner's Drive, within the RPG. To the rear of the site is a wide grassed area containing groups of trees and ornamental planting. Opposite the site are large open grassed playing fields covering a significant area of the RPG. The character of the surrounding area is open and sylvan in nature.

13. There are lampposts regularly spaced along Gardner's Drive which, together with the trees that line it on one side, create a rhythm and vertical emphasis within the RPG close to the appeal site. The lower part of the street pole would be screened in some views by the nearby trees and planting. Nonetheless, it would be substantially taller and bulkier than the nearby lampposts and trees. In the context of the urban and open parkland setting of the RPG and this part of the CA it would be an unexpected and alien feature that would not assimilate into its surrounding. Whilst the height of the proposed installation has been reduced from 20m as previously proposed, and the proposed grey colour is similar to that of the nearby lampposts, this would not adequately mitigate the adverse visual impact arising from the design, height, and siting of the proposal.
14. Accordingly, the proposals would lead to a loss of significance of the RPG and the CA, amounting to less than substantial harm.
15. For the above reasons, I conclude that the siting and appearance of the proposal would harm the character and appearance of the area with particular regard to Newsham Park Conservation Area and the Grade II listed Newsham Park Registered Park and Garden. Insofar as they are relevant to siting and appearance, the proposal would be contrary to LP Policies HD1, HD7 and UD1. Such policies seek to protect heritage assets and the character of the area. The proposal would also conflict with guidance within the Framework including the requirement that development should conserve the historic environment and that equipment on new sites is sympathetically designed.

Listed buildings

16. The Grade II listed Judge's Lodgings is a house dating from the late 18th Century, altered in the 1860s. It is a 3-storey building with basement, of brick construction with stone dressings and slate roof. It has 5 bays with the central 2 breaking forward under a pediment, an entrance porch with paired Corinthian columns, and central bay windows with architraves, reeded friezes and cornices on slender consoles. It is situated between Judges Drive and Judges Way on the edge of Newsham Park. Its significance and special interest are derived from its aesthetic value.
17. The Grade II listed Newsham Park Hospital was designed by the Alfred Waterhouse and built in 1871-4. It is a substantial building of common brick with red stone dressings and slate roof. Its architectural features include a symmetrical front of 19 bays, a 5-storey tower with pavilion roof and octagonal corner turret and top balustrade, windows with mullions and transoms, and dormers. It is located on Orphan Drive, adjoining Newsham Park. Its significance and special interest are derived from its aesthetic value and from its associative and historic value as an example of a building designed by a notable architect.
18. The setting of a listed building is defined in the glossary to the Framework as the surroundings in which the heritage asset is experienced. In respect of both buildings, their surroundings include Newsham Park and, consequently, as the appeal site is situated within it, it would be sited within the setting of such listed buildings.

19. Whilst the proposed equipment would be highly visible within large parts of Newsham Park, I observed that it would not be visible in views from Newsham Park Hospital due to the separation distance and the intervening features.
20. The Judge's Lodgings is also some distance from the appeal site, albeit closer than Newsham Park Hospital. Such a separation distance combined with the dense tree planting around its perimeter would ensure that the proposed equipment would only be glimpsed in views from that listed building. Furthermore, for the same reasons, the proposed equipment would not be seen in views of Judge's Lodgings
21. Due to this lack of visibility, the appeal site does not materially affect the way that the listed buildings are experienced. Consequently, I find that the appeal site does not contribute to, or detract from, their significance.
22. I therefore conclude that the siting and appearance of the proposals would not harm the setting of the Grade II listed buildings, Judge's Lodgings and Newsham Park Hospital. Insofar as they are relevant to siting and appearance, the proposal would accord with LP Policies HD1, HD7 and UD1 and the Framework which, amongst other things, seek to protect heritage assets.

Alternative sites

23. 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.
24. 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.
25. The appellant's submission sets out that no mast/site sharing opportunities or existing buildings/structures were identified. The appellant does not, however, consider and explain why the erection of the proposed equipment on nearby buildings outside of the RPG and CA, such as Hope House on the corner of Boaler Street and Milverton Street or Fairfield Medical Centre on Sheil Road, are not appropriate. I cannot, therefore, discount erecting antennas on existing buildings as a sequentially preferable alternative to the appeal proposal. Thus, 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 a need and to facilitate 5G coverage for the area. I attach positive weight to these benefits and the improved service to users. However, such public benefits of the proposal do not outweigh the less than substantial harm to the heritage assets identified above.
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. The proposal is therefore contrary to the guidance within the

Framework, including the requirement that equipment on new sites to be sympathetically designed.

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 with regard to the effect of the siting and appearance of the proposals on the character and appearance of the area including the CA and RPG, 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