



Appeal Decision

Site visit made on 22 November 2023

by H Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 January 2024

Appeal Ref: APP/V4630/W/23/3321082

Land on Chester Road, Brownhills, Walsall, Staffordshire WS9 9DE

- 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 MBNL (Three UK Ltd / H3G Ltd) against the decision of Walsall Council.
 - The application Ref 22/1374, dated 5 October 2022, was refused by notice dated 24 November 2022.
 - The development proposed is the removal and replacement of the existing 11.5m monopole with a new 18m monopole supporting 6 no. antennas with a wraparound equipment cabinet at the base of the column, the installation of 4 no. new equipment cabinets together with relocation of 1no. existing cabinets and ancillary development.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of the removal and replacement of the existing 11.5m monopole with a new 18m monopole supporting 6 no. antennas with a wraparound equipment cabinet at the base of the column, the installation of 4 no. new equipment cabinets together with relocation of 1no. existing cabinets and ancillary development at Land on Chester Road, Brownhills, Walsall, Staffordshire WS9 9DE in accordance with the terms of the application, Ref 22/1374, dated 5 October 2022, and the plans submitted with it.

Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.
3. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. Nevertheless, Policies ENV3 of the Black Country Core Strategy (2011), and saved policies GP2, ENV32 and ENV38 of the Walsall Unitary Development Plan (2005) (UDP) are material considerations as they relate to issues of siting and appearance. In particular, they seek to ensure respect for site context, local character and distinctiveness of the surrounding area, and no adverse effect on the visual amenity of the area. Similarly, the

National Planning Policy Framework is also a material consideration and this includes a section on supporting high quality communications.

4. A new version of the National Planning Policy Framework (Framework) was published on 19 December 2023. The parts of the Framework most relevant to the appeal have not substantively changed from the previous iteration. Consequently, this update to national policy does not fundamentally alter the main parties' cases or prejudice their position at appeal, and it is not necessary to seek further comments. References to the Framework hereafter are to the December 2023 version.

Main Issues

5. The main issues are the effect of the siting and appearance of the proposed installation on:
 - the character and appearance of the area;
 - the living conditions of nearby residential occupiers, with regards to outlook;
 - 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

6. The appeal site is a grassed verge adjacent to Chester Road. It is positioned next to a pedestrian footway and near to a residential care home. The site is within a semi-rural area and is located within the Green Belt.
7. Signage associated with the care home is situated to the immediate west of the appeal site whilst telegraph poles and associated overhead wiring line Chester Road in the vicinity of the site. Street lighting along Chester Road is sited at regular intervals. Numerous mature trees and hedgerows are also within the vicinity of the site.
8. The proposed monopole mast and associated equipment would be positioned to the rear of the grass verge. Whilst there are vertical features in the immediate vicinity of the appeal site, the proposed monopole mast would be considerably taller than the existing street furniture and trees in this section of Chester Road. It would also be evidently taller and thicker than the existing monopole mast located on the opposite side of Chester Road. The proposal's antenna apertures at the top of the mast would add to the bulk of the structure at its highest point.
9. The substantial height of the pole would be further pronounced by its prominent position near to the pedestrian footway and the vehicular access to the care home. The siting and appearance of the proposal would therefore appear at odds with the open character of the grass verge and would be visually imposing, particularly for passers-by using the footway and Chester Road.

10. In addition, the proposed monopole mast and associated cabinet equipment would result in an increase in ground coverage compared to the existing situation. This would further contribute to the visual clutter and dominance of the proposal as perceived by passing drivers and pedestrians.
11. However, the views of the proposal would be seen within the context of a background of the three-storey care home buildings and the vertical emphasis of the nearby street furniture and trees when approaching along the carriageway and footways.
12. In reaching the above findings, I have taken account of paragraph 119 of the Framework which states that where new sites are required, equipment should be sympathetically designed and camouflaged where appropriate. In that regard, the design of the proposal reflects its intended function and there is no evidence before me that it has not been designed as sympathetically as possible in this location. However, such material considerations of themselves do not prevent the harm I have identified.
13. For the reasons given, the proposal would cause harm to the character and appearance of the area. As such, the proposal would fail to accord with the design objectives of the Framework. In addition, the proposal would be contrary to Policy ENV3 of the Core Strategy, and saved policies GP2, ENV32 and ENV38 of the UDP.

Living Conditions

14. Although the proposal would be sited near to the care home, the appellant's evidence includes the approved floor plans for application ref: 17/0033 which illustrates that at ground, first and second floors there would be no bedrooms situated within the south-eastern corner of the phase 1 care home building. Furthermore, the ground floor of the northern corner is occupied by an admin office and stairwell, the first floor by a small cinema, circulation space and stairwell, and the second floor by a small cinema, activities room and stairwell. As such, there are no bedrooms within phase 1 of the care home building that would be situated with direct views of the proposal.
15. Although the proposal would be visible from bedrooms located on the north-eastern and north-western elevations of the care home building, these bedrooms are set away from the corner edge of the building and therefore such views would be at oblique angles. Consequently, there would not be unreasonable harm to the outlook from these existing bedroom spaces.
16. The appellant has also submitted the approved floor plans for phase 2 of the care home, which is still under construction. The building is configured in an L shape where the long edge of the building is situated furthest away from the appeal site. The short edge of the building extending toward Chester Road would have a separation distance of around 25m at its closest point. The approved floor plans show that the rooms closest to the proposal would be occupied by a communal lounge area at ground and first floor, and a dining room at second floor. Whilst bedrooms and balconies would be orientated to face towards Chester Road, these would be located in the long edge of the building and set back over 50m from Chester Road. As such, there would be a sufficient distance and therefore views over such a distance would not result in unreasonable harm to the outlook of future occupiers.

17. Furthermore, the relatively slim line nature of the proposed monopole mast would be viewed against a backdrop of trees and vegetation and in the context of the nearby street furniture. The proposed cabinet equipment would be generally hidden from views by virtue of the boundary planting and fencing along Chester Road boundary of the site.
18. Whilst there are nearby residential properties fronting Chester Road, these are sited further away and there is significant tree screening present which would prevent any views between the proposal and these existing residential properties.
19. I therefore consider that the siting and appearance of the proposed monopole would not cause harm to the living conditions of surrounding residents in relation to outlook. In this regard, it would accord with paragraph 135 of the Framework, which seeks a high standard of amenity for existing and future users. In addition, for this main issue, there would be no conflict with Policy ENV3 of the Core Strategy, and saved policies GP2, ENV32 and ENV38 of the UDP.

Pedestrian and highway safety

20. The proposal, including the associated cabinets, would be located on a grassed verge adjacent to the pedestrian footway positioned between Chester Road and the access to the adjacent care home. However, the proposed equipment would not obstruct pedestrian movement within the area, as it would be sited to the rear of the grass verge and away from the pedestrian footway and crossing point. Moreover, as the proposal would be set back from the carriageway, there would be no impact on pedestrian or vehicular visibility in this location.
21. The submitted evidence shows that the proposed equipment would be sited outside the visibility splay envelope at the Care Home access, even with the cabinet doors in an open position. Therefore, the proposal would not impair visibility for drivers existing or entering the access. Indeed, I note the highways authority is now in agreement with this.
22. With regards to the servicing and maintenance of the proposed equipment, it is likely that this would be similar to that undertaken for the existing mast and equipment, which is positioned near to the pedestrian footway and crossing point on the opposite side of Chester Road. I also note that the appellant states such visits would be infrequent. Therefore, I am satisfied that the construction of the proposal and its ongoing servicing and maintenance could be undertaken without causing harm to highway and pedestrian safety through appropriate arrangements and would be controlled under separate legislation.
23. No substantive evidence has been submitted by the Council to demonstrate that the proposal would otherwise interfere with pedestrian and highway safety.
24. Consequently, based on the evidence before me, the siting and appearance of the proposed development would not cause unacceptable harm to pedestrian and highway safety. Therefore, the proposal would comply with paragraph 115 of the Framework, which states that development should only be prevented on highway grounds if there would be an unacceptable impact on highway safety. In addition, the proposal would also accord with Policies T10 and T11 of the

UDP, which amongst other things, seek to ensure development maintains safe access for pedestrians, cyclists and wheelchair users.

Need

25. The proposal would upgrade the service provision for the surrounding area by enabling 3G and 4G coverage. This would benefit the needs of residents, visitors and businesses. It would also have the capability to provide future technology such as 5G.
26. Paragraph 121 of the Framework explains that applications for telecommunications development, including prior approval, should be supported with the necessary evidence to justify the proposed development. This should include for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure.
27. The appellant states that the proposed mast needs to be taller and slightly wider than the existing mast in order to support the latest 3G and 4G antennas which are generally larger and heavier than previous technologies, as well as bulkier feeder cables that run down the centre of the monopole. The appeal proposal would be situated close to the existing mast to enable it to replicate the existing coverage as far as possible and to ensure that the new installation knits efficiently into the digital communications network. I also acknowledge the constrained cell area and the operational need for the installation.
28. The evidence indicates that the appeal site is the most efficient location within the cell area. The Council have not suggested alternative locations that would otherwise be suitable to provide the required network coverage without causing the harm I have identified. I also note that there have been no objections to the proposal from local residents. Consequently, there is no information before me to indicate that there are suitable alternative sites to provide the required coverage that could otherwise avoid the harm I have identified with respect to the character and appearance of the area.
29. As such, the proposal would accord with the aims of the Framework, as set out above, which requires evidence to demonstrate that alternative sites have been explored.

Other Matters

30. The appellant 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). According to the Framework, it is not necessary to determine health safeguards where the proposal meets these guidelines.

Planning Balance

31. The proposal would have no harmful effect on the living conditions of occupiers of nearby properties with regards to outlook and would be acceptable in terms of pedestrian and highway safety. However, acceptability in these regards is a neutral factor that does not weigh in support of the proposal.
32. Although the proposal would cause harm to the character and appearance of the area, in my view the level of harm would be moderate given the compact

scale of the development and its prominence in only localised views due to land level changes and the presence of intervening screening features in more distant views. Paragraph 118 of the Framework states that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Furthermore, planning decisions should support the expansion of electronic communications networks.

33. Given the need for the installation, which weighs in favour of the proposal, a balance needs to be carried out against any harm identified. The proposal would provide economic and social well-being benefits as indicated by the appellant. In that context, the need for the installation to be sited in the location as proposed to provide improved network coverage and capacity to meet the needs of local community and business, emergency services, and the absence of any more suitable alternatives, weigh considerably in favour of the proposal.
34. On balance, I conclude that the benefits provided by the improved network coverage and capacity for the local community and businesses, and emergency services, would significantly outweigh the moderate harm caused by the siting and appearance of the proposed mast to the character and appearance of the area.

Conditions

35. Any planning permission granted for 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. It 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

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

H Smith

INSPECTOR