



Appeal Decision

Site visit made on 12 December 2023

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2024

Appeal Ref: APP/Z4310/W/23/3318300

Garston Way Street Works, Garston Way, Liverpool L19 2JA

- 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 under Schedule 2, Part 16, Class A of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Gallivan on behalf of CK Hutchison Networks (UK) Ltd. against the decision of Liverpool City Council.
 - The application Ref 22PT/3073, dated 9 November 2022, was refused by notice dated 18 January 2023.
 - The development proposed is 5G telecoms installation: H3G 20m street pole and additional equipment cabinets.
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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 5G telecoms installation: H3G 20m street pole and additional equipment cabinets at Garston Way street works, Garston Way, Liverpool L19 2JA in accordance with the terms of the application Ref 22PT/3073, dated 9 November 2022, and the plans submitted with it including: LPL20274_LPL431_TBC_L0851_GA_REV_A 002 site location plan, LPL20274_LPL431_TBC_L0851_GA_REV_A 215 proposed site plan and LPL20274_LPL431_TBC_L0851_GA_REV_A 265 proposed site elevation.

Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order), 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 provisions of the Order do not require regard to be had to the development plan. I have had regard to the policies of the development plan and the National Planning Policy Framework (the Framework) only insofar as they are a material considerations relevant to matters of siting and appearance.
4. A revised National Planning Policy Framework (the Framework) came into force on the 19 December 2023 with a further change published on 20 December. The revised Framework is a material consideration which should be taken into account from the day of publication. The paragraphs most pertinent to this appeal are unchanged, other than their numbering. Having considered the

revisions and in light of the principles of natural justice, in this instance I do not consider it necessary to invite any submissions from the parties on the revised Framework.

Main Issue

5. The main parties do not dispute that the appeal scheme meets the requirements of Class A, Part 16, Schedule 2 of the Order such that it would constitute permitted development, subject to the condition that prior approval must be sought in relation to its siting and appearance.
6. The main issue is the effect of the siting and appearance of the proposed installation on the character and appearance of the area, with particular regard to trees.

Reasons

7. The appeal site is located on a grass verge to the side of Garston Way. The site is to the rear of an adjacent supermarket and the grass verge currently includes well-established trees, streetlights, and traffic lights. The nearest residential properties are on the opposite side of Garston Way, Dock Road and St Mary's Road and are separated from the site by landscaping, the existing roads, and the supermarket building.
8. The character and appearance of the area is open and green due to the trees lining both sides of Garston Way. However, it is also clearly a mixed-use area with the commercial supermarket use and other industrial uses further along the road and the residential properties being set behind areas of landscaping. Moreover, Garston Way is a primary strategic route network within the city and is a wide road of several lanes of traffic. The pole would be most visible from passing traffic on Garston Way.
9. The proposed pole would extend above the height of the adjacent supermarket building and is taller and wider than the existing streetlights. However, the existing streetlights already extend above the height of the supermarket. Furthermore, the existing trees near to the site would provide an element of screening for views along Garston Way. The proposed pole would not look out of place, nor would it result in a cluttered appearance due to the well-spaced nature of neighbouring street furniture. As a result, the open character and appearance of the area would be satisfactorily maintained.
10. Policy GI9 of the Liverpool Local Plan 2013-2033, adopted 2022 (LP) is a material consideration as the effect on trees relates to the siting and appearance of the proposal. GI9 requires all development that is within 3 metres of the outer extent of the canopy spread of any tree to be supported by the arboricultural reports listed within the policy.
11. The Council raises concern about the impact of the proposal on nearby trees from the potential interference of the signal from the proximity of the trees and I note that the proposal was not submitted with any of the documents required in Policy GI9. The appeal submission suggests an Arboricultural Report is included in Appendix 6; however, the appendix is not complete.
12. Notwithstanding this, from the evidence before me and from my observations at my site visit, the proposal would be over 3m from the canopy of the nearest tree and therefore an arboricultural report would not be required for this

proposal. Moreover, due to the separation distance between the proposal and the nearest trees, and that the pole would extend above the height of the trees, in my judgement the proposal would not result in any significant damage or loss of any of the trees. Furthermore, the open and verdant character of the area would not be adversely affected to a significant degree.

13. 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 trees.
14. I, therefore, find no conflict with Policies STP4, UD1 or GI9 of the Liverpool Local Plan 2013-2033, adopted 2022 (LP) which, taken together support new infrastructure proposals where the contribution to national priorities and locally identified requirements outweigh the adverse effects, seek to ensure that all new development promotes a high standard of design taking account of local character and seeks to retain existing trees.

Other Matters

15. The Council has not raised any concerns regarding the impact of the siting and appearance on views from nearby residential properties due to the separation distances and while I have carefully considered these matters, the evidence before me has not led me to different conclusions.
16. Interested parties have questioned the need for the proposal as there are already masts in the area. However, I am only in a position to consider the proposal before me, based on its individual planning merits and in this particular case I have found the siting and appearance of the proposal to be acceptable.
17. I note that interested parties have also raised concerns in relation to the proximity of the site to a school and other educational establishments. Although the Code of Practice for Wireless Network development in England, published 7 March 2022, (the Code) advises that operators should discuss the proposed development with the relevant body of the school or college before applying to the local planning authority, the Code does not set specific distances for these consultations. The reports and exclusion zones referred to by interested parties are not planning requirements. Moreover, there is no clear reason for me to consider that the Council did not give notice of the proposal in accordance with the relevant requirements of the Order.
18. 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). In these circumstances, notwithstanding the comments raised by interested parties regarding health concerns, questioning the validity of the ICNIRP, the Public Sector Equality Duty and other legislation, 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.
19. The concerns of the occupiers of nearby properties with regard to the effect of the proposal upon property values are not of material relevance to the outcome of this appeal. Furthermore, the concerns regarding the use of energy and the

impact on wildlife from radiation is not a matter which can be considered under the assessment of siting and appearance.

Conditions

20. The Order does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators contained within it. These specify that the development must be carried out in accordance with the details submitted with the application, begin within 5 years of the date of the approval and 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

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

K Townsend

INSPECTOR