



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/23/3322961

Fazakerley Road street works, Fazakerley Road, Liverpool L9 2AJ

- 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/3063, dated 10 November 2022, was refused by notice dated 3 January 2023.
- The development proposed is 5G telecoms installation: H3G 18m street pole and additional equipment cabinets.

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 18m street pole and additional equipment cabinets at Fazakerley Road street works, Fazakerley Road, Liverpool L9 2AJ in accordance with the terms of the application Ref 22PT/3063, dated 10 November 2022, and the plans submitted with it including: LPL21837_LPL439_TBC_L0884_GA_REV_A 002 site location plan, LPL21837_LPL439_TBC_L0884_GA_REV_A 215 proposed site plan and LPL21837_LPL439_TBC_L0884_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. The appellant has referred to both a 18m pole and a 20m pole within their statement of case. I have considered the proposal as described on the application form, as an 18m pole.
5. 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

6. 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.
7. 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 and the living conditions of the occupants of 2 and 4 Fazakerley Road, 189-193 Rice Lane and 224 Rice Lane, with particular regard to outlook.

Reasons

8. The appeal site is located near the junction of Fazakerley Road and Rice Lane, which is a busy classified road. The area is mixed residential and commercial with two-storey residential dwellings on the same side of Rice Lane as the appeal site and commercial units opposite, with flats above in a mix of two and three storey buildings. Fazakerley Road and the streets beyond are two-storey residential terraced housing. There are few longer distance views of the site due to the curvature of Rice Lane and the built-up nature of the area.
9. However, the footpath at this point is wide and is adjacent to a small triangle of soft landscaping with mature trees which results in an open character and appearance to the immediate area. The trees and green space provide some visual relief to the hard built form surrounding it. The proposed development would be visible from the immediate area and also from the surrounding residential properties.
10. Existing street furniture, consisting of street lighting columns, a CCTV column, wooden telegraph poles, road signage, a bus stop shelter and post box, are located within the footpath on both sides of the roads.
11. The proposal is for an 18-metre pole with associated ground-based apparatus which would be located on the back edge of the footpath, adjacent to the grassed area and trees.
12. Policy GI9 of the Liverpool Local Plan 2013-2033, adopted 2022 (the 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.
13. Although the proposal was not submitted with the documents required by Policy GI9 of the LP, and from the evidence before me the proposal is within 3m of the canopy of at least one tree, the Council's concern relates to the potential interference of the signal from the proximity of the trees, rather than the impact of the footprint of the development on the roots of the trees. The information required by GI9 of the LP would not provide the detail of the

- sightlines between poles, requested by the Council Tree Officer, and I have no means to secure that information under the prior approval process.
14. Both main parties agree that the proposal would extend above the highest point of the canopy of the trees and, therefore, even though it may be within 3m of the trees I am not convinced that the development would affect any of the trees within the green space to an extent that it would result in significant damage or loss of any of the trees.
 15. Moreover, the green space contains a number of other trees that would not be affected. The appellant has advised that the siting has been chosen to take advantage of the trees to reduce the visual impact. The potential damage or loss of one tree would not amount to significant harm given the extent of the other trees and the size of the green space. The trees within the green space would continue to provide the verdant character and visual relief and the open character and appearance of the area, as a whole, would not be significantly adversely affected by the proposed development.
 16. The proposed pole and associated cabinets would also be read alongside the other street furniture, albeit at a greater height. The urban backdrop to the pole and the curvature of the road would mean that, even with a greater height, the pole would not stand out as incongruous features in the street scene. The existing street furniture around the appeal site is not a cohesive group and the proposal would add to the existing mix of structures but not have a negative visual effect.
 17. The existing trees also provide a visual backdrop for the proposal as viewed from the residential properties on Rice Lane and the opposite side of Fazakerley Road. The views from 2 and 4 Fazakerley Road would be from ground floor and first floor windows and would include views of the proposed development. The views from 189-193 Rice Lane and 224 Rice Lane would be from first floor flats and would therefore be above the cabinets but include views of the pole.
 18. However, the views from all of the surrounding properties would be within the context of the busy road, with a backdrop of existing buildings beyond the pole and of other street furniture and the other trees within the green space. Moreover, the neighbouring properties are all on the opposite side of the roads and footpaths. As the proposal is not directly outside any of the front windows of the neighbouring properties, the separation distance would reduce the overall harm and the pole would be read as part of wider views. Moreover, the trees within the green space would also continue to provide a degree of greenery to the outlook from these properties.
 19. Although the pole would be visible from the properties, in my judgement, the proposal would not be experienced as an overbearing or unacceptably obtrusive feature by neighbouring residential occupiers.
 20. 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 reference to trees and the living conditions of the occupants of 2 and 4 Fazakerley Road, 189-193 Rice Lane and 224 Rice Lane, with particular regard to outlook.
 21. I, therefore, find no conflict with Policies STP4, UD1, UD2 or GI9 of the 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 distinctiveness and seeks to retain existing trees.

Other Matters

22. Interested parties have questioned why the proposal cannot be in a commercial or business area. The evidence before me includes details of the sequential approach outlined in Paragraph 121 of the National Planning Policy Framework which was undertaken to select the appeal site. This included the exploration of alternative sites, including siting on buildings and other structures, and concludes that there are no alternative sites that would be more suitable for the proposed development. The Council does not dispute this. While limited justification has been provided in this sense, I am satisfied that the appellant has followed the sequential approach with respect to site selection and I have no substantive evidence before me to clearly indicate otherwise.
23. It must also be noted that, as I have identified that the siting and appearance of the proposed development to be acceptable, it is unnecessary for me to consider the detailed merits of potential alternative sites.
24. Interested parties consider that if this appeal is allowed then a precedent would be set for similar developments in the locality and have questioned the need for the proposal as there are already two masts on Rice Lane. 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.
25. Highway safety and vandalism concerns have also been raised by interested parties. However, I have no compelling evidence to show that the proposed development, which is sited at the back of the pavement, is at any greater risk of being hit by vehicles or vandalised than the existing streetlights or bus shelter which are adjacent to the road. Furthermore, I have no reason to come to a different conclusion on the highway and pedestrian safety considerations of the development to that made by the Council.
26. 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.
27. The concerns of the occupiers of nearby properties with regards to the effect of the proposal upon property values are not of material relevant to the outcome of this appeal and the concerns regarding the use of energy needs is not a matter which can be considered under the assessment of siting and appearance.

Conditions

28. 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

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

K Townsend

INSPECTOR