



Appeal Decision

Site visit made on 12 December 2023

by J D Clark BA (Hons) DpTRP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2024

Appeal Ref: APP/Z4310/W/23/3317708

Middlemass Hey street works, Middlemass Hey, Liverpool L27 7AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order 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 Gallivan of C K Hutchison Networks (UK) Ltd against the decision of Liverpool City Council.
 - The application Ref 22PT/3318, dated 5 December 2022, was refused by notice dated 27 January 2023.
 - The development proposed is described as proposed 5G telecoms installation: H3G 18m street pole and additional equipment cabinets.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GDPO 2015), 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. There is no requirement to have regard to the development plan as there would be for any development requiring planning permission. Nevertheless, Policies UD1 and UD2 of the Local Plan¹ are material considerations as they relate to issues of siting and appearance. Policy STP4 relates to infrastructure provision where they are required to help deliver national priorities amongst other things.
4. The National Planning Policy Framework (the Framework) was revised on 19 December 2023 and updated on 20 December 2023. However, there are no material changes in the revision or the update relevant to the substance of this appeal. The Framework is a material consideration including its section on supporting high quality communications.

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 effect on trees and, if any harm would occur, whether this is outweighed by the need for the

¹ Liverpool City Council – Liverpool Local Plan 2013 – 2033, Adopted January 2022.

installation to be sited as proposed taking into account any suitable alternatives.

Reasons

Character and Appearance

6. Middlemass Road runs off Caldway Drive, a main road running through a residential area. The area comprises mostly of two-storey houses, with those on Caldway Drive being set behind substantial brick walls. There is a single storey building on the corner opposite the appeal site on Middlemass Hey and Caldway Drive. It was unoccupied at the time of my site visit. There are lampposts, a CCTV camera, metal and timber fencing and brick walls and this otherwise hard landscape is softened by grass verges, hedges and a small number of small trees within a triangular landscaped area.
7. The proposed telecommunications pole and equipment cabinets would be located within an area of grass verge alongside the pavement on Middlemass Hey and on the edge of the triangular area of landscaped open space. There is a row of three small trees close to the pavement and the proposed development would be installed close to them with the equipment cabinets close to the middle tree and the pole between the middle tree and the tree closest to the road junction with Caldway Drive. Nearby walls are about 1.8 metres in height and so visually the equipment cabinets would be no higher than them. Therefore, together with the surrounding landscaping, the cabinets would not be unduly prominent in the street scene.
8. The appellant states that 18 metres is the lowest pole required for the improved 5G service need identified in the area. The proposal is for a 'slim line' streetpole which I note is a design intended to fit alongside street furniture including lampposts and therefore blend in with the street scene. However, the proposed pole would be considerably taller than anything else around it; the submitted plans indicate the trees to be between 6 metres and 8 metres in height, the CCTV camera/pole 8 metres and nearby buildings about 7 metres high.
9. The CCTV camera is mounted on a heavy lamppost which although not particularly high is chunky in its appearance and prominent in its location close to the corner of the two roads. Notwithstanding this, in the context of the open character of the junction and the low buildings in the surrounding area, the proposed pole would be highly visible, prominent and incongruous in the street scene from both the highways and from the residential properties surrounding it.
10. Consequently, the proposed 18 metre high telecom pole would have a harmful effect on the character and appearance of the area. However, the lack of visual harm with regard to the cabinets does not lessen the harm caused by the telecom pole.

Trees

11. The installation of the cabinets would involve the removal of the middle tree of the group of three. Whilst this tree is small at about 6 metre high, it is part of this landscaped group within the triangular area of land. The landscaping and grass verge are important features which soften what otherwise is a fairly hard urban environment.

12. As part of the appeal submission, the appellant has submitted an arboricultural report which identifies the three trees referred to above as young standards planted as part of a landscaping scheme within the last 10 – 15 years. They are identified as Lime trees (*Tilia spp*) which have the potential to grow into large mature specimens.
13. The appellant's statement confirms that the installation of the cabinets would affect the Root Protection Area of the middle tree (T2) so that its removal would be required. However, the assessment concludes that the long term health of the other two trees T1 and T3 would not be harmed. Moreover, the removal of T2 would be considered good arboricultural practice allowing T1 and T3 to grow and develop a balanced canopy structure.
14. I note that the tree report concludes that the subject trees are unlikely to reach the height of the 18 metre pole for many years and therefore the trees are unlikely to have an adverse impact on signal strength for a long time. However, the survey suggests some minor repositioning of the layout to maximise the distance of the pole from the retained trees.
15. The Council's response to the tree report states its continued concern about the two trees to be retained regarding the potential damage to their root systems and the potential future requirements for pruning to avoid conflict with the telecommunications pole. The Council also express concern about the loss of a healthy tree and seek financial compensation through a Unilateral Undertaking (UU). The appellant has not commented on this. In situations where trees are removed for reasons other than arboricultural management, Local Plan Policy G19 requires trees to be replaced on the site or the Council may seek funding from the developer for off-site planting in the locality. No information is given as to where this replacement planting may take place but rather the Council refer to the cost of damage/loss caused by the removal of the tree plus the associated legal fees². In any event, no UU has been submitted and therefore I have considered the effect on the trees on the basis of the information presented to me.
16. I find that whilst the tree is young, along with the others in this small group, they are an important characteristic in the street scene. Although, in the long term tree management may require the removal of the tree on the basis of good arboricultural practice, that is not the case yet. In addition to the harm I have found above, I also find that the loss of the tree would have a harmful effect on the character and appearance of the area.

Need and Alternative Sites

17. The proposal is required to extend the 5G mast infrastructure and the appellant explains that due to the higher frequencies utilised, the cell areas for 5G services are smaller than that required for earlier generations of telecommunication (3G and 4G). The intended target/search area has a radius of approximately 100 metres, centred on the Middlemass Hey area. A list of alternative sites are included in the submission together with a plan identifying their location. These have been discounted for reasons relating to insufficient or unsuitable pavements and visibility issues or they have been discounted due to their proximity to residential properties.

² A sum of £7,599.00 plus legal fees is referred to.

18. The explanations for the discounted sites are brief and these alternative sites are all discounted for technical reasons relating to the practicalities of their installation or due to their proximity to residential properties. As such, I am not convinced that a less visually intrusive location could not be found within the wider urban area that would meet the appellant's requirements.
19. I appreciate the appellant's objectives to follow Government commitment to improving high speed 5G mobile connectivity and the benefits this has to the local community. I also note the increased demand that has arisen from more home working following the Covid pandemic and the requirement for improved telecommunications in residential areas. However, these matters have not been taken into account in considering the matters of siting and appearance.

Conclusion

20. Consequently, the proposed installation would have a harmful effect on the character and appearance of the area and to trees due to its siting and appearance and I am not convinced that less harmful alternatives capable of fulfilling the appellant's requirements could not be found. The harm that I have found is not outweighed by the need for the installation as proposed and therefore, for the reasons given above I conclude that the appeal should be dismissed.

J D Clark

INSPECTOR