



Appeal Decision

Site visit made on 3 January 2024

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th January 2024

Appeal Ref: APP/Z4310/W/23/3323126

Entrance to Botanic Park, Edge Lane, Kensington, Liverpool L7 9LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required 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 Gallivan (CK Hutchison Networks (UK) Ltd) against the decision of Liverpool City Council.
 - The application Ref 22PT/3328, dated 7 December 2022, was refused by notice dated 19 January 2023.
 - The development proposed is a 5G telecoms installation: H3G 20m street pole and additional equipment cabinets.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (Framework) was published in December 2023. I have had regard to this in reaching my decision.
3. I have used the address from the decision notice as this provides a more accurate location of the appeal proposal than the address on the application form.
4. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) require the proposed development to be assessed solely on the basis of its siting and appearance, taking into account any representations received. My determination has been made on this basis.
5. 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. I have, though, had regard to the policies of the Liverpool Local Plan 2013-2033 (Local Plan) and the Framework insofar as they are a material consideration relevant to matters of siting and appearance.

Main Issues

6. The main issues are the effect of the siting and appearance of the proposed installation on (i) the character and appearance of the area, having regard to the setting of the listed Wavertree Botanic Garden and Park and listed Botanic Park Lodge; (ii) the long-term health of trees; and (iii) 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

7. The appeal site is situated on the southern side to Edge Lane, adjacent to the main entrance to Wavertree Botanic Garden and Park. The wide road, which is a dual carriageway in the vicinity of the appeal site, as well as the presence of the park and garden as an open space area, contribute to the spacious, verdant character along this part of Edge Lane.
8. The proposed mast would be situated near various existing items of street furniture. At a height of 20m, it would however be significantly taller than any of these, including nearby lampposts. This element of the proposal would also exceed the height of trees which are in the vicinity of the site, the tallest of which extend to around 12m in height. As such, I do not consider that they would reduce the visual impact of the proposal.
9. I note that for the most part, the mast would have a slim-line design, and that it would be finished in a grey colour. However, given its height, which would be conspicuously taller than any nearby built or natural features, the proposed mast would appear as an incongruous, unduly prominent feature to the streetscene.
10. The appeal proposal would be situated immediately adjacent to a grade II* listed park and garden, Wavertree Botanic Garden and Park. Its significance derives from it being an early example of a municipal botanic garden and park which has remained largely unchanged since the 19th Century. It is bounded by stone walls and railings, with the entrance from Edge Lane formed of stone piers and metal gates. The utilitarian, functional appearance of the appeal scheme would contrast with the traditional form of the boundary treatment to the listed park and garden and its verdant setting. As such, it would harm the setting of the listed park and garden. Reference has been made to a number of other listed buildings, including the Lodge to the Botanic Park but given the distance from the appeal proposal, I do not consider that they would be any harm arising.
11. The proposed cabinets are low level structures that would be seen amongst other similar height structures on the highway, and I do not therefore consider they would unacceptably harm the character and appearance of the area, or the setting of the listed park and garden.
12. Nevertheless, on this issue, for the reasons set out, I conclude that the siting and appearance of the proposed installation would result in significant harm to the character and appearance of the area and to the setting of the listed Wavertree Botanic Garden and Park. The proposal would conflict with, insofar as they are material considerations, paragraph 119 of the Framework and Policies UD1, HD1 and STP4 of the Local Plan, which require consideration of, amongst other matters, the form and scale of a development proposal, and for proposals to conserve or enhance the historic environment.

Long-term Health of Trees

13. The appeal site is situated close to a number of trees that are located within the neighbouring Wavertree Botanic Garden and Park. The trees extend to a height of around 12m and given the proximity to the proposal, the Council has raised concerns that the mast, cabinets and associated ground works could

damage the root system. In the absence of any further information on the effects of the proposal on nearby trees, I consider that the irreparable damage to roots could lead to the loss of these trees.

14. Given the above, I conclude that the siting of the proposed installation would potentially have an unacceptable adverse effect on the long-term health of nearby trees. It would therefore be contrary to, insofar as they are material considerations, Policy GI 9 of the Local Plan, which seeks, amongst other matters, for there to be adequate spacing between the development and the existing retained trees, taking into account the current and future spatial requirements of the trees.

Need

15. The Framework sets out that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being and in this respect, there is a need to support the expansion of electronic communications networks, including next generation mobile technology. The proposed mast would provide 5G coverage, which require base stations to be in close proximity to the area they serve, in this instance, in the Kensington area of the City. A number of benefits have been set out by the appellant including meeting the needs of businesses and communities, through for example by supporting home working and using phones and wireless technology on the move. Reference has also been made to a Government letter that sets out the importance of high-speed digital communications infrastructure.
16. The appellant has set out that the sequential approach was followed in considering mast / site sharing, existing buildings or structures but no such opportunities were found. Although reference has been made to a desktop survey and a physical inspection having been undertaken, I have not been provided with details of which existing buildings or structures were considered. The appellant's alternative site assessment relates to a new ground-based installation and notwithstanding its conclusions on the various sites considered, given that there may be other sites that could accommodate the proposal, I find that the appeal development has failed to demonstrate adherence to the sequential approach.
17. I appreciate the need for this installation is to provide new 5G mobile coverage to the residential area around the site and that a mast at 20m high is the minimum required to provide improved 5G service. It would bring a modern, high-speed communications service and this weighs in favour of the appeal. The proposal would, however, for the reasons set out above, be harmful to the character and appearance of the area, to the setting of the listed park and garden, and in relation to the long-term health of nearby trees. On the evidence before me, I am not convinced that less harmful alternatives have been properly explored and it is my overall view that the need for the proposal does not in this case, outweigh the harm.

Other Matters

18. The site is not in a Conservation Area, nor is it subject to environmental designations. The proposal would also not have a detrimental impact on residential amenity or pedestrians using the pavement. These are however neutral matters and not ones which weigh in favour of the proposal.

19. I note the appellant sought pre-application discussions with the Council. This appeal follows the Council's formal decision, and I can confirm that I have assessed the development accordingly, on both its merits and impacts.

Conclusion

20. For the above reasons and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

F Rafiq

INSPECTOR