



Appeal Decision

Site visit made on 16 January 2024

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

an Inspector appointed by the Secretary of State

Decision date: 13th February 2024

Appeal Ref: APP/Z4310/W/23/3327235

Toby Carvery SW, Aigburth Road, Liverpool L19 0NU

- 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 Cornerstone against the decision of Liverpool City Council.
 - The application Ref 23PT/0432, dated 21 February 2023, was refused by notice dated 31 March 2023.
 - The development proposed is described as a mast - 20m monopole – galvanised metal, 2 equipment cabinets – pressed metal – grey.
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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) Order 2015 (as amended) for the siting and appearance of a mast – 20m monopole – galvanised metal, 2 equipment cabinets – pressed metal – grey at Toby Carvery SW, Aigburth Road, Liverpool L19 0NU in accordance with the terms of the application Ref 23PT/0432, dated 21 February 2023, and the plans submitted with it including:-
 - Drawing Nos: -
 - 100 Rev A
 - 200 Rev A
 - 201 Rev B
 - 300 Rev A
 - 301 Rev A

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, GI 9 and H7 of the Local Plan¹ are material considerations as they relate to issues of siting and appearance. Policy STP4 relates to infrastructure

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

provision where they are required to help deliver national priorities, amongst other things.

4. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023 and is a material consideration in this appeal, including its section on supporting high quality communications. Having considered the revisions to the Framework, as well as the principles of natural justice, together with the nature of the determining issues in this appeal it is clear to me that there are no material changes in the revised Framework relevant to the substance of this appeal. Therefore, I do not consider it necessary, in this instance, to invite any submissions from the parties on the revised Framework and am content that no prejudice has been caused by me taking this approach.

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 the occupiers of neighbouring residential properties with particular regard to outlook, the health of nearby trees 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

6. The proposed installation (the monopole and the cabinets) would be sited within the central reservation on Aigburth Road (A561), a main arterial road into and out of the City. Trees line the grassed central reservation along the road and a pedestrian crossing comprising a footpath and railings diagonally cross the grassed area. Within the central reservation there are also lampposts, a CCTV camera, traffic lights and close by there is one newly planted tree and another mature tree. On one side of the carriageway is a Toby Carvery restaurant/pub (referred to in the site's location), and a hotel. On the other side of the road are commercial premisses including a single storey building and a three-storey terrace. There are flats above the commercial units and there are residential properties further along the road in both directions.
7. Aigburth Road is characterised by its wide dual carriageway which, together with the grass verge forming a central reservation, creates a wide space with buildings set far apart across the road. The trees and lampposts introduce a strong vertical array of structures along this main road and two existing telecommunication installations further along Aigburth Road contribute towards the general character and appearance of the street scene.
8. Although there are already two other telecommunication poles in the area, given the nature of this main road and the other vertical street furniture and trees in the locality, I do not consider that the proposal would lead to visual clutter or appear particularly intrusive. Moreover, whilst the other two poles are visible, they have become assimilated into the street scene and are located to one side of the carriageway and are not in the central reservation. There is also a substantial gap between the appeal site and the other two telecommunication poles. Also, the proposal includes two equipment cabinets but given their position close to the railings and towards the edge of the central reservation, they would not appear intrusive or out of place in this urban environment.

9. Consequently, the proposal would not result in an obvious accumulation of telecommunication installations and I do not find that the impact on the street scene to be a negative one. Therefore, I do not consider that the proposal would have a harmful effect on the character or appearance of the area.
10. Due to the location of nearby residential properties, the generous separation distances they maintain and the intervening street furniture and trees, I do not consider that the appearance of the proposal would result in a poor outlook that would be detrimental to the living conditions of the occupiers of the surrounding residential properties.
11. As stated above, there is a young tree and a more mature one sited close to the proposed installation. However, neither tree, and particularly the mature one, is so close as to interfere with either the monopole or the cabinets. Whilst the appellant has not submitted a tree assessment which would identify the canopy spread and the root protection areas, I am satisfied from my own observations, and the appellant's undisputed evidence indicating tree distances, that the installation would be sufficiently far enough away to avoid any harm to the health of nearby trees. Also, based on the above distances, there is no compelling evidence that the installation would be within the area where a trees assessment, as prescribed by Policy GI 9 of the Local Plan, is required.
12. The proposal is required to facilitate the rollout of 5G technology and to improve 2G, 3G and 4G services in this area as part of the continued network improvement program by the operator. However, paragraph 122 of the Framework makes clear that need for electronic communications systems should not be questioned.
13. I note that concern has been expressed about whether mast or site sharing has been explored or whether alternative site have been considered. However, as I have found that the proposal would not harm the character or appearance of the area, the living conditions of the occupiers of surrounding residential properties or have a harmful effect on the health of existing trees, there is no need for me to assess alternative sites or mast sharing. Having said this, I note that another telecom installation proposed by the appellant further along Aigburth Road, close to Liverpool Cricket Club, has been refused by the Council and dismissed on appeal². The result of that decision has led the appellants to seek alternatives which has resulted in the selection of the appeal site.

Other Matters

14. Concerns have been raised about potential effects on health. However, 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, the Framework advises that health safeguards are not something which decision makers 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.

² Planning Application Ref: 20PT/1045 – Appeal Ref: APP/Z4310/W/20/3263445.

Conditions

15. 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

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

J D Clark

INSPECTOR