



Appeal Decision

Site visit made on 27 February 2024

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 13th March 2024

Appeal Ref: APP/Y0435/W/23/3330812

Land at Whaddon Way, Milton Keynes MK3 7JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 MBNL, (EE (UK) Ltd & H3G (UK) Ltd) against the decision of Milton Keynes Council.
 - The application Ref is 23/00211/PRIOR.
 - The development proposed is installation of a 20m monopole with 12 antenna apertures and 7 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 (the GPDO), 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 principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the Order do not require regard to be had to the development plan. Nevertheless, I have had regard to the policies of the development plan and the National Planning Policy Framework (the Framework) only insofar as they are material considerations relevant to matters of siting and appearance.
4. The Government published a revised Framework in December 2023. The amendments made did not have any bearing on the main issues in this appeal, and it was therefore not necessary to seek comments from the main parties on the updated Framework.

Main Issues

5. The main issues are the effect of the siting and appearance of the proposal on:
 - the character and appearance of the area;
 - highway safety with particular regard to pedestrian safety; 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

Character and appearance

6. The appeal site is located on Whaddon Way in an area of mixed development, including residential, a row of commercial units including shops and take away restaurants, public house, garage and community buildings. Selkirk Grove is a residential road that is located adjacent to the appeal site to the west that does not have vehicular access onto Whaddon Way but does have pedestrian and cycle connectivity. The appeal site is not subject to any heritage designations and there are none within the immediate vicinity.
7. There are existing examples of street furniture within the vicinity of the appeal site including streetlights, bollards, road signs and a bus shelter. Trees are located in the separate area of verge to the west of the pavement and directly to the north of the appeal site. The appellant asserts that the area is of no distinct architectural merit. However, the existing grass verge provides separation between the road and the pavement and provides a visual break in built form, softening the appearance of the urban environment. As a result, it does contribute to the character and appearance of the area in a positive way.
8. During my site visit, whilst only a snapshot in time, I noted that the road was fairly busy with vehicular traffic including a regular bus service and that the pavements were well used with pedestrian activity leading to and from the shops and community buildings. I also noted that there is a primary school located on Melrose Avenue, a short distance from the appeal site.
9. I understand that the technical requirements of the proposal dictate the dimensions of the mast and the number of cabinets needed. The proposed equipment would be situated within the grass verge closest to the road. Despite the setback from the edge of the road, it would be highly visible when moving along Whaddon Way, when heading east along Selkirk Grove and when heading west from the junction opposite. Whilst there are other elements of street furniture and trees within the grass verge areas surrounding the appeal site, these would be significantly lower than the proposed mast. The bulk of the equipment at the top of the proposed mast would add to its prominence.
10. The built form nearest to the proposal is predominantly two storey dwellings. The commercial unit opposite does have a three storey element, but this is set back and situated in a perpendicular arrangement to the road, meaning that it does not appear overly prominent. The backdrop of the surrounding built form would not visually integrate the appearance of the proposal into the local area. The proposed mast would therefore appear as a prominent and imposing addition to the street scene which would be harmful to the character and appearance of the area. A more sensitive colour finish would not overcome this harm.
11. The proposed cabinets, whilst much lower in height than the mast, would result in 7 separate cabinets, infilling the currently open verge between the pavement to the south and the existing streetlight to the north. They would add clutter

onto the verge between the road and the pavement, exacerbating the visual harm arising from the mast.

12. I therefore find that the siting and appearance of the proposed development would result in unacceptable harm to the character and appearance of the area. Insofar as they are a material consideration, it would conflict with Policies D1 and D2 of Plan:MK 2016 – 2031 Adopted March 2019 (Plan:MK) which together, amongst other things, seek to ensure that development responds appropriately to the site and surrounding context and has regard to the character of the area.

Highway safety with particular regard to pedestrian safety

13. The proposal would be sited within the grass verge area and would not prevent people from using the existing pavement network. The appellant asserts that the closest cabinet to the road would be set back by approximately 1.4m and would be limited to 1.45m in height and therefore most pedestrians would be visible to road users travelling south along Whaddon Way. They also state that the section of footpath adjacent to the southern boundary of the appeal site is not a preferred route for pedestrians, given the presence of the zebra crossing further south which is a more obvious place to cross the road.
14. Whilst I note that there is no dropped kerb or pavement across the verge directly opposite the stretch of pavement to the south of the appeal site, on the eastern side of Whaddon Way, the presence of the paved area with two existing bollards, does suggest that it is there to be used as part of the network of pavements. During my site visit, a number of pedestrians did use the zebra crossing. However, I also witnessed a cyclist using this short section of pavement to the south of the appeal site to access Whaddon Way.
15. Placing a cabinet 1.45m high, within 1.4m of the edge of the road, would mean that it would be possible for some pedestrians, such as children, to be hidden from the view of drivers heading south along Whaddon Way, until they are in very close proximity to the road. The likelihood of conflict between pedestrians and road users would increase as a result.
16. I note that the road alongside the appeal site is subject to a 30mph speed limit and incorporates traffic calming measures, with the carriageway narrowed at the zebra crossing to single lane traffic, and a speed bump present. However, this would not negate the possibility that the pavement adjacent to the southern boundary of the appeal site would be used, and that some pedestrians would be hidden from the view of road users until they were in very close proximity to the edge of the road.
17. I therefore find that the siting and appearance of the proposal would be likely to be harmful to highway safety, with particular regard to pedestrian safety. Insofar as it is a material consideration, it would conflict with Policy CT2 of Plan:MK which, amongst other things, seeks to ensure that developments integrate into existing sustainable transport networks and do not have an inappropriate impact on safety and that they provide safe, suitable and convenient access for all potential users.

Alternatives

18. 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.

19. The proposed mast would represent one of a number required to replace a previous mast that was located on a nearby tower block that had already been demolished at the time of my site visit. It would provide 5G coverage and a number of potential benefits have been set out by the appellant, including providing 4G coverage which would be used by the Emergency Services Network. Reference has also been made to a number of documents that set out the importance of high speed digital communications infrastructure.
20. An exercise to assess alternative sites has been undertaken by the appellant. No mast sharing or existing building structures were found suitable and therefore, a new base station was considered to be the only option. Alternative sites considered included one to the rear of the commercial units on a small building, one on top of the building which houses the commercial units and four others within or adjacent to the highway verge in relatively close proximity to the appeal site.
21. Each alternative has been discounted for reasons, including, the restricted height of buildings and that the area is subject to redevelopment plans, lack of space within business premises and within the pavement and the proximity to trees. The information provided regarding the alternative sites chosen and the reason for discounting them is limited. The assessment had ruled out siting a mast on an existing building at the outset, but then two buildings were identified in the alternative sites looked at, meaning that the number of potential alternative ground based sites that were investigated appeared to be more limited.
22. I therefore do not consider that sufficient evidence has been given to demonstrate that the alternative sites identified are unsuitable or that the search for possible alternatives was robust in this case.
23. Having regard to all of the above, there is not sufficient evidence before me to definitively rule out other sites and to conclude that the proposed development needs to be sited as proposed because the appeal site is the only feasible or least-worst option. In coming to this view, I have taken into account the constrained nature of the cell search area.

Other Matters

24. I note that this appeal proposal sought to resolve issues raised by the Council about the siting of a previous proposal, which was located closer to the road. The appellant states that the reason for refusal given by the Council for both schemes was identical. Nevertheless, I must deal with this appeal proposal on its individual merits.
25. I have considered the other appeal decisions, put to me by the appellant, which have been allowed. Whilst I have limited information before me on each of these other cases, in my view they are distinct from the current case, in terms of the surrounding context. Based on the appeal decisions provided, one was located adjacent to a dual carriageway; another is referred to as being set away from the road and the third is noted as being located at a point where the road bridges the Underground rail lines. Therefore, they are not directly comparable.

26. The appellant asserts that there would be no harm to residential amenity as a result of the proposed siting and appearance of the installation. Even if I were to agree, this would be a neutral consideration.

Conclusion

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

G Dring

INSPECTOR