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# Appeal Decision

Site visit made on 6 June 2024

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

**an Inspector appointed by the Secretary of State**

**Decision date: 18<sup>th</sup> June 2024**

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**Appeal Ref: APP/A0665/W/23/3332161**

**Asda Ellesmere Port, off McGarva Way, Ellesmere Port CH65 0BZ**

- 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 EE UK Ltd & Hutchison UK Ltd against the decision of Cheshire West and Chester Council.
  - The application Ref is 23/02700/TEL.
  - The development is described as proposed NTQ telecommunications installation; proposed 20m high Valmont climbable monopole on 5.2 x 5.2 x 1.4m deep concrete base and associated ancillary works.
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## Decision

1. The appeal is allowed and prior 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 a proposed NTQ telecommunications installation; proposed 20m high Valmont climbable monopole on 5.2 x 5.2 x 1.4m deep concrete base and associated ancillary works at Asda Ellesmere Port, off McGarva Way, Ellesmere Port, CH65 0BZ in accordance with the application 23/02700/TEL and the details submitted with it including :-
  - Drawing No: 1709299\_EPN042\_96143\_CH0687\_M001 A
    - 002 Site Location Plan; 003 Access Plan; 004 Lease Demise; 005 Cherry Picker & Crane Location; 100 Existing Site Plan; 150 Existing Elevation A; 215 Proposed Max Configuration Site Plan; 265 Proposed Max Configuration Elevation A; and 304 Proposed Max Configuration Antenna Schedule.

## Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, 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, Policy DM 18 of the Cheshire West and Chester Council Local Plan (Part Two)

Land Allocations and Detailed Policies, adopted 18 July 2019, is a material consideration insofar as it relates to issues of siting and appearance.

4. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023 and is also a material consideration to 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.

## **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 surrounding area 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 comprises a landscaped area of land adjacent to a service access to a supermarket (Asda) and a footpath leading from McGarva Way to the supermarket's car park. McGarva Way is a tree lined road with grass verges. Lampposts are well spaced along the road. There is a telecommunications installation to the south of the appeal site and a large free standing sign to a car wash. Residential properties overlook the supermarket's car park and there are also residential properties on the opposite side of McGarva Way. These are set behind a strip of grassed land that is mounded in part and includes a row of trees. The most noticeable feature of the area is the trees alongside the road and the overall verdant appearance which characterises the area.
7. The proposal includes a fenced compound and a 20 metre high mast, described as a Valmont climbable monopole, together with equipment cabinets. The proposed mast would be taller than the surrounding trees and the supermarket building. It would include a headframe supporting antenna and other apparatus, including dishes would form part of the structure.
8. Although some vegetation would be cleared to accommodate the installation, a large part of the mast and much of the ground based equipment would be partly screened and/or blend into the verdant landscape and/or the boundary wall of the service yard. The mast would be visible from the road but due to its location, set back from the highway, and the overall tree lined character of McGarva Way, it would not appear unduly obtrusive from either mid-range or longer distance views. Closer up, it would be seen against the backdrop of the supermarket building, including an external metal staircase and the metal cladding of the building itself.
9. The appeal site is not a particularly open area but rather comprises a modest heavily vegetated area of land, forming part of the verdant character of the area, against the backdrop of the wall to the service area. Despite the removal

of some vegetation, the overall character of the surrounding area would remain green and pleasant. Also, whilst the mast would be taller than anything else around it, primarily only the upper section would be visible. This would be above tree tops and from some view points, against the backdrop of the supermarket. The ground based elements of the proposal would not appear unduly intrusive given the location adjacent to the service access to the supermarket and the comings and goings of service vehicles.

10. The existing mast to the south is sited close to the road. The proposed installation would differ in design and appearance and due to a curve in the road, the two would only be seen together in limited views along McGarva Way. Furthermore, the proposed installation would be set back from the road and due to the tree cover along the road, the cumulative effect of the two installations would not be detrimental to the street scene.
11. For the above reasons I conclude that the siting and appearance of the proposed installation would not have a harmful effect on the character and appearance of the surrounding area.

### *Alternatives*

12. The Council question compliance with the Framework, including paragraph 121, as it considers that insufficient evidence has been submitted to justify the proposed development with regards to more suitable alternatives. However, as I have found that the proposal would not harm the character or appearance of the area, there is no need for me to consider this matter further.

### **Other Matters**

13. The appellant states that an existing installation is required to be relocated as the building upon which it is erected is to be demolished. The description of the installation is prefixed with the reference NTQ which is explained as a Notice to Quit an existing site (Ellesmere Port & Neston Civic Centre – Council office building). The Council question whether the proposal represents a replacement of the installation to be removed as it is not comparable in visual terms to what it would replace. The Council also refer to an approval in 2021<sup>1</sup> for a roof top installation at the Ellesmere Port Church of England College which was stated as being a replacement for the installation to be lost. The appellant has not commented on this and I have little information about it. In any case I have assessed the proposal on the basis of my main issues set out above and found that no harm would be caused.

### **Conditions**

14. I do not consider that it is necessary to impose a condition relating to the colour of the monopole, as suggested by the appellant, given the character of the area. In any event, 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.

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<sup>1</sup> Ref: 21/04234/FUL.

**Conclusion**

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

*J D Clark*

INSPECTOR