

Appeal Decision

Site visit made on 24 September 2024

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th October 2024

Appeal Ref: APP/P4605/W/24/3344479

**Land off Charles Henry Street, adjacent to Vaughton Street junction,
Birmingham B12 0SJ**

- 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 Birmingham City Council.
 - The application Ref is 2023/06725/PA.
 - The development proposed is described as 'The installation of a 17.5m monopole, accommodating 6no. antennas & 2no. microwave dishes, the installation of 2no. equipment cabinets, along with ancillary works.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order), 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 Council has referenced development plan policies in its decision notice. The appellant has also drawn attention to development plan policies considered to be relevant. The principle of development is established by the Order and the provisions of Schedule 2, Part 16, Class A of the Order do not require regard be had to the development plan. I have had regard to the policies of the development plan and the National Planning Policy Framework (the Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.

Main Issues

4. The main issues are the effect of the siting and appearance of the proposed installation on the character and appearance of the 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

5. The connecting roads of Vaughton Street and Charles Henry Street divide the residential properties to the east and light industrial units to the west of these roads. Green features and open spaces are limited in this mixed use urban setting. However, the appeal site and its immediate surroundings comprise a substantial swathe of grass, lining one side of this carriageway, and providing a pedestrian connection from the residential area to the school and businesses fronting these streets.
6. The grassed area is crossed by footways and contains several trees, spaced intermittently or at the edge of the area. There is some street furniture, but this is largely limited to streetlamps, low metal barriers and bollards. Although there are some existing metal cabinets, these are in the wider area, such that they have limited influence on the character of the appeal site. With mature vegetation and few built forms, the grassed area has a relatively open and verdant character, and this public space provides a pleasant contrast with the surrounding development.
7. The appellant describes the appeal site as being of a non-sensitive nature with a backdrop of industrial units. However, although it is a relatively small triangle of grass, it appears clearly in the street scene as the western extreme of the wider public open space. Moreover, located close to the entrance of the school, it has a prominent location, lining part of the pedestrian access from Angelina Street.
8. This wider pedestrian access is also largely devoid of structures, and much of this area is laid to grass and flanked by mature vegetation. The appeal site is seen as part of this pleasant pedestrian route, and contributes to the green, open public space that positively characterises this area.
9. The mast and two sizeable ancillary cabinets would be positioned at the edge of the grassed area, and close to the footway. This large mast would be considerably taller than existing buildings, streetlamps and trees in this area. Also, both in form and materials, it would appear strident and visually at odds with the existing green character of this public space.
10. The proposed site elevation plan shows the installation set against the palisade fence of the neighbouring school. However, the site location plan confirms the appeal site as being somewhat to the east of that existing boundary. At the location shown on the site plan, the development would significantly cover an existing open grassed area. With few existing features at its base to screen it, the large mast and cabinets would appear a dominating feature when walking towards the school or across this public space.
11. It is asserted that the development would only be visible from limited public vistas. However, as already stated, the development would harmfully disrupt the existing public vista between Angelina Street and Vaughton Street. Filling a significant existing space and in such a prominent location on this pedestrian route, the large addition would harmfully erode the existing sense of openness and verdant character in this immediate area.

12. While trees would provide some screening, as shown in the photomontages, this would be largely limited to the lower sections of the mast. Moreover, with few trees in the immediate vicinity existing vegetation would only serve as screening from distant vantage points. This would not mitigate the significant visual harm close to the development.
13. My attention has been drawn to several appeal decisions for masts in Birmingham. Many of the sites in these appeals are areas of grass. However, unlike the proposal before me, they were generally grass verges as opposed to open spaces. In the cases of Eachelhurst Road, Bromford Drive, Quinton Road, Weoly and Mere Green, existing vertical features such as streetlamps were significantly taller than the streetlamps near this appeal site. With regards Dogpool Lane, the backdrop of buildings and existing planting had a beneficial visual effect on that installation, which for the reasons outlined above would not be so in this case. The local circumstances in these other appeals are distinctly different and not directly comparable and attract limited weight accordingly.
14. The proposed mast height has been reduced from that of a previous proposal at the appeal site. However, even at a reduced height, significant harm to the character of the area would arise. The appellant is content to change the colour of the installation. However, the Order does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators. As such there is no mechanism before me to secure this outcome.
15. In light of the above, I find that the impact of the siting and appearance of the proposed installation would significantly harm the character and appearance of the area. Although not determinative in this case and only in so far as they relate to this prior approval matter, the proposal would fail to accord with Policies PG3, TP7 and TP9 of the Birmingham Development Plan and Policy DM2 of the Development Management in Birmingham Development Plan Document (DPD). These Policies collectively seek high quality development and to maintain green infrastructure and open space. The proposal would also fail to accord with provisions of the Framework which seeks well-designed places.

Suitable Alternatives

16. The coverage maps show that there is no 5G service in the search area. And it is understood that this installation is needed to replace and upgrade an existing mast sited on a nearby building and to address this gap in coverage. The technical challenges specific to the siting of 5G masts have also been drawn to my attention.
17. A site search, supporting this appeal, takes account of provisions of the Framework that required the possibility of erecting antennas on existing buildings, mast or other structures to be explored. Considering over thirty sites, this site search also appears comprehensive, in terms of cell area coverage, and has been recently reviewed.
18. Many of the sites considered were discounted due to the proximity to residential areas, potential harmful impact on pedestrian movement, constraints of existing services, access, proximity to windows, loss of

parking and business space and in respect of schools, the loss of space in a playing field. I find nothing that would lead me to dispute the conclusions on those particular alternative sites.

19. Bransford Tower was one of the other sites considered. This existing tower block was not favoured due to its peripheral location and the likelihood that service coverage would overlap target areas. However, this building is located only a short distance from the appeal site and is in the cell search area identified by the appellant. Also, the evidence submitted suggests that unlike many of the other buildings in the cell search area, the tower block would be structurally suitable for a stub mast. The appellant suggests that negotiations with the landowner would be prolonged. However, limited information has been presented to substantiate that this would be so.
20. It is stated, in respect of sites on Bissel Street, ICNIRP compliance would be needed, but I find no substantive evidence that this could not be achieved. This aside, some sites on this street were discounted due to potential signal clipping from neighbouring buildings. However, the buildings in this area are not significantly taller than those in the wider search area or the buildings near the appeal site.
21. It is noted that underground services and overhead cables can be a constraint. However, while underground constraints are identified at Macdonald Street and the Alcester Street Junction, the pavement at Adelaide Street, near this location, is stated as being viable for the mast. The appellant asserts that this is not a preferred location as it is at the edge of the search area. But once again, Adelaide Street is not far from the appeal site and is within the target area. Moreover, unlike the appeal site, it is not part of a public green space.
22. In light of the evidence advanced in this appeal, I have not been convinced that locating the installation in the middle of a prominent pedestrian route in this green open space would be the 'least worst' option in this case, and that there are no other potentially less harmful siting options than this in the search area.
23. The appellant highlights there is no requirement in the Order or planning policy for developers to select the best feasible location where a proposed site is acceptable. Be this as it may, I have found that the proposed installation would harm the character of the area and in respect of this prior approval matter the development would not be acceptable at this location. Moreover, I have not been convinced by the arguments for discounting some alternative sites for the reasons stated.
24. Consequently, I have not been persuaded that this visually harmful development would be the only viable option. For the reasons set out, I am unable to conclude that the appeal site would be the least harmful option, and that there are no more suitable alternatives reasonably available in this constrained search area. In relation to this siting and appearance matter, the proposal would fail to accord with Policy DM16 of the DPD.

Planning Balance and Conclusion

25. The considerable social, environmental and economic benefits of the installation have been highlighted. However, these are separate issues to the prior approval matters of siting and appearance and therefore outside the scope of this appeal. This said, the proposal would improve capacity and coverage of 3G and 4G services and address the gaps in 5G service coverage in the area. This would in small part help address the national and local need for this infrastructure. This would be a positive factor that weighs moderately in favour of the proposal.
26. Several national, regional and local telecommunication strategy documents have been submitted. Also, I note the evidence relating to health, the industry code of practice and ministerial statements relevant to this type of development. However, the principle of this development has already been accepted and the need for this infrastructure is not a matter which is in question in this appeal.
27. The proposal would improve 3G and 4G services and would provide new 5G service coverage. Weighed against these moderate positive factors, is the visual effect of the siting and appearance of the proposed installation at this location. In this regard I find that the proposal would result in significant harm to the character and appearance of the area. Accordingly, the lack of clear evidence demonstrating that there are no other suitable alternatives available is an important factor in this case. I therefore conclude that the moderate benefits identified above would not outweigh the significant harm in respect to character and appearance and the appeal is dismissed.

A J Sutton

INSPECTOR