



Appeal Decision

Site visit made on 19 September 2023

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2023

Appeal Ref: APP/T4210/W/22/3310086

Land opposite Brookshaw Centre, Brook Street, Bury BL9 6EB

- 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 CK Hutchison Networks (UK) Limited against the decision of Bury Metropolitan Borough Council.
 - The application Ref 68818, dated 23 August 2022, was refused by notice dated 17 October 2022.
 - The development proposed is described as 'proposed 5G 15m telecoms installation: H3G street pole and additional equipment cabinets.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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 GPDO), planning permission is granted for the installation, alteration or replacement of any electronic communications apparatus subject to limitations and conditions.
3. The provisions of the GPDO require the local authority to assess proposed development solely based on its siting and appearance, taking account of any representations received. My determination of this appeal has been made on the same basis.
4. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A do not require consideration of the development plan. Therefore, 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 factors relevant to matters of siting and appearance.
5. I have taken the address of the appeal site from the Council's decision notice rather than the application form as it is a more accurate description of the location.

Main Issues

6. The main issues are:
 - the effect of the siting and appearance of the proposal on the character and appearance of the area and the outlook of nearby occupants; and,

- in the event that harm is identified, whether this would be outweighed by other considerations including the need to locate the installation on the appeal site having regard to the potential availability of alternative sites.

Reasons

Character and appearance

7. The appeal site is part of a footpath that passes through a grassed area of public open space. The open space is identified as Recreation Provision in the Urban Area protected under Policy RT1/1 of the Bury Unitary Development Plan (UDP). Around the public open space are two storey properties, predominantly in residential use, and a small public car park.
8. Whilst there are lampposts, a telegraph pole, a traffic sign and existing cabinets on the edge, no street furniture or trees are located within the space. The open nature of the space offers visual relief from its densely built-up surroundings and positively contributes to the character and appearance of the area.
9. The proposed street pole would be substantially taller than the nearby lampposts and other street furniture. It would also be of a greater height than the two-storey buildings in the vicinity of the site. The scale of the proposed apparatus and its isolated position within the open space and absence of trees to provide screening would result in it appearing as a conspicuous and discordant feature, particularly from the houses that face towards the site.
10. The occupants of 26-32 Brookshaw Street would have a very clear view of the appeal scheme from the front facing windows. In addition, there would be clear views from the first-floor rear facing windows of 8 Hilton Street. Due to the close distance to these residential properties, the proposed apparatus would be dominant and oppressive in such views and would thereby harm the living conditions of such occupants with respect to their outlook.
11. I acknowledge that the proposed street pole is of the lowest possible height required for the improved service need that has been identified in the area. I also acknowledge that the street pole and the associated cabinets are designed to be installed on grass verges and pavements alongside street furniture, where limited siting opportunities exist. Nevertheless, for the reasons given above, the proposed apparatus would unacceptably detract from the character and appearance of the area and would harm the living conditions of nearby occupants.
12. The appeal proposals would not impact on a conservation area or other sensitive receptors. However, this is a neutral factor that does not outweigh the harm that I have found. Furthermore, even if I were to consider that the grey colour of the equipment is appropriate in this location, this would not mitigate the harm to the character and appearance of the area and to the living conditions of nearby occupants that I have identified.
13. For the above reasons, I conclude that the siting and appearance of the proposal would harm the character and appearance of the area and the outlook of nearby occupants. Insofar as they are relevant to siting and appearance, the proposal would conflict with UDP Policies EN1/2, EN1/4 and EN1/10. Such policies, amongst other things, seek to ensure proposals do not have an unacceptable adverse effect on character and townscape, taking into

consideration landscaping and open space provision, and encourage the provision of suitably located and well-designed street furniture. The proposal would also be contrary to paragraphs 115 and 130 of the Framework, which seek to ensure that telecommunications equipment is sympathetically designed and sympathetic to the built environment.

Whether any harm is outweighed by other considerations

14. Paragraph 117 of the Framework states that evidence must be supplied to demonstrate that alternatives have been taken into consideration, including the possibility of erecting antennas on an existing building, mast or other structure.
15. The appellant's submission sets out that no mast/site sharing opportunities or existing buildings/structures were identified. The appellant does not, however, consider and explain why the erection of the proposed equipment on the existing mast, buildings and other structures within the Freetown Business Park is not appropriate. I cannot, therefore, discount mast sharing and erecting antennas on existing buildings as being sequentially preferable alternatives to the appeal proposal.
16. The information submitted as to the reasons why each of the six identified alternative sites are unsuitable is limited to a very brief commentary. One such alternative is nominal location, D1, on Hudcar Lane which is said to be very residential with insufficient pavements when it is, in fact, where Freetown Business Park is located and is predominantly commercial in nature with areas of incidental open space. Another alternative, location D5 is a wide footpath on the corner of Chesham Road and Walmersley Road. No substantive evidence has been provided to demonstrate that the pavement is unsuitable or that siting of the proposed apparatus would impede driver visibility or obstruct pedestrian flows making the footpath unsuitable for the proposals. Therefore, subject to further investigation such sites might reasonably be less harmful to the character and appearance of the area and the outlook of nearby occupants.
17. Consequently, I have insufficient evidence before me to be satisfied that alternative sites have been comprehensively assessed or that the appeal site represents the least harmful option available to meet the additional coverage and capacity requirements and so secure the same public benefits. In that regard it would be contrary to UDP Policy EN1/10, insofar as it is relevant to siting and appearance, and paragraph 117 of the Framework as there is insufficient evidence to justify the proposal.
18. The Framework indicates that planning decisions should support the expansion of electronic communications networks. The proposal is required to address an acute need and to facilitate 5G coverage for the area. I attach positive weight to these benefits and the improved service to users. However, the overall harm caused in respect of the main issue is significant and the benefits of the proposal and other considerations do not outweigh this harm.

Conclusion

19. For the reasons given above, and having regard to all other matters raised, the appeal should be dismissed.

Elaine Moulton INSPECTOR