



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/22/3309754

Corner of Jubilee Way & Tenters Street, Bury BL9 0AL

- 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) Ltd against the decision of Bury Metropolitan Borough Council.
- The application Ref 68819, dated 23 August 2022, was refused by notice dated 12 October 2022.
- The development proposed is described as 'proposed 5G 20m telecoms installation: H3G street pole and additional equipment cabinets.'

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 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.
6. An Arboricultural Report (the Report) has been submitted with the appeal, however such information was not before the Council when it made its decision. The Procedural Guide to Planning Appeals – England is clear that it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. Therefore, having regard to the Wheatcroft¹ Principles, the

¹ *Bernard Wheatcroft Ltd v Secretary of State for the Environment (JPL 1982 P37)*

acceptance of the Report at this stage would potentially prejudice the interests of other parties. As such, in reaching my decision, I have not had regard to the Report and have determined the appeal based only on the information that was before the Council. Even if I had accepted the survey and taken it into account, for the reasons I shall set out below, the overall outcome of the appeal would be unchanged.

Main Issues

7. The main issues are:

- the effect of the siting and appearance of the proposals on the character and appearance of the area and the outlook of nearby occupants;
- the effect of the siting and appearance of the proposals on highway safety; 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

8. The appeal site forms part of a gently sloping grassed verge adjoining Jubilee Way, a busy urban dual carriageway. The site lies directly in front of a largely complete development of town houses and between two lines of trees. Whilst there are lampposts and traffic signs in the wider area the grass verge within which the appeal site would be located is free from street furniture.
9. Whilst not formally protected through a Tree Preservation Order, the trees adjoining the appeal site, along with the other street trees on Jubilee Way, makes a significant and positive contribution to the character and appearance of the locality forming part of a green corridor along this busy urban route. I have no evidence before me to demonstrate that the trees would be unlikely to survive for many years.
10. It is clear the proposed street pole would be very close to, and would possibly rise through, the canopies of trees that are along the front boundary of the town houses. It is therefore likely that the proposed apparatus would be within the root protection areas of such trees. In the absence of an Arboricultural Report that I can take into consideration, there is no evidence that demonstrates such works would not constrain the root area and/or result in the need to undertake significant pruning works to the tree canopies. Accordingly, the health and/or the appearance of the trees could be significantly and adversely affected by the proposals. For these reasons, it is not certain that the proposed apparatus can be installed whilst ensuring the long-term retention of the trees in a form that would continue to positively contribute to the character and appearance of the area.
11. Views of the street pole and cabinets would be filtered through the trees along the front boundary of the town houses adjoining the appeal site that are under construction. Nonetheless, the proposed apparatus would be directly in the line of sight. The proximity to the front elevation and front gardens of the town

houses would result in the proposals being dominant and oppressive in such views. Consequently, the outlook of the future occupants of such properties would be unacceptably harmed. Such effects would be exacerbated should the canopies of the trees be significantly pruned to accommodate the proposals, or naturally die back over time.

12. Standard machinery may not be suitable for use between the proposed equipment and the adjoining footpaths, making maintenance more difficult. Nonetheless, there is nothing before me that demonstrates that the strip could not be maintained should the proposed apparatus be installed. Furthermore, even if it were not possible to maintain the entire grass verge, only a small area would become overgrown. This would not be to the extent that a material and harmful impact on the appearance of the site or the wider area would arise. This does not, however, outweigh the harm that I have found.
13. 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.
14. 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 any impact on the trees and the harm to the living conditions of nearby occupants that I have identified.
15. 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 Policies EN1/2, EN1/3, EN8 and EN1/10 of the Bury Unitary Development Plan (UDP). Such policies, amongst other things, seek to ensure proposals do not unacceptably affect character and townscape, consider the wider landscape setting, and retain trees.

Highway Safety

16. As set out above, there is nothing before me that demonstrates that the maintenance of the grass verge around the proposed apparatus would not be possible. Moreover, due to the small area of grass verge that would be affected and distance from vehicular traffic, even if it became overgrown due to a lack of maintenance it would not be to such an extent that it would harm highway safety by impeding visibility. Therefore, in the absence of any substantive evidence to the contrary, I consider that adequate accommodation works would be provided around the perimeter of the proposed apparatus and that the highway verge could continue to be maintained following its installation.
17. Accordingly, the siting and appearance of the proposal would not have an unacceptable impact on highway safety.

18. UDP Policies EN1/2, EN1/3, EN8 and EN1/10 have been referenced in the fourth reason for refusal, however, these policies do not relate to highway safety and are not, therefore, relevant to this main issue.

Whether any harm is outweighed by other considerations

19. 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.
20. The appellant's submission sets out that no mast/site sharing opportunities or suitable existing buildings/structures were identified. The appellant does not, however, consider and explain why the site of the existing monopole at the junction of Haymarket Street and Angouleme Way is not suitable as a site share. I cannot, therefore, discount site sharing as being sequentially preferable alternative to the appeal proposal.
21. Furthermore, 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 Jubilee Way/Tenterden Street. Although it is stated that this site is very residential with insufficient pavements it is, in fact, next to a cleared site, car park and offices with the nearest residential properties being some distance from, and not looking towards that location. Therefore, subject to further investigation this site might reasonably be less harmful to the character and appearance of the area and the outlook of nearby occupants.
22. 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.
23. 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 issues is significant and the benefits of the proposal and other considerations do not outweigh this harm.

Conclusion

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

Elaine Moulton

INSPECTOR