



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: 18 October 2023

Appeal Ref: APP/T4210/W/22/3309740

Land near junction of Sycamore Road & Bury Road, Tottington, Bury BL8 3EG

- 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 68817, dated 23 August 2022, was refused by notice dated 6 October 2022.
- The development proposed is described as 'proposed 5G 16m telecoms installation: H3G street pole and additional equipment cabinets.'

Decision

1. The appeal is allowed and 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 5G 16m telecoms installation: H3G street pole and additional equipment cabinets at land near junction of Sycamore Road & Bury Road, Tottington, Bury BL8 3EG, in accordance with the application ref: 68817, dated 23 August 2022, and the plans submitted with it including BRY21769_MAN638_88062_BL0390_GA_REV_A Issue A (002 Site Location Plan), BRY21769_MAN638_88062_BL0390_GA_REV_A Issue A (215 Proposed Site Plan), BRY21769_MAN638_88062_BL0390_GA_REV_A Issue A (265 Proposed Site Elevation).

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. In addition, I have amended the description of development used in my formal decision from that set out in the banner heading above, which has been taken from the planning application form. The amended description leaves out 'proposed' as this word does not refer to an act of development.

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
 - highway safety.

Reasons

Character and appearance

7. The appeal site is located on Sycamore Road within a well-maintained and wide grass verge adjoining the vehicular carriageway, and between two vehicular accesses. It is in a predominantly residential area and adjoins the playing field of Walshaw Sports Club. The proposed apparatus would be sited close to the footpath with a narrow strip of grass retained between. A wider area of verge would separate the proposal from the carriageway. There are lampposts, trees and telegraph poles within the grass verges on either side of Sycamore Road and cabinets are located broadly opposite the appeal site within the grass verge.
8. Standard machinery may not be suitable for use within the remaining narrow strip of verge, 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.
9. Interested parties have raised concerns that the proposal would adversely affect the character and appearance of the area. However, the rhythm created by the existing lampposts, telegraph poles and trees would not be unacceptably interrupted by the introduction of the proposed apparatus. Whilst the proposed street pole would be higher than the nearby trees, it would be seen against the backdrop of these trees which would soften its presence. Moreover, the proposed equipment cabinets would be of modest size and extent and would not appear as large and unsightly additions to the verge.
10. Notwithstanding the existing cabinets close to the site and the possible erection of a 15m mast nearby, the siting of the proposed apparatus would not result in an undue proliferation of street furniture that would create a visually cluttered street scene. Additionally, given the degree of separation and the intervening green space, the proposal would not appear as conspicuous and discordant features when viewed from the houses on Sycamore Road and Bury Road.
11. For the above reasons, I conclude that the siting and appearance of the proposal would not harm the character and appearance of the area. Insofar as they are relevant to siting and appearance, the proposal would accord with

Policies EN1/2, EN1/3 and EN1/10 of the Bury Unitary Development Plan (UDP) which, amongst other things, seek to ensure proposals do not have an unacceptable adverse effect on character and townscape and encourage the provision of suitably located and well-designed street furniture.

Highway Safety

12. The footpath adjoining the appeal site has a straight alignment and its existing width would be maintained. Consequently, any driver would have good visibility of pedestrians travelling along Sycamore Road or emerging from the public footpath that joins Sycamore Road close to the appeal site. Given the limited footprint and height of the proposed cabinets, and the diameter of the proposed street pole, any obstruction of views between drivers and pedestrians would be extremely limited. As such, all highway users would be able to see and anticipate each other's movements if the proposed apparatus were in place and highway and pedestrian safety would be maintained. Furthermore, taking into consideration the scale and position of the proposed apparatus and its distance to the junctions of the nearby accesses, the proposed apparatus would not impede driver visibility to the extent that harm to highway safety would result.
13. As set out above, there is very little 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, 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 find 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.
14. For the reasons given above, the siting and appearance of the proposal would not have an unacceptable impact on highway safety.
15. UDP Policy EN1/10 has been referenced in the reasons for refusal 2, 3 and 4, however, as this policy makes no reference to highway safety it is not relevant to this main issue.

Other Matters

16. As I have found that the siting and appearance of the proposal to be acceptable, it is not necessary for me to consider the alternative sites that have been suggested by the Council and interested parties, or those that have been assessed by the appellant. In addition, whether the site was chosen on a financial basis is a matter that falls outside of the remit of this decision.
17. Concern has been expressed about the potential effects of the proposed installation on health. The appellant, however, has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). In these circumstances, the Framework advises that health safeguards are not something which a decision-maker should determine. No sufficiently authoritative evidence has been provided to indicate that the ICNIRP guidelines not be complied with or that a departure from national policy would be justified.

Conditions

18. Any planning permission granted for the development under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2), which specify that the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin not later than the expiration of 5 years beginning with the date on which the local planning authority received the application, and must 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. I have not repeated these conditions in my formal decision.
19. The Council have suggested that a condition be imposed stating the development must be begun not later than 3 years beginning with the date of this permission. They have also suggested a condition relating to visibility splays. However, the GPDO does not provide any specific authority to amend the 5-year time limit set out at Paragraph A.3 (11) or for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators. Consequently, I have not imposed the suggested conditions.

Conclusion

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

Elaine Moulton

INSPECTOR