

Appeal Decision

Site visit made on 12 October 2016

by Beverley Doward BSc BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 October 2016

Appeal Ref: APP/G5180/W/3151769

Land opposite 27-33 Chelsfield Road, Orpington, BR5 4DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Part 16 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 .
 - The appeal is made by CTIL, Vodafone Ltd and Telefónica UK Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/15/05646/TELECOM, dated 23 December 2015, was refused by notice dated 7 March 2016.
 - The development proposed is the installation of 10.0m T-Range Replica Telegraph Pole on a new root foundation and ancillary development.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Part 16 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) for the installation of a 10.0m T-Range Replica Telegraph Pole on a new root foundation and ancillary development at land opposite 27-33 Chelsfield Road, Orpington, BR5 4DW in accordance with the terms of application Ref DC/15/05646/TELECOM, dated 23 December 2015 and the plans submitted with it.

Application for costs

2. An application for costs was made by CTIL, Vodafone Ltd and Telefónica UK Ltd against the Council of the London Borough of Bromley. This application will be the subject of a separate Decision.

Procedural Matter

3. The address given in the heading above is taken from the Council's decision notice as this is more accurate than that submitted with the application. I have included the relevant postcode.

Main Issues

4. The main issues in this case are the effect of the siting and appearance of the proposal on the character and appearance of the area and the living conditions of nearby residents with regard to outlook.

Reasons

5. The appeal site forms part of a small grassed area of land at the junction of Chelsfield Road with Northfield Avenue which serves some value in providing
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an area of open green space in this predominantly built up residential area. Within the grassed area there is an existing telegraph pole, a post box and a bench as well as three trees, one of which is a sapling. There is also a variety of existing street furniture within the wider vicinity of the appeal site including streetlights, telegraph poles, a zebra crossing with illuminated bollards and beacons, road signs and litter bins.

6. The appeal proposal is for a shared electronic communications street furniture radio base station comprising a 10m high replica telegraph pole with a diameter of about 300mm and an equipment cabinet which would be 1.6m high and 1.8m wide. Both pieces of equipment would be sited within the grassed area of land set back from the edge of the footway beside Chelsfield Road. The proposed pole would be sited about 1m in from the footway and about 4.8m in from the north eastern corner of the grassed area. The equipment cabinet would be sited to the west of the pole and about 0.6m in from the footway with doors opening onto an area of concrete paving.
7. The Council's decision notice refers only to the effect of the proposed mast (pole). However, its appeal statement raises concerns in relation to both the pole and associated cabinet. The pole would appear similar to other telegraph poles in the area, the evidence indicating that it would be coloured nut brown with a GPR timber finish. Although it would be taller and wider than other telegraph poles and street lights in the area the pole would be seen in the context of these other vertical structures. The equipment cabinet would be similar in appearance to other utility cabinets within the area. Accordingly, I am satisfied that both the pole and cabinet would appear as items of normal street furniture which would not be out of place in this urban setting. They would not add unduly to the existing collection of street furniture in the area and would not therefore result in the street scene appearing unduly cluttered.
8. The pole and cabinet would be sited in close proximity to an existing tree within the grassed area which, along with the trees in the side garden of 52 Northfield Avenue, would provide some screening from vantage points within the surrounding area and act as a backdrop to the equipment. I appreciate that the trees are deciduous. However, even during the winter months when there are no leaves on the trees, views of the proposed equipment would be filtered by their presence. Accordingly, I am satisfied that the proposed equipment would not appear overly prominent or dominant so as to detract from the street scene. The issue of whether or not the proposed equipment might attract vandalism or graffiti thereby detracting from the street scene is an issue of management. In any event there is no substantive evidence to indicate that this would be the case.
9. The proposed equipment would be sited nearest to the dwellings on the opposite side of Chelsfield Road and to No 52 Northfield Avenue. However, the intervening distance would be sufficient so as to ensure that the proposed equipment would not appear overbearing or visually intrusive when viewed from these properties. Accordingly, it would not materially harm the outlook from these dwellings. The proposed equipment would also be visible from other dwellings in the immediate vicinity. However, the angle of view and the greater distances involved mean that it would not have a material impact on the outlook from these dwellings.

10. Having regard to all of the above therefore, I conclude that the proposal would not cause material harm to the character and appearance of the area or to the living conditions of nearby residents with regard to outlook.
11. The appeal relates to a prior approval application. Therefore, the presumption in favour of the development plan under s38(6) of the Planning and Compulsory Purchase Act 2004 does not apply; rather the development plan policies are material considerations in so far as they relate to siting and appearance. In this case there would be no conflict with policy BE1 of the London Borough of Bromley Unitary Development Plan (UDP) which requires development proposals to be of a high standard of design that does not detract from the street scene. There would also be no conflict with policy BE22 of the UDP which relates to telecommunications apparatus and requires, amongst other things, that proposals demonstrate that the character and appearance of the area and the visual and residential amenity of occupiers of neighbouring properties would not be adversely affected.
12. Although not referred to in its reason for refusal, the Council refers to advice contained within its Supplementary Planning Guidance (SPG) documents (SPG No 1 and SPG No 2) which it indicates supports its development plan policies. However, I have not been provided details of which specific policies the respective guidance supports. Accordingly, the weight I am able to attach to these documents is limited. In any event, given my findings above, the proposal would not conflict with the advice contained in SPG No 1 cited by the Council regarding the quality of the public realm. Furthermore, SPG No 2 referred to by the Council provides residential design guidance and therefore does not appear relevant to the appeal proposal.

Other matters

13. Concerns have been raised about the potential health risk of the proposal particularly with regards to its siting in relation to the nearby primary school. However, a declaration confirming that the proposal has been designed to fully comply with the guidelines of the International Commission on Non-Ionizing Radiation Protection (ICNIRP) for public exposure. The National Planning Policy Framework indicates that in such circumstances health safeguards are not something which a decision maker should determine. There is nothing in the evidence before me to indicate that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified.
14. The siting of the proposed equipment within the grassed area of land and set back from the edge of the footway beside Chelsfield Road would ensure that it would not impede the safe passage of pedestrians on the footway.
15. In respect of siting the Council does not challenge the appellants discounting of alternative sites or suggest that there is a sequentially preferable, or suitable and available alternative site and there is no substantive evidence to lead me to conclude otherwise in this respect.
16. I appreciate that the Council has refused a previous prior approval application for a telecommunications proposal on the site. However, the appeal proposal is substantially different from that proposal and as, I have found above, would not cause material harm to the character and appearance of the area or to the living conditions of nearby residents.

17. Both parties have referred to other appeal decisions relating to telecommunications development in support of their case. I am not aware of the details of these and cannot therefore be certain that the circumstances are the same as in this case. In any event each case needs to be determined on its own merits taking into account the specific proposal and the context of the site and its surrounding. I have determined the appeal on this basis and the decisions have not therefore been determinative in my consideration of the appeal.
18. I note the concerns raised by the appellant regarding the Council's approach towards telecommunications proposals. However, this is not a matter for me to comment upon or consider as part of this appeal.
19. The Council has not suggested any additional conditions in its appeal documentation although I note that the Council Officer's report recommended that prior approval be granted subject to three conditions. Proposals which are permitted development are subject to the standard conditions set out at Part 16 of Schedule 2 to the GPDO. The GPDO does not provide any specific authority for imposing additional conditions beyond the deemed conditions for electronic communication code operators. In the absence of evidence or justification to the contrary, I find that additional conditions should not be imposed.

Conclusion

12. For the reasons given above I conclude that the appeal should be allowed.

Beverley Doward

INSPECTOR