



Appeal Decision

Site visit made on 15 September 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2020

Appeal Ref: APP/A5840/W/20/3254786

Tesco Express, 186-188 Southwark Park Road, Bermondsey SPA, London SE16 3RP

- 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 Hutchinson 3G UK Limited against the decision of the Council of the London Borough of Southwark.
 - The application Ref 20/AP/1179, dated 17 April 2020, was refused by notice dated 12 June 2020.
 - The development proposed is Phase 8 Monopole C/W wrapround cabinet at base and associated ancillary works.
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Decision

1. The appeal is allowed and prior 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 Phase 8 Monopole C/W wrapround cabinet at base and associated ancillary works at Tesco Express, 186-188 Southwark Park Road, Bermondsey SPA, London SE16 3RP in accordance with the terms of the application Ref 20/AP/1179, dated 17 April 2020, and the plans and drawings submitted with it, including: 002 Site Location Plan, 005 Cherry Picker and Crane Location, 100 Existing Site Plan, 150 Existing Elevation A, 210 Proposal H3G Site Plan and 260 Proposal H3G Elevation.

Procedural Matters

2. For the purposes of my Decision, I have taken the appellant's name, site address, details of the proposal and the date of the application from the covering letter submitted with the application.
3. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO 2015) grants planning permission for certain classes of development, described as permitted development (PD). The Council's first reason for refusal of the application alleges that the proposal does not comply with Schedule 2, Part 16, Class A of the GPDO 2015. However, the prior approval procedure set out under Schedule 2, Part 16, Class A of the GPDO 2015 makes no provision for any determination to be made as to whether the development would be PD. Furthermore, the requirement for prior approval is akin to a pre-commencement condition attached to the grant of permission by Article 3(1), and development which is constructed not in

accordance with the terms or conditions of the permission would be at risk of enforcement action.

4. The provisions of the GPDO 2015, 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.

Planning Policy

5. The principle of development is established by the GPDO 2015 and the provisions of Schedule 2, Part 16, Class A of the GPDO 2015 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 (Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.

Main Issue

6. Based on the foregoing and the Council's second reason for refusal, the main issue is the effect of the siting of the proposed development on highway safety.

Reasons

7. The appeal site forms part of the pavement along a main highway near to its junction with St James's Road. The proposal incorporates the installation of a monopole and four cabinets, including one which wraps around the monopole. This installation would be largely separate and contained from other elements of street furniture and located against a wall which is slightly recessed from the front of the adjacent building (Tesco Express).
8. The area of pavement which the appeal site forms a part of narrows to accommodate roadside parking spaces. Nevertheless, the proposed installation would only encroach up to a about 1m into the pavement. Consequently, a minimum unobstructed pavement width of about 2.6m would still be retained.
9. Despite the considerable footfall along this part of the highway, the retained pavement width would not be significantly dissimilar to that which already exists, in part, in front of the Tesco Express and there is nothing before me to suggest that this does not function safely. Accordingly, and in the absence of any minimum requirement being suggested by the Council, the retained pavement area would be sufficient to allow the free flow of pavement users. My conclusion on this matter is also supported by the lack of objection on highway safety grounds from the Council's Highways Policy team.
10. For the above reasons, the siting of the proposed development would not harm highway safety and would not be in conflict with saved Policy 5, of the Southwark Plan (2007), insofar as it is a material consideration to this application for prior approval.

Other matters

11. The Framework states that numbers of radio and telecommunications masts should be kept to a minimum and those existing masts, buildings and other structures should be used. In this case, I have no strong reasons to dispute the

appellant's assertions that due to the constrained cell search area for the proposed installation and technical constraints, the only viable option is the proposal.

12. Although the proposed monopole would be noticeably taller than nearby street furniture and the Tesco Express building, it would be a relatively slender structure with a simple form. Moreover, from across the road it's visual effect would be largely absorbed against the backdrop of a building with a relatively plain and sizeable façade. From along the road the visual presence of the monopole would be sufficiently mitigated by the substantial scale of the nearby mature street trees. Therefore, the proposed monopole would not result in any discernible visual harm to the area.

Conditions

13. Planning permission granted for the proposed 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.

Conclusion

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

M Aqbal

INSPECTOR