

Appeal Decision

Site Visit made on 27 April 2021

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th May 2021

Appeal Ref: APP/G5180/W/20/3262754

Farnborough Way, Orpington, BR6 7ET

- 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 Hutchison 3G UK Ltd against the decision of London Borough of Bromley.
 - The application Ref DC/20/02191/TELCOM, dated 20 June 2020, was refused by notice dated 21 September 2020.
 - The development proposed is telecommunications installation: proposed 20m Phase 8 Monopole C/W wrapround Cabinet at base and associated ancillary works.
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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 telecommunications installation: proposed 20m Phase 8 Monopole C/W wrapround Cabinet at base and associated ancillary works at Farnborough Way, Orpington, BR6 7ET in accordance with the terms of the application Ref DC/20/02191/TELCOM, dated 20 June 2020, and the plans submitted with it including BMY12120_M001 002A; 100A; 150A; 210A; 260A; 303A; and 305A.

Procedural Matters

2. Under paragraph A.3(8) of Schedule 2, Part 16, Class A, Paragraph A.3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO 2015) the local planning authority has a period of 56 days beginning with the date on which the authority received the application for prior approval to notify the applicant that prior approval is required and is either given or refused. If no such notification is given, the development can begin.
3. In this case, the application was received on 26 June 2020 and the authority made its decision on 21 September 2020. However, the appellant failed to notify Transport for London (TfL), the highway authority, before making the application as required by paragraph A.3(1). TfL was subsequently notified on 18 August 2020 and the appellant agreed that the 56 day period should begin from that date¹. The Council thus notified the appellant that prior approval was required and was refused within the prescribed period.

¹ Email from appellant to the Council dated 18 August 2020

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.
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 to be had to the development plan. I have had regard to the policies of the development plan only in so far as they are a material consideration relevant to matters of siting and appearance.
6. With regard to the above, during the course of the appeal, The London Plan² was published on 2 March 2021, superseding The London Plan 2016. The main parties have been given the opportunity to comment on the implications of the publication for this appeal. The Council confirmed that it had no comments³ and no response was received from the appellant.

Main Issues

7. The main issues are:
 - i) the effect of the proposal on the character and appearance of the area;
 - ii) the effect of the proposal on the safe and efficient use of the highway;
 - iii) whether any harm caused is outweighed by other considerations, including the benefits of the proposal and the need to site the installation in the location proposed, having regard to the potential availability of alternative sites.

Reasons

Character and appearance

8. Farnborough Way forms part of the A21 between the M25 and south-east London. In the vicinity of the appeal site it is a straight 2-lane highway, with grass verges, a footway / cycleway and belts of tall, predominantly deciduous, trees to either side. These trees largely screen the houses beyond from the road and give this section of the road an attractive, sylvan character and appearance. On the opposite side of the road to the appeal site are streetlights and road has limited signage on both sides.
9. The proposed installation would be sited on a section of the grass verge adjacent to the road and forward of the footway and tree belt. The verticality of the proposed monopole would reflect the nature of the trees but it would be higher. It would be substantially taller than the streetlights on the opposite side of the road. With its height and the limited street furniture to this side of Farnborough Way, the proposal would be an incongruous structure in the street scene.
10. Due to its separation from the tree belt and the alignment of the road to either side of the site, the proposed installation would be visible for some distance when approaching from either direction, as demonstrated by the appellant's

² The Spatial Development Strategy for Greater London March 2021

³ Email dated 14 April 2021

Zone of Theoretical Visibility (ZTV). Whilst it would be seen against a backdrop of trees from the road, from the footway it would be seen more against the skyline. With its height and siting, the monopole would therefore be clearly visible in views along Farnborough Way in the vicinity of the site.

11. The proposed installation would be sited almost directly opposite a pedestrian / cycle access from Melrose Crescent to Farnborough Way, but from this it would be seen largely against a backdrop of the tree belt. I have no reason to doubt that the height of the proposal is required to clear the nearby trees and the top of the antenna would project approximately 2 m above them. It would therefore be visible from a wider area, as shown on the ZTV. However, at distance this portion of the antenna would not be a prominent feature on the skyline and thus would not be significantly harmful to the character or appearance of this wider area.
12. The main effect of the proposed installation would therefore be very localised and mitigated by the existing trees, which would provide a degree of camouflage. I have no reason to expect these trees to be removed nor any evidence that any trees would need to be removed to accommodate the proposed development. The proposal would therefore retain the sylvan character and appearance of the immediate area. The documentation submitted with the application states that the monopole would be galvanised and the cabinets grey. Both would therefore have a neutral colour and finish.
13. For the reasons set out above, I conclude that the proposed installation would be harmful to the character and appearance of the area due to its siting and appearance and so, in this respect and insofar as they are a material consideration, would be contrary to the design aims of Policies 37 and 89 of the Bromley Local Plan (2019) (the Local Plan). However, given the localisation and mitigation of the impact, I consider this harm would be limited.

Safe and convenient use of the highway

14. TfL has contended that the proposal would present significant safety concerns, particularly the means of access for installation works and maintenance and that it would represent an unexpected feature that would startle and distract drivers. Some temporary disruption to the highway during installation, were permission to be granted, would be likely but this would be a matter for discussion with TfL. I have no reason to doubt the appellant's claim that most maintenance would take place remotely. On the occasions when physical access is required on street parking is available on the residential roads near the appeal site so it would not be necessary to park on the highway at the site, which is an urban clearway.
15. The entire installation would be contained within the grass verge with the proposed cabinets set a minimum of approximately 0.1 m from the footway and approximately 1.65 m from the road. With the cabinet doors closed the proposal would not physically impinge on either the road or the footway. It is not clear from the submitted drawings on which side the doors would open, but the appellant has indicated that they would open towards the footway.
16. If this was the case, the open doors, at 0.9 m wide, would overhang the footway. However, the footway is approximately 2.3 m wide which would leave approximately 1.5 m clear width on the footway. This would be adequate room for users of the footway to pass with little hindrance and would accord with the

acceptable minimum set out in TfL's Streetscape Guidance Fourth Edition 2019 Revision, to which the appellant draws my attention. If, on the other hand, the doors were to open on the side facing the road, there would be adequate room for the doors to be fully open without interfering with the road. Therefore, the proposal would not significantly interfere with the use of the road or footway.

17. When first installed the installation would be a novel feature for drivers of vehicles on Farnborough Way, but I see no reason why regular users of the road would not become used to the installation in a relatively short period of time. Moreover, it would be visible from a reasonable distance when approaching in either direction rather than appearing suddenly around a bend. The installation would be neutrally coloured and static. I am not persuaded therefore that it would be a distraction for drivers. Consequently, the likelihood of the installation leading to accidents would be low. I have no evidence of the causes of the accidents to which an interested party refers.
18. A crossing point of Farnborough Way with a central pedestrian refuge is located a short distance to the north-west of the site of the proposed installation. Local residents have referred to the use of this crossing to access local schools and facilities and services in Farnborough village. However, the installation would be set back from the edge of the carriageway and neither the Council nor TfL has contended that the installation would interfere with sight lines for either drivers or pedestrians on this straight section of road.
19. I therefore conclude that the proposal would not be harmful to the safe and convenient use of the highway by all users and so, in this respect and insofar as they are a material consideration, it would not be contrary to the design and road safety aims of Policies 32, 37 or 89 of the Local Plan.

Whether any harm caused is outweighed by other considerations

20. I have found above that the proposal would result in limited harm to the character and appearance of the area due to its siting and appearance. This harm should be weighed against any factors in the proposal's favour.
21. The proposed installation is to fill a gap in the 5G coverage for the primarily residential area of South Orpington. The Government's *Future Telecoms Infrastructure Review*, published in 2018, to which the appellant refers, outlined plans to extend full-fibre broadband coverage across the country by 2033 and for the majority of the population to have access to 5G mobile coverage by 2027. The document summarises the social, economic and environmental benefits from 5G.
22. The Review is reflected in the National Planning Policy Framework (the Framework), which states that "*advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being*". Planning decisions should support the expansion of electronic communications networks, including 5G. The proposal would have demonstrable social and economic benefits weighing significantly in its favour.
23. The Framework requires the number of electronic communications masts, and the sites for such installations, to be kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion. Use of existing masts, buildings and other structures should be encouraged. However, the appellant's evidence is

that the nature of 5G antennae and the separation required from other items of associated equipment is such that 5G cannot use existing other operators' structures. Consequently, there are no opportunities for site-sharing within the search area and the only option is a new ground-based mast. This is not disputed by the Council.

24. The Site Specific Supplementary Information (SSSI) submitted by the appellant explains that the cell search area is extremely constrained and largely comprises residential areas. Having regard to the need to minimise the effect on residents and to avoid underground services, the only alternative sites identified by the appellant are a little further along Farnborough Way to the north-west.
25. The Council has not suggested any alternative sites. Whilst TfL has indicated its willingness to work with the appellant to find a suitable alternative site, it has not suggested any alternative sites. Interested parties have suggested a number of possible alternative sites, including the junction of Farnborough Way with Shire Lane and Farnborough Hill; adjacent to the telephone exchange in Farnborough village; or nearer to Green Street Green or Bromley.
26. However, I have no persuasive evidence that the installation in any of the alternative locations suggested would be materially less harmful to the character and appearance of the area or that sites nearer to Green Street Green or Bromley would be within the search area. I am satisfied therefore, on the basis of the evidence before me, that there are no preferable suitable sites within the locality for the proposed installation.
27. I therefore conclude that the benefits of increased 5G coverage and the need to site the installation in the location proposed, having regard to the potential availability of alternative sites, outweigh the limited harm to the character and appearance of the area I have identified.

Other Matters

28. A significant number of objections were made to the application by local residents and the Farnborough Village Society. Many of these expressed concerns about the potential effects of the proposed installation on health. Whilst I understand these concerns, the appellant 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).
29. In these circumstances the Framework advises that health safeguards are not something which a decision-maker should determine. It is therefore not within the scope of this appeal to consider whether or not ICNIRP guidelines are protective of public health. No sufficiently authoritative evidence has been provided to indicate that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified in this case.
30. Concerns were also expressed by the occupiers of several of the dwellings on Hillborough Way about the effect on their living conditions and the value of their properties. During my site visit I assessed the effect of the proposal from the rear gardens of Nos 50 and 56 Hillborough Way, which back on to the tree belt along the south-west side of Farnborough Way.

31. From my observations, the monopole would be visible from these properties, particularly during the winter months when the deciduous trees have lost their leaves. However, due to the separation distances between the monopole and Nos 50, 56 and their neighbouring properties, the intervening tree belt (even without leaves) and the monopole's relatively slim profile, it would not be significantly overbearing for these properties.
32. Consequently, it would not be unacceptably harmful to the living conditions of the occupiers of these properties. For this reason, the degree of interference that would be caused would not be sufficient to give rise to a violation of human rights of these occupiers, a matter raised in representations, under the Human Rights Act 1998. It is a well-established principle that the planning system does not exist to protect private interests such as the value of property.
33. A number of other matters were raised in representations, including the effect of the proposal on wildlife. However, without evidence to support the contention that there is a badger sett or setts in the bank behind the appeal site I am not persuaded that there is a reasonable likelihood of badgers being present. Otherwise, the effect on wildlife is a generic matter and not related to the specific siting and appearance of the proposal before me. Neither that therefore, nor any of the other matters raised in representations, have been determinative in this appeal.
34. The Council draws my attention to a recent dismissal of an appeal within the Borough for a 20 m mast⁴. However, the Inspector who determined that appeal considered the location of the appeal site to have a spacious and open character and noted that the upper 10 m of the proposal would not be screened by trees. That proposal would therefore have a greater effect on the character and appearance of the area than that before me and is thus not directly comparable.

Conditions

35. Any planning permission granted for the proposed installation 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 less 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.
36. Were prior approval to be granted additional conditions have been suggested by the Council, the appellant and TfL. These relate to the materials, finish and colour of the apparatus, a construction management plan, tree protection and approval by TfL as to the means by which installation and maintenance and repair will be undertaken. However, the GPDO 2015 does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators.

⁴ APP/G5180/W/20/3247425

37. In any event, I do not consider these additional conditions to be necessary to make the development acceptable. The proposed materials, finishes and colours are described in the documentation submitted with the application which I find acceptable. The Council has not indicated otherwise. I have no evidence that the proposed installation would be likely to adversely affect nearby trees. Disruption to the highway during installation would be a matter for discussion with TfL irrespective of a condition. Parking on Farnborough Road is prohibited and on street parking is available nearby. I have therefore not imposed any additional conditions.

Conclusion

38. I have found above that the proposal, due to its siting and appearance, would give rise to limited and localised harm to the character and appearance of the area. However, I consider this harm would be outweighed by the social and economic benefits of enhanced telecommunication services from an installation in the location proposed.
39. For the reasons given above, and having regard to the other matters raised, I conclude that the appeal should be allowed and prior approval granted.

Martin Small

INSPECTOR