



Appeal Decision

Site Visit made on 27 April 2021

by G Rollings BA(Hons) MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 May 2021

Appeal Ref: APP/L5810/W/20/3257569

Footway of Mortlake Road, Opposite the junction with Courtlands Avenue, Richmond, TW9 4ES

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Telefonica UK Ltd against the decision of Richmond Upon Thames London Borough Council.
 - The application Ref 19/3896/FUL, dated 23 December 2019, was refused by notice dated 13 February 2020.
 - The development proposed is The removal of the existing 14 metre high street pole mast, to be replaced by the installation of a 15 metre high street pole mast housing 6no. antennas within a 580mm GRP shroud, along with 3no additional radio equipment housing and ancillary development.
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Decision

1. The appeal is allowed and planning permission is granted for the removal of the existing 14 metre high street pole mast, to be replaced by the installation of a 15 metre high street pole mast housing 6no. antennas within a 580mm GRP shroud, along with 3no additional radio equipment housing and ancillary development, at the footway of Mortlake Road, opposite the junction with Courtlands Avenue, Richmond, TW9 4ES, in accordance with the terms of the application, Ref 19/3896/FUL, dated 23 December 2019, and the plans submitted with it, subject to the list of conditions in the Annex attached to this decision.

Main Issues

2. The main issues are:
 - The effect of the proposed development on the character and appearance of the area, including the adjacent Metropolitan Open Land;
 - The effect of the proposed development on nearby protected trees;
 - Whether the correct public health documentation has been provided as part of the appeal; and
 - The reuse of the existing site, alternative site selection, and the need for the proposal.

Reasons

Character and appearance

3. The appeal site is at the edge of a pedestrian pavement along a busy road, against a metal open fence with an open cemetery directly behind. Tall,

mature trees mark the boundary on the cemetery side. The proposed monopole would be a metre taller and also bulkier than the existing pole, in a slightly altered location. The pole is viewed from street level against or through the trees and although obvious in the street scene, appears in context within an area of high physical and visual activity. The slight differences between the existing and proposed poles are minor and there would be no significant detrimental visual effects resulting from the replacement pole.

4. One additional array of cabinets (comprising two separate cabinets) is also proposed, in addition to retention of the one existing, with a similar height and appearance. Although there would be some slight harm to the street scene, there is a substantial number of existing street furniture and poles within the surrounding area, resulting in a cluttered street appearance. As such, the harm would be minimal.
5. The cabinets would be located against the fence and the pole viewed against the verticality of the adjacent trees. There would be minimal harm to the openness of the adjoining Metropolitan Open Land, particularly when appreciated in conjunction with the existing street scene, and cumulative effects considered in comparison with the existing monopole and cabinet.
6. I therefore conclude that although there would be some harm to the character and appearance of the area, including the adjacent Metropolitan Open Land, this harm would be minimal. There would be some conflict with the Council's *Local Plan* (2018) Policies LP 1, LP 13 and LP 16, which together require development to be of a high design quality, and protect Metropolitan Open Land and trees, amongst other considerations.

Effect on trees

7. The trees adjacent to the appeal site are protected with a Tree Preservation Order (TPO). The appellant's Tree Protection Plan submitted with the appeal indicates some incursion by the new equipment into the trees' root protection area (RPA). All of the affected trees are graded with a moderate to high quality and life expectancy, and given their protected status and high contribution to the character and appearance of the area, their preservation is important.
8. The appellant has submitted an arboricultural method statement, although the Council has raised concerns regarding omissions such as depth of excavations, analysis of incursions into the RPA, and future canopy management, which have not been subsequently addressed. Despite the preventative measures proposed by the appellant, such as hand and spade excavation within the RPA, the absence of detailed information does not allow me to carry out a balanced assessment of the impacts on the RPA and future canopy management, and thus the likelihood of the affected trees' long-term survival.
9. However, the existing equipment would have had an impact on the trees at the time of its installation, despite the TPO not being a consideration at that time. The proposed works are minor in scale and in close proximity to the existing equipment. Despite the Council's objections, its suggested conditions include close monitoring of the works and consideration of the depth of the proposed equipment. This would go some way to mitigating potential harm to the trees.

10. Taking all of the above into account, I conclude that the proposed development could have a harmful impact on the protected trees, but that harm to the RPA could be partly or wholly mitigated through the monitoring of the works during the construction phase, and management thereafter. It would conflict with Local Plan Policy LP 16, which resists development that would result in the damage of trees considered to be of townscape or amenity value, amongst other considerations.

Public health documentation

11. The Council has confirmed that the information required to demonstrate that the development will operate within the relevant public exposure levels set out within the guidelines produced by the International Commission on Non-Ionizing Radiation Protection (ICNIRP) was provided by the appellant, but overlooked at the application stage.
12. I have reviewed the appellant's submission, including the Declaration of Conformity with ICNIRP Public Exposure Guidelines, which demonstrates that the proposal would operate within the radio frequency levels recommended by ICNIRP. I therefore conclude that the correct public health documentation has been provided as part of the appeal, and that there would be no conflict with Local Plan Policy LP 33, which requires appellants to demonstrate that telecommunications proposals would operate within ICNIRP guidelines, amongst other considerations.

Existing and alternative sites

13. No alternative site selection process has been undertaken. Nonetheless, I acknowledge that a similar exercise was carried out when the site was developed in 2016. Given the similarities between the current and proposed layouts and the recency of the 2016 study, I accept that a new site selection process would be unlikely to reach a different conclusion. In any instance, the *National Planning Policy Framework* (2019) (the Framework) supports the reuse of existing facilities (paragraph 113). It also provides support for the expansion of the communications network, including 5G equipment.

Other Matters

14. I have had regard to the Council's *Telecommunications Equipment Supplementary Planning Document* in my decision.
15. The appeal site is within the setting of the Mortlake Crematorium, a grade-II listed building. There is no dispute between the parties that the proposed works, which would be minor in nature, would not have an adverse effect on the setting or particular significance of the Listed Building. Having considered the proposal and visited the site I concur with that view. Accordingly, it is my view that the development would conserve this significance and not harm the setting of the designated heritage asset.

Planning Balance

16. I have found that the development would result in harm to the character and appearance of the area. The provision of the required public health documentation is a neutral factor in my decision, and reuse of an existing site and need for the development are positive factors of public benefit that attract substantial weight.

17. The harm is minor or, in the case of potential damage to the RPA, could be partly mitigated. Tree canopy interference would also require future works, but the cost of this would be borne by the appellant. As such, the harm has moderate weight in my decision. Accordingly, the substantial benefits outweigh the harm in this instance. Although the proposed development would conflict with the development plan, material considerations indicate that I should make a decision that is not in accordance with the development plan.

Conditions

18. I have considered the Council's suggested conditions against the tests set out in the Planning Practice Guidance (PPG)¹. Condition No. 2 is included for the absence of doubt, and conditions 3, 4 and 5 are required to preserve the character and appearance of the area. Conditions 6, 7 and 8 are required to preserve the health and longevity of protected trees, and

Conclusion

19. For the reasons given I conclude that the appeal should succeed.

G Rollings

INSPECTOR

(conditions overleaf)

¹ PPG reference ID: 21a-003-20190723; revision date: 23 07 2019.

ANNEX – LIST OF CONDITIONS

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 100 Rev. B; 201 Rev. C; and 301 Rev. C.
3. In the event that the development hereby allowed ceases or alters in a manner so as to leave this structure without function, then the structure shall be removed in its entirety and the footway/verge made good within 3 months of the cessation or alteration of the use of the structure.
4. The applicant and/or future owner of the equipment hereby approved shall ensure that any graffiti or other similar defacement is removed within 7 days of being notified of it by the Local Planning Authority.
5. No new external finishes (including fenestration), including works of making good, shall be carried out other than in materials and colours to match the existing associated equipment which the development hereby approved would replace.
6. Prior to commencement of works, details of foundation design including depth and extent of the proposed cabinets and telecommunication mast shall be submitted and be approved in writing by the Local Planning Authority.
7. Prior to commencement of works, details of Line of Sight including details of tree proximity, size and future growth and tree maintenance plan to include frequency of pruning shall be submitted and be approved in writing by the Local Planning Authority.
8. Prior to commencement of works, the following shall be submitted to and be approved in writing by the Local Planning Authority:
 - an auditable system of site supervision and monitoring by a commissioned "Project Arboriculturist" during critical phases of the project where trees could be damaged.
 - written confirmation of the appointment of a retained "Project Arboriculturist" for the duration of the project.