



Appeal Decision

Site Visit made on 12 July 2021

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 08 September 2021

Appeal Ref: APP/K5600/W/20/3263392

Cremorne Road, Chelsea, London SW10 0EH

- 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 Royal Borough of Kensington and Chelsea.
 - The application Ref: PA/20/04270, dated 24 July 2020, was refused by notice dated 24 September 2020.
 - The development proposed is described as 'Proposed telecommunications installation: Proposed 18m Phase 8 Monopole C/W wrapround Cabinet at base and associated ancillary works.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), 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.
3. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. I have had regard to the policies of the development plan and the National Planning Policy Framework only in so far as they are a material consideration relevant to matters of siting and appearance.
4. With regard to the above, following the determination of the application and during the course of the appeal, the London Plan (the LP 2021) was formally adopted in March 2021 and a revised version of the National Planning Policy Framework (the revised Framework) was published on 20 July 2021. The LP 2021 replaces the London Plan 2016 and the revised Framework replaces the 2019 version. The main parties have been given the opportunity to comment on these changes and I have determined this appeal in the context of the LP 2021 and the revised Framework.
5. During the determination of the application the height of the proposed 18m Phase 8 monopole was reduced to 15m. The Council has confirmed it considered the application on the basis of a 15m monopole but this was not

reflected in the description of development in the decision notice. In addition, the Council's appeal statement assesses the proposal on the basis of a 15m monopole. Given the above and for the avoidance of doubt, I have determined the appeal on the basis that it is for a 15m monopole. I am satisfied that no parties' interests have been prejudiced by this approach.

6. There are ambiguities in the appellant's evidence regarding the detail of the proposal. From the evidence before me and my observations on site, the proposed development would be a new installation at the site and would not involve the removal and/or replacement of existing equipment. I have determined the appeal on this basis.

Main Issues

7. The main issues are:

- The effect of the siting and appearance of the proposal on the character and appearance of the surrounding area, with particular regard to whether it would preserve or enhance the character or appearance of the Thames Conservation Area; and
- Whether any harm caused would be outweighed by any benefits of the proposal, including the need to site the installation in the location proposed having regard to the potential availability of alternative sites.

Reasons

Character and appearance with regard to the Thames Conservation Area

8. The appeal site (the site) is situated on highways land located at a prominent position near to the junction of Cremorne Road and Lots Road on the northern embankment of the River Thames. The area possesses a mix of uses, but is predominantly residential including the World's End Estate residential flats and the finer grain residential terraces of the Lots village area nearby. At the rear of the site are large advertising hoardings, next to which are some existing small cabinets. Street lights, street furniture, transport infrastructure and mature deciduous trees are positioned within close proximity to the site.
9. The site is within the Thames Conservation Area (the TCA) which encompasses the Royal Borough of Kensington and Chelsea's entire southern boundary on the River Thames. From the evidence before me, the special interest and significance of the TCA is largely derived from a combination of the natural resource of the River from which the City evolved; the principal built structures of the Thames bridges and the Chelsea Embankment; riverside buildings and structures; public gardens and tree-lined routes; statues; and street furniture. Together, these create a high quality urban area of special architectural and historic interest.
10. The site is part of an important thoroughfare which permits the ability to experience and appreciate the River Thames and its embankment. Notwithstanding the presence of the large advertising hoardings, the site contributes positively to the character and appearance of the TCA as a whole and thereby to its special interest and significance as a designated heritage asset.

11. The appeal proposal comprises the installation of an H3G LTE (Three) 15m Phase 8 monopole with a wraparound cabinet at base and associated ancillary works, all of which would be set back from the highway next to one of the advertising hoardings.
12. I am aware that there are operational requirements and technical constraints that dictate the height and form of the monopole, which the appellant declares there is no scope to alter if the required coverage is to be achieved and maintained. Nevertheless, the 15m monopole would be significantly taller than other manmade features within the immediately surrounding area. Its vertical projection above the adjacent advertising hoardings and nearby pedestrian crossing lights and street lights would cause it to be an unduly prominent feature in the townscape.
13. I acknowledge that the vertical form and materials of the monopole would echo the pedestrian crossing lights and street lights close by. I also note the appellant's willingness to accept a condition to control the colour of the equipment. However, the monopole with wraparound cabinet would still be considerably bulkier in form and appearance than the adjacent vertical features within the street scene. This difference would not be sufficiently moderated by the use of an alternative colour scheme. Furthermore, the proposal would also detrimentally contribute to the general clutter of street furniture within this area. As such, the monopole with wraparound cabinet would appear as an incongruous feature which would not assimilate well into the townscape.
14. For these reasons, the proposal would be highly conspicuous in views when travelling south west along Cremorne Road and the embankment, as well as when travelling north east along Lots Road, albeit to a slightly lesser degree. It would also be perceptible from the adjacent World's End Estate flats.
15. Having regard to the map images submitted by the appellant illustrating the zone of theoretical visibility (ZTV) for a 15m monopole in the location proposed, in many instances the monopole would only be observed in glimpsed or oblique views by drivers travelling along the busy route of Cremorne Road. Nonetheless, the proposal's dominant presence in the street scene would still be fully perceived in short-range views by pedestrians and cyclists travelling along the well-used public pathways close to the site. As such, the findings of the ZTV exercise do not justify the acceptance of the proposal.
16. In addition, although some screening would be provided by the mature trees nearby, this would not satisfactorily mitigate the undue presence of the monopole within the street scene, particularly during the autumn and winter months when leaf cover would be reduced.
17. Together, these factors would result in the proposal failing to integrate into its important riverside location and urban backdrop, detrimentally detracting from the character and appearance of the area and diminishing the special interest and significance of the TCA as a whole.
18. To conclude on this issue, the siting and appearance of the proposal would have a harmful effect on the character and appearance of the surrounding area and would not preserve or enhance the character and appearance of the TCA. As such, the proposal would fail to meet the requirements of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). In its evidence the Council has not cited any policies of the Royal Borough of

Kensington and Chelsea Local Plan 2019 (K&CLP) or the LP 2021 that it considers the proposal would conflict with. Nevertheless, from those stated in the delegated report, I consider that the proposal would be contrary to the aims of Policies CL3, CL11 and CR4 of the K&CLP regarding heritage assets, views and streetscape, in so far as they are a material consideration in this appeal. It would also conflict with the provisions within the revised Framework which seek to conserve and enhance the historic environment, in so far as they are a material consideration in this appeal.

Whether any harm is outweighed by other considerations

19. Paragraph 199 of the revised Framework advises that when considering the impact of a proposed development on the significance of designated heritage assets, great weight should be given to the asset's conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of the heritage asset or from development within its setting and that this should have clear and convincing justification.
20. Due to the extent of the proposal's effects, I find that it would cause less than substantial harm to the significance of the TCA. Under such circumstances, paragraph 202 of the revised Framework advises that any harm should be weighed against the public benefits of the proposal.
21. The proposal is required due to acute capacity issues. The appellant asserts that a sequential approach has been rigidly adhered to in the site selection process. The submitted Site Specific Supplementary Information¹ confirms the alternative options which have been considered and discounted. The appellant maintains that the best site has been selected in terms of protecting amenity and minimising visual intrusion within the target coverage area.
22. I recognise that, as confirmed by paragraphs 114 and 115 of the revised Framework, the Government places a high priority on the provision of high quality communications and considers it to be a key part of the economic growth strategy for the UK. The appellant has highlighted the proposal's contribution to the delivery of sustainability² and also drawn my attention to examples of the potential economic and social benefits which could accrue from 5G³.
23. The proposal would facilitate the expansion of the appellant's 5G telecommunications network across Chelsea. Specifically, in this instance, it would enhance 5G coverage levels and network capacity within the World's End Estate area. I also note that the equipment has been designed to facilitate multiple sharers. In these respects, the proposal would provide significant benefits to local consumers including residents, visitors and businesses in the cell search area. These public benefits attract substantial weight in favour of the proposal.
24. Nevertheless, I am mindful that heritage assets, such as conservation areas, are an irreplaceable resource and should be conserved in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of existing and future generations. Therefore, although the Government aims to facilitate the growth of new telecommunication systems

¹ Site Specific Supplementary Information dated 25th July 2020.

² Requirement as detailed in 'Planning for Growth', 2011.

³ Future Telecoms Infrastructure Review, 2018.

and digital technologies, it also places great emphasis on protecting areas of identified special architectural or historic interest.

25. Moreover, notwithstanding that a sequential approach has been followed and that nine alternative sites have been considered and discounted, I find the submitted evidence in these regards to be limited. I am not satisfied that it adequately or conclusively demonstrates that a less harmful alternative site, which would secure the same public benefits, is not available.
26. To conclude on this main issue, I find that the considerable importance and weight I attach to the identified harm would not be outweighed by the substantial weight I attach to the benefits of the proposal, including the need to site the installation in the location proposed having regard to the potential availability of alternative sites. Therefore, there is no clear and convincing justification for the harm. As such, the proposal would fail to satisfy the requirements of section 72(1) of the Act. It would also conflict with the heritage aims of Policy CL3 of the K&CLP and paragraphs 197, 199 and 200 of the revised Framework, in so far as they are a material consideration in this appeal.

Other Matters

27. The site is within the setting of the Lots Village Conservation Area (the LVCA). The Council has raised no concerns about the effects of the proposal on the setting of the LVCA and the contribution it makes to the significance of the designated heritage asset. From the evidence before me, I have no reason to disagree. Nevertheless, an avoidance of harm in this regard weighs neutrally and does not amount to a consideration in support of the appeal.
28. The appellant has demonstrated that the proposal would be compliant with the guidelines published by the International Commission on Non-Ionising Radiation Protection. I am also aware that no comments on the proposal were received from any statutory consultees, including a Historic Environment specialist, or members of the public. Nonetheless, these are neutral factors that weigh neither for nor against the appeal.
29. That the appellant submitted a 'written offer of pre-application consultation' to the Council and ward councillors with no response received, does not justify the acceptance of the proposal and carries little weight in the determination of the appeal.
30. After finding harm to the significance of the TCA, the Council did not explicitly balance this harm against the public benefits of the proposal as required by the revised Framework. Nevertheless, the omission of this obligation by the Council is not for me to consider as part of an appeal under section 78 of the Town and Country Planning Act 1990. Moreover, even if this had been undertaken, there is no certainty that the Council would have found in the proposal's favour.

Conclusion

31. Accordingly, for the reasons given above, I conclude that the appeal should be dismissed.

F Cullen

INSPECTOR