
Appeal Decision

Site visit made on 16 November 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2021

Appeal Ref: APP/Z5630/W/21/3271556

Area of grass verge, The Triangle, Kenley Road, Kingston Upon Thames KT1 3RU

- 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 Limited against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 20/02741/TEL, dated 30 October 2020, was refused by notice dated 10 December 2020.
 - The development proposed is the erection of a 15 metre high Phase 8 telecommunications pole with built-in cabinet, 3 no. separate cabinets and ancillary works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order), 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. It must also take into account any representations received within the requisite time period. My determination of this appeal has been made on the same basis.

Planning Policy

3. The principle of development is established by the Order and the relevant provisions do not require the proposals to accord with development plan or other national planning policies. Nevertheless, I have had regard to the policies of the Royal Borough of Kingston Upon Thames, Local Development Framework, Core Strategy, April 2012 (CS), The London Plan, March 2021 (LP) and the National Planning Policy Framework (the Framework) only in so far as they are a material consideration relevant to the matters of siting and appearance. In addition, I have taken the related guidance in the Planning Practice Guidance¹ into account. In relation to the siting and design of fixed and

¹ Paragraph: 071 Reference ID: 13-071-20170728

mobile electronic telecommunications equipment this provides a link to the Cabinet Siting and Pole Siting Code of Practice, November 2016 (CP).

Main Issue

4. The main issue is the effect of the siting and appearance of the proposed telecommunications equipment upon the character and appearance of the area, including the nearby willow tree.

Reasons

5. The Triangle is at a central location at the conjunction of several roads, within a local centre comprising mixed uses that serves the wider sub-urban residential area. It includes a triangular grassed verge with a mature weeping willow tree. Together they contribute spaciousness, greenery and a softening effect to the public realm, particularly when the tree is in full leaf. Despite amounting to a relatively small area, due to its prominent location in the street scene it nevertheless has a valuable wider impact. Its presence as a distinctive natural feature has a positive impact in immediate views around the local centre. In addition, I was able to see the willow tree in longer views from Kenley Road to the north west, Arundel Road to the north and Clarence Avenue to the east. In all cases the willow tree was a focal point in the view.
6. My view of the importance of the triangular verge and willow tree is reinforced by the significant number of representations received highlighting it as a cherished local landmark.
7. The proposal would introduce a 15m high telecommunication pole with antennas and wrap around base cabinet, as well as three other cabinets along the western edge of the grassed space. The structures would have a utilitarian appearance. Notwithstanding that the pole has been reduced in height by comparison to a previous application, it would nevertheless be significantly higher than the willow tree, streetlamps, road signage and most buildings in the area. It would also be thicker than existing lampposts and road signage poles and so would not easily blend in with existing street furniture. As a result, it would be conspicuous in the local centre, and the impact would be particularly stark when the willow tree was not in leaf.
8. In addition, there would be a tension between the overtly functional appearance of the equipment and its proposed prominent siting such that it would appear harmfully incongruous. As it would be in the foreground when seen from the west it would interfere with views of the willow tree and grassed amenity area, thereby marring their positive effect. From other perspectives, the pole's positioning at a focal point in the street would draw the eye and detract attention away from the tree.
9. Furthermore, the equipment would be sited relatively close to the willow tree. Little information is provided to show that its presence would not adversely affect the health or continued presence of the tree. For example, it is not clarified where the existing roots radiate out, and whether they may be harmed. I have nothing before me to indicate the age of the tree or its future growth potential. Therefore, given the considerable overhang of its branches, it is not clear whether the position of the cabinets and pole would restrict the elegant shape of the tree in the future.

10. Additionally, the Council's tree and landscape officer² comments that the running of service lines and ducting beneath ground level would be within the root protection area of the tree and would be likely to sever a number of roots. This could cause the tree to go into decline, particularly given that it has undergone reduction relatively recently to save it following partial collapse. Given his expertise, and in the absence of evidence to show otherwise, I attach considerable weight to his views.
11. Notwithstanding that the appellants suggest that they could undertake a tree survey, as there is no provision to impose conditions under the Order, this could not be secured. Even if it were possible, it would be too late as the siting of the structures would have been approved and there would only be limited ability to take account of any negative findings in such a survey.
12. Taking these factors together the proposed siting and appearance of the equipment would have a marked adverse impact on the character and appearance of the area. This would be contrary to policy DM10(t) of the CS which requires development proposals to avoid locating structures, including telecommunications equipment where they will be visually intrusive and likely to result in an adverse effect on the character and visual amenities of the local and wider area. Furthermore, it would conflict with advice in the CP³ which amongst other matters, recommends not positioning cabinets or poles in a prominent position at a junction or on a bend in the road. Other prominent locations on grass verges or grassed amenity areas should also be avoided unless there is a technical justification.
13. My attention is drawn to the LP, paragraphs 114 and 115 of the Framework and a letter from the Department for Digital, Culture, Media and Sport⁴ which emphasise the importance of advanced, high quality and reliable communications infrastructure. Whilst I acknowledge this general support, it is not entirely without qualification and hence, the prior approval process allows for the consideration of siting and appearance in specific cases. Moreover, paragraph 131 of the Framework stipulates that trees make an important contribution to the character and quality of urban environments. Therefore, planning decisions should ensure that appropriate measures are taken to retain existing trees whenever possible. This is not confined to trees that are the subject of protection orders.
14. In support of the proposal the appellants highlight the need to improve fifth generation coverage in and around Kenley Road, Clarence Avenue and Oliver Road. I accept that there are technological constraints which restrict the extent of the target area within which a new ground-based installation would address this need. However, although the appellants describe the search process for a new site as exhaustive⁵, I am not fully assured that a more robust exercise would not provide a less prominent site than the proposal before me for the following reasons.
15. Firstly, the map provided at Figure 2 shows a search area of 100 metre radius. However, given that the appeal site lies approximately 200m to the south west of the search area, evidently it would be possible to extend the area of search

² Email dated 1.12.20

³ Paragraphs 4.2.4, 4.2.7 & 5.8

⁴ Dated 27.8.20, Appendix 6, Appellants' Appeal Statement

⁵ Section D8 of table, page 11, Appellants' Appeal Statement

whilst still addressing the technical requirement. It is not clearly shown that the search was thoroughly conducted over a wider area, or why this would not be feasible.

16. Furthermore, the reasoning for discounting sites at nearby largely residential roads is generic. There is little to show that any specific sites have been realistically considered. Even if the mix of uses at the local centre near to the appeal site were found to be more suitable, no other less prominent sites appear to have been considered in this location. Where it would cause less visual harm, the CP⁶ states that due consideration should be given to the option of providing cabinets and poles on private land. This does not appear to have been considered within the search table⁷.
17. It is put to me that there are numerous vertical items of street furniture close to the appeal site and that telecommunication equipment is often found in urban locations. Be that as it may, for the reasons outlined, I am required to consider the proposal on its own merits and having done so, have found the siting and appearance advanced in this case to be unacceptably harmful. Whilst I accept the siting would not pose a physical obstacle to pedestrians and may be out of the direct line of sight of dwelling houses, this would not address nor outweigh the harm I have identified.
18. Furthermore, reference⁸ is made to an allowed appeal for cabinets and a monopole at Walworth, London. Based on the limited information provided in relation to that decision, it does not appear that it considered the impact on the character and appearance of the area or a tree, rather it turned upon the extent of the permitted development right in the Order and disruption to pedestrians. Accordingly, it is notably different from the proposal before me and carries little weight.
19. As part of my determination, I have taken the representations received into account. These included some letters of support which welcomed improvements to the mobile telecommunication infrastructure in the local area. However, whilst I have given considerable weight to the need to provide high quality communication infrastructure, based on the information before me, I am not persuaded that this could not be addressed by less visually harmful means and so, would not justify a harmful development.
20. Accordingly, I find that the siting and appearance of the proposed telecommunications equipment would have a significant harmful effect upon the character and appearance of the area, including the nearby willow tree. Therefore, prior approval is required and should be refused.

Conclusion

21. For the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

⁶ Paragraphs 4.2.5 & 5.9

⁷ Pages 10 & 11, Appellants' Appeal Statement

⁸ Paragraph 7.8, Appellants' Appeal Statement, Appeal reference APP/A5840/W/20/3254830