

Appeal Decision

Site visit made on 19 October 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal Ref: APP/A5840/W/21/3273518

Old Kent Road, Bermondsey Spa, Walworth, London SE17 1HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Hutchison UK Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref 21/AP/0502, dated 6 February 2021, was refused by notice dated 26 March 2021.
 - The development proposed is described as: 'telecommunications installation: proposed 20m Phase 8 Monopole C/W wraparound Cabinet at base and associated ancillary works'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For clarity and precision, I have inserted 'Old Kent Road' into the address in the banner heading above, as it is listed on the appeal form.
3. The provisions of the GPDO, requires 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.
4. The relevant provisions of the GPDO do not require regard to be had to the development plan. Accordingly, 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.
5. The Government published the revised National Planning Policy Framework on 20 July 2021 (the Framework). The main parties have had an opportunity to comment on the significance of the changes.
6. The Council have referred in refusal reason no.3 to a failure by the appellant to serve the requisite notice on all of the owners of the land, particularly Transport for London (TfL). Whilst I note the dispute by the appellant on this matter, it is nonetheless, a misgiving on the application. However, during the application process, TfL was notified of the application by a consultee. Thus, for the purpose of this appeal, I consider that TfL have not been prejudiced by the procedural omission and have been able to comment accordingly. I have dealt with the appeal on this basis.

Main Issues

7. The main issues of this appeal are the effect of the appearance and siting of the proposed development on: i) the character and appearance of the appeal site and surrounding area; and, ii) pedestrian and highway safety.

Reasons

Character and appearance

8. The monopole mast and ancillary equipment are required to provide 5G coverage and support the existing mobile network. The site is located in a visually prominent location adjacent to a road with residential properties to the rear. I have had regard to the surrounding urban environment within which the appeal site is located, and other features such as street lighting, traffic lights and street trees, amongst other things. As such, I find that this is not an unsuitable location in principle for the siting of telecommunications equipment.
9. The proposed development would be readily visible from within the public realm. However, whilst some screening would be provided from the adjacent mature street trees, a section of the mast would extend above their canopies. Nonetheless, it would appear unduly prominent and visually intrusive within the context of the immediate street scene, due to its location, almost centrally between a street tree adjacent to the carriageway and a group of taller mature trees to the rear of the pavement. I find that this open and wide expanse of pavement, positively contributes to the public realm between Darwin Street and Paragon Mews.
10. Similar to the adjacent street and traffic lighting columns, the proposed development would have a similar vertical design. However, the proposed development would have a more dominant presence in views from the public realm than the existing structures, particularly due to the combination of its greater height and more bulky and visibly distinct array on top of the supporting column. However, whilst additional features are present in the form of the New Kent Road viaduct and its associated lighting, these would not overcome the harm identified. Thus, the proposed development would significantly erode the open character of the site and the wider section of public realm, of which it forms part.
11. For the above reasons, I therefore conclude that the proposed development would significantly harm the character and appearance of the appeal site and surrounding area. Thus, the proposed development would fail to accord with the design, character and appearance aims of Saved Policies 3.2, 3.12 of the Southwark Plan 2007 (SP) and the requirements of the Framework.

Pedestrian and highway safety

12. During my site visit, in the middle of a weekday afternoon, the adjacent road was busy, including the regular bus services. I found that the arrangement of the pavement and the public realm added to the perception of safety and security when walking along the pavement in the immediate vicinity of the site. Nonetheless, the area surrounding the site was busy in nature due to the road and the number of pedestrians on the pavement. Additionally, I noted on my visit that it is also possible for the pavement to be used by cyclists, which adds further justification for its current dimensions.

13. I accept that the area of pavement is wider than other sections of pavement along Old Kent Road. However, due to the way that this section of public realm operates, which includes the site, I find that there are misgivings with the siting of the proposed development that would restrict the flow of pedestrians and cyclists. This would likely result in an increase of potential conflict. There is dispute between the appellant and TfL regarding the effect of the proposed development on the pavement width. The submitted plans indicate that the proposed development will be sited 5.5m from the kerb, albeit from the centre of the mast.
14. Whilst acknowledging that an acceptable minimum distance for the Footway clear zone as stipulated at 11.2 of the TfL Streetscape Guidance Fourth Edition 2019 Revision (the TfL SG) is 1.5m, this is where 2m is not possible due to physical constraints. Little justification has been provided to demonstrate why 2m cannot be achieved. Additionally, I am not convinced on the details provided that the proposed development would achieve the objectives of section 11.2 of the TfL SG. Overall, and following my own findings during my visit and in the absence of any substantive evidence to the contrary, I consider the siting of the proposed development would be unacceptable in its location, as it would harmfully restrict the available pavement for pedestrians to the detriment of their safety.
15. Concern has been raised in respect of the outlook from 1 to 2 Old Kent Road and I have had regard to the comments received from the occupier of Flat 5, 2 Darwin Street. However, I note the distances of neighbouring residential properties from the site and consider that whilst the proposed development will be visible from surrounding properties, the distances maintained, combined with the width of the mast would be sufficient to prevent any significant harm to their outlook.
16. For the above reasons, I therefore conclude that the proposed development would cause significant harm to pedestrian and highway safety. Thus, the proposed development would conflict with the pedestrian and highway safety aims of Saved SP Policy 5.3 and the requirements of the Framework.

Other Matters

17. The installation would provide 5G coverage for the surrounding area, which would be of significant benefit to its users. The proposed development would contribute to delivery of advanced, high quality and reliable communications infrastructure, which is recognised as being essential for economic growth and well-being in paragraph 114 of the Framework.
18. I am aware that the proposed development has been designed to facilitate future site sharing. I acknowledge that the height of the proposed development must be sufficient to enable local provision and clear surrounding buildings and the installation with 5G also needs to be at the height detailed to clear International Commission on Non-Ionizing Radiation Protection (ICNIRP) standards and guidelines and thus there is no scope to lower the height of the array.
19. Paragraph 117 c) of the Framework requires for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure. Whilst acknowledging the list of Discounted Options in the appellant's submission, it is limited to clearly

demonstrate that there are no alternative sites available, which would cause less harm than that identified above. Thus, I am not satisfied or convinced that undertaking the proposed development at this site is the only way to achieve the identified economic and social benefits.

20. I have had regard to the confirmation of compliance with ICNIRP. However, these matters are of neutral consequence in the assessment of this appeal. The appellant also advises that the cabinets are permitted development and do not require prior approval. However, I am not convinced that there is a greater than a theoretical possibility that the installation of the cabinets on their own, might take place.
21. I have also had regard to concerns raised by the appellant about the way that the Council handled the scheme, particularly regarding the request for pre-application advice, but this does not affect the planning merits of the case. I have considered this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.

Conclusion

22. I acknowledge the potential economic and social benefits of the proposal detailed by the appellant, and the support given by the Framework towards a high quality and reliable communications infrastructure, including 5G networks, in supporting economic growth and social well-being.
23. In this instance, I do not consider that the public benefits of the installation in terms of the enhancement of the telecommunications network, its contribution to economic growth and the operational and locational needs of the operator outweigh the significant harm that I have identified to its siting and appearance.
24. For the above reasons, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR