



Appeal Decision

Site visit made on 29 November 2021

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10/01/2022

Appeal Ref: APP/N5090/W/21/3271788

Area of Grass Verge, High Road, East Finchley, London

(Grid Ref Easting: 526967; Grid Ref Northing: 189951)

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 London Borough of Barnet.
 - The application Ref 20/6016/PNT, dated 11 December 2020, was refused by notice dated 2 February 2021.
 - The development proposed is the erection of a 15 metre high Phase 8 telecommunications pole with built-in cabinet, 3no. separate cabinets and ancillary works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A new London Plan 2021 (the London Plan) has been published since the Council's decision. Both parties have had the opportunity to address this matter in their statements.
3. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. Both main parties were given the opportunity to comment on any relevant implications for the appeal and I have taken account of any comments made.
4. I have taken the description and location of the development from the planning appeal form as these accurately represent the proposal.
5. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO), under Schedule 2, Part 16, Class A require the local planning authority to assess the proposed development solely on the basis of its siting and appearance. My determination of this appeal has been made on the same basis.
6. Part 16 of the GPDO establishes that the proposal is permitted development and therefore it is accepted in principle by virtue of the legislation. Furthermore, there is no requirement to have regard to the development plan as there would be for any development requiring planning permission.

7. Nevertheless, policy CS5 of the Core Strategy 2012 and policies DM01, DM06 and DM18 of the Development Management Policies 2012 (DMP) are material considerations as they relate to issues of siting and appearance as well as heritage assets. Policy CS9 of the Core Strategy and policy DM17 of the DMP are also relevant as they relate to safe travel. Similarly, the Framework is also a material consideration in respect of supporting high quality communications and the sympathetic design of telecommunications infrastructure.

Main Issues

8. The main issues are the effect of the siting and appearance of the proposal on:
- The character and appearance of the area, with due regard to Listed Buildings; and
 - Pedestrian safety.

Reasons

Character and Appearance

9. The appeal site is located in a grass verge located between the busy through-road of High Road and an adjacent playing field.
10. There are a number of trees within the grass verge and within the footpath. These trees may provide a degree of screening for an installation in this location, particularly in medium to longer distance views along High Road. However, the mast and cabinets would be located adjacent to the edge of the pavement, and would project beyond the line of trees as well as being distinctly separate from the fence adjacent to the playing field. Due to this arrangement, the screening effect of trees within the verge would be significantly diminished, resulting in an awkward arrangement where the cabinets and mast would appear as insensitive clutter within the streetscape.
11. There are other vertical man-made features in the vicinity, including streetlights, signage and traffic signals. However, the mast and antennas would be of a greater height and bulk than these other features, and the proposal would also project above nearby trees within the verge. Due to its location on the edge of the pavement and when viewed against the open backdrop of the playing field, the appeal proposal would be a jarring and incongruous feature within the streetscape. The proposal would also be an obtrusive feature projecting above the trees in views from the playing field.
12. Reference has been made to the Grade II Listed Buildings of East Finchley Library and East Finchley Baptist Church Hall, which are located some distance to the south east of the site. Based on the Listing descriptions, the significance of these designated heritage assets primarily derives from their architectural interest. Although the appeal proposal would be visible in some views of the Library, it would still enable the architectural quality of the Library to be appreciated. Due to the intervening extent of the playing field and other features including trees and boundary treatments, the appeal site is distinctly separate from the Library and would not affect important views of it. It would not visually compete with the Library or distract from its setting. The appeal site has an even greater degree of separation from the Listed Church Hall due to intervening buildings. Due to its siting and appearance, I conclude that the proposal would have a neutral effect on the setting of the Listed Buildings.

13. Notwithstanding my conclusions in respect of the setting of Listed Buildings, I conclude that the proposal would lead to significant harm to the character and appearance of the area.

Pedestrian Safety

14. The proposal would be located within a grass verge rather than the pavement. However, service personnel would have to open the doors of the cabinets over the footpath for maintenance purposes. The appellant has provided evidence in respect of the appropriate width of footpaths, and even with the doors open and allowing for the presence of service personnel, the submitted plans indicate that a suitable width of footpath would be retained to enable the safe passing of pedestrians. This represents my own observations where I saw that the footpath was relatively wide, and that during maintenance operations provision could be made so that pedestrians would not be deflected onto the adjacent cycleway. On that basis, and given the short term and intermittent nature of maintenance operations, I consider that the proposal would not cause an unacceptable obstruction for pedestrians.
15. Should more intensive operations be required, for example involving the temporary parking of an aerial platform, this can be managed in consultation with the highways authority in a similar manner to the maintenance of other utilities.
16. I am mindful that the pavement is used by children and parents accessing nearby education facilities. However, even given the sensitive nature of these pedestrian movements I consider that the proposal would not harm pedestrian safety for the reasons stated above.
17. In conclusion on this issue, based on what I have seen and read, the proposal would not harm the free flow of pedestrians or their safety.

Other Matters

18. Paragraph 117 of the Framework sets out that evidence must be supplied to demonstrate that alternatives have been taken into consideration. The appellant has undertaken a sequential approach to site selection with all the alternatives discounted. The appellant states that no site sharing or opportunities or existing structures were identified. However, even given the limited size of a 5G cell, the appeal site is outside of the identified area of search and little evidence is provided in respect of other existing sites or buildings which may fall within an appropriate distance. I saw that there were a number of buildings in the area which may be suitable for the location of antenna, and the appellant has not set out why these were discounted. On that basis, the appellant's sequential approach would not appear to be suitably robust.
19. The intended 5G cell covers a densely built suburban and service area, and it is logical that the mast would need to be sited away from features including housing, gardens and areas of high pedestrian footfall. However, the appellants comments on the limitations of other locations are set out in relatively general terms, and based on what I have seen and read I am not persuaded that the appellant has demonstrated that this visually harmful location is the only feasible option.

20. I am mindful of the economic and social benefits of providing and enhancing electronic communication infrastructure, as set out in the letter from the Department for Digital, Culture, Media and Sport of 27 August 2020. The appellant emphasises that the 5G service provides faster speeds and handles large amounts of data. Furthermore, paragraph 114 of the Framework advises that advanced, high-quality and reliable communication infrastructure is essential for economic growth and social well-being and that the expansion of electronic communication networks, including next generation mobile technology (such as 5G), should be supported.
21. These matters weigh in the proposal's favour. However, it has not been demonstrated that these benefits would not be possible on sites in the vicinity of the appeal proposal which are more suitably located in respect of character and appearance. These benefits therefore carry limited weight in favour of the appeal.
22. Reference has been made to an appeal decision in the London Borough of Southwark, but I have not been provided with evidence to demonstrate that that appeal was a direct parallel to the appeal before me in respect of siting and appearance, and in any event I have determined this appeal on its own merits.

Conclusion

23. Based on the evidence before me, it has not been demonstrated that the appeal site is the only viable solution with regards to supporting high quality communications. I conclude that the benefits of the installation in terms of an enhanced telecommunications network as well as the locational needs of the operators would not outweigh the significant harm that I have identified to the character and appearance of the area, notwithstanding my conclusions in respect of pedestrian safety. For the reasons given above, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR