



Appeal Decision

Site visit made on 8 December 2021

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 February 2022

Appeal Ref: APP/Z5630/W/21/3270636

Area of Footpath, Berrylands, Kingston upon Thames, KT5 8JU

- 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 Royal Borough of Kingston Upon Thames.
 - The application Ref 20/01918/TEL, dated 7 August 2020, was refused by notice dated 2 October 2020.
 - 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.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Because this is an application for prior approval the provisions of the 2015 Order 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. This appeal will be determined on the same basis.

Policies

3. Part 16 of the Order 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.
4. Nevertheless, Policies CS8, DM9 and DM10 of the Royal Borough of Kingston-Upon-Thames Core Strategy (2012) are material considerations inasmuch they relate to issues of siting and appearance. Similarly, the London Plan (2021) and the National Planning Policy Framework (the Framework) are also material considerations and include sections on supporting high quality communications.

Main Issues

5. The main issues are the effect of the siting and appearance of the proposed installation on (a) highway safety in relation to the width remaining on a footway and (b) the character and appearance of the area and, (c) if any harm would occur, whether this is outweighed by the need for the installation to be sited as proposed taking into account any suitable alternatives.

Reasons

Highway safety

6. The appeal relates to the footway on the southern side of Berrylands opposite the junction with Regent Road. The footway is about 2m wide and consists of a tarmac surface that continues to the east. To the west the footway changes to paving slabs and a narrow grass verge on the outer edge.
7. The proposed cabinets would be sited on the footway's outer edge leaving a width of 1.34m for the 6m combined length of the cabinets, according to the appellant's measurements. The width would be sufficient for most pedestrian movements, allowing people to pass in opposite directions. There would also be adequate room for a wheelchair user or for a double buggy. But an issue could arise for a double buggy with passing movements, depending on the width required for the movement in the opposite direction.
8. If the proposal were to result in such a footway width restriction, it is likely that one party would wait on the wider footway for the other to pass, resulting in an inconvenience. It is less likely that a user of the footway would step into the road as the proposal would be on the footway's outer edge and due to the presence of parked cars. There are yellow line restrictions at the junction with Regent Road making it more likely that vehicles would be parked on the opposite side next to the appeal site.
9. The proposal would have a slightly greater width than the grass verge to the west. Whereas during times of inclement weather, the verge could become soft and muddy and thereby less suited to some pedestrian movements, such as for buggies, the verge would not be a physical obstruction and could still be used by many pedestrians if expedient to do so. The proposed array of cabinets would become the pinch-point for any pedestrian width issues.
10. Whilst the appeal site is not close to a school building, it is close to an entrance to Christ Church Primary School through the adjacent tennis club. The evidence from several representations is that the footway is busy with children and parents at the start and end of school days resulting in some congestion. At such times, the constriction to the footway's width resulting from the proposal could result in inconvenience if there are buggies, accompanied children and children's scooters passing in opposite directions.
11. My findings are that the proposal's siting would be unlikely to result in problems of highway safety. But it would nonetheless result in some harm through obstruction resulting in nuisance and inconvenience at times of busy usage of the footway.

Character and appearance

12. The area is predominantly residential in character with two-storey housing to the northern side of Berrylands and to both sides of Regent Road. There is a close boarded fence about 2m high to the southern side of Berrylands and a wire mesh fence about 3m high beyond this relating to courts to a tennis club. The courts are also served by vertical floodlight columns.
13. The proposed monopole would be seen against the open backdrop of the tennis courts. It would be about twice the height of the floodlight columns and streetlamps in Berrylands and the assembly of antennae in its upper part would

add to its greater width. The monopole and its antennae would appear as a high and conspicuous feature silhouetted against the skyline in views along Berrylands without trees or a building to filter views or to form a backdrop. Its siting would not be directly opposite any dwelling in Berrylands but would be highly prominent in views along Regent Road. The proposal would result in an incongruous and visually intrusive addition to the street scene.

14. My finding on the second main issue is that the proposal's siting and appearance would result in harm to the character and appearance of the area. Overall harm has to be weighed against the proposal's benefits and possible alternative locations resulting in lesser harm.

Need and alternative locations

15. The proposal would result in the public benefit of increased digital connectivity. The expansion of electronic communications networks, including the next generation of mobile technology such as 5G, is clearly supported in the Framework. At Paragraph 115 it states, "*Where new sites are required (such as for new 5G networks), equipment should be sympathetically designed and camouflaged where appropriate*". The proposal would have a compact design for its antennae but would be sited in a relatively open and exposed location without screening or camouflage to soften its appearance.
16. The appeal site is about 200m to the north-east of the preferred centre of the appellant's nominal search area for extending 5G coverage in association with existing facilities. The appellant has listed 5 discounted alternative sites at or close to Manor Drive nearer to the centre of the search area. Reasons for discounting these sites include large overhanging trees, the presence of overhead telephone cables and dropped kerbs allowing access to residential driveways. At my site visit, I noticed several of these constraints and that the discounted sites were in predominantly residential roads.

Planning balance

17. The local expansion of 5G network capacity would be a benefit in accordance with the Framework's planning objectives. The benefits of such 'prior approval' proposals are recognised through their permitted development status. They should therefore be able to proceed on a local site to enable network extension.
18. However, I have found considerable harm in relation to the proposal's siting and appearance. I acknowledge constraints cited on the discounted alternatives but note that the proposal's location would be on the target area's periphery. I am not satisfied that there may not be an alternative peripheral location for an installation beyond the immediate target area, that may suffice, and which may be preferable given the level of harm that would arise from the current proposal's siting and appearance. The discounted alternatives are relatively clustered and are all on the public highway. It has not been sufficiently demonstrated that there is not a more favourable option. Some representations from local residents have suggested an alternative siting at Pine Walk.
19. The appellant has referred to an allowed appeal in Southwark for a 20m monopole (ref. APP/A5840/W/20/3254830). I consider there to be many differences between the Southwark site's more urban character and pattern of footway usage and my findings at the current suburban site, and therefore have afforded only limited weight to the allowed appeal.

Other Matters

20. Concerns have been raised about potential effects on health. The appellant has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). In these circumstances, the Framework advises that health safeguards are not something which a decision-maker should determine. No sufficiently authoritative evidence has been provided to indicate that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified.
21. I have noted the representation in favour of the proposal at the application stage on the benefits the proposal would bring. However, the vast majority of the representations have been against the proposal for the reasons I have addressed.

Conclusion

22. The harm that would occur from the proposal's siting and appearance would not be outweighed by the need for the installation to be sited as proposed, taking into account any suitable alternatives. For the reasons given above I conclude that the appeal should be dismissed.

Rory MacLeod

INSPECTOR