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## Appeal Decision

Site visit made on 15 February 2022

**by Darren Hendley BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 February 2022**

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**Appeal Ref: APP/J0540/W/21/3280950**

**Bourges Boulevard, West Town, Peterborough PE1 2LD**

- 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 CK Hutchison Networks (UK) Ltd against the decision of Peterborough City Council.
  - The application Ref: 21/00807/PRIOR, dated 13 May 2021, was refused by notice dated 19 July 2021.
  - The development proposed is a 20.0m Phase 8 Monopole C/W wrapround Cabinet at base and associated ancillary works.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Class A of Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits Development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network in, on, over or under land controlled by that operator or in accordance with the electronic communications code, consisting of (amongst others): the installation, alteration or replacement of any electronic communications apparatus, or development ancillary to radio equipment housing.
3. Paragraph A.3. sets out matters by which development that is permitted by Class A is subject to and requires the developer to apply to the local planning authority for a determination as to whether prior approval of the authority will be required as to the siting and appearance of the development. Development must not begin before the occurrence of such an approval.
4. The principle of development is established by the provisions of Class A. It does not require regard to be had to the development plan. The Council's reasons for refusal refer to Policies LP13, LP16 and LP29 of the Peterborough Local Plan 2016 to 2036 (2019). They have also been referred to in the appellant's submissions. I have had regard to the policies of the development plan only in as far as they are a material consideration relevant to matters of siting and appearance.
5. Correspondence was exchanged between the appellant and the Council around the date of the decision over whether the Council had issued its decision within

the 56 day statutory period and so whether the proposal had deemed consent. The Council established in that correspondence that it had issued the decision within the period from which it had received the application, in particular in relation to the fee and with regard to its working days. This has not subsequently been disputed by the appellant and does not form part of its appeal case. On this basis, the proposal does not benefit from a deemed consent.

6. Whilst the appeal was submitted in a different spelling of the appellant company name from the planning application, the appeal proceeds in the name as was set out on the application form as ordinarily only an applicant can make an appeal.

### **Background and Main Issues**

7. The appellant applied to the Council as to whether prior approval was required for the siting and appearance of the proposal. The Council considered that prior approval was required and refused the application on the grounds of siting. The Council's concerns relate both to highway safety due to the proximity of the proposal to Bourges Boulevard and the lack of an appropriate parking/stopping area, and on the grounds of the juxtaposition to trees, in the absence of an arboricultural impact assessment (AIA).
8. On the other hand, the appellant considers that the siting of the proposal would not cause undue highway safety concerns and would be sited a sufficient distance away from the trees. The appellant also considers there is a compelling case as regards need and an absence of alternative sites. The appearance of the proposal is not in dispute.
9. As such, the main issues are the effect of the proposal on (i) highway safety and the free flow of traffic; (ii) the amenity value of trees; and (iii) if harm arises, whether this is outweighed by the need for the installation to be sited as proposed, taking into account any suitable alternatives.

### **Reasons**

#### *Highway Safety*

10. The appeal site comprises part of a grass verge which runs alongside the northbound carriageway of Bourges Boulevard. This road is a dual carriageway and operates at a speed limit of 40 miles per hour. It is a busy thoroughfare and a major route north of the city centre.
11. The only demarcation between this part of the grass verge and the road is a raised kerb. There is no barrier or similar. The proposal would be situated only a short distance back from the side of the carriageway. There would be merely what is shown as a narrow concrete access track in between. This would not amount to an appropriate off-road parking/stopping area, due to its width. Reference has also been made to the potential for a safety barrier in the application documents, but such a structure is not shown on the submitted plans.
12. Whilst there is some merit in keeping the grass verge clear from obstructions in the event of a vehicle leaving the carriageway at speed, of particular concern in my view is how maintenance vehicles would be accommodated in the absence of an appropriate parking/stopping area off the carriageway. There would not

be sufficient space for a vehicle to park on the concrete access track, due to its narrow width, based on what is shown on the submitted proposed site plan. Nor is there the assurance that the vehicle would be parked safely elsewhere, in the absence of a proposed parking/stopping area.

13. There is no dispute over visibility and pedestrians would not be impeded as there is no footway. Utilising the grass verge in some way, although undefined under the proposal, would also prevent obstruction. Nevertheless, this does not alter that it is not evident how maintenance vehicles would be accommodated with the proposal being located so close to the carriageway, without an appropriate parking/stopping area. It would be far from a satisfactory state of affairs given the road characteristics and usage of Bourges Boulevard.
14. Taking account of the above and in the absence of an appropriate parking/stopping area, I conclude that the proposal would have an unacceptable effect on highway safety and the free flow of traffic.

#### *Trees*

15. Beyond the grass verge, there is an embankment which contains trees and vegetation. Some of the trees also border onto the grass verge itself with their canopies overhanging it. The trees provide a pleasing backdrop to this side of Bourges Boulevard and so as a group they have some amenity value.
16. With regard to the need to provide an AIA, the Framework states that such an application should be supported by the necessary evidence to justify the proposed development. It is however also the case that the prior approval procedure is attended by the minimum of formalities, as the principle of the development is not in question.
17. In this case, there would be some separation between where the proposal would be sited and the trees. The trees are either on or close to the embankment, whilst the proposal would be sited on the opposite side of the grass verge close to the carriageway.
18. The Council has taken a precautionary approach in the absence of an AIA, and information on root protection and service runs. However, I am not persuaded this position is consistent with how an application for prior approval is to be dealt with, and due to the relationship between the siting of the proposal and the trees. The Council's position would be stronger, if the application was for planning permission and where a broader ambit of consideration would be given, but this is not the case in this instance.
19. As such, the absence of an AIA is not critical on this issue. Accordingly, I conclude that the proposal would not have an unacceptable effect on the amenity value of trees.

#### *Need and Alternative Sites*

20. With regard to need, the proposal would enable 5G coverage from the installation to facilitate improved connectivity in the area. The Framework supports high quality communications and sets out that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Furthermore, it goes on to state that decisions should

support the expansion of electronic communications networks, including next generation mobile technology (such as 5G).

21. The appellant has also referred to the Letter to Chief Planning Officers: Planning for Growth' dated 31 March 2011 and the Future Telecoms Infrastructure Review (2018), both of which concern the backing of Government for improved digital connectivity. With the recent increase in homeworking and a reliance on mobile telecommunications by the emergency and public services, improved connectivity has taken on additional importance. The evidence that the appellant has submitted shows there is a lack of coverage for such services in this area. It is envisaged that the proposal would provide this coverage.
22. A number of alternative sites have been put forward and the appellant has set out how a sequential approach has been followed. There is not substantive evidence to the contrary on the unsuitability of these sites. There is a need for the proposal to be sited in this location. Furthermore, the stretch of grass verge where the appeal site is found along this side of Bourges Boulevard may not in itself be unsuitable for the proposal. However, this is on the basis that the particular issues that arise from siting are resolved through a more persuasive site design, in particular in relation to highway safety.

### **Other Matters**

23. It has been contended that the proposed cabinets would be permitted development. However, they are clearly part of the telecommunications works that were applied for. Nor is it evident why they would meet the requirements of Class A, related to the purpose of the operator's electronic communications network, if solely the proposed equipment cabinets were to proceed. Hence, they are the subject of my decision, along with the proposed monopole.
24. There has also been reference made to a lack of a response at the pre-application stage, where there may have been the opportunity to influence the proposal. The appeal is however to be decided on the planning merits and so what occurred at the pre-application stage does not alter my view.

### **Balancing Exercise and Conclusion**

25. That the proposal would have an unacceptable effect on highway safety and the free flow of traffic is decisive. The potential implications of such harm would be severe along Bourges Boulevard because it involves related road safety matters where it has not been adequately demonstrated that appropriate parking/stopping could safely take place. This would not be outweighed by the need for the installation to be sited as proposed, taking into account any suitable alternatives. That it would not have an unacceptable effect on the amenity value of trees does not weigh either for or against the proposal.
26. The proposal thus fails against the prior approval matter of siting, as is set out by paragraph A.3. As a result, it would not satisfy the requirements of Class A of Schedule 2, Part 16 of the GPDO and, therefore, is not development permitted by it. For these reasons, the appeal should be dismissed.

*Darren Hendley*

INSPECTOR