
Appeal Decision

Site visit made on 9 February 2022

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2022

Appeal Ref: APP/M9584/W/21/3278223

Sidings Street, Stratford Marsh, London Borough of Newham, London E15 2HX

- 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 Hutchinson UK Ltd against the decision of the London Legacy Development Corporation.
 - The application Ref 21/00187/T16, dated 16 April 2021, was refused by notice dated 09 June 2021.
 - The development proposed is a 20m phase 8 monopole C/W wrapround cabinet at base and associated ancillary works.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of a 20m phase 8 monopole C/W wrapround cabinet at base and associated ancillary works at Sidings Street, Stratford Marsh, London Borough of Newham, London E15 2HX in accordance with the terms of application Ref 21/00187/T16, dated 16 April 2021, and drawing nos NHM14709_M001 suffix: 002A; 100A; 150A; 210A; 260A; 303A; and 305A submitted with it.

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 terms.
3. There is also no requirement to have regard to the development plan as there would be for any development requiring planning permission. Nevertheless, policies in the London Legacy Development Corporation Local Plan (LP) and The London Plan are material considerations insofar as they relate to issues of siting and appearance. LP Policy S.6 and London Plan Policy SI 6 are specifically concerned with digital connectivity infrastructure. Similarly, the National Planning Policy Framework (the Framework) is also a material consideration and this includes a section on supporting high quality communications.

Main Issues

4. The main issues are the effect of the siting and appearance of the proposed installation on the character and appearance of the area and, if any harm would occur, whether this is outweighed by the need for it to be sited as proposed taking into account any suitable alternatives.

Reasons

Character and appearance

5. The proposed monopole and cabinets would be located on an existing landscaped verge at the back edge of the footway on the south-eastern side of Montfichet Road. A retaining wall to the elevated flyover of Siding Street is located immediately to the south-east of the site. Tall street lighting columns are located on Montfichet Road and at an elevated level on Siding Street. Multiple railway lines and their overhead cabling infrastructure run parallel and adjacent to Siding Street. The traffic light-controlled junction of Montfichet Road and Pool Street is located to the north-west of the site. The area immediately surrounding the site is, therefore, characterised by substantial infrastructure. The wider area provides a backdrop of large buildings and public open space, including the London Stadium, the London Aquatics Centre, the Arcelor Mittal Orbit and other high rise residential and commercial buildings. The site is not within a Conservation Area or within close proximity to any listed buildings. Therefore, policies which seek to conserve the historic environment are not relevant in this appeal.
6. The Framework confirms that good design is a key aspect of sustainable development. The design of the mast is dictated by technical considerations. In particular, the appellant states that it needs to be a minimum of 20m in height in order to clear surrounding structures and enable suitable coverage. Furthermore, the height ensures that the guidelines of the International Commission on Non-Ionizing Radiation Protection (ICNIRP) are met. According to the appellant, there is no scope to lower the pole as to do so would mean that the cell could not effectively communicate with other cells and with the wider network. In turn, this would compromise the level of service.
7. Whilst the mast would be higher than the nearby street lighting, vertical features are common in the surrounding area. Indeed, the surrounding context of substantial infrastructure, in combination with the bulk of the large buildings in the wider background, means that the mast would not appear unduly prominent or incongruous in views. With the on-going roll-out of 5G services, such an installation would not appear remarkable to the eye given its context. Whilst the proposed cabinets would add some visual clutter, they would be unobtrusive given their small scale and position adjacent to a higher retaining wall. As such, the overall harm of the development to the character and appearance of the area would be limited.

Suitable alternatives

8. The proposed mast is required to fill a coverage 'hole' within the London Stadium area as illustrated in the cell search area map. Paragraph 117 c) of the Framework expects evidence to be submitted that the possibility of erecting antennas on an existing building, mast or other structure has been explored. The Council asserts that insufficient justification for discounting alternative

sites, including nearby tall buildings, has been provided. The appellant states that the cell search area is extremely constrained and that the only viable option has been put forward.

9. It is clear from the appellant's submitted information, including the cell search area map and the assessment of alternative mast locations, that detailed consideration has been given to achieving the optimal viable location in terms of balancing the required coverage with the proposal's effect on the character and appearance of the area. Alternative mast sites have been discounted for a variety of reasons, including proximity to tall buildings, obstructing trees, and due to inadequate pavement widths. Whilst not every potential siting may have been assessed within the appellant's evidence, there is no substantive evidence before me of a feasible and practical site elsewhere.

Final Balance

10. The proposal would cause limited harm to the character and appearance of the area. As such, there would be some limited conflict with LP Policy BN 1 which requires development to respond to place. Whilst London Plan Policy SI 6 and LP Policy S 6 support the co-location of services on existing structures where possible, there is no substantive evidence to indicate that the proposed siting is not the best available given the technical and operational constraints that exist. This is a compelling consideration given the importance attached to supporting the expansion of electronic communications networks in national policy. It is not tenable to refuse approval when the evidence is that this would create a gap in the network for this operator that could not be filled within the relevant area. Furthermore, development plan policy is not determinative and the erection of a mast of this height is accepted in principle by virtue of Part 16 of the Order.
11. The absence of a feasible and practical site elsewhere that would provide the required coverage means that the need for the installation to be sited as proposed outweighs the limited harm that would occur. As a result, the proposed siting is acceptable.

Other Matters

12. The appellant has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by ICNIRP. In these circumstances, the Framework advises that health safeguards are not something which a decision-maker should determine and there is no reason to depart from national policy in this respect.

Conditions

13. The Order does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators contained within it. These specify that the development must be carried out in accordance with the details submitted with the application; begin within 5 years of the date of the approval; and be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.

Conclusion

19. For the reasons given above, the appeal is allowed and prior approval is granted.

S D Castle

INSPECTOR