
Appeal Decision

Site visit made on 4 May 2022

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 May 2022

Appeal Ref: APP/U5360/W/21/3281417

Area of footpath, Fountayne Road, Hackney, London N16 7DT

- 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) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Hutchison 3G (UK) Limited against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2021/1152, dated 13 April 2021, was refused by notice dated 7 June 2021.
 - The development proposed is erection of an 18 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.

Procedural Matters

2. Amended plans were submitted with the appeal. The differences between these plans and those submitted with the application are minor. Aside from removal of dishes from the mast, the changes shown consist of added annotation and omission of the cabinet doors. These plans have drawn no comment from the Council. I am satisfied that given the minor and largely illustrative nature of the changes the interests of no party would be prejudiced by my use of the amended plans to determine the appeal.

Main Issues

3. Insofar as the GPDO limits consideration of the proposed development to the matters of siting and appearance, the main issues are:
 - whether the siting and appearance of the development would preserve or enhance the character or appearance of Northwold and Cazenove Conservation Area (the Conservation Area), including the contribution made to it by a non-designated heritage asset; and
 - the effects of the siting of the development on pedestrian safety.

Reasons

Character and appearance

4. The site is located within the Conservation Area, which is a designated heritage asset. Here Section 72 of the Planning (Listed Buildings and Conservation

Areas) Act 1990 (as amended) (the Act) sets out the desirability of preserving or enhancing the character or appearance of conservation areas, whilst paragraph 199 of the National Planning Policy Framework (the Framework) makes clear that great weight should be given to the conservation of designated heritage assets. Paragraph 200 further states that any harm or loss of significance should require clear and convincing justification.

5. Insofar as it is relevant to this appeal the significance of the Conservation Area resides in its historic residential character and layout, originally developed as a middle-class suburb during the 1870-90s. Within this context Fountayne Road is a broad, attractive tree-lined street, which predominantly remains lined either side by C19th dwellings. The site lies towards the southern end of the road, close to the junction of both it and several other streets with Northwold Road (the junction). The junction forms a key axis in the planned layout of the suburb, within which the Parish Church of St Michael and All Angels (the church), which overlooks the junction, forms a centrepiece.
6. The church, which has a simple but attractive brick-built Gothic design, is described by the Council as 'locally listed', and thus as a non-designated heritage asset. In this regard, and as outlined above, it draws significance from the role it plays within the historic layout of the suburb, and from the positive contribution it thus makes to the significance of the wider Conservation Area.
7. The mast would stand in Fountayne Road immediately adjacent to the boundary of the church. The gap between the church and the mast would be reasonably small, and the height of the mast would modestly exceed that of the church. Taking perspective and the orientation of the church into account, the upper portion of the mast would be viewed against the sky from ground level in Fountayne Road. Whilst this would lend prominence to the mast, it would also give rise to visual competition with the church. The mast would appear as the somewhat dominant feature, notwithstanding its lesser mass. The relationship would be in no way complementary. Nor would it be directly mitigated by trees. Indeed, almost all the adjacent trees shown as a 'backdrop' on the plans have since been pollarded to a reasonably low height. The mast would otherwise appear as an incongruous feature relative to the sequence of taller trees which line the rest of the street.
8. The mast would be set away from the junction. The upper portion would nonetheless remain visually prominent, particularly on the approach to the junction along Stoke Newington Road which provides a key vista of the west front of the Church. This would again give rise to visual conflict and competition, directly detracting from the prominence of the church, and appreciation of the focal role it plays within the historic townscape.
9. The mast would be painted black, matching the colour used for lamp posts. This would however provide only a very limited sense of integration. As it would otherwise be likely to make the mast more conspicuous when viewed against the sky, it would not mitigate the harm identified above.
10. The mast would therefore harm both appreciation of the significance of the church, and the design quality and composition of the historic townscape of which it forms part. It follows that the scheme would fail to preserve or enhance the character or appearance of the Conservation Area, contrary to the expectations of the Act. Its significance as a designated heritage asset would likewise fail to be conserved.

11. The appellant explains that the need to improve 5G mobile coverage requires the mast to be sited within an area of geographically limited size. In this regard a large part of the area of search falls within the Conservation Area. The main driving force in consideration of alternatives however appears to have been pavement widths. The Conservation Area itself appears to have played little obvious role in the site selection process. The evidence presented does not therefore demonstrate that alternatives have been properly or thoroughly investigated, or therefore that the level of harm caused would be wholly unavoidable. The proposal therefore falls short of providing clear and convincing justification for such harm.
12. The harm caused to the significance of the Conservation Area would be less than substantial. Such harm attracts considerable importance and weight. In accordance with paragraph 202 of the Framework it is necessary to weigh this harm against the public benefits of the scheme.
13. The social and economic benefits of mobile telecommunications coverage are implicitly recognised by the grant of permission under Article 3(1) of the GPDO. They are further acknowledged by the Framework. The development would modestly improve coverage, and this is a public benefit to which I attach moderate weight. That being so, and in view of my findings above, such weight is insufficient to outweigh the harm that would be caused to the significance of the Conservation Area, including the contribution made to it by a non-designated heritage asset.
14. For the reasons outlined above I conclude that the siting and appearance of the development would fail to preserve or enhance the character or appearance of the Conservation Area, including the contribution made to it by a non-designated heritage asset. There is no requirement in this case to determine the appeal against policies within the development plan. However, insofar as it remains a material consideration, the development would also conflict with Policy LP3 of the Hackney Local Plan 2033 Adopted 2020 (the LP) which supports the above objective; Policy LP4 of the LP which seeks to secure conservation and enhancement of non-designated heritage assets; Policy LP1 of the LP which more broadly seeks to secure development that preserves or enhances the significance of the historic environment; Policy HC1 of the London Plan 2021 (LP21), which likewise sets out the broad objective of conserving and enhancing the significance of heritage assets; and Policy D8 of the LP21, which states that proposals should ensure the public realm is well designed and related to the local and historic context.

Pedestrian safety

15. The section of pavement on which the equipment would be sited is unusually wide relative to adjoining sections of pavement. Even with the equipment installed the width of the clear section of pavement to its front would remain in excess of the 2 metre width considered desirable by the Council. It would also fall well within the range of widths seen on immediately adjoining sections of pavement. It is clearly the case that the equipment would obstruct use of the part of the pavement it would occupy. However, considered in the context of the pavement as a whole, localised narrowing consistent with the existing pattern would not give rise to any unacceptable impact on pedestrian convenience or safety.

16. The Council nonetheless raises the concern that greater obstruction would occur if the cabinet doors were open. This largely stems from the doors having been illustrated in an open position on the plans submitted with the application. Though the appellant has indicated that the doors would fold back in practice, even if they didn't it is unlikely that the cabinet doors would be opened more than very infrequently. Moreover, reasonable clearance would still exist, and any obstruction would occupy such a small length of pavement that it could be simply and easily negotiated by pedestrians. Insofar as adjoining sections of pavement contain street trees which provide regular obstructions, this would not present an unusual challenge in context.
17. In view of my findings above it is unlikely that pedestrians passing the site would feel forced to step into the road to avoid oncoming pedestrians. The fact that Fountayne Road is marked out with parking bays either side, including adjacent to the site, in any case limits the extent to which stepping into the road would be possible. I therefore see no reason to believe that the development would give rise to collisions between pedestrians and vehicles.
18. For the reasons outlined above I conclude that the siting of the development would not have any unacceptable effect on pedestrian safety. As established above, there is no requirement to determine the appeal against policies within the development plan. However, insofar as it remains a material consideration, the Council has cited conflict with Policy LP42 of the LP, which amongst other things states that new development will be permitted where it improves the pedestrian environment. However, this objective is set within the context of site linkages to transport infrastructure, facilities and amenities, and thus not clearly applicable to development in question.

Conclusion

19. For the reasons set out above I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR