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# Appeal Decision

Site visit made on 5 July 2022

**by C Shearing BA (Hons) MA MRTPI**

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

**Decision date: 12<sup>th</sup> August 2022**

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**Appeal Ref: APP/L3625/W/21/3281868**

**Land at the junction of Park Lane East and Church Road, Reigate, Surrey RH2 8BW**

- 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 Ltd against the decision of Reigate and Banstead Borough Council.
  - The application Ref 21/00477/TED, dated 26 February 2021, was refused by notice dated 16 April 2021.
  - The development proposed is a mast.
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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 mast at the land at the junction of Park Lane East and Church Road, Reigate, Surrey RH2 8BW in accordance with the terms of the application Ref 21/00477/TED dated 16 April 2021 and the plans submitted with it including: 002 Site Location Plan, 100 Existing Site Plan, 150 Existing Site Elevation, 215 Proposed Site Plan and 265 Proposed Site Elevation.

## Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority, and therefore the Secretary of State, to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.
3. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. I have had regard to the policies of the development plan and the National Planning Policy Framework (the Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.
4. The site address in the banner heading is taken from the Council's decision notice rather than the application form, as this more accurately describes the site's location. The description of the development is taken from the application form.

5. The appellant states the colour of the equipment would now been green, rather than grey as stated in the application documents. As the interested parties have had the chance to comment on this, I do not consider that they would be prejudiced by my consideration of this change and I have determined the appeal on this basis.
6. The appellant has put forward that the proposed ground level cabinets do not require prior approval. Notwithstanding the positions set out, this is not for me to determine as part of the appeal. I have assessed the scheme based on the description of the development and the plans submitted.

### **Main Issue**

7. The main parties do not dispute that the appeal scheme meets the requirements of Class A, Part 16, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) such that it would constitute permitted development, subject to the condition that prior approval must be sought in relation to its siting and appearance.
8. The main issue is 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 the installation to be sited as proposed, taking into account any suitable alternatives.

### **Reasons**

9. The appeal site is located in a predominately residential area, close to the junction of Park Lane East with Church Road and Seale Hill. While there are higher densities of residential development to the south, this particular part of Park Lane East is characterised by detached buildings set within generous plots. These are set back from the road behind dense hedgerows and mature trees. In combination with the wide grass verges on the northern edge of the road, these features create a particularly spacious and verdant character to this part of the street. The area immediately to the north of the appeal site forms a Residential Area of Special Character, designated for these attributes.
10. Close to the appeal site there is very little street furniture. An existing low level cabinet sits adjacent to the appeal site, which is set close to the line of the hedgerow. There are existing street lights which are low level and of a simple design with slim profiles set at regular intervals. By comparison to these modest features, the proposed mast would be much taller, have a substantially thicker profile and a complex and cluttered appearance by virtue of the equipment it would accommodate. Consequently, the mast would be in stark contrast to the existing character of this part of the street.
11. While the mast would be set close to a cluster of mature trees, based on the evidence, its height would exceed that of the trees and nearby buildings, and the trees would provide little visual screening for the upper parts of the mast. As a result, the mast would be visible in longer views particularly from the south and west, where the land slopes gently downwards, and also from Seale Hill to the north. In these views the upper parts of the mast would appear visually prominent and stand out as an unusual and incongruous feature above the tree line. From the west, the upper parts of the mast are more likely to be obscured in public views from the street due to the gradient of the land, mature street trees and the curve of the road.

12. By reason of their height and utilitarian appearance, the ground level cabinets would be heavily at odds with the simple and verdant character of the area. The visual impact of their siting would be exacerbated by their position, sitting centrally on the grass verge and close to the road edge, where they would be prominent in localised views when approaching the site from the east and west.
13. While the proposed green colour may assist in alleviating the visual impacts of the ground level cabinets to some degree, the colour alone would not overcome the above concerns. In addition, this colour would do little to alleviate the substantial visual impact of the upper levels of the mast where the equipment would exceed the tree canopies.
14. I find the proposal would cause harm to the character and appearance of the area due to the above factors. Insofar as they are a material consideration, the proposal would be contrary to the aims of Policies NHE1 and DES1 of the Reigate and Banstead Local Plan: Development Management Plan 2019 (the DMP) which, among other things, require development to respect local character and landscape features. There is also conflict with Policy ENF3 of the DMP and the objectives of the Framework insofar as they require new telecommunications sites to be sympathetically designed and camouflaged where appropriate.

#### *Alternative Sites*

15. The proposed equipment would provide 5G coverage as well as improved 4G coverage. The supporting coverage map demonstrates an extensive area with a deficiency in 4G coverage which the proposals seek to infill. This information is not disputed by the Council and has informed the appellant's search area for the new equipment. On the basis of the evidence before me, I am satisfied that the appellant has demonstrated that there is an identified need for the proposed development to be located somewhere within the search area.
16. The proposed development, through its siting and appearance, would cause harm to the character and appearance of the area for the reasons given. Paragraph 117 of the Framework requires that, for a new mast, evidence be provided that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure.
17. Details of six alternative sites in the surrounding area have been provided and these include use of existing non-residential buildings, in line with the requirements of the Framework. Based on the evidence before me, there are no existing masts within the search area which were suitable for inclusion. For each of the options considered, a clear justification has been provided as to why it would not provide a suitable alternative, including potential impacts on residential amenity, visual impacts and obstructions to footways, which would make them less favourable than the appeal scheme. In the case of New North Road, which lies at the centre of the search area, this residential road is characterised by footpaths with regular vehicular crossovers. Based on the evidence, I agree that positioning the proposed equipment here would be very likely to obstruct the footpath and consequently pose a threat to pedestrian safety. I have no reason to dispute the appellant's claims in relation to these discounted sites and find their assertions to be reasonable.
18. Third parties have suggested the equipment could be located further north in the woodland of Priory Park. Based on the coverage map, this would be on the

periphery of the area of coverage deficiency and the appellant has responded that, in addition, this would not be suitable due to the Green Belt and Site of Nature Conservation Importance designations which affect this area. Given these different sensitivities, I find these to be appropriate reasons to discount this location. No other reasonable alternatives have been put forward by the parties.

19. I am satisfied that a thorough review of alternative options within the search area has therefore been conducted. The absence of a more suitable alternative site is an important part of the assessment of the acceptability of the siting of the proposed development, particularly as the proposals are permitted development and have been accepted in principle by the GPDO.
20. Overall, while the development proposed would cause harm to the character and appearance of the area, it has been demonstrated that there is an identified need for the proposed equipment within this area and that there are not more suitable alternatives available, and this outweighs the harm I have identified. On consideration of these factors, I find the siting and appearance of the proposed development to be acceptable.

### **Other Matters**

21. Concerns have been raised about potential effects on health. However, the appellant has provided a certificate to confirm that the proposal has been designated 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.
22. While some of the trees close to the appeal site are the subject of a Tree Preservation Order, I do not have substantive evidence before me to suggest that they could not be preserved. Due to the distance of the ground level cabinets from the junction with Seale Hill and Church Road, and the depth of those cabinets, I am not convinced that the development proposed would cause harm to highway safety through obstructing visibility at the junction. I have no substantive evidence before me to suggest otherwise.
23. The mast would inevitably be visible from the windows of nearby properties which face towards it, and the impacts of the appeal scheme on the character of the area are addressed above. However, due to the width of the mast and its distance from those nearest windows, I do not find that its siting would cause unacceptable harm to the living conditions of the occupants of those properties in terms of their outlook.
24. The boundaries of the Surrey Hills Area of Outstanding Natural Beauty (AONB) are currently under review. However my decision is based on the circumstances at this time, at which the appeal site does not lie within the designated AONB.
25. I have had regard to the other issues raised by third parties, however my considerations are confined to those matters set out under the relevant Part and Class of the GPDO as detailed above.

26. Concerns have been raised in respect of public consultation. Based on evidence of neighbour consultations provided by the Council, I find that the obligations under Part 16, Class A, paragraph A.3(6) have been met. I find the description of the site address provided by the Council, in combination with the supporting plans, to be sufficient for the purposes of identifying the site, despite omitting reference to Seale Hill.

### **Conditions**

27. 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**

28. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

*C Shearing*

INSPECTOR