
Appeal Decision

Site visit made on 16 August 2022

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2022

Appeal Ref: APP/W1715/W/22/3293607

Turnpike Way, Hedge End, Eastleigh SO30 4RA. Easting:448638.

Northing:113616.

- 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 CK Hutchison Networks (UK) Ltd against the decision of Eastleigh Borough Council.
 - The application Ref PN/21/91255, dated 30 July 2021, was refused by notice dated 5 October 2021.
 - The telecommunications installation is described as "*15.0m Phase 8 Monopole C/W wraparound Cabinet at base and associated ancillary works*".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO 2015), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) 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. My determination of this appeal has been made on the same basis.
3. The appellant's view is that the proposed cabinets do not require prior approval due to their size and function. This is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. I have determined the appeal on the basis of the scheme before me, which was the subject of the prior approval application and includes the proposed cabinets.
4. The principle of development is established by the GPDO 2015, and the provisions of Schedule 2, Part 16, Class A of the GPDO 2015 do not require regard be had to the development plan. I have had regard to the policies of the development plan and the *National Planning Policy Framework 2021* (the Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.
5. Since the refusal of the planning application and the submission of this appeal, the *Eastleigh Borough Local Plan 2016-2036* (the Local Plan) was adopted on 25 April 2022. This replaces all of the saved policies of the adopted *Eastleigh*

Borough Local Plan Review 2001-2011, including those referred to in the Council's decision notice. I have dealt with the appeal accordingly.

Main Issue

6. The main issue is the effect of the siting and appearance of the proposed installation on highway safety.

Reasons

7. The appeal site lies within a grassed highway verge on the north side of Turnpike Way, within a mixed residential and commercial urban area of Hedge End. It is located close to a roundabout junction, where Turnpike Way meets the A334 Charles Watts Way. The B3342 Tollbar Way joins the roundabout opposite Turnpike Way. The speed limit of these classified roads near the roundabout is 40mph.
8. Turnpike Way has a 30mph speed limit and acts as one of the main spine roads for a housing area, with numerous residential roads leading from it into the estate. These include Pudbrooke Gardens, a small residential cul-de-sac, the entrance to which lies just east of the appeal site.
9. During my site inspection, which took place on the weekday lunchtime, I saw that the roundabout junction was busy, with a steady flow of traffic. Moreover, it is reasonable to expect that the volume of traffic would be even greater during morning and evening peak travel times associated with work and school run journeys. As such, I find that driver visibility within the vicinity of this junction is an important factor in ensuring highway safety.
10. The grass verge, in which the appeal scheme would be sited, extends around the corner of the road junction. Whilst it contains existing structures, including pole-mounted street lights and a traffic speed limit sign, and several low structures comprising road signs and small equipment boxes, these do not impair vehicle visibility at the junction.
11. The appeal scheme includes 4 equipment cabinets sited within close proximity of the proposed monopole, with heights ranging from 0.95m to 1.752m. Having regard to their proposed height and the linear positioning of the cabinets close to each other and the proposed mast structure, which one cabinet will wrap around, and within the grassed highway verge between, and close to, the two road junctions of Turnpike Way with Charles Watts Way and Pudbrooke Gardens, I consider that these structures have the potential to impede driver highway visibility at these junctions to the extent that harm to highway safety could result.
12. The Council's concern is that the appellant has failed to show the required visibility splays, both for vehicles exiting Pudbrooke Gardens and for those turning into Turnpike Way from Charles Watts Way. As such, the appellant has not satisfactorily demonstrated that the appeal scheme would not affect highway safety by impinging upon the required visibility splay envelopes with structures which exceed the maximum height of 1.0m which is considered acceptable to ensure driver visibility.
13. There is no disagreement between the two main parties in respect of the required X and Y visibility splay distances adopted by the Council. Moreover, there is no cogent evidence before me that would reasonably lead me to

question these figures against those endorsed by the Department for Transport (DfT) and Highways England in Manual for Streets (MfS), MfS2 and the Design Manual for Roads and Bridges (DMRB).

14. Rather, it is the appellant's application of these figures that is in dispute. For vehicles exiting Pudbrooke Gardens, the visibility splay to the west towards the roundabout, whilst drawn from the correct 2.4m set back distance, to allow for the distance between the front of the car and the driver's eye, the Y distance has been shown extending to the central reservation of the road, rather than towards the nearside kerb, where approaching vehicles would be located.
15. In respect of vehicles approaching Turnpike Way from Charles Watts Way, the forward visibility distance is shown extending from the central refuge not the nearside of the road, and is shown as a single line of visibility rather than a changing line that would be associated with a moving vehicle.
16. On the basis of the evidence before me from the Council, it appears that by adjusting the positioning of the visibility splays to take account of the positioning of vehicles within the highway and the moving nature of vehicles approaching from the west, that the proposed equipment is likely to be sited within the required visibility splays, and as such, would be likely to impede the view of drivers exiting Pudbrooke Gardens of vehicles approaching from the west and vice versa for drivers entering into Turnpike Way from Charles Watts Way.
17. The appellant has not provided any demonstrative evidence to dispute this, and without assurance of the correct visibility splay information, I cannot be convinced that highway safety has been properly taken into consideration, and that it would not be compromised in any form by the proposal. As a result, I find that the appeal scheme, by virtue of the siting and appearance (including height) of the proposal, is contrary to Local Plan Policy DM13, which, amongst other things, states that access arrangements to the highway network must not cause or increase danger to road users, and Paragraph 130 of the Framework which seeks to ensure that new development creates places that are safe and accessible.
18. I have considered whether this matter is capable of being satisfactorily addressed through the imposition of a planning condition, noting that one of the Council's suggested conditions should the appeal be allowed, relates to the requirement for the appellant to demonstrate adequate visibility splays prior to the implementation of the proposed installation.
19. However, the Order does not provide any specific authority for imposing additional conditions beyond the deemed conditions for the development by electronic communication code operators contained within it. These specify that the development must be carried out in accordance with the details submitted with the application, together with providing timescales for implementation and subsequent removal of the development. As such, in this instance, the proposal is not capable of being made acceptable by means of imposing a planning condition to ensure highway safety through the demonstration of adequate visibility splays.
20. The Framework indicates that the need for electronic communication systems should not be questioned when determining development schemes. Moreover,

the proposal would facilitate improved 5G coverage and capacity within the area which would, in accordance with advice set out in the Framework, provide clear economic and social benefits to the local area. I have carefully considered the appellant's stated technical limitations in terms of cell size, height of monopole and the drive to improve service and coverage.

21. I also accept that the position of the newly proposed equipment would need to complement the existing network so as to promote continuous network cover. As a result, the search area that was identified for the purposes of site selection was necessarily constrained in size. I also acknowledge that efforts have been taken to position the monopole away from potentially sensitive receptors and where it could be partially screened by existing structures.
22. The social and economic benefits arising from these factors carry considerable weight. However, the appellant's statement focuses heavily on matters of character and appearance rather than the highways issues as stated in the reason for refusal. I cannot therefore be certain that the site selection process was sufficiently robust, or that it was not misdirected in this respect, or that the location was the best available in terms of highway safety.
23. It is not a matter of dispute between the main parties that there would be no harm to the character and appearance of the surrounding area arising from the proposed development. The appellant's appeal statement spends considerable time setting out the absence of harm in these respects, but this is not a matter which the Council found harm. I have no further evidence before me which would lead me to a different conclusion, but the absence of harm is a neutral factor which neither weights in support of, nor against, the proposal.

Other Matters

24. The appellant states that pre-application advice from the Council was sought prior to the submission of the prior approval application, but that no response was received. This procedural matter is not an issue for me to consider as part of this appeal. Moreover, whilst the Framework encourages pre-application discussion, I would not be bound by the advice given by the Council prior to the submission of the application.
25. Concerns have been raised about potential effects on health. However, 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.

Conclusion

26. There would be benefits from the upgrading of telecommunications infrastructure, which would accord with the Framework's guidance on the importance of high-quality communications.
27. However, it has not been satisfactorily demonstrated that highway safety has been taken into consideration sufficiently to mitigate against any shortcomings of the site, and as a result, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR