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# Appeal Decision

Site visit made on 4 October 2022

**by G Pannell BSc (Hons) MA MRTPI**

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

**Decision date: 20 October 2022**

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**Appeal Ref: APP/A2280/W/21/3279794**

**Berwick Way, Frindsbuy Extra, Medway , ME2 4DJ**

- 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) (GPDO).
  - The appeal is made by Hutchison 3UK Ltd against the decision of Medway Council.
  - The application Ref MC/21/0937, dated 25 March 2021, was refused by notice dated 22 June 2021.
  - The development proposed is 20m Phase 8 Monopole C/W wrapround Cabinet at base and associated ancillary works.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Since the Council's decision The Town and Country Planning (General Permitted Development)(England)(Amendment)Order 2022 (SI 2022 no. 278) has come into force. This Order amends Class A of Part 16 of Schedule 2 of the GPDO.
3. The provisions of the GPDO 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.

## Planning Policy

4. Part 16 of the Order establishes that the proposal is permitted development and therefore it is accepted in principle by virtue of the legislation. Furthermore, there is no requirement to have regard to the development plan as there would be for any development requiring planning permission.
5. Nevertheless, Policy BNE1 of the Medway Local Plan 2003 (LP) is a material consideration as the policy relates to issues of siting and appearance. It seeks to require development to demonstrate that proposals are appropriate in relation to the character, appearance and functioning of the built and natural environment.
6. Similarly, the National Planning Policy Framework (the Framework) is also a material consideration and this includes a section on supporting high quality communications.

## **Main Issue**

7. The main issue is the effect of the siting and appearance of the proposed installation on the character and appearance of the area.

## **Reasons**

8. Since the proposal was first submitted to the Council in early 2021, the appeal site has been subject to extensive highway works, including carriageway widening, the construction of a retaining wall and a cycleway/footway.
9. Part 16, A3(5) of the GPDO sets out that the application must be accompanied by (a) a plan indicating its proposed location. The site location plan submitted with the appeal is no longer accurate given the extent of highway works that have been undertaken.
10. The appellant has failed to respond to a request for updated plans to demonstrate that it remains possible for the proposed monopole to be sited in the position shown, which now appears to be located within a maintenance bay, rather than an open verge. The Council have also indicated that the proposed location of the monopole conflicts with the construction of the new slip road.
11. As the immediate context of the appeal site has changed it is not possible on the basis of the plans before me to make a judgement on the effects of the appeal on the character and appearance of the area or whether the proposed siting would affect safe pedestrian movement along the pavement, or visibility splays.
12. I note the support in the Framework for high quality communications, and that advanced, high quality, reliable communication infrastructure is considered essential for economic growth and social well-being. I also note that policies and decisions should support the expansion of the communications network, and that the delivery of 5G infrastructure is specifically referenced. However, I must balance this against the requirement for equipment to be sympathetically designed and camouflaged where appropriate, as well as the overarching imperative in the Framework for development to achieve well-designed places for the long term.
13. The Council have not disputed the appellant's need for improved coverage and I see no reason to take a different stance. The need for this installation weighs in favour of the appeal, as do the benefits of improved connectivity. However, there is considerable doubt arising from the lack of up to date plans that the proposal would not be harmful to the character and appearance of the area, particularly as a result of the siting within the newly constructed highway works with the footpath and cycle path passing in close proximity. It is my overall view that the need for the installation does not in this case, outweigh the harm.
14. The proposal would also be contrary to Policy BNE1 of the LP which seeks to ensure that development proposals respect and enhance the character of the site, its context and surroundings in terms of size, scale, form and massing.

## **Conclusion**

15. For the reasons set out above, I have concluded that there is insufficient evidence before me to conclude that the development would not be harmful to the character and appearance of the area, and do not consider that harm to be outweighed by the support in the Framework for high quality communications, when weighed against the development plan harm and the wider requirements of the Framework.
16. As such, for the reasons given above, I conclude that the appeal should be dismissed.

*G Pannell*

INSPECTOR