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## Appeal Decision

Site visit made on 18 October 2022

**by J Bowyer BSc(Hons) MSc MRTPI**

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

**Decision date: 21 October 2022**

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**Appeal Ref: APP/B0230/W/22/3299334**

**Grass Verge Wigmore Lane Side of 13 Brill Close, Luton LU2 9RL**

- 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 Luton Borough Council.
  - The application Ref 21/01653/TEL, dated 26 November 2021, was refused by notice dated 20 January 2022.
  - The development proposed is 'new 18m high Phase 8 3HG street pole and associated 3no. equipment cabinets (colour GREY-7035)'.
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### Decision

1. The appeal is allowed and prior 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 new 18m high Phase 8 3HG street pole and associated 3no. equipment cabinets (colour GREY-7035) at Grass Verge Wigmore Lane Side of 13 Brill Close, Luton LU2 9RL in accordance with the terms of the application Ref 21/01653/TEL dated 26 November 2021 and the details submitted with it.

### Preliminary Matters

2. I have taken the site address from the Council's decision notice. This differs from the address given on the planning application form, but is consistent with the address entered by the appellant on the appeal form, albeit with the addition of a post code and reference to 'grass verge', and I am satisfied that it accurately describes the location of the proposal.
3. The appeal relates to an application made pursuant to the provisions of Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). For development to be permitted by Class A, it must satisfy limitations set out at paragraph A.1, and conditions at paragraph A.2. These conditions include a requirement in certain cases for developers to apply to the Local Planning Authority for a determination as to whether prior approval will be required as to the siting and appearance of the development.
4. In determining such an application, the provisions of the GPDO 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. I have determined the appeal on the same basis.

## **Planning Policy**

5. The principle of development is established by the GPDO, and the provisions of Schedule 2, Part 16, Class A do not require regard to be had to the development plan. Nevertheless, policies of the development plan may be material considerations where relevant to matters of siting and appearance.
6. In this regard, Policies LLP1 and LLP25 of the Luton Local Plan 2011-2031 (adopted 2017) include requirements broadly for development that responds positively to townscape and the street scene and that enhances local character and distinctiveness. Policy LLP35 relates specifically to communications infrastructure, and includes requirements that options for sharing of existing installations have been fully explored, and that installations have been designed, sited and appropriately landscaped to minimise impact on amenity. These are relevant to matters of siting and appearance.
7. In addition, the National Planning Policy Framework ('the Framework') includes a section on supporting high quality communications, and is also a material consideration.

## **Main Issues**

8. The main issues are:
  - i) the effect of the siting and appearance of the development on the character and appearance of the area;
  - ii) the effect of the siting and appearance of the development on the living conditions of the occupiers of neighbouring dwellings on Brill Close and Buckingham Drive having regard to outlook; and
  - iii) if any harm would occur, whether this would be outweighed by the need for the installation to be sited on the appeal site having regard to any suitable alternatives.

## **Reasons**

### *Character and Appearance*

9. The appeal proposal includes an 18m high street pole with a wraparound cabinet and 3 further equipment cabinets. These would occupy part of a wide verge that runs between the footway alongside Wigmore Lane and the side of dwellings which front Brill Close and Buckingham Drive.
10. Near to the appeal site, buildings are generally set back from Wigmore Lane with intervening gardens and/or verges including the one at the appeal site providing for a significant degree of openness in views along the street. This part of the street is fairly straight, and the development would be visible for some distance on the approaches to the site along Wigmore Lane, as well as from nearby residential streets including Brill Close, and Handcross Road and Polegate. In these views, the street pole would be substantially taller than the existing lamp posts, other street furniture and street trees that I observed nearby. It would also be much taller than neighbouring dwellings, and would stand more than twice as high as the roof of the adjacent property at 13 Brill Close. Furthermore, it would be of larger diameter than streetlights in the vicinity, and would be of increased width and bulk at the upper section where there would be attached antennae and equipment. In my assessment, the far greater height and scale of the street pole relative to other development and

trees nearby would be striking, and I find that it would stand out as a conspicuous and visually intrusive feature in this part of the street scene.

11. However, while the street pole would be tall, the cabinets and ancillary works would be of fairly modest height and overall scale, and the development would occupy a relatively small part of the verge. As a result, there would be only a slight loss of openness, and in my assessment, the existing impression of spaciousness in the street scene would not be harmfully reduced overall. Although the development would be visible from Wigmore Lane and surrounding streets, its position set within the verge would also provide for a degree of separation from observers, and trees would offer some screening or a backdrop to the lower section of the street pole in some views. Furthermore, the development would be of functional appearance, and would be finished in a neutral grey colour similar to nearby street lights which would be likely to help to reduce its visual impact. Given also that it is not uncommon for similar telecommunication structures to be found alongside roads in built up areas, it would not be a wholly incongruous or alien feature as part of the urban fabric. These factors would help to minimise the impact of the development on amenity and the surrounding area.
12. For these reasons, I conclude that the siting and appearance of the proposal would cause harm to the character and appearance of the area. That said, the resulting harm would be relatively localised, and I consider that it would be more modest than asserted by the Council given that I have found that the openness of the street scene would not be unacceptably harmed.

#### *Living Conditions*

13. The development would be visible from the gardens and some windows of dwellings on Brill Close and Buckingham Drive. However, the lower section of the street pole would be relatively slender, and the wider, upper section would be well above the level of the neighbouring gardens and windows so that it would not be readily apparent in the typical range of views outwards. These factors would moderate the visual impact of the development. The street pole would also be offset from the closest facing window to the side of 13 Brill Close, and while there may be oblique views towards it, the main outlook from the window would not be affected. There would be reasonable separation to other neighbouring windows and gardens, and I am satisfied that while the development would be visible, it would not be overly obtrusive, and neighbouring occupiers would not experience a harmful loss of outlook or unacceptable detriment to their quality of life.
14. I therefore conclude having regard to outlook that the siting and appearance of the development would not cause unacceptable harm to living conditions for occupiers of neighbouring dwellings on Brill Close or Buckingham Drive.

#### *Alternative Sites*

15. The Framework advises that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being, and that the expansion of electronic communications networks, including next generation mobile technology such as 5G, should be supported.
16. The social and economic benefits of the proposal are not in themselves relevant to the consideration of matters of siting and appearance. Nevertheless, the

development is proposed to meet operational requirements and provide 5G coverage to the area around the appeal site where details submitted by the appellant illustrate a need for a new base station to address an existing gap in coverage. It would therefore support the Government's clear objectives to facilitate telecommunications coverage.

17. In providing this coverage, the Framework outlines that the number of masts should be kept to a minimum, and encourages use of existing masts, buildings and other structures. Policy LLP35 of the Local Plan includes similar requirements for sharing of existing sites to be fully explored and for installations to be designed, sited and appropriately landscaped to minimise their impact on amenity.
18. The appellant's evidence sets out that there are no existing mast sites capable of supporting additional equipment within the target area that could provide the necessary coverage. I have no firm reason to find differently. The appellant has also considered other potential new sites to provide coverage, but the information before me shows that the target area of search is limited in extent, and predominately residential in character. Alternative sites identified within this area were discounted as unsuitable for reasons including that the streets would be too narrow to accommodate the equipment, and the presence of overhead lines. I have no substantive evidence that would challenge the validity of the appellant's assessment, or to suggest realistic alternative sites that have not been considered. Moreover, I note that the potential alternative sites considered would be in similar or closer proximity to neighbouring dwellings, and based on my observations at my visit, developments would also be likely to be readily visible in their surroundings. From the information before me, I find the appellant's case that there are no other sites that could more suitably host the required equipment to be compelling.
19. The lack of realistic alternative options to suitably deliver the required coverage and support communications in the area is a consideration which weighs strongly in favour of the development.

### **Other Matters**

20. An interested party has raised concerns over potential risks to health. However, the proposal is accompanied by a certificate confirming that it has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection ('ICNIRP'). The Framework advises that health safeguards different from the International Commission guidelines for public exposure should not be set. No substantive evidence has been provided to indicate that ICNIRP guidelines would not be complied with, or to demonstrate that a departure from national policy would be justified.
21. Concerns that property values would be adversely affected have not been substantiated. Moreover, planning is concerned with land use in the public interest rather than the protection of private interests.
22. The Council's Highways consultee has suggested that the development should be relocated to abut the footway, referring to the requirement for additional paving and future maintenance of verges. However, I must consider the details of the development as it is proposed. The visual impact of the paving in the street scene would be limited, and in the absence of firm evidence to indicate

that the proposal would prevent effective maintenance of the verges, I do not find that its siting set slightly away from the footway would be unacceptable.

### **Planning Balance**

23. I have found that the proposal would be visually intrusive, and that its siting and appearance would cause harm to the character and appearance of the wider area. However, the harm would be relatively localised, and I do not find that there would be an unacceptable loss of openness or harm to the living conditions of neighbouring occupiers.
24. Furthermore, the Framework gives strong support to the need for high quality and reliable communications infrastructure. The proposal would deliver 5G coverage to the area which would be important for economic growth and social well-being, and from the evidence before me, there would be no less harmful viable alternative locations to the appeal site to achieve these outcomes.
25. In this context, I find that the harm to the character and appearance of the area would in this case be outweighed by the need for the installation to be sited on the appeal site having regard to any suitable alternatives.
26. I therefore conclude that the siting and appearance of the development would be acceptable.

### **Conditions**

27. Development permitted under Class A Part 16 is subject to standard conditions. These specify that the development must, except to the extent that the Local Planning Authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin not later than the expiration of 5 years beginning with the date on which the local planning authority received the application, and must 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. I have not repeated these conditions.
28. The Council's Highways consultee has suggested a condition to require a Construction Method Statement covering details of the initial installation of the development and future maintenance. However, the GPDO does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators contained within it. Moreover, any effect on the highway network during installation or maintenance would be a matter for discussion with the relevant authorities, and it is not clear from the submitted information that the additional condition would be necessary to make the development acceptable. I have not therefore imposed it.

### **Conclusion**

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

*J Bowyer*

INSPECTOR