



Appeal Decisions

Site visit made on 26 October 2022

by R J Jackson BA MPhil DMS MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal A Ref: APP/N5090/W/22/3296564

Friern Barnet Road, Friern Barnet, London N11 3DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by CK Hutchison Networks (UK) Ltd against the decision of London Borough of Barnet.
 - The application Ref 21/6624/PNT, dated 11 December 2021, was refused by notice dated 26 January 2022.
 - The development proposed is a 16.0m Phase 8 Monopole C/W wrapround cabinet at base and associated ancillary works.
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Appeal B Ref: APP/N5090/W/22/3300765

Friern Barnet Road, Friern Barnet, London N11 3DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by CK Hutchison Networks (UK) Ltd against the decision of London Borough of Barnet.
 - The application Ref 22/1593/PNT, dated 21 March 2022, was refused by notice dated 5 May 2022.
 - The development proposed is a 15.0m Phase 9 super slimline monopole and associated ancillary works.
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Decisions

Appeal A

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 16.0m Phase 8 Monopole C/W wrapround cabinet at base and associated ancillary works at land at Friern Barnet Road, Friern Barnet, London N11 3DS in accordance with the terms of the application Ref 21/6624/PNT, dated 11 December 2021, and the plans submitted with it under Master Drawing No. ENF14692_M001 Issue A: 002 Site Location Plan, 100 Existing Site Plan, 150 Existing Elevation A, 210 Proposed Site Plan, 260 Proposed Elevation, 303 Proposed Antennae Schedule & Line Configuration, 305 Equipment Schedule & Support Structure Details.

Appeal B

2. 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 15.0m Phase 9 super slimline monopole and associated ancillary works at land at Friern Barnet Road, Friern Barnet, London

N11 3DS in accordance with the terms of the application Ref 22/1593/PNT, dated 21 March 2022, and the plans submitted with it under Master Drawing Number ENF14692_M003 Issue C: 002 Site Location Plan, 100 Existing Site Plan, 150 Existing Elevation A, 210 Proposed Site Plan, 260 Proposed Elevation.

Preliminary Matters

3. The proposals are two alternative designs for mobile phone masts and associated equipment. The difference between the two proposals is that in Appeal A the pole would be 16m tall and would have a unit wrapped around the base, while in Appeal B it would be 15m tall and not have a wrap around base unit. The equipment at the top of the mast is smaller in Appeal B than Appeal A. The separate associated equipment at ground level is identical in each case.
4. These appeals relate to refusals to grant prior approval under Class A, Part 16, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order). Under these provisions prior approval is required as to the siting and appearance of the development. I have dealt with the appeals on that basis.
5. Where a proposal complies with the provisions of Part 16 of the Order it establishes that the proposals 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.
6. Nevertheless, Policies DM01, DM06 and DM18 of Barnet's Development Management Policies DPD (2012) (the DM Plan) are material considerations as they relate to issues of siting and appearance. In particular, they seek to protect character and amenity, deal with heritage and telecommunications. Similarly, the National Planning Policy Framework (the Framework) is also a material consideration and this includes sections on supporting high quality communications and heritage.
7. The site is within the setting of the Grade II* listed Church of St John the Evangelist. Consequently, I am required to pay special attention to the desirability of preserving the setting of the listed building in line with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended). It is also within the setting of the locally listed Friern Barnet Community Library.

Main Issue

8. The main issues in Appeal A are:
 - (i) whether the proposal would represent permitted development under the terms of the Order;
 - (ii) the effect of the siting and appearance on the character and appearance of the area and the settings of the church and library as heritage assets; and
 - (iii) if any harm would occur, whether it would be outweighed by the need for the installation to be sited as proposed.
9. The main issues in Appeal B are:

- (i) the effect of the siting and appearance on the character and appearance of the area and the settings of the church and library as heritage assets; and
 - (ii) if any harm would occur, whether it would be outweighed by the need for the installation to be sited as proposed.
10. As the second and third issues under Appeal A and those for Appeal B are identical, I will consider them together differentiating where necessary.

Reasons

Whether permitted development

11. The Council has asserted that the proposal in Appeal A would not be permitted development because it breaches a single criterion within Part 16 of the Order. It does not dispute any other part and I have no reason to disagree in this regard.
12. The provision asserted to be breached is in paragraph A.1.(7)¹. This states:

Development not permitted: ground or base area

(7) Development consisting of the installation, alteration or replacement of any electronic communications apparatus other than—

- (a) a mast;
- (b) an antenna;
- (d) any apparatus which does not project above the level of the surface of the ground; or
- (e) radio equipment housing,

is not permitted by Class A(a) if the ground or base area of the structure would exceed 1.5 square metres.

13. The Council's essential case is that collectively the 'wrap around' base together with the three other equipment boxes exceed 1.5 square metres in area.
14. In relation to radio equipment housing the exception to the general permitted development is contained in A.1(9) which states as follows:

Development not permitted: radio equipment housing

(9) Development consisting of the installation, alteration or replacement of radio equipment housing is not permitted by Class A(a) if—

- (a) the development is not ancillary to the use of any other electronic communications apparatus;
- (b) the cumulative volume of such development would exceed 90 cubic metres or, if located on the roof of a building, the cumulative volume of such development would exceed 30 cubic metres; or

¹ The Council's Officer report refers to the proposal not meeting the criteria laid out in Part 16 A.2(3) of the Order but does not specify why this would be breached. There is reference in the report to the 1.5 square metres criterion, which can be found in paragraph A.1.(7).

(c) on any land which is, or is within, a site of special scientific interest, any single development would exceed 2.5 cubic metres, unless the development is carried out in an emergency.

15. There is no definition of "radio equipment housing" in the Order. However, I note that in a recent (March 2022) consultation on changes to permitted development rights in relation to telecommunications equipment it was stated: "To enable deployment of 5G and to improve mobile coverage, mobile network operators need to deploy radio equipment housing ('equipment housing'). This can range in size from a small cabinet to a purpose-built cabin serving several operators."
16. It therefore seems to me that 'radio equipment housing' are cabinets or cabins in which is installed the electronic equipment required to allow the equipment of the antenna to work. That in Appeal A the bottom of the mast is enclosed with other electronic equipment means that this enclosure is 'radio equipment housing'.
17. The list in paragraph (7) is exclusive. What is not permitted is something representing development that is not a mast, an antenna, radio equipment housing or anything underground if that something exceeds 1.5 square metres in area. As the proposal is for 'radio equipment housing' it is necessary to move to paragraph (9). Here, in a location such as this outside a site of special scientific interest, there is no reference to a ground or base area and the radio equipment housing proposed would not exceed the volume limit.
18. In this case, it would appear that all the above-ground boxes would be either the mast itself or radio equipment housing. Therefore, these are not covered by the ground coverage limit. In respect of the radio equipment housing it would not exceed the volume limit and, subject to the prior approval of the siting and appearance, would represent permitted development.

Character, appearance and effect on setting of heritage assets

19. The Framework defines the significance of a heritage asset as the value of a heritage asset to this and future generations because of its heritage interest. The national Planning Practice Guidance (the PPG) also notes² that 'significance' derives not only from a heritage asset's physical presence, but also from its setting.
20. Paragraph 199 of the Framework indicates that great weight should be given to the conservation of a heritage asset and this is irrespective of the level of harm that may occur. It is also emphasised that the more important the asset, the greater the weight should be. Paragraph 200 of the Framework indicates that any harm to the significance of a heritage asset, or from development within its setting, should require clear and convincing justification.
21. The appeal site lies on the south side of Friern Barnet Road on a level section of highway running along a slight ridge. From my site visit it appears that this road is a busy thoroughfare. The appeal site is part of an area of open space laid to grass between the road and a turning and parking area for buses. At the rear of the area is a low wall and an area of trees; one tree in particular is showing a considerable amount of die-back in its crown. The footway runs between the wall and the area of grass. There are two 10m high streetlight

² Reference ID: 18a-006-20190723

columns close to the main carriageway and the trees are generally taller than the light columns.

22. On the northern side of Friern Barnet Road is a narrower strip of grass with a row of well spaced-out, smaller, deciduous trees. Beyond that is a service road with the single storey Friern Barnet Community Library beyond that. This is a locally listed building. Despite requesting information from the Council as to why the building holds that status no reply has been provided within the timeframe set. It seems to me that for the purposes of this appeal from what I was able to see at the site visit, the significance relates to its formal front façade with gabled ends and framed entrance door.
23. To the west, on the south side of Friern Barnet Road is the Grade II* listed Church of St John the Evangelist. The listing description describes it as “an impressive and successful design in restrained Gothic style”, the apse at the eastern end is in French thirteenth century manner and the flying buttresses are noticeable in supporting the nave. The significance for the purposes of this appeal relates to its external appearance as a formal composition and from its size and thus importance as the largest structure in the area. Between the eastern end of the church and the appeal site is a small area of trees, most of which are deciduous but there is a significant evergreen holly tree.
24. The overall impression of this section of the street scene is of a wide area with buildings well set back from the main carriageway creating a sense of space. There is relatively little street furniture on the southern side of this section of the road.
25. In each case the mast would be located centrally within the depth of the grassed area, but approximately two-thirds along to the east. The three associated equipment boxes would be located slightly to the west and the whole protected on the carriageway side by an Armco barrier.
26. In both cases, the mast and associated equipment cabinets would harm the setting of the Library building. The masts would be materially taller than the building and each proposal would have an industrial appearance at odds with the formal Arts and Crafts façade. However, due to the separation of the service and main roads in the terms of the Framework this would represent less than substantial harm to the significance of the heritage asset and at the lower end of such harm. That being the case paragraph 203 of the Framework indicates that a balanced judgement will be required having regard to the scale of any harm and the significance of the asset.
27. Turning to the effect on the setting of the Church, while the masts would be of a similar height as the Church they would be well separated from it. Even during the months when some vegetation is not in place they would be sufficiently distant from one another so that in each case the masts would not cause harm to the significance of the Church as identified. As such the setting of the listed building would be preserved.
28. The introduction of either mast would result in some visual clutter from the mast, associated cabinets and barrier in what is currently an open area. However, it would generally be viewed against the backdrop of vegetation either in the treed area or the walls and fences of the surrounding area as the road curves to the east and would thus cause limited harm to the street scene.

29. In its effect on both the setting of the Library and the street scene the proposal in Appeal A would cause slightly more harm than that forming Appeal B. This would be due to the additional height, the nature of the equipment at the head of the pole, and the increased clutter from the wrap around box at the base with the other equipment housing.
30. In terms of the cited development plan policies, the proposals would be contrary to Policy DM01 of the DM Plan in that they would not enhance local character and respect the appearance, scale and height of surrounding buildings, in this case the Library, and Policy DM18 of the same plan which indicates telecommunications development will be permitted where there is no significant adverse effect on the external appearance of the space on which they are located and that the special character of all heritage assets should be preserved or enhanced.
31. Policy DM06 of the DM Plan indicates that heritage assets will be protected in line with their significance and whether the benefits outweigh any harm. I will consider that in the next section.

The benefits of the proposed development

32. Paragraph 114 of the Framework makes clear advanced, high quality and reliable communications infrastructure is essential and that planning decisions should support the expansion of electronic communications networks including 5G technology. The proposed siting and appearance would provide those public benefits and I therefore give them substantial weight.
33. The appellant submitted a report with each application which demonstrates that there is a need for an additional mast in the area, and that alternative locations would be more harmful. I consider that these reports are reasonable.
34. However, both reports include the sentence "The height of the pole has been kept down to the absolute minimum capable of providing the required essential new 5G coverage". Given that the 15m high pole is lower than the 16m pole there is a degree of inconsistency in these reports, and neither report shows anticipated coverage from positioning the relevant mast in this location, nor one with anticipated coverage from a lower mast to demonstrate that a shorter pole would not provide the necessary coverage.
35. While I give these reports significant weight from demonstrating a need for additional provision in this area, I give them little weight in demonstrating that either mast is the minimum necessary to provide that coverage.

Planning Balance

36. Both of the proposals would preserve the setting of the Church of St John the Evangelist, but would result in less than substantial harm to the setting of the locally listed Library and limited harm to the street scene, with Appeal A giving a slightly greater degree of harm in each case.
37. In each case the decision comes down to a judgement between the harms identified and the public benefits of providing additional telecommunications facilities. Even giving great weight to the conservation of the setting of the Library, I conclude that in each case within the context of a busy street the benefits outweigh those harms, even giving slightly more weight to the harms in Appeal A when compared with Appeal B.

Conditions

38. 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

39. For the reasons given above I conclude that both appeals should be allowed and prior approval should be granted.

RJ Jackson

INSPECTOR