



Appeal Decision

Site visit made on 28 November 2022

By Guy Davies BSC (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2022

Appeal Ref: APP/P5870/W/22/3299750

Area of Footpath, Ewell Road, Cheam, Surrey SM3 8AH

- 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) (hereafter the 'Order').
 - The appeal is made by Great British Communications against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2022/00069, dated 13 January 2022, was refused by notice dated 9 March 2022.
 - The development proposed is described as being for a determination as to whether prior approval is required for the proposed new 5G streetworks mast and ancillary equipment to be located at Ewell Road, Cheam, Surrey.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The provisions of the Order require the local planning authority to assess the proposed development based solely on its siting and appearance, taking into account any representations received¹. My determination of the appeal has been made on the same basis.
3. The provisions of the Order do not require regard to be had to the development plan. I have therefore only had regard to the policies of the development plan and the National Planning Policy Framework (the 'Framework') in so far as they are material considerations relevant to matters of siting and appearance.
4. The Council did not notify the appellant that prior approval was required before determining the application. I have taken the refusal notice as implying that prior approval was required. The failure to notify accordingly does not invalidate the refusal or subsequent appeal.

Main Issues

5. The main issues are the effect of the siting and appearance of the proposed installation on:
 - The character and appearance of the Cheam Village Conservation Area
 - Use of the public footpath.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4)

6. If harm is caused, it is also necessary to consider whether there are any alternative sites or designs that are preferable before coming to a judgement on the harm weighed against the public benefits of the proposal.

Reasons

Character and appearance

7. The installation would occupy a site on the edge of Cheam Park at the western approach to Cheam village centre. The footpath on which it would be located is bounded by grass verges on either side, with mature trees behind providing a visual screen to the open parkland beyond. Domestic scale buildings with trees and hedges on the opposite side of the road give way to the denser, more built up frontages of commercial premises immediately to the east. The character of the area is a very pleasant one with the trees and hedges along Ewell Road providing a verdant setting which contrasts with the mock Georgian and mock Tudor inspired buildings making up the western end of the village centre.
8. In this setting the proposed mast would be an unwelcome and prominent feature in views up and down Ewell Road and as one approaches the site along Anne Boleyn's Walk. Nearby trees would largely screen views of it from Cheam Park although the antennae array would be visible above the tree tops. A black finish may help reduce its visual impact but would not adequately reduce its prominence in the street scene.
9. There is already a variety of street furniture in the immediate vicinity, including lighting columns, bollards, road signage, a litter bin and a pedestrian crossing to the west. However, the height and girth of the proposed mast would be noticeably greater than these existing structures, distinguishing it from them, and making it more prominent and obtrusive in views of the site. The equipment cabinets would be less visually apparent and would be typical of other utility cabinets that are commonly found in such locations. Nevertheless, I conclude that the mast, because of its size and height, would cause harm to the character and appearance of the area.
10. Because of the location of the site within the Cheam Village Conservation Area, I am required to give special attention to the desirability of preserving or enhancing the character and appearance of the area². As noted, I consider the mast would detract from the visual qualities of the area. In the wording used by the Framework, it would cause less than substantial harm to the significance of the conservation area although I accord that impact great weight in the planning balance.

Use of footpath

11. The mast and equipment cabinets would be placed at the back of the footpath, reducing its width for pedestrians. This footpath forms one of the main entrances to the park from the village centre and is therefore well used. Such a narrowing would cause an unacceptable degree of constriction to the footpath, to the detriment of its users.
12. The appellant proposes to widen the footpath to compensate for the area taken up by the installation by hardstanding part of the front verge. This has attracted an objection from Transport for London who is opposed to the loss of

² Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

highway verge, because of the benefits of soft verges in environmental and drainage terms.

13. Although widening the footpath would overcome the obstruction caused by the proposed installation, I share Transport for London's views as regards the loss of soft verge, and conclude that it would be detrimental not only in environmental and drainage terms, but also visually, unless no other alternative was available.

Alternative sites and designs

14. Given that the mast would cause harm to the character and appearance of the conservation area, and to the use of the footpath, it is necessary for me to consider whether there are any preferable sites the mast could be located within the technical constraints of the telecommunications network, or alternative designs that might reduce its prominence.
15. The appellant states that no site sharing or building mounted options were identified in their initial site selection process. Having viewed the site, I also did not see any nearby telecommunication masts that might provide an alternative mounting for the antennae. An existing mast noted in one letter of representation is on the other side of the railway line near the station, and I accept outside the target area for this particular installation.
16. I am less convinced about the lack of building mounted options. The target area includes part of Cheam village centre, which includes a number of 3 storey buildings in part commercial use at least some of which have flat roofs hidden behind roof pitches. Mounting the antennae on such a building is likely to be less intrusive than the proposed mast. I have been provided with no evidence to demonstrate that the owners or occupiers of these buildings have been approached or that such options would not be technically feasible.
17. Even if a building mounted option were not to prove feasible, other positions for a mast have been suggested in representations that would be preferable in visual terms. These include within a public car park, or a position further back from the road in amongst the trees so that the mast and cabinets would be better screened in the street scene. I acknowledge that care would need to be taken to avoid underground cabling damaging tree roots but in the absence of any evidence to the contrary that need not be an unsurmountable problem.
18. I note that the appellant has considered some alternative locations for a mast and discounted them because of visibility splay concerns and/or pavement width restrictions. While that may be the case for those particular locations, it does not appear that the alternative locations suggested in representations have been assessed. One site was discounted due to it being on private land. That in itself is not sufficient reason to discount an alternative site, unless the land owner has been approached and declined to treat. I have no evidence that any such approach has been made.
19. So far as design is concerned, a building mounted installation would be preferable to a free standing mast because it would be less likely to be as prominent. If a mast were the only feasible option, then I accept that a monopole as proposed would be preferable to a lattice style mast. No suggestions have been made for alternative designs, nor am I aware of any,

that might have less visual impact than that proposed, given the structural and stability requirements for mounting the antennae.

20. Having regard to the above, I am not satisfied that all reasonable alternative options for achieving coverage have been exhausted in this case, either as a building mounted option or failing that a preferable location for a mast mounted option.

Other Matters

21. Concern has been raised in representations about the potential effect of microwave radiation on human health, including proximity to local schools. Paragraph 118 of the Framework advises that local planning authorities, and by implication other decision makers, should not seek to set health safeguards different from the International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines for public exposure. The appellant has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by ICNIRP. For that reason the potential effect on health is not a determining planning issue.
22. I note other appeals are outstanding for telecommunications installations in the same borough³. As consideration of these appeals will be specific to the siting and appearance of each of those proposals, as it is in this case, I do not consider that they have any relevance for this appeal.
23. Although some representations question the need for the installation, or indeed a 5G network, paragraph 118 of the Framework says that decision makers must determine applications on planning grounds only, and should not seek to prevent competition between different operators or question the need for an electronic communications system.

Planning Balance

24. The principle of the development is established by the permitted development right, subject to consideration of siting and appearance. The context for that consideration is set by the technical limitations of the telecommunications network, and the need to cover the area targeted for reception.
25. I have found that the proposed mast would cause harm to the character and appearance of the Cheam Village Conservation Area, and would result in undesirable changes to the highway verge. That conclusion prompts the need to consider whether there are any reasonable alternative sites or designs that would cause less harm. In that regard, I am not satisfied that all such reasonable options either for building mounted antennae or for an alternative location for a mast have been adequately assessed.
26. Policy 23 of the Sutton Local Plan 2018 requires that all telecommunications equipment should be sited and designed in such a way that it does not adversely affect the appearance of the surrounding area. Permission should only be granted where, amongst other criteria, it is not intrusive in the street scene, all alternative sites which fulfil the functional requirements have been assessed, and every effort has been made to minimise the visual impact of the proposal. Policies 28 and 30 of the same plan reinforce Policy 23 in terms of

³ APP/P5870/W22/3299738 and 3299741

character and design, and protection of heritage assets. The proposal would conflict with these policies for the reasons set out above.

27. Paragraph 114 of the Framework recognises that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being, and supports the expansion of electronic communications networks, including the introduction of 5G. I acknowledge the significant benefits that would arise from improving the 5G network in this part of Cheam. However, it has not been demonstrated that such benefits could not be achieved in ways that would have a less harmful effect on the character and appearance of the conservation area, or the use of the footpath.

Conclusion

28. Having regard to the above, I conclude that the appeal should be dismissed.

Guy Davies

INSPECTOR