



Appeal Decision

Site visit made on 6 December 2022

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Appeal Ref: APP/G5750/W/22/3299716

Upton Lane, Opposite 365 Upton Lane, London E7 9PT

- 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 the Council of the London Borough of Newham.
 - The application Ref 21/03050/PRETEL, dated 6 December 2021, was refused by notice dated 26 January 2022. The development proposed is Proposed 5G telecoms installation: H3G Phase 8 15m high street pole c/w wrap-around cabinet and 3 further additional equipment cabinets.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO), under Schedule 2, Part 16, Class A require the local planning authority to assess the proposed development solely on the basis of its siting and appearance. My determination of this appeal has been made on the same basis.
3. The Council has referred to a number of development plan and national policies in its decision notice. However, the principle of development is established by the GPDO as set out above and its provisions do not require regard be had to the development plan. I have nonetheless had regard to the policies of the development plan, namely the Newham Local Plan 2018 and the London Plan, adopted March 2021, and the National Planning Policy Framework July 2021 (the Framework) only insofar as they are a material consideration relevant to matters of siting and appearance.

Main Issues

4. The main issues are the effect of the siting and appearance of the proposed installation with regard to the character and appearance of the area, with particular regard to the effect on the setting of a designated heritage asset and trees within it, and if any harm would occur, whether this is outweighed by the need for the installation to be sited as proposed, taking into account any suitable alternatives.

Reasons

5. The appeal site is part of the footpath on Upton Lane. Immediately adjacent to the site is West Ham Park, a Grade II Registered Historic Park and Garden. As a designated heritage asset, paragraph 199 of the Framework confirms that great weight should be given to its conservation.
6. Its use as a public park dates from the late 19th-century. The Listing description confirms it was a botanic garden prior to this and that there is a longer history to the site as a garden. Its significance derives from it being an example of a substantial formally laid out public park providing a green space in an otherwise dense urban area. The uninterrupted view along Upton Road provides the setting along this boundary, which includes the main entrance to the park.
7. The proposed telecommunications equipment would consist of a 15m 5G streetpole mast with associated antennae and equipment sited towards the top, and a wrap-around cabinet at the base. There would be three stand alone equipment cabins at ground level. The mast would appear wider than the surrounding slender lampposts.
8. The appeal proposal would be sited some 45m from the main entrance to the park. The mast and cabinets would appear as prominent features in the street scene due to the wider pavement around the main entrance to the park, the open nature of the railings against which the cabinets would be viewed and the bulk of the equipment on the mast being sited above the canopy of the trees against which they would be viewed. It would therefore be highly visible and incongruous in views along Upton Lane which provide the setting for West Ham Park.
9. The site is immediately adjacent to the ornamental gardens which are fenced from the remainder of the park and provide for a more tranquil area, with a walk and benches set in the formal landscaping. The mast would be clearly visible in views when moving around the ornamental gardens and would be a prominent and incongruous feature against the trees and traditional roofscape of the dwellings that currently form the setting when viewed from within West Ham Park.
10. The equipment would also be sited directly adjacent to trees that lie within West Ham Park. The Council has expressed concerns that no information has been provided regarding the effect of the installation of the equipment within the root protection zones of surrounding trees. While I note the plans submitted with the appeal show that the mast and equipment cabins would each be installed on a 'new root foundation', I have no further details as to what these are, how they would protect the roots of the trees and how this would be ensured during installation. Without this information, it is not possible for me to be certain that the development would not have an adverse effect on the adjacent trees. This is relevant to matters of siting and appearance, as the appellant in their statement relies on those trees to help mitigate the visual impact of the mast.
11. For the reasons above, I find that the proposed installation would be harmful to the setting of West Ham Park, a designated heritage asset. This harm would be less than substantial. In such circumstances, paragraph 202 of the Framework

advises that this harm should be weighed against the public benefits of the proposal.

12. Paragraph 117 of the Framework states that applications should be 'supported by the necessary evidence to justify the proposed development' including as regards potential alternatives. The appellant has followed a sequential approach to site selection within this constrained cell search area. A number of alternative sites have been considered and subsequently discounted. This has been evidenced through a map of the cell search area and a brief commentary on why each of the alternative sites is unsuitable. The main reasons given are pavement width restrictions and relationship with residential housing, with proximity to schools and nurseries and visibility concerns also being factors.
13. However, there is no evidence of the effect on the setting of the designated heritage asset being considered as part of this process. As such, I am not convinced that a robust review of possible site options within the search area has been conducted. I therefore have insufficient evidence before me to be satisfied that the appeal site represents the least harmful option available in the area to meet the additional coverage and capacity requirements.
14. Paragraph 114 of the Framework confirms that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning decisions should support the expansion of electronic communications networks, including next generation mobile technology such as the 5G network that would be supported by the proposed development. As such, the proposal would provide significant benefits through the improved coverage and capacity in the locality. While I have not taken this into account in considering matters of siting and appearance, they are nonetheless public benefits of the appeal proposal.

Conclusion

15. For the reasons given above, I am not satisfied that the harm I have identified is outweighed by the need for the installation to be sited as proposed. Consequently, nor am I satisfied that the public benefits of the proposal would outweigh the harm I have identified to the significance of the designated heritage asset. I therefore conclude that the appeal should be dismissed.

J Downs

INSPECTOR