
Appeal Decision

Site visit made on 20 January 2023

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 February 2023

Appeal Ref: APP/Z3635/W/22/3298392

Area of Grass Verge, Long Lane, Stanwell, Spelthorne TW19 7DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 Spelthorne Borough Council.
 - The application Ref 21/01609/T56, dated 13 October 2021, was refused by notice dated 8 December 2021.
 - The development proposed is 5G telecoms installation: H3G Phase 8 16m high street pole c/w wrap-around cabinet and 3 further additional equipment cabinets.
-

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 5G telecoms installation: H3G Phase 8 16m high street pole c/w wrap-around cabinet and 3 further additional equipment cabinets at Area of Grass Verge, Long Lane, Stanwell, Spelthorne TW19 7DS in accordance with the application Ref 21/01609/T56 dated 13 October 2021, and the details submitted with it.

Procedural Matters

2. The description of development has been taken from the Council's decision notice in the interests of clarity. This has been reflected in the banner heading and decision above.
3. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (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, considering any representations received.
4. My determination of this appeal has been made on the same basis. Therefore, whilst the appellant has referred to the purported benefits, I have not expressly taken these matters into account. The benefits have effectively already been recognised by the grant of permission under Article 3(1) of the GPDO.

5. The principle of development is established by the GPDO, and the relevant provisions do not require regard be had to the development plan or the National Planning Policy Framework (the Framework). I have only had regard to the policies in the development plan and the Framework insofar as they are material considerations relevant to making a planning judgement on any matters of siting and appearance.

Main Issue

6. The main issue is the effect of the proposal's siting on highway safety.

Reasons

7. The site is located on a grass verge adjacent to large trees and other street furniture, including telecommunications infrastructure and lamp posts along Long Lane. It is clear from the drawings presented in support of the appeal, and from what I saw during my site visit, that the proposal would not include land used for the pedestrian footpath or the vehicular carriageway.
8. Indeed, as the appellant points out, the proposal would be set back from Long Lane and is not situated within a zone that would give rise to any immediate safety concerns. Moreover, there is existing telecommunications equipment and other street furniture in similar locations and there is no evidence of pre-existing safety concerns arising from their siting.
9. I appreciate the Council has acted on the consultation response received from the highway authority, however I am not clear that the consultation response deals with the specific details of this case. There is no detailed analysis of the drawings submitted as part of the original application and broadly speaking the additional information requirements appear generic in their substance.
10. For example, the drawings submitted clearly show the relationship between the proposal and the kerb line and other street furniture. Furthermore, the consultation response asks for footway widths, but the drawings clearly show that existing footways would not be impacted by the proposal. Consequently, I am not satisfied that the need for additional information has been substantiated.
11. The consultation response also outlines some other permitting requirements that would be necessary before development commences, such as street works permitting and other technical structural approvals. However, these appear to be separate matters not relevant to the determination of this appeal, and adequately controlled by processes established under other legislation.
12. Overall, I am satisfied that the proposal has a sufficient set back and would not interfere with pedestrian or vehicle usage of Long Lane, through land take, sightline obstruction or otherwise, and therefore its siting would not have a harmful effect on highway safety.

Other Matters

13. I appreciate the appellant has covered a number of issues in some detail, including the appearance of the proposal among other things. However, these are matters not disputed by the Council and have not been determinative under the appeal, which has been decided on the basis of the main issue.
14. Concerns have been raised about potential effects on health. However, the appellant has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP).
15. Paragraph 118 of the Framework advises that health safeguards are not something which a decision-maker should determine. No sufficiently authoritative evidence has been provided to indicate that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified.
16. In relation to the siting and appearance of the proposal and the potential effects on the character and appearance of the area, it was clear during my site visit that the proposal would sit against a backdrop of trees and amongst other utilitarian development.
17. These other features would be of appreciable scale, meaning the proposal would assimilate into the character and appearance of the area without causing unacceptable harmful effects to the outlook of neighbouring occupiers or on the character and appearance of the street scene.
18. I acknowledge concerns from other interested parties about the siting of the proposal in relation to protected trees. However, there is no substantive evidence demonstrating that the trees are protected, or indeed that they would be at risk as a result of the proposal. Consequently, I have given these concerns limited weight in my decision.
19. The Council has consulted statutory bodies about potential interference with underground pipelines and no objection was received. On this basis I am satisfied there is no evidence that the proposal would interfere with underground pipelines in the vicinity.
20. There are concerns from other interested parties about alternative sites not being adequately explored. However, I have not determined that the proposal would be harmful, and there is no requirement to go on to consider alternative sites in this context.
21. Notwithstanding, it is clear from the appellant's evidence that they have discounted a number of alternative sites in the immediate vicinity, and I am satisfied they have complied with the sequential approach required by Paragraph 117(c) of the Framework.

Conditions

22. 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. 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

23. For the reasons given above, the appeal is allowed, and prior approval is granted.

Liam Page

INSPECTOR