



## Appeal Decision

Site visit made on 24 January 2023

**by Laura Cuthbert BA(Hons) MSc MRTPI**

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

**Decision date: 21 February 2023**

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**Appeal Ref: APP/A5840/W/22/3305340**

**Area of Footpath, Newington Causeway, Elephant and Castle, London  
532162, 179499**

- 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 & Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by CK Hutchison Networks (UK) Ltd against the decision of London Borough of Southwark.
  - The application Ref 22/AP/1619, dated 6 May 2022, was refused by notice dated 28 June 2022.
  - The development proposed is Proposed telecommunications installation: Proposed 'slim line' phase 8 monopole c/w wraparound cabinet at base, 3no. additional ancillary equipment cabinets and associated ancillary works.
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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 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, taking into account any representations received. My determination of this appeal has been made on the same basis.
3. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require that regard be given to the development plan.

### Main Issue

4. The main issue is whether the appeal proposal can benefit from prior approval.

### Reasons

5. Part 16, Class A of Schedule 2 of the GPDO permits development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network. This includes the installation, alteration, or replacement of any electronic communications apparatus. This is subject to several situations where such development is not permitted, listed under paragraph A.1 and also the conditions outlined under paragraph A.2 of Part 16. There is no dispute between the main parties that the proposed

development would meet the relevant requirements of paragraph A.1 and A.2. There is no reason for me to take a contrary view.

6. However, development under Part 16, Class A of the GPDO is permitted subject to the condition that before beginning the development the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority is required. Before an application is made for prior approval, Paragraph A.3.(1)(a) of Part 16 requires that the developer must give notice to any person who is an owner of the land to which the development relates. The GPDO is prescriptive as to what information the notice must contain. This includes a description of the proposed development which includes the height of any mast, as established under paragraph A.3.(2)(a)(iii) of Part 16, Class A.
7. The Council states that the appeal site is part of the adopted highway for which the Local Highway Authority (LHA) is the landowner. The ownership is not disputed by the appellant. Indeed, I note that notice was served on the LHA as the landowner as part of the appeal process. However, the Council outlines that the notice was not correctly served. I have received a copy of the relevant Developer's Notice (dated 29 April 2022), which does not include the height of the proposed mast. It therefore does not accord with the requirements of paragraph A.3.(2)(a)(iii) of Part 16, Class A of the GPDO. Furthermore, the Developer's Notice was not submitted with the prior approval application. Therefore, the appellant failed to evidence the serving of the notice as part of the prior approval process as required under A.3(1)(a) and A.3(5)(c) of Part 16.
8. The appellant has not provided any evidence of a revised notice being served on the Council before the prior approval application was made. Furthermore, no robust evidence has been provided by the appellant that refutes the Council's claim. Accordingly, the procedural requirements of the GPDO with regard to conditions A.3(1)(a), A.3.(2)(a)(iii) and A.3(5)(c) of Part 16 have not been met and therefore prior approval cannot be granted.

## **Conclusion**

9. For the reasons given above, I conclude that the appeal should be dismissed.

*Laura Cuthbert*

INSPECTOR