



Appeal Decision

Site visit made on 8 March 2023

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2023

Appeal Ref: APP/U2235/W/22/3300749

Yalding Hill, Yalding, ME18 6AL

- 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 Maidstone Borough Council.
 - The application Ref 22/500380/TNOT56, dated 19 January 2022, was refused by notice dated 22 March 2022.
 - The development proposed is 15.0m phase 8 monopole c/w wrapround cabinet at base and associated ancillary works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Because this is an application for prior approval, the provisions of the 2015 Order 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. This appeal will be determined in the same way.
3. There is no requirement to have regard to the development plan as there would be for any development requiring planning permission. Nevertheless, policies in the Maidstone Borough Local Plan 2017 relating to issues of siting and appearance are material considerations. These refer to the principles of good design in the countryside. Policy DM25 is specifically concerned with electronic communications and, amongst other things, expects every effort to be made to minimise the visual impact of the proposal.
4. The National Planning Policy Framework is also a material consideration and includes a section on supporting high quality communications.
5. As part of the appeal, the appellant company provided drawings amending the location of the proposed pole from one side of the footway to the other. It would therefore be in a very similar position to that considered at application stage. The Council and interested parties have had opportunity to comment on this change and there would be no injustice in dealing with the appeal based on the revised siting of the monopole.

Main Issues

6. The main issues are the effect of the siting and appearance of the proposed installation on the character and appearance of the area and on pedestrian

safety. Furthermore, if any harm would occur, whether this is outweighed by the need for the monopole and equipment to be sited as proposed taking into account any suitable alternatives.

Reasons

Character and appearance

7. The proposed mast and cabinets would be located on the edge of a field adjacent to the footway. The surroundings are rural in nature with open land and vegetation predominating although there are scattered dwellings and commercial operations in the vicinity. The only visual paraphernalia near the appeal site comprises a post box, road sign and telegraph poles.
8. According to the Framework, equipment on new sites should be sympathetically designed. The appellant maintains that there is no scope to lower the mast and that the type of installation proposed is the optimum design solution. If reduced in height, then it would not be able to provide adequate coverage for the operator and so compromise the level of service. Nevertheless, its siting and appearance should be assessed as proposed.
9. The mast would be between two trees that fringe the field behind. Whilst the Council refers to them as “spindly” they are, in my estimation, similar in height to the proposed pole. Their spread is limited but nonetheless they would provide useful foils to the mast as they would flank it on either side. When in leaf these trees would provide a degree of camouflage as referred to by the Framework, especially in angled views along Yalding Hill. Furthermore, from most directions, the mast would be seen against the distant backdrop of tall and substantial trees.
10. These natural features would assist in assimilating the mast into its surroundings. However, the mast would have a functional appearance that would not sit easily in a pleasant countryside location such as this. In particular, although determined by practical requirements, the chunkiness of the pole and the fussiness of the antennas would stand out in the local scene. Indeed, the mast would constitute an unexpected element in its rural setting and therefore would be visually jarring and somewhat incongruous.
11. It is maintained that the cabinets to serve the installation are permitted development, but they have been included in the application. In their context they would add visual clutter. Furthermore, the Armco barrier in front of the installation on the edge of the carriageway would be another discordant and urbanising element.
12. The proposal would detract from its surroundings as a utilitarian feature that would contrast markedly with the attractive immediate locality. However, the adjoining and surrounding vegetation would provide some mitigation of the visual impact. Therefore, the harm to the character and appearance of the area would not be of a high order.

Pedestrian safety

13. The proposed installation would not be partly sited on the pavement as originally proposed. As no encroachment would take place there would be no adverse implications for users or for pedestrian safety. There is some dispute about the dimensions shown on the drawings, but they clearly indicate that the

mast and cabinets would be outside the footway and the matter has been considered on that basis.

Suitable alternatives

14. Paragraph 117 c) of the Framework expects evidence to be submitted that the possibility of erecting antennas on an existing building, mast or other structure has been explored. The appellant has investigated these options sequentially and maintains that site sharing is not feasible and that a new mast to facilitate a digital coverage upgrade is the only available option.
15. The mast is required to provide additional capacity to meet demand as a cell to the east is overloaded. The search area is said to be highly constrained and to only cover a small radius. Although Figure 5 of the appellant's statement shows a nominal white marker, there is no detail of the search area's extent or why the cell needs to be where it is in order to "offload" the congested sector. The clarity of this evidence is not assisted by the reference to it covering a densely packed residential area which is not the case.
16. Eight other options have been considered and discounted. The reasons given for this include obstruction from tree canopies, overhead cables, insufficient space to house the equipment and land ownership constraints. These findings are not disputed but the plan at Figure 6 is not especially detailed. It is therefore difficult to verify the claim that the appeal site represents the only viable solution from a planning and radio coverage perspective. In particular, no detail is provided of the ownership issues.
17. The Parish Council raises the possibility of locations at the nearby commercial buildings at the top of the hill. It is not clear from the evidence whether these have been investigated but placing the installation in conjunction with existing built development would seem, on the face of it, likely to minimise the visual consequences for the countryside. Consequently, there is insufficient evidence that there are no suitable alternative sites to deliver 5G services around Yalding to fulfil the Government's support for the expansion of electronic communications networks.

Other Matters

18. Reference has been made to various social and economic benefits but these have not been taken into account in considering the matters of siting and appearance.
19. The appellant has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by International Commission on Non-Ionizing Radiation Protection. In these circumstances, the Framework advises that health safeguards are not something which a decision-maker should determine and there is no reason to depart from national policy.
20. The appellant company observes that no pre-application feedback was received but the Council maintains that no valid submission was made and that the relevant fee was not paid.

Conclusion

21. The proposed installation would cause harm to the character and appearance of the area. Furthermore, it has not been adequately demonstrated that there

are no suitable alternatives to serve this area, especially having regard to the commercial buildings along this part of Yalding Hill.

22. Therefore, for the reasons given, the proposal is unacceptable and prior approval should not be granted.

David Smith

INSPECTOR