



Appeal Decision

Site visit made on 14 March 2023

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 April 2023

Appeal Ref: APP/B0230/W/22/3307732

Area of Footpath, High Town, Luton, Bedfordshire LU2 7NZ

- 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 Luton Borough Council.
 - The application Ref 22/00880/TEL, dated 6 July 2022, was refused by notice dated 30 August 2022.
 - The development proposed is 5G telecoms installation: 15m street pole and 3 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 Order 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 Order, and the provisions therein do not require regard be had to the development plan. I have had regard to the policies of the development plan, any related guidance and the National Planning Policy Framework (Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.

Main Issues

4. The main issues in this appeal are:
 - The effect of the development on the character and appearance of the area; and
 - The submission of a correct International Commission on Non-Ionizing Radiation Protection (ICNIRP) certificate.

Reasons

Character and appearance

5. The proposed development would be located in close proximity to the public footpath and the highway, in a predominately residential area close to public

- open space, which includes a good degree of vertical landscaping in the form of trees. There are also streetlights and some signage in the locality.
6. Paragraph 114 of the Framework states that such telecommunications development is essential, and the expansion of electronic networks should be supported, including the next generation of mobile phone technology. Based on the guidance in the Framework, there would be public benefits from the proposal.
 7. Paragraph 117 of the Framework states that evidence must be supplied to demonstrate that alternatives have been taken into consideration. I am satisfied, based on the evidence before me, that a sufficiently robust investigation as to possible alternatives has taken place.
 8. In this case, the appellant's evidence demonstrates that there is a need for a new mast in the area, in order to cater for the forecast rapid increase in demand for mobile services in the future. In accordance with the advice at paragraph 118 of the Framework, the Council does not question the need for improved coverage.
 9. The appellants state that the proposed mast would facilitate Fifth Generation (5G) connectivity. The proposal would be easily visible and tower above the existing surroundings when seen in its context. Although it could be argued that the mast is a slim, unfussy design, it would be considerably taller than any of the nearby street furniture and trees, whilst the utilitarian appearance would not fit well into this pleasant environment.
 10. The scale of the mast is strident, industrial in nature and has the external appearance of a structure more often seen in industrial areas and would be harmful to the local context of residential development and public open space. The mast would appear dominant in the locality and be harmful to the character and appearance of the area, magnified by its proximity to the public footpath.
 11. From closer viewpoints, the entire structure would be visible. It would be an unattractive and dominating feature. The scale and design of the installation would be incongruous in this setting. Consequently, regardless of the colour finish that could be used on the equipment, I conclude that the siting and appearance of the proposal would significantly harm the street scene and the character and appearance of the area.
 12. The Framework recognises that planning decisions should support the expansion of electronic communications networks and the appellant has provided evidence to justify the proposed development. However, I have found the siting and appearance of the development would result in harm to the character and appearance of the area, which is not outweighed by these other considerations. I find the proposal to be in conflict with the design and setting aspirations set out in paragraph 130 of the Framework.
 13. Whilst not determinative, I find conflict with policies LL1, LL25 and LL35 of the Local Luton Plan (the LP), which, amongst other matters, expect development to have been designed, sited and appropriately landscaped to minimise their impact on amenity.

ICNIRP Certificate

14. The Council have stated that a submitted ICNIRP certificate has not been completed correctly and have issued a reason for refusal on that basis.
15. However, amongst the evidence in front of me, the appellant has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by the ICNIRP.
16. In these circumstances, 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.
17. In this matter, I find no conflict with policies LL1, LL25 and LL35 of the LP, which, amongst other matters, expect development to comply with national guidance in respect of electromagnetic fields. This lack of conflict is only a neutral matter in the overall development.

Planning Balance and Conclusion

18. I have taken into account the economic and social benefits of the proposal, and the supporting documentation provided that demonstrate the merits of an effective communications network. Nonetheless, I do not find these benefits outweigh the harm that would be generated by the siting of the mast and associated works in such a location.
19. For the reasons set out, I conclude the appeal should be dismissed.

Paul Cooper

INSPECTOR