



Appeal Decision

Site visit made on 5 April 2023

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 APRIL 2023

Appeal Ref: APP/C5690/W/22/3305284

Area of Footpath, Sydenham Hill, Upper Sydenham, London.

(Grid Ref Easting: 534671; Grid Ref Northing: 172994)

- 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 & 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 Lewisham.
 - The application Ref DC/22/126960, dated 26 May 2022, was refused by notice dated 21 July 2022.
 - The development proposed is described on the application form as "5G telecoms installation: H3G Phase 8 high street pole c/w wrap-around cabinet and; and 3 further additional equipment cabinets".
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above has been taken from the application form which differs from that on the Council's decision notice. In Part E of the appeal form it is stated that the description of development has not changed and neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 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.
4. Part 16 of the GPDO establishes that the proposal is permitted development and therefore it is accepted in principle by virtue of the legislation. Furthermore, there is no requirement to have regard to the development plan as there would be for any development requiring planning permission. Nevertheless, I have had regard to the policies of the development plan referred to by the Council insofar as they are material considerations relating to issues of siting and appearance. Similarly, the National Planning Policy Framework (the Framework) is also a material consideration and this includes a

section on supporting high quality communications as well as other matters relevant to siting and appearance.

Main Issue

5. The main issue is the effect of the siting and appearance of the proposal on the character and appearance of the area, with due regard to the Forest Hill Conservation Area, and the consideration of alternative sites.

Reasons

Character and Appearance

6. The appeal site is located within the highway verge on the edge of an area of open space. The verge includes a number of trees extending along the edge of the open space, and which gives both the streetscape and the open space a pleasant verdant character. The site is opposite the junction with Lapse Wood Walk which serves a residential area.
7. The appeal site is on the edge of the Forest Hill Conservation Area (the CA). The CA appraisal sets out that the predominant character of the CA is residential and well treed, with a fine collection of mostly Victorian and Edwardian houses. The site is within a character area of the CA which includes the Horniman Museum and public spaces, the former being identified as the most important building in the CA. The site is adjacent to a field which includes a children's play area and which the CA appraisal identifies as the 'Horniman Triangle' which provides a rural quality to the CA. These features contribute to the importance of the CA as a designated heritage asset.
8. Within the above context, the appeal proposal would appear as an obtrusive feature within this landscaped setting. The mast would be viewed as a bulky and incongruous feature projecting above the nearest trees, and this harm would be exacerbated by the existing tree canopy being cut back to facilitate the proposed installation. The proposed cabinets would also add clutter into this landscaped setting, adding to the visual harm arising from the mast.
9. Some degree of screening would be provided by existing trees in views along the streetscape, although I consider that the mast would still be apparent as an intrusive man-made structure within this verge. The mast would also be particularly obtrusive in views from the adjacent open field and play area, as well as from the junction opposite the site.
10. There are existing man-made features in the vicinity of the mast, including a bus stop and street light. But these are not of a form or scale which would justify the height, bulk and siting of the proposed mast.
11. I conclude that the proposal due to its siting and appearance would lead to significant harm to the character and appearance of the area. The introduction of a prominent and bulky man-made structure in this landscaped area would harm the significance of the CA, particularly in respect of the rural quality of the Horniman Triangle. Within the terms of the Framework the harm to the CA would be less than substantial, although great weight should be given to the CA's conservation as a designated heritage asset, irrespective of whether any potential harm would amount to less than substantial harm to its significance.

12. Insofar as they are relevant to the consideration of siting and appearance, the proposal would be contrary to Policies 15 and 16 of the Core Strategy¹; and DM Policies 30, 35, 36 and 39 of the DMLP² in respect of achieving high quality design and the consideration of heritage assets, including with regards to telecommunications masts and infrastructure. The proposal would also be contrary to the Framework in respect of the sympathetic design of new electronic communications sites.

Consideration of Alternative Sites

13. Paragraph 117 of the Framework sets out that for a new mast or base station, the applicant should provide evidence that they have explored the possibility of erecting antennas on an existing building, mast or other structure. This is also reflected in DM Policy 39 of the DMLP.
14. The appellant specifies that it has undertaken a sequential approach to site selection with all the alternatives discounted. Reference has been made to existing mast sites in this location which are not capable of supporting additional equipment to extend coverage to the target area, although no substantive evidence is provided. Furthermore, as referred to by the Council, the appellant's sequential site selection does not demonstrate that they have considered existing mast sites.
15. Even given the limited size of a 5G cell and the constraints of this area, I also saw that there are a number of buildings which may be suitable for the location of antennas, and the appellant has not set out why these were discounted.
16. On the basis of what I have seen and read, the appellant's sequential approach and site selection exercise is not suitably robust. Insofar as they are relevant to this main issue in respect of siting and appearance, the proposal would conflict with policy DM 39 of the DMLP and the Framework with regards to the consideration of alternative sites.

Other Matters

17. I am mindful of the benefits of providing and enhancing electronic communication infrastructure. The appellant emphasises the benefits of improved network coverage and capacity, most notably in relation to 5G. This includes many community and commercial benefits, such as education, e-commerce, working from home and leisure activities.
18. Paragraph 114 of the Framework advises that advanced, high-quality and reliable communication infrastructure is essential for economic growth and social well-being and that the expansion of electronic communication networks, including next generation mobile technology (such as 5G), should be supported. I have also had regard to the communication from the Department for Digital, Culture, Media and Sport provided by the appellant.
19. However, as set out in respect of the consideration of alternative sites, it has not been demonstrated that the benefits of the proposal are not possible on sites in the vicinity of the appeal site which are more suitably located in respect of character and appearance. On that basis, although these benefits weigh in

¹ Core Strategy - Development plan document, June 2011.

² Development Management Local Plan, November 2014.

the proposal's favour, they carry limited weight in respect of the proposal on this particular site.

Conclusion

20. I have found that the siting and appearance of the proposal would lead to significant harm to the character and appearance of the area and would fail to preserve or enhance the character and appearance of the CA. Whilst I have had regard to the need for the installation to be sited in this area, the evidence in respect of suitable alternative locations which could address that need is not sufficient.
21. The harm to the CA would be less than substantial, but for the reasons stated I attach great weight to that harm. Mindful of my concerns in respect of the significant visual impact of the proposal and the inadequate consideration of potential alternative sites, I do not consider that it has been demonstrated that the public benefits of the proposal on this particular site are sufficient to outweigh the harm to the CA.
22. I therefore conclude that the appeal should be dismissed.

David Cross

INSPECTOR