



Appeal Decision

Site visit made on 18 April 2023

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2023

Appeal Ref: APP/H0738/W/23/3315375

Bishopton Avenue, Stockton-on-Tees TS19 0RQ

- 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 Stockton-on-Tees Borough Council.
 - The application Ref 22/2041/TEL, dated 16 September 2022, was refused by notice dated 15 November 2022.
 - The development proposed is described as: 'Proposed 16.0m Phase 8 Monopole C/W wrapround Cabinet at base and associated ancillary works'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO 2015), 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 provisions of Schedule 2, Part 16, Class A of the GPDO 2015 do not require regard be had to the development plan. I have had regard to the policies of the development plan and the National Planning Policy Framework (the Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.

Main Issues

4. The main issues of the appeal are:
 - whether the proposed development would preserve the setting of the Sparks Daylight Bakery Grade II listed building and, if any harm would occur, whether this is outweighed by the need for the installation to be sited as proposed taking into account any suitable alternatives; and
 - the effect of the proposed development on highway safety.

Reasons

Listed building

5. The appeal site is located within an area of grass verge along Bishopton Avenue which is a busy road network and is highly visible from a number of public viewpoints particularly along Bakery Drive and Bishopton Avenue. The surrounding area is residential and there are a number of properties located within close proximity of the site. The Spark's Daylight Bakery is also located a short distance to the north which now serves flatted properties. The dwellings along this side of the road are set back from Bishopton Avenue with garden areas/parking to the front and are generally open. There is also an area of landscaped greenspace between the properties and the appeal site which is interspersed with a number of trees/shrubs. There are further trees located along this stretch of road as well as several other trees located on the opposite side of the road. A number of streetlights and road signs also line Bishopton Avenue.
6. Although the appeal site is not within a statutory designation for particular protection such as; Conservation Area, World Heritage Site, SSSI or National Park, the Sparks Daylight Bakery is a Grade II listed building and as such, I have had regard to paragraph 199 of the Framework which states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
7. The site's significance is derived from its historic and aesthetic merits and is a prominent building within the street scene. Despite the presence of trees and other street furniture in the area, clear and open views of the listed building are available on approaching the site along Bishopton Avenue where its Art Deco design can be fully appreciated. The landscaped greenspace to the front of the listed building along with its trees/shrubs provide a sense of openness and spaciousness within the street scene which contributes positively to the overall setting of the listed building and general character and appearance of the area.
8. The proposed development would be located on the grass verge in front of the properties and the landscaped greenspace. It would therefore be highly visible from the nearby residential properties as well as the main road. The monopole at 16 metres high would exceed the height of the properties including the listed building and its height along with its width would also be greater than other nearby features. This, coupled with the associated cabinets which would extend across 6 metres of the adopted highway would be visually prominent and incongruous within this open setting and would dominate the street scene even if painted a different colour. Its overall height and width and its close proximity to the listed building, would also unacceptably impact upon the current views afforded by drawing the eye away from the building to the detriment of the listed building and its setting.
9. I appreciate the specific requirements and overall reasoning for the height and that such features are regularly seen across the UK. However, the proposed development would still be too large in this location. I also note that there are existing trees located behind the appeal site and other street furniture in the area. Such trees are however set at a distance from one another, some of which are relatively small in size and these along with other street furniture would not provide significant screening. They would certainly not mask the proposed development completely from view of the listed building and from local residential properties.

10. Accordingly, I find that the proposed development would fail to preserve the setting of the Grade II listed building causing less than substantial harm to its significance as a designated heritage asset. Paragraph 200 of the Framework explains that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. It goes on to explain at paragraph 202 that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
11. I appreciate the public benefits associated with provision of enhanced digital communication including benefits to the wider economy, improved connectivity for businesses, industry and other sectors, use by the emergency services and ensuring continuous coverage. However, such benefits would not be sufficient to offset the identified harm to the listed building to which I have attached great weight given the importance of the asset and its conservation as advised by the Framework.
12. Paragraph 117 of the Framework sets out that applications for electronic communications development (including applications for prior approval under the General Permitted Development Order) should be supported by the necessary evidence to justify the proposed development. The appellant has followed a sequential approach. It states that the cell search area is extremely constrained, covering a small radius with extremely limited availability of options and that there are no suitable structures or properties that would support a rooftop/site share/upgrade installation within the designated search area and the only viable solution from a planning and radio coverage perspective has been put forward.
13. A number of alternative sites were considered and subsequently discounted, but the information before me is limited with a list of discounted options and a brief and somewhat vague explanation on why other sites have been discounted. Many of these sites have been discounted due to their proximity to housing. However, such reasoning is no different to the appeal site in that the proposed development would also be located within close proximity to residential dwellings in addition to there being a listed building nearby. Such factors would make the appeal site a more sensitive location.
14. This application follows the recent approval for the installation of a new mast to the south of the appeal site under reference 20/2850/TEL. The appellant explains that this site is no longer viable due to unforeseen circumstances and a new location is therefore required to provide the essential 5G coverage. I acknowledge the key drivers associated with site selection including capacity and coverage and appreciate that the search area is highly constrained as well as there being difficulties with the previous location and other challenges associated with such a roll out including underground services etc. However, there is no substantive evidence before me that the appeal site represents the only viable option particularly given that the Council have provided some alternative sites which are said to be more acceptable. Although the appellant claims that pre-application advice was undertaken with no responses received, the Council have set out that this was undertaken after the application was submitted and that no discussion was held to look at or explore alternative sites.

15. Whilst not determinative, the proposal would be contrary to Policies SD8, HE2 and TI3 of the Stockton on Tees Borough Council Local Plan, 2019 (LP) which together, amongst other matters, requires development to positively respond to and enhance heritage assets and that where a new mast or base station has been justified, any equipment should be sympathetically designed and camouflaged where appropriate. The proposed development would also be contrary with chapter 16 of the Framework which relates to conserving and enhancing the historic environment.

Highway safety

16. At my site visit, I observed the movements of vehicles along Bishopton Avenue and while only a snapshot in time, I saw that the road was busy with a fast moving and consistent flow of traffic.
17. The appeal site is located a very short distance from the junction where Bakery Drive meets Bishopton Avenue, and the proposed development would extend across 6 metres of the highway verge which is within the existing visibility splay. This, together with its height would significantly obstruct views and increase the impact on highway safety for all road users when exiting Bakery Drive onto the busy public highway.
18. Additionally, the Council's Highways, Transport and Design Department as well as interested parties have explained that there have been a number of accidents within the vicinity of the junction which does not appear to be disputed. Whilst I have limited detail on this, a reduced visibility on approaches onto this busy trafficked road which has already been subject to a number of accidents would further exacerbate the existing situation leading to conditions prejudicial to highway safety.
19. I conclude that the siting of the proposed development within the adopted highway would be prejudicial to highway safety. Whilst not determinative, in this respect the proposal would be contrary to Policy SD8 of the LP which amongst other matters, requires new proposals to be designed with public safety in mind.

Other Matters

20. The appellant sets out that there have been no statutory consultation objections from landscape experts or the Environmental Health Unit. However, this does not change my findings in respect of the main issues.
21. 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). 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.

Planning Balance

22. Paragraph 114 of the Framework explains that advanced, high quality and reliable communications infrastructure is essential for economic growth and

social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections.

23. I have had regard to the benefits of the proposed development as set out above. However, on the basis of the evidence in front of me and my own observations on site, I have found that the proposed development would fail to preserve the setting of the Grade II listed building and the siting of the proposed development within the adopted highway would be prejudicial to highway safety. It has not been demonstrated that the appeal site represents the only viable option. Therefore, notwithstanding the need to upgrade the network and assist the governments aspirations along with the associated benefits, the harm that would arise from the siting of the development would not be outweighed by the overall need in this location.

Conclusion

24. The appeal is dismissed.

N Teasdale

INSPECTOR