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# Appeal Decision

Site visit made on 14 April 2023

**by Jane Smith MA MA MRTPI**

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

**Decision date: 25 May 2023**

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**Appeal Ref: APP/A1530/W/22/3304077**

**Hawthorne Avenue, Greenstead, Colchester CO4 3JE**

- 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 Colchester Borough Council.
  - The application Ref 221239, dated 11 May 2022, was refused by notice dated 24 June 2022.
  - The development proposed is 15.0m Phase 8 Monopole C/W wraparound Cabinet at base and associated ancillary works.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. In the banner heading above, I have used the spelling of the site address as given on the application form. However, local street signs refer to the location as Hawthorn Avenue and I have used the local spelling below.
3. Also in the banner heading, I have used the Council's title at the time of determining the application. However, following Colchester's recent designation as a City, the Council is now known as Colchester City Council.
4. 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.
5. The principle of the proposed development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A do not require consideration of the development plan. I have therefore had regard to the policies of the development plan only insofar as they are relevant to matters of siting and appearance. In this regard, I note that the Colchester Borough Local Plan 2017-2033 Section 2 (Section 2 LP) was adopted in July 2022, shortly after the application was determined, but prior to submission of the appeal. I have therefore had regard to policies in the adopted development plan, where relevant. I have not had regard to Policy DP1 of the Development Policies Focused Review Version (2014), which was referred to in the reason for refusal, but has been superseded.

## **Main Issues**

6. The main issues are:

- the effect of the siting and appearance of the proposal on the character and appearance of the area,
- the effect of the siting of the proposal on implementation of planned highway improvements, 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.

## **Reasons**

### *Character and appearance*

7. The appeal site is on highway land at the corner of Bromley Road and Hawthorn Avenue. It comprises a small, grassed area with footpaths to either side, within a wide pavement next to a zebra crossing. A similar area on the opposite corner contains a collection of small street trees, but the appeal site contains no planting other than some rather worn out turf.
8. The site adjoins a primary school playground, from which it is separated by a low hedge and railings. There is a parade of shops immediately opposite and a terrace of two storey dwellings on the other side of Hawthorn Avenue. The surrounding area is mainly residential, with some small scale commercial premises. Buildings are generally on one or two storeys, although there is a more substantial three storey secondary school and some three storey flats further down Hawthorn Avenue.
9. Existing street furniture includes a few telegraph poles and several slender street lights, which are a similar height to the street trees opposite. Vertical features are otherwise limited and the proposed mast would be significantly taller than any of the surrounding street furniture or buildings. It would be of heavier proportions than the slender street lights and would be topped with relatively bulky antennas.
10. The mast would be in a particularly prominent position, on an open street corner. There is limited existing vegetation on this corner and a significant sense of openness due to the extent of the adjacent school playground. As a result, the mast would be conspicuous from several directions. The site is furthermore in a location which is something of a focal point for local residents, given its proximity to the adjacent primary school and shops, as well as the secondary school slightly further along the road. Therefore, while existing street trees would filter some more distant views, this is offset by the number of people likely to pass the site on a regular basis, thereby being exposed to views of the mast in very close proximity.
11. While I note that the proposed installation is designed with urban, roadside locations in mind, and that the area is not subject to heritage constraints, the mast would nevertheless be a dominant and intrusive feature within what is a predominantly low rise, residential neighbourhood. The level of intrusion could not be adequately mitigated through alternative paint colour, and in any event

the GPDO does not provide any authority for imposing conditions to secure such measures.

12. For the above reasons, the siting and appearance of the proposal would be harmful to the character and appearance of the area. Accordingly, insofar as they are a material consideration, the proposal would be contrary to Policy SP7 of the Section 1 LP<sup>1</sup>, Policy DM15 of the Section 2 LP and with relevant paragraphs of the National Planning Policy Framework (the Framework). These policies, amongst other things, require that development meets high standards of design, responding positively to local context and respecting the character of the site, its context and surroundings.
13. Although the Council's statement also alludes to conflict with Policy ENV1 of the Section 2 LP, this policy relates to conservation and enhancement of the natural and historic environment, countryside and coastline. No heritage or other relevant constraints have been brought to my attention and as such Policy ENV1 is of limited relevance in this case.

#### *Planned highway improvements*

14. The Council has provided details of a planned highway improvement scheme, comprising modification of the junction of Hawthorn Avenue and Bromley Road from a simple priority junction to a mini roundabout. The proposed works are detailed on RLT Engineering Consultants Ltd drawing number 1902/07/2003 (the Highway Works drawing). This was provided in the Council's statement of case and therefore the appellant has had the opportunity to comment.
15. The Highway Works drawing indicates that the planned improvements would be implemented within the existing carriageway. Therefore, the appeal site, which is within the pavement and highway verge, does not physically encroach on land required for the modified junction. However, I noted during my site visit that the appeal site is the only land which could realistically be used for stationing construction vehicles, plant or equipment adjacent to the highway, during the construction process. The similar verge on the opposite side of Hawthorn Avenue is planted with several street trees and the pavement in front of the shops is enclosed by a metal barrier railing and bollards.
16. On that basis, the Highways Authority's objection that the proposed installation would prejudice implementation of these planned and approved highway improvements appears well-founded. The appellant highlights that there is an existing street light on the appeal site, but this single feature would not obstruct access to the rest of the land. No substantive evidence has been provided that the proposed development could be phased or otherwise coordinated with the Highways Authority, so as to ensure that the planned highway improvements can go ahead. Nor have I been provided with any evidence suggesting that the improvements are no longer planned.
17. I furthermore note that the highway improvements are required to mitigate the impact of an approved development for 145 dwellings on a nearby site. As such, based on the evidence before me, the proposed siting of the mast and associated equipment cabinets would not only prejudice the planned and approved improvements to highway safety and capacity, but also the associated delivery of a significant number of new homes.

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<sup>1</sup> North Essex Authorities' Shared Strategic Section 1 Plan (2013-2033), adopted February 2021

18. For the above reasons, I conclude that the proposed siting would be prejudicial to the implementation of planned highway improvements, since it would obstruct land required during the construction process.

*Alternative sites*

19. The Framework recognises that high quality and reliable communications infrastructure is essential for economic growth and social well-being. It therefore supports the expansion of electronic communications networks, including 5G. The application is accompanied by evidence of the need for the proposed installation, to support the roll-out of 5G mobile coverage. This identifies the search area within which additional equipment is required. In accordance with the Framework, I have had appropriate regard to the public benefits associated with improvements to telecommunications infrastructure within that defined area.
20. Although the application indicates that there are no realistic options for mast sharing or utilising existing structures, limited supporting evidence has been provided. I noted during my site visit that there are existing masts set back from the nearby A137, very close to the nominal site identified in the application drawings. While I accept that there may be technical reasons why sharing of these existing structures is not possible, no detailed explanation has been offered.
21. In terms of options for a new base station, several alternative sites have been identified by the operator. The reasons why these have been discounted include buildability, limited pavement width, conflict with existing overhead cables and proximity to residential properties.
22. The alternative sites are mainly strung out along a significant length of the A137. Within this area, I noted locations where there are wide grass verges and more extensive tree cover. This includes some of the alternative sites which have been rejected due to limited pavement width. No detailed explanation has been offered as to why the wide grass verges are unsuitable or unavailable. There are also extensive areas within the search area where no evidence has been provided that alternative sites have been assessed.
23. While I appreciate that some of the alternative sites would be close to existing dwellings, the same could be said of most of the search area. Indeed, the proposed siting would be opposite a terrace of existing dwellings on Hawthorn Avenue. Therefore, this is not a clearly demonstrated point of difference between the proposed and alternative sites.
24. The Code of Best Practice on Mobile Network Development in England (the Code), published November 2016 and referenced in National Planning Policy Guidance, sets out a range of principles for new installations. They include the application of good siting and sensitivity to context for all telecommunications development, not just in environmentally sensitive areas. Both the Code and the Framework prioritise mast and site sharing wherever possible. The Code also sets out guidance for placing new base stations close to taller features including trees, to mitigate the level of visual intrusion.
25. Based on the evidence before me, I am not satisfied that the principles in the Code have been fully followed in this case. In particular the evidence does not clearly demonstrate that consideration has been given to mast sharing options,

or alternative siting in a less prominent and exposed location, which would also avoid prejudicing the implementation of highway safety improvements. On that basis, I conclude that the harm I have identified would not be outweighed by the need for the installation to be sited as proposed, taking into account any suitable alternatives.

### **Conclusion**

26. For the above reasons I conclude that the appeal should be dismissed.

*Jane Smith*

INSPECTOR