



Appeal Decision

Site visit made on 19 April 2023

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2023

Appeal Ref: APP/A5840/W/22/3310695

Dulwich Wood Park Streetworks, Upper Sydenham, Southwark, London SE19 1XQ

- 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 the Council of the London Borough of Southwark.
 - The application Ref 22/AP/2985, dated 21 August 2022, was refused by notice dated 13 October 2022.
 - The development proposed is a 15.0m Phase 9 slimline Monopole and associated ancillary works.
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Decision

1. The appeal is allowed and prior approval is granted for a 15.0m Phase 9 slimline Monopole and associated ancillary works at Dulwich Wood Park Streetworks, Upper Sydenham, Southwark, London SE19 1XQ in accordance with the terms of the application, Ref 22/AP/2985, dated 21 August 2022, and the plans submitted with it.

Preliminary Matters

2. 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. Accordingly, the principle of development is established by the GPDO and is not a consideration. My determination of this appeal has been made on this basis.
3. The relevant provisions of the GPDO do not require regard to be had to the development plan. Accordingly, I have had regard to such policies and related supplementary guidance only insofar as they are a material consideration relevant to matters of siting and appearance. They are not, in themselves, determinative. The National Planning Policy Framework (the Framework) is also a material consideration in so far as it is relevant to the development and prior approval matters.
4. The appellants' view is that the proposed cabinets do not require prior approval due to their size and function. This is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. I have determined the appeal on the basis of the scheme before me, which was the subject of the prior approval application.

Main Issues

5. The main issues are whether or not the siting and appearance of the proposed installation would cause harm to a) the character and appearance of the area; and b) highway and pedestrian safety.

Reasons

Character and Appearance

6. The proposal is for a 15m high slimline monopole and associated equipment cabinets to be located on an existing footway, set between a single carriageway road (Dulwich Wood Park) and a grassed bank. There are houses on either side of the road but which are set well back from it. Furthermore, the area also accommodates three blocks of flats to the west and five to the east of the site.
7. I observed that there are existing streetlights along Dulwich Wood Park as well as some tall, mature trees. Thus, there are vertical and tall elements within the street scene. The wider skyline is also punctuated by the Crystal Palace transmitter, which is a conspicuous feature of the area. The street trees, grass verges and planting within gardens contribute to the verdant and developed suburban character of this area.
8. Given the topography and road alignment, the monopole would be a readily visible feature within the immediate Dulwich Wood Park streetscene although wider views would be more restricted. The lower parts would be seen against more solid backgrounds and the nearby tree would provide some screening.
9. For technical reasons the monopole needs to be tall enough to clear surrounding buildings and land. Despite being taller and wider than streetlighting columns, such installations are an increasingly common and expected sight on footways along well used roads such as this. Indeed, given the surrounding context, the height of the monopole would not be a completely alien structure.
10. Although functional in appearance, the antenna would be formed in a relatively compact, neat design at the head of the slimline pole. The combined elements of the development have a relatively small footprint. Overall, the visual effect would be sufficiently mitigated to ensure that the proposal would not appear unduly prominent or jarring in the street scene.
11. Given its height and position, the monopole would be visible from the houses near to the site as well as some of the upper floor windows of the nearby flats. However, given the separation distances and the relatively slim nature of the pole, it would not dominate or harm the outlook from these properties.
12. The proposed monopole and cabinets would create a degree of clutter as perceived at street level. However, any effect would be limited because all of the proposed equipment would be relatively constrained and located in a line, close to the back of the footway.
13. Overall, I do not find that the proposal would appear unusual or unexpected in such a context nor would it appear overly prominent or visually intrusive. The proposal's siting and appearance would not therefore cause harm to the character and appearance of the area. Insofar as they are a material consideration, the proposal would comply with Policy SI6 of the London Plan

2021 (LP) and Policies P13 and P44 of the Southwark Plan 2022 (SP) which, amongst other things, support the delivery of digital connectivity infrastructure whilst ensuring development respects the local environment and so would not be harmful by reason of its siting or appearance.

14. The siting and appearance of the development would also be in conformity with the Framework's policies for supporting high quality communications and achieving well-designed places.

Highway and Pedestrian Safety

15. The Officer Report (OR) suggests that the height of the pole would potentially be a distraction to drivers. However, the Decision Notice refers to the pole obscuring the views of pedestrians and motorists.
16. Vehicles travelling up Dulwich Wood Park would see the monopole, but it would be on the opposite side of the road. As noted above, it would be viewed against a backdrop of existing buildings and trees. Given its positioning, it would not obscure drivers' views of other road users or of pedestrians, whether they be walking, waiting at the bus stop or using the crossing beyond the appeal site.
17. Similarly, those motorists travelling down Dulwich Wood Park would view the monopole and equipment cabinets against a backdrop of the mature oak tree as well as other planting and buildings. Furthermore, the monopole and cabinets would be set away from the road, which itself curves away from the position of the equipment. The proposal would not therefore obscure drivers' views of the road, the bus stop, pedestrians or the pedestrian crossing.
18. The proposal would be a static feature and notwithstanding the monopole's height, both it and the associated cabinets would clearly be identifiable for their function and not entirely unexpected features within a suburban context. It therefore seems to me that neither the pole nor the associated equipment would appear likely to form a distraction for drivers.
19. The equipment would be sited at the back of the footway. The OR notes that the public footpath would retain a width in excess of 2.4m. The Council considers this to be acceptable as it provides sufficient room for those with mobility issues or those with children and pushchairs to pass with comfort. Based on my observations and the evidence before me I have no reason to conclude that the proposal would represent a barrier to pedestrian movement.
20. Given its positioning at the back of the footpath, the equipment would not obscure pedestrians' views of traffic using Dulwich Wood Park, the pedestrian crossing or the bus stop. The proposal would not therefore obscure the views of pedestrians or compromise their safety.
21. Accordingly, I find that neither the siting nor appearance of the proposal would result in an unacceptable distraction to motorists nor obscure the views of pedestrians or motorists. The proposal would not harm highway and pedestrian safety and as such, insofar as it is material, would comply with Policy SI6 of the LP and Policies P13, P44 and P51 of the SP which, amongst other things, support the delivery of digital connectivity infrastructure whilst ensuring development does not have a detrimental impact on footways and meet the needs of all pedestrians. The siting and design of the development would therefore be in conformity with the requirements of the Framework in this regard.

Other Matters

22. Reference is made in the OR to Section 12.6 of the Transport for London document 'Streetscape Guidance' (2022). This advises a minimum 500mm wide hard surface must be provided around cabinets to allow for adequate access and to facilitate the maintenance of shrubs and grass. However, that guidance is in relation to cabinets that are located within a planted or grassed area. The proposed cabinets are not within the grassed area but adjacent to it. Notwithstanding this, the grassed area at this point appears to me to be of sufficient width that the proposed equipment would not unduly compromise access to it nor its maintenance.
23. As I have found the proposal to be acceptable it is not necessary for me to consider alternative sites, regardless of whether they have received approval from the Council. The Framework is also clear, at Paragraph 118, that the need for an electronic communications system should not be questioned.
24. The proximity of a mature oak tree, whilst not given as a reason for refusal is referenced in the OR. The appellant's evidence indicates that the works would be over 10m from the tree's trunk and could be undertaken without causing harm. There is no substantive evidence before me to indicate that the works would cause harm to the tree's roots.
25. Despite assertions in the OR, it is not clear to me how the monopole would facilitate access to the rear garages in Lymer Avenue or properties in Tylney Avenue. Access to Lymer Avenue already exists and the structure would be set away from the boundary of properties in Tylney Avenue.
26. Concerns over how the main parties have communicated and interacted with interested parties are matters to be taken up directly with them. I have focused on the planning merits and main issues of the case.

Conditions

27. The GPDO does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators contained within it. These specify that the development must be carried out in accordance with the details submitted with the application, begin within 5 years of the date of the approval and be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.

Conclusion

28. For the above reasons, the appeal is allowed, and prior approval is granted.

Stewart Glassar

INSPECTOR