

Appeal Decision

Site visit made on 7 June 2023

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 19th June 2023

Appeal Ref: APP/N1540/W/22/3306858

Footway adjacent to 8 Slacksbury Hatch, Harberts Road, Harlow, Essex CM19 4ER

- 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 Harlow District Council.
 - The application Ref HW/PNT/22/00257, dated 9 June 2022, was refused by notice dated 26 July 2022.
 - The development proposed is telecommunications installation: 15m 'slim line' phase 9 monopole and 3 no. additional ancillary equipment cabinets and associated ancillary works.
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Decision

1. The appeal is allowed, and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for telecommunication installation: 15m 'slim line' phase 9 monopole and 3 no. additional ancillary equipment cabinets and associated ancillary works at Footway adjacent to 8 Slacksbury Hatch, Harberts Road, Harlow, Essex CM19 4ER in accordance with the terms of the application, Ref HW/PNT/22/00257, dated 9 June 2022, and the plans submitted with it, subject to the standard conditions set out in Schedule 2, Part 16, Class A of the GPDO.

Preliminary Matters

2. No address or description of the development was provided on the application form for the proposed development. I have therefore used the details provided on the decision notice in my banner above, as these satisfactorily identify the location of the site and the development proposed.
3. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 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.

Planning Policy

4. The principle of development is established by the GPDO, and the provisions of Schedule 2, Part 16, Class A do not require regard to be had to the

development plan. Nevertheless, Policies PL1, IN4 and IN5 of the Harlow Local Development Plan (2020) are material considerations, as they relate to issues of siting and appearance. In particular, these policies, together, seek to ensure all development is to a high standard, protects, enhances or improves local distinctiveness, whilst taking account of local character and context, including patterns of development, urban form and landscape character, Green Infrastructure including trees and landscaping, building typology and the historic environment and responds to the scale, height, and massing of the surrounding area; seek to minimise adverse impacts on the natural and built environment and communities; and ensure that opportunities to share masts or sites with other providers have been explored. The National Planning Policy Framework (the Framework) is also a material consideration, and it includes a section on supporting high quality communications.

Main Issues

5. The main issues in this appeal are the effect of the siting and appearance of the proposed installation on the character and appearance of the area 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

6. The appeal site (the site) lies within a wide area of footway which forms part of the public highway at the junction of Helions Road with Harberts Road. The buildings around this junction are limited to one or two storeys in height. The site lies close to planting beds, including a tree. The land opposite Helions Road is open parkland with play areas, bounded by a hedge containing mature trees. The site lies adjacent to a row of single storey commercial units and opposite a two-storey public house. In the wider area lies housing. The site therefore lies in an area that is suburban in appearance, with domestic scale buildings and an open, verdant spacious character.
7. In the immediate vicinity of the site there are streetlights of slim design, together with bollards, a retaining wall topped by guard railing, the planting beds and traffic signage. However, street furniture is of a modest scale and not visually predominant in the area. The street scene is characterised by the modest scale buildings, the openness of the junction and the verdancy of the planting beds and hedges.
8. The proposed 15 metre monopole and associated cabinets would be located in a generous area of footway in front of the planting beds.
9. In the immediate vicinity, the modest scale of street furniture and built form would provide no effective screening. The alignment of road and the siting of the installation on the outside of a gentle bend, relatively close to the carriageway, would provide considerable long views of the equipment when travelling along Harberts Road. Long views of the equipment would be more limited, when approaching along Helios Road. There would, however, be limited views from nearby properties, such as those fronting Collins Meadow.
10. Whilst there are streetlights in close proximity, they are of a much slimmer design, and would be only roughly half the height of the proposed mast. The

- structure would be higher than any of the nearby surrounding buildings and would be much bulkier than any of the existing street furniture in the locality.
11. Due to the local topography and built form the monopole and cabinets would be largely screened from longer views from dwellings further afield, albeit that the top of the monopole may intrude in some views.
 12. However, in close proximity, the equipment would be a highly visible, prominent and incongruous feature that would be out of proportion with the surrounding domestic scale of the buildings and recessive street furniture. Its harmful visual impact would be readily perceived by persons passing through the area, visiting the nearby shops and by some residents.
 13. In these views it would be an alien feature in this otherwise suburban location. As the installation would be increasingly screened in longer views, the harm to the character and appearance of the area would be principally felt in the vicinity of the junction. Nevertheless, some harm would still manifest in views from the wider area. Close to the site the harm would be significant, but further away it would be limited.
 14. In arriving at this conclusion, I have considered the appellant's choice of colours, and I consider that the colour of the mast could be controlled by condition. However, whilst some colours may reduce the prominence of the proposed development to a limited degree, they would not successfully conceal its height, bulk, and incongruous presence in these suburban surroundings.
 15. For the above reasons, I conclude that the proposal would be harmful to the character and appearance of the area. Consequently, I must consider whether this harm is outweighed by the need for the installation to be sited as proposed, taking into account any suitable alternatives.

Reason for installation, alternative sites and planning balance

16. As set out at paragraph 114 of the Framework, advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being and planning decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections. Paragraph 117 of the Framework confirms that applications for telecommunications development should be supported with the necessary evidence to justify the proposal. This should include evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure. It should also be noted that paragraph 118 of the Framework indicates that the need for electronic communication systems should not be questioned when determining applications.
17. The installation is required to fill a gap in 5G coverage in an area of residential and other uses, including schools and other community facilities, surrounding the site, where access to digital services is poor. Paragraph 115 of the Framework advises that the number of telecommunications masts should be kept to a minimum, consistent with the needs of consumers, the efficient operation of the network, and the provision of reasonable capacity for future expansion. It also encourages the use of existing masts, buildings, and other structures. However, it does recognise that new sites may be required for new 5G networks. The evidence indicates that the sequential approach to site

selection set out in paragraph 117 of the Framework has been followed, and that there are no opportunities for erecting antennas on existing buildings, masts, or other structures.

18. It is contended that, within a constrained search area, the appeal site presents the only viable solution, bearing in mind technical requirements. The appellant's evidence highlights six alternative sites within the target coverage area that have been considered, but the reasons given for discounting them are brief. The appellant identified that the search area is predominantly residential and that the footways are generally narrow. For this reason the appellant identified that all six alternative sites (referred to as D1 to D6) were unsuitable. Having visited the alternative sites I have no reason to disagree with these conclusions generally.
19. During my site visit I observed that all of the alternative sites except D1 would involve the location of the proposed apparatus in closer proximity to residential properties, with greater visibility from residential windows. D1 would also be closer to community facilities and lie on a narrow footway on a main road where pedestrian footfall could be anticipated to be higher and any obstruction of the footway more harmful.
20. The appellant also identifies, with regard to D2, D3 and D6, that the proposal would lie within the visibility splays of junctions. Whilst I have no reason to dispute this with regard to sites D2 and D3, D6 is closely associated with a wider area of paving, set back far enough from the carriageway that it would be unlikely to interfere with footway traffic or visibility splays. This area, from observation, already contains services. D6 would, however, be closer to residential dwellings and more visible from them than the proposal site. Further, there would be little difference in regard to its prominence in longer views. I do not, therefore, consider that D6 would be a better site for the installation of the apparatus.
21. The appellant has satisfactorily demonstrated that the proposed development is necessary for coverage of the locality and therefore, on the evidence before me, I conclude that the appeal site represents the least harmful alternative for a new installation to provide 5G coverage for the area.
22. Given the specific circumstances of this appeal, I find that the proposed development's benefits in terms of providing improved digital connectivity should be given very significant weight.
23. Having considered the above, I am of the view that, taken together, very significant weight can be afforded to the public benefits of the proposed development, which would outweigh the significant harm to the character and appearance of the immediate area.
24. Reference has been made to various social and economic benefits, but these have not been taken into account in considering the matters of siting and appearance.

Other Matters

25. I am aware that the Council received many representations against the proposal from local residents, including a petition. Concerns have been raised about potential effects on health. There is a pre-school, a primary school and two nurseries, together with other community facilities in the wider area. 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.

26. Concerns have been raised that the installation of the mast and its associated cabinets may adversely affect property values. However, that is not a matter which is before me.
27. My attention has been drawn to a recent appeal decision¹. However, the appeal site in that case is some distance from the proposal site and does not inform its immediate context and so I place limited weight upon it. I have, in any case, determined this appeal on its own merits.

Conditions

28. The Order 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

29. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

I A Dyer

INSPECTOR

¹ PINS Ref: APP/N1540/W/22/3299307