



Appeal Decision

Site visit made on 31 May 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2023

Appeal Ref: APP/Q1445/W/22/3294973

Eastern Road, Kemptown, Brighton, BN2 1LF

- 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 & Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by CK Hutchinson Networks (UK) against the decision of Brighton & Hove City Council.
 - The application Ref BH2021/02984, dated 7 August 2021, was refused by notice dated 6 October 2021.
 - The development proposed is described on the application form as: 'Proposed 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. 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.
3. Part 16 was amended on 04 April 2022, which was after the appeal was submitted but before the deadline for the appellant's final representations. As such, I am satisfied that the appeal process has provided suitable opportunity for the main parties to make representations on the amendments.

Planning Policy

4. The principle of development is established by the GPDO. The provisions of Schedule 2, Part 16, Class A do not require regard to be given to the development plan. The Council did not refer to any development plan policies within its reasons for refusal but the decision notice outlines that City Plan¹ Policy SS1 is relevant. I have therefore had regard to it and the National Planning Policy Framework (2021) (the Framework) insofar they are relevant to matters of siting and appearance.

¹ Brighton & Hove City Plan Part One – March 2016

Main Issue

5. The main issue is the effect of the siting and appearance of the proposed development 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

6. The appeal site is located on the corner of Eastern Road and Tillstone Street and comprises a grass verge and part of the pedestrian footway. The footway is particularly wide in this location such that it would easily accommodate the proposed development without resulting in obstruction to pedestrian movement. The site is located within an area primarily consisting of residential development with a small number of commercial uses also prevalent.
7. There is variation in the character of the surrounding buildings, with a range of architectural styles and scales of development present. Nonetheless the northern side of Eastern Road (where the site is located) comprises far less prominent development than the area to the south of the highway. The carriageway of Eastern Road comprises of four lanes with relatively wide footways either side. As a result, the appeal site and immediately surrounding area have a fairly open character (in contrast to the character of the multi-storey buildings to the south of the highway), which is unusual within a densely developed urban area.
8. There are trees on the southern side of Eastern Road but these are planted below street level and set well away from the appeal site. As such, they only provide visual screening when the appeal site is viewed from the south. However, the most open views of the site are from the east, west and north. The street lights on Eastern Road are typically located within the middle of the carriageway. As such, they do not form a prominent characteristic of the footways. Whilst I note that there are taller buildings to the south, east and west, these are set back sufficiently from the appeal site that they do not provide a significant amount of visual screening.
9. The appeal site is also directly adjacent to the Queens Park Conservation Area (the CA). In terms of the GPDO requirements, a condition set out under Paragraph A.2(c) requires that - where a development is visible from Article 2(3) land (such as conservation areas) - the visual impact of the development on the site is minimised so far as practicable, taking into account the nature and purposes of the site. In assessing whether this condition has been met the policies contained within the Framework are relevant.
10. The CA begins directly to the north of the appeal site and predominantly encompasses areas comprising two storey residential development (of traditional design) and a large park known as Queen's Park. Based on the evidence before me and the observations made during my site visit, the CA primarily derives its significance from the distinctive relationship between residential buildings and the park. The area of the CA adjacent to the appeal site is part of a gradual transition to the larger scale development to the southern side of Eastern Road.
11. The proposed monopole would be a very prominent feature of the street scene, clearly visible from within the CA. This is because the CA is in extremely close

proximity to the appeal site and there would be no significant visual screening between the two. Whilst the cabinets at ground level would have no significant impact, the 15 metre monopole (even taking into account its slimline design) would result in a sudden increase in the scale of development at an important juncture between the CA and the surrounding area. This would be completely at odds with the gradual transition between Queen's Park and the much more prominent development on the opposite side of Eastern Road. Indeed, there would be resultant harm to the significance of the CA and in particular the relationship between the open space and the nearby residential development on Tillstone Street. This would be the case regardless of whether the colour of the monopole was altered.

12. In determining and weighing the level of harm it is appropriate to consider the policies contained within the Framework. Within the context of the Framework there would be 'less than substantial harm' to the CA. Framework Paragraph 202 explains that where a development proposal would lead to less than substantial harm to a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
13. The Council had initially refused the planning application partly on the basis that it considered the appellant had not demonstrated, through a robust site selection analysis (including the assessment of other potential buildings) that there are no alternative sites for the proposal. However, the Council has reviewed the additional information submitted as part of the appellant's statement of case and has confirmed that it no longer wishes to defend this reason for refusal. As such, the evidence indicates that there is common ground that there are no suitable alternative sites available.
14. However, even accepting that there are no suitable alternative sites, in this case it is necessary to come to a conclusion as to whether the public benefits of the proposal would outweigh the identified harm. This is because the proposal involves development which would be visible from and harmful to the CA.
15. The benefits of the proposed development are relatively extensive. The proposal would include an improvement to the existing mobile network and provision of 5g coverage to a densely populated area. The provision of continuous and improved coverage would provide social and economic benefits to local residents, businesses (and other organisations) as well as transient users of the network. The benefits are not just confined to the geographical area encompassed by the coverage given that the proposal is part of a much wider network of telecommunications infrastructure. The need for continuous coverage and connectivity across the wider UK network would be supported through this proposal. Framework Paragraph 114 specifically emphasises that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. As such, there are public benefits which can be afforded significant weight.
16. Nonetheless, the Framework identifies that 'great weight' should be given to the conservation of heritage assets. In this case, the harm would be less than substantial. It would nonetheless have a significantly damaging impact, particularly given the high degree of harm caused to the gradual transition between Queen's Park and the far more prominent development to the south of Eastern Road. These are characteristics which directly relate to the significance of the heritage asset. Furthermore, the harm would be clearly apparent from

within the CA, particularly from Tillstone Street. I therefore afford great weight to the harm which would be caused by the proposal. As such, even though the public benefits of the proposal can be afforded significant weight (and it is common ground that there are no suitable alternative sites), they would not outweigh the less than substantial harm to the character and appearance of the Conservation Area.

Conclusion

17. For the reasons given above, the appeal is dismissed.

Luke Simpson

INSPECTOR