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# 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: 26 June 2023**

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**Appeal Ref: APP/Q1445/W/22/3306129**

**Bexhill Road street works, Bexhill Road, Brighton BN2 6NT**

- 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 Hutchison Networks (UK) Ltd against the decision of Brighton & Hove City Council.
  - The application Ref BH2022/01783, dated 26 May 2022, was refused by notice dated 22 July 2022.
  - The development proposed is described on the application form as: 'Proposed 5G telecoms installation: H3G Phase 8 high street pole c/w wrap-around cabinet and; and 3 further additional equipment cabinets.'
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## Decision

1. The appeal is dismissed.

## Preliminary Matter

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.

## Planning Policy

3. 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 Plan<sup>1</sup> Policy SS1 is relevant. I have therefore had regard to it and the National Planning Policy Framework (2021) (the Framework) insofar as they are relevant to matters of siting and appearance.

## Main Issue

4. The main issue is the effect of the siting and appearance of the proposed development on the character and appearance of the area and highway safety. In addition, if any harm would occur, whether this would be outweighed by the need for the installation to be sited as proposed, taking into account any suitable alternatives.

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<sup>1</sup> Brighton & Hove City Plan Part One – March 2016

## **Reasons**

### *Character and Appearance*

5. The appeal site comprises an existing footway adjacent to Bexhill Road. This part of Bexhill Road forms part of the brow of a hill which extends upwards from the south to the South Downs National Park (SDNP) approximately 100 metres to the north. The area to the south of the appeal site has fairly urban character, comprising primarily of various two storey employment units. Albeit, these units have a modest scale when viewed from the north, given the slope of the hill. To the north of the appeal site the land predominantly comprises open fields which separate the appeal site from the SDNP. The character of this area is open and rural.
6. The proposal includes a 15 metre monopole which would be located on the existing footway. Whilst there are various trees and street lights interspersed along Bexhill Road, these are far more diminutive than the proposed mast. Furthermore, they are sparsely located such that they would not have any significant visual screening effect. Given the location of the appeal site on the upper extent of the hill, the mast would be obtrusively prominent, particularly when viewed from the south, east or west. It would not be sympathetic to the more modest scale of development to the south and it certainly wouldn't be in keeping with the rural open character of the open fields to the north.
7. The visual impact of the proposal would be compounded by its close proximity to the SDNP. Indeed, the proposal would be visible in conjunction with the SDNP from various vantage points, including at the junction of Bexhill Road and Falmer Road. The dominant height of the mast in such a prominent location would harm the gradual transition between the picturesque, open and rural character of the SDNP to the north and the more urban character to the south. As such, it would fail to conserve the landscape and scenic beauty of the SDNP and would not be in keeping with the character of the area. The proposed cabinets would not result in any additional harm over and above that caused by the mast, given their far less prominent scale.

### *Highway Safety*

8. The Council's decision notice asserts that the proposal would obstruct the footway, resulting in a less convenient route, particularly for those with mobility and visual impairments. Despite this assertion, there is no substantive evidence to indicate that this would result in an adverse impact on highway safety.
9. The proposal includes an extension to the footway. Whilst the footway is currently straight it is not uncommon for footways to occasionally deviate. This would result in an inconvenience to pedestrians but nothing more. In summary, there is insufficient evidence to indicate that there would be any adverse impact on highway safety as a result of the proposal.

### *Alternatives*

10. Framework Paragraph 114 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. As such, the overall need for such development is

established and this is recognised through the grant of permission for this type of development under the GPDO.

11. Nonetheless, Framework Paragraph 115 requires that the number of masts and the sites for such are kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion. It states that the use of existing masts, buildings and other structures is encouraged. Additionally, Framework Paragraph 117 advises that applications for electronic communications development (including applications for prior approval under the GPDO) should be supported by the necessary evidence to justify the proposed development. For a new mast or base station, this should include evidence that the applicant has explored the possibility of erecting antennas on existing buildings, masts, or other structures.
12. The evidence before me indicates that the appellant has taken a sequential approach to site selection. The appellant suggests that the only viable option is to erect a new ground-based mast. However, very little rationale has been provided for discounting the use of existing buildings. The appellant has provided some evidence of sites which have been discounted, however these are all ground-based sites. Furthermore, the evidence on the rationale for discounting these ground-based sites is inadequate with 'visibility splay concerns' and 'unsuitable pavements' given as reasons in various cases. These justifications are vague at best and should be elaborated on. For example, it is by no means clear 'why' the pavements are unsuitable or 'what' the visibility concerns are (and whether they could be overcome).
13. In summary, whilst the appellant has provided some details of alternative sites, the analysis is insufficient to properly discount these sites as more suitable locations. This is particularly important, given the significant harm that the proposed development would cause to the character and appearance of the surrounding area. Furthermore, insufficient evidence has been provided to demonstrate that the use of existing buildings and structures has been sufficiently explored.
14. For these reasons, whilst the overall need for the development is established, it has not been adequately demonstrated that there is a need for the proposed development to be sited in this particular location, taking into account other potentially suitable alternative sites. As such, the significant harm which the proposed development would cause to the character and appearance of the area is not outweighed.

### **Other Matters**

15. I note the appellant's reference to the written communication from the Department for Digital, Culture, Media and Sport<sup>2</sup>. Whilst this re-affirms Government emphasis on the importance of the telecommunications network I have already outlined that the need for the proposal is established and reflected through the grant of permission for this type of development in the GPDO. As such, this consideration does not alter my overall findings.

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<sup>2</sup> Appendix 2 Appellant Statement of Case

**Conclusion**

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

*Luke Simpson*

INSPECTOR