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# Appeal Decision

Site visit made on 4 May 2023

**by J Symmons BSc (Hons) CEng MICE**

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

**Decision date: 18 July 2023**

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**Appeal Ref: APP/P5870/W/22/3310972**

**Belmont Rise, Sutton, London SM2 6DY**

- 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 Sutton.
  - The application Ref DM2022/01553, dated 21 August 2022, was refused by notice dated 18 October 2022.
  - The development proposed is a telecommunications installation: proposed 15.0m Phase 8 Monopole C/W wrapround 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. The Council has referred to a number of development plan policies in its decision notice. However, the provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. Nevertheless, in determining this appeal I have had regard to Policies 23, 28 and 36 of the Sutton Local Plan 2016-2031 (2018) (the Local Plan), Policy D8 of the London Plan 2021 (London Plan) and the National Planning Policy Framework 2021 (the Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.
4. The Council has also referred to Policy T2 of the London Plan in its decision notice. However, this relates to healthy streets and as such is not clearly relevant to the issues concerning this appeal.
5. The appellant states that the cabinets should not form part of the planning application process or this appeal as they are Permitted Development (without Prior Approval). While this is noted, this is not for me to determine as part of the appeal. I have assessed the proposal based on the description of the development and the plans submitted.

6. The appellant has submitted an Arboricultural Impact Assessment (Ref 4774/DR.22 Issue 1) dated January 2023 (AIA) as part of the appeal. This provides additional information on the proposal's effect on the nearby trees and does not alter the development proposed. As part of the appeal process the parties have had the opportunity to provide comments on this additional information. As such, and having regard to the Wheatcroft principles, I am satisfied that there would be no risk of prejudice if I take this information into account. I have therefore determined the appeal on this basis.

## **Main Issues**

7. The main issues in this appeal are the effect of the siting and appearance of the proposal on the character and appearance of the area, existing trees and highway safety and, if any harm or risk would occur, whether this would be outweighed by the need for the installation to be sited as proposed taking into account any suitable alternatives.

## **Reasons**

### *Character and appearance*

8. Belmont Rise is a busy road that passes through a predominantly residential area. With its verges, footpath, planting and relatively regular spaced semi-mature/mature trees, the road has a largely green, open and spacious character. The appeal site is located in the western verge of this road, near to the junction with Northdown Road, a signalised pedestrian crossing and a driveway serving 8 Northdown Road (No 8). It sits adjacent to the garden boundary fence of No 8 and very close to a number of semi-mature/mature trees. A local school is also nearby. The road has some existing street furniture such as traffic signals, lighting columns and signage.
9. The proposal would consist of a 15 metre (m) high telecommunications monopole with associated cabinets located in a single line and an Armco barrier.
10. Together the monopole and associated cabinets would be a significant group of structures within the area and their larger size, massing, and height in comparison to the existing street furniture, along with their proximity to the road, would make them much more conspicuous in the street scene from both the road and footpath. Even the surrounding context of a busy urban road corridor would not reduce the proposal's visual intrusion.
11. The surrounding housing orientation and partial screening provided by the trees and boundary fencing would limit the proposal's impact on outlook from the surrounding residential properties, including No 8 and the nearby school. However, this would not reduce the visual intrusion caused to views from the road and footpath. Furthermore, even though the proposal seeks to minimise the mass and scale of the monopole and associated cabinets through the use of the extensive backdrop of similar height tree canopies; slimline monopole design; positioning against existing boundary fencing and from adopting a single line layout design, these would not sufficiently soften the visual intrusion caused. Changing the colour of the monopole and its cabinets would also not mitigate the fundamental massing and visual discord created within the street scene by the cabinets and the Armco barrier.

12. For these reasons, the siting and appearance of the proposal would harm the largely green, open and spacious street scene and it would appear as an incongruous and prominent feature which would harm the character and appearance of the area. Insofar as it is a material consideration, this would be contrary to Policies 23 and 28 of the Local Plan. These policies seek, amongst other matters, to ensure that development does not adversely affect the character and appearance of the area.
13. The proposal would also be contrary to paragraph 115 of the Framework which seeks new equipment to be sympathetically designed and camouflaged.

#### *Existing Trees*

14. Trees make a positive contribution to the character and appearance of the area and the proposal would be located very close to one semi-mature and two mature trees. The AIA identifies that of these, the proposal would be partly located within the estimated Root Protection Area (RPA) of the two mature trees which are noted as being of high quality and value in the landscape. However, the AIA concludes that as the RPA encroachments would be small (1% and 5% of the identified total RPA), based on studies regarding tree tolerance to root loss, this would not be an unacceptable loss or harm.
15. Although the AIA does refer to the 'proposal' in its assessment, within the 'development implications' section only cabinet base impacts are confirmed as 'not being considered wholly detrimental to the retention of the tree'. The report makes no reference to the monopole foundation, or any associated services installation. Details of the proposed foundations and service routing are not provided. I therefore cannot be sure that any impacts on the trees from these have been considered by the report.
16. To demonstrate the proposal would be feasible, the report includes an outline tree protection method statement for the implementation stage. Notwithstanding that it provides for monitoring and agreement of the works with an Arboricultural Consultant, the details are generic and little certainty is provided that the measures presented would prevent tree roots within the foundation areas being significantly harmed. The report also proposes, subject to detailed discussions with the Council, that certain details in the method statement could be addressed by means of a planning condition and in accordance with the guidance contained in BS 5837 (2012) - Trees In Relation to Design, Demolition and Construction Recommendations. However, no evidence that the AIA has been discussed and agreed with the Council has been provided and there is no authority in this type of case to apply any conditions beyond those as set out in the relevant part of the GPDO.
17. Consequently, the AIA is not sufficient to persuade me that the siting of the proposal would not significantly harm the trees and as a result have a significant detrimental effect on the area's character and appearance. Insofar as it is a material consideration, this would be contrary to Policy 28 of the Local Plan which, amongst other things, aims for new development to respond to natural features and retain trees.

#### *Highway safety*

18. Belmont Rise is part of the Transport for London (TfL) Road Network. As part of its maintenance responsibility for this road, TfL undertakes cutting of the grass

verges. The proposal would reduce the verge width to approximately 1.5m and the Council advise that TfL consider this would be too narrow and would necessitate grass cutting operatives having to use the carriageway which would be unsafe. However, no substantive evidence has been presented to confirm this. As I observed during my visit, there are already several existing features, such as trees and other soft landscaping and street furniture along the road that create relatively short and narrow sections of verge that are close to the edge of the carriageway and require grass cutting. I am therefore not convinced that the proposal's relatively short section of reduced verge would be significantly different to these existing areas. As no evidence to the contrary has been provided, I do not see that the proposal would cause an unacceptable increase in risk to operative safety in carrying out maintenance to the verge.

19. Notwithstanding the above, the Council also advise that TfL considered that maintenance of the proposed monopole and associated cabinets would result in the need to use the carriageway. In these circumstances, TfL advised that, due to the pedestrian island, the existing two-way traffic would have to be diverted and without appropriate traffic management this would increase the risk of vehicle collisions. Details regarding any proposed traffic management have not been provided. I consider that it is likely that maintenance, such as works to the proposed monopole, would require the use of the carriageway. While this would be limited and temporary, without evidence to the contrary I cannot be sure that the proposal would not increase the risk to highway safety.
20. I conclude on this issue that the siting of the proposal would likely pose a risk to highway safety. Insofar as it is a material consideration, this would be contrary to Policy 36 of the Local Plan. This policy seeks, amongst other matters, to ensure that development manages and mitigates transport impacts.
21. The proposal would also be contrary to paragraph 111 of the Framework which states that development should be prevented or refused if it would have an unacceptable impact on highway safety.
22. The Council has also referred to Policy D8 of the London Plan in its decision notice which covers public realm. Little evidence has been provided by the Council to show that this is relevant to the proposal's effect on highway safety and the issues concerning this appeal.

#### *Need for the installation*

23. It is evident from the maps supplied that there is a need for improved coverage in the area. The need for the installation in this location weighs in favour of the appeal. Moreover, there is no basis to question that the equipment is necessary to achieve the required standard of network coverage and that the area is constrained by its predominantly and densely packed residential nature. It is also acknowledged that the proposal could facilitate future mast sharing and thereby reduce the potential need to avoid the installation of other masts elsewhere in the area.
24. The appellant has advised that there is no scope to pull the proposal outside of the identified coverage area. They also state that use and upgrading of their existing base stations, sharing of other telecommunication provider's infrastructure, co-location or site sharing alongside existing telecommunications development and the use of existing buildings have been considered and discounted. However, little evidence has been provided to

substantiate this. Furthermore, the appellant confirms that five alternative sites within the identified coverage area have been considered and discounted. The reasons for discounting these sites includes the presence of underground services, proximity to housing and the mast being highly prominent. However, the reasons are brief and unsupported by any further evidence to clearly substantiate why they are inappropriate and not viable.

25. It is acknowledged that the Framework sets out that high quality and reliable communications infrastructure is essential for economic growth and social well-being. I also note that policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections. However, while there would be various social and economic benefits arising from the proposal, in this case the need for the installation does not outweigh the harm I have identified.

### **Other Matters**

26. It is appreciated that the appeal site is not within an area with a statutory designation for particular protection for its character. However, this does not mitigate the proposal's harm found in regard to character and appearance of the area, existing trees and highway safety.
27. Concerns have been raised about potential effects on health, particularly the proposed monopole's proximity to residential properties. However, a declaration of conformity confirming that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP) has been provided. 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 in this respect.
28. While it is noted that a pre-application enquiry was submitted for the proposal and no response was received from the Council, this process would not predetermine the outcome of a subsequent application. This appeal has considered the proposal on its planning merits and found harm for the reasons set out above.

### **Conclusion**

29. I find that the siting and appearance of the proposed development would harm the character and appearance of the area, including existing trees, and be likely to pose a risk to highway safety. This harm would not be outweighed by the need for the installation to be sited as proposed and its social and economic benefits.
30. For the reasons given above, I conclude that the appeal should be dismissed.

*J Symmons*

INSPECTOR