



Appeal Decision

Site visit made on 15 June 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2023

Appeal Ref: APP/M3835/W/23/3315490

Lynhurst Road, Broadwater, Worthing BN11 2DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a 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) Limited against the decision of Worthing Borough Council.
 - The application Ref AWDM/1478/22, dated 31 August 2022, was refused by notice dated 26 October 2022.
 - The development proposed is 15.0m Phase 9 slimline Monopole 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 the siting and appearance of 15.0m Phase 9 slimline Monopole and associated ancillary works at land at Lynhurst Road, Broadwater, Worthing BN11 2DW in accordance with the terms of the application Ref AWDM/1478/22 dated 31 August 2022, and the plans submitted with it including BN0801 issue A.

Preliminary Matters

2. The description of development in the banner heading above is taken from the application form, albeit with superfluous information not referring to an act of development removed.
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 and informed the main issue.
4. The Worthing Borough Council Local Plan 2020 – 2036 (WLP) was adopted on 28 March 2023. The parties have had the opportunity to comment on the updated policy position and these comments have been taken into account, where received. In any event, the principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO 2015 do not require regard be had to the development plan. I have done so only insofar as the policies are a material consideration relevant to matters of siting and appearance.

Main Issue

5. The main issue is the effect of the siting and appearance of the proposed installation on the character and appearance of the area.

Reasons

6. The proposed development would be located on the wide pavement directly in front of a public car park on the south side of Lyndhurst Road. The pavement either side of the road contains a range of street furniture, including lighting columns, street signs, traffic lights and bus shelters. The car park of Worthing Hospital is opposite with the hospital building further to the north. The street within the vicinity of the appeal site is lined with established trees either side.
7. The proposed 15m telecommunications mast with ancillary equipment would be of functional appearance, typical of telecommunications equipment seen in urban and suburban areas generally. Although the proposal would be greater in height than the existing lighting columns, the development would be largely screened in views along Lyndhurst Road. Even in winter, the trees would offer some screening. However, the development would be readily visible from positions near to the site, including the bus stops on Lyndhurst Road and from the car parks either side, between the existing trees.
8. As it would be seen amongst many vertical features, including the lighting columns and established trees, the monopole would not stand out as an isolated or unduly exposed structure. This would be the case even though it would be close to car parks and the upper part of the monopole would protrude above the trees either side. It would not appear alien or unexpected and would be seen against the vegetation, which provides a visual break to the car parks and a level of enclosure to the street.
9. Although the proposed monopole would be a tall installation and the antennas at the top would add some bulk, it would overall appear as a narrow, slimline feature. The areas of car park would continue to contribute to provide visual relief to its built-up surroundings, notwithstanding the introduction of the proposed development, and would remain largely open features either side of the road.
10. The proposed number of cabinets would result in a row of them along the pavement's edge, but they are typical of the form of structures seen on roadsides. As such they would not appear as incongruous features within the street and would not lead to undue visual clutter. Thus the proposal, when considered as a whole, would avoid causing material harm to the character and appearance of the area.
11. My attention has been drawn to the nearby 'Farncombe Road' Conservation Area and the potential impact the proposal might have on it. However, the appeal site does not lie within the conservation area, with it ending approximately 100 metres to the east of the appeal site. As such it would be erroneous to undertake the statutory duties under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended.
12. In any case, I have found that the proposal would not adversely compromise the character or appearance of the street scene. For similar reasons, and given the context of the appeal site, I do not find that it would cause harm to the setting of the conservation area.

13. Consequently, the proposal would not appear overly prominent or visually intrusive, and the siting and appearance of the proposed installation would have an acceptable effect upon the character and appearance of the area. Insofar as it is a material consideration, the proposal would comply with Policies DM5 and DM14 of the WLP, which amongst other provisions, seek to ensure development is high quality and that telecommunication infrastructure minimises its impact on the visual amenity, character or appearance of the surrounding area. The appeal scheme also complies with the National Planning Policy Framework (the Framework) which seeks proposals for telecommunications to have no significant adverse effect on the external appearance of the space in which they are located.

Other Matters

14. The Framework is clear that Local Planning Authorities should not question the need for an electronic communications system. I am satisfied that the plans and details submitted are sufficiently accurate to enable an assessment of the impact of the proposal to be made.
15. I note the concerns about the lack of consultation with the Council prior to the application for prior approval being submitted. However, I note the Delegated Officer Report sets out the consultation responses received by the Council following receipt of the application. I have taken into account the views expressed as part of that process, along with those submitted in response to the appeal. I consider that sufficient consultation has been undertaken.
16. I acknowledge that concerns have been raised about potential effects on health, particularly the proposed monopole's proximity to the hospital, children's nursery and care home, including people with existing health issues. Third parties have pointed to a number of studies and a legal challenge. 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. I do not consider that the evidence before me indicates that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified.
17. Within their evidence, the appellant states that the site maintains a reasonable distance from 'sensitive receptors'. This term is not defined, although I note that the site has been chosen to be the best possible location to provide 5G coverage at the furthest distance from sensitive residential receptors. The effect on health is not in and of itself a valid material consideration, and I have little substantive evidence to demonstrate the proposal by virtue of its siting or appearance would be harmful to sensitive receptors.
18. The Equalities Act 2010 sets out the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This involves having due regard, in particular, to the need to eliminate discrimination, advance equality of opportunity and foster good relations between people who share a relevant protected characteristic and those who do not.
19. The principle of development is established by Part 16 of the GPDO. Potential impact on health is addressed above and, whilst the parties dispute this, I note

that the information submitted by the appellants sets out that consultation was carried out with the nearby children's nursery and that the hospital has been consulted by the Council. Therefore, I am satisfied that allowing prior approval would not amount to discrimination for any protected group under the Equalities Act.

20. Concerns have also been raised regarding the proximity of the installation to residential housing. Given the distance of the proposed installation from the closest residential properties and the surrounding context, I am satisfied that no undue loss of light, privacy or outlook would occur. Nor would the mast be overbearing when seen from those properties.
21. The Framework seeks to minimise the number of such sites and encourages the use of existing masts and buildings for new equipment. However, in this case there is evidence that such options have been explored and discounted for specific reasons. Also, as I have identified that the siting and appearance of the proposed development would be acceptable, it is not necessary to consider the detailed merits of any potential alternative site.
22. The impact of the proposed development upon the natural environment, including trees and pollinators, is not substantiated. Concerns raised relating to the proposal's carbon footprint and effect on property values fall beyond the scope of the prior approval process to which this appeal relates.
23. Where the equipment would be sited, I observed seemingly stable ground conditions. Moreover, any possible threat to the stability of the proposed development has not been clearly substantiated. I have also had regard to other matters raised by local residents, such as the potential for the installation of CCTV and the proximity of the proposal to Beach House Park, but find none that lead me to a different overall conclusion.
24. I acknowledge the appeal decision referred to by the Council. I have not been provided with the full details of the case, including the design and precise location and I am therefore unable to fully assess any direct comparability to the current appeal proposal. However, from the details before me, it appears that the merits and circumstances of this appeal is materially different to the appeal proposal before me, including that the site was in a different location. In any case, every appeal must be considered on its own merits, as I have done.

Conditions

25. Any planning permission granted for the development under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2), which specify that the development must, except to the extent that the Local Planning Authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin not later than the expiration of 5 years beginning with the date on which the Local Planning Authority received the application, and must 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

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

J White

INSPECTOR