



Appeal Decision

Site visit made on 27 July 2023

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 August 2023

Appeal Ref: APP/T2215/W/22/3309680

Outside Dartford West Health Centre, West Hill, Dartford, Kent.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by CK Hutchison Networks (UK) Ltd against the decision of Dartford Borough Council.
 - The application Ref DA/22/00938/TDA, dated 3 August 2022, was refused by notice dated 27 September 2022.
 - The development proposed is 5G telecoms installation: H3G 15m street pole with additional equipment cabinets.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site location given on supporting information and plans submitted with the application and subsequent appeal submissions contains a number of inaccuracies. The site is located on West Hill, rather than the nearby street of Tower Road as stated by the appellant. The reference to Brooklands Temple Hill would also not appear to relate to this site. On that basis, I have used the site location on the Council's decision notice in the heading above as this accurately reflects the location of the site.
3. The GPDO under Schedule 2, Part 16, Class A requires the local planning authority to assess the proposed development solely on the basis of its siting and appearance. My determination of this appeal has been made on the same basis.
4. Part 16 of the GPDO establishes that the proposal is permitted development and therefore it is accepted in principle by virtue of the legislation. Furthermore, there is no requirement to have regard to the development plan as there would be for any development requiring planning permission. Nevertheless, I have had regard to the policies of the development plan referred to by the Council insofar as they are material considerations relating to issues of siting and appearance. Similarly, the National Planning Policy Framework (the Framework) is also a material consideration and this includes a section on supporting high quality communications as well as other matters relevant to siting and appearance.

Main Issues

5. The main issues are:

- The effect of the siting and appearance of the proposal on the character and appearance of the area;
- The consideration of alternative sites; and
- Whether an appropriate International Commission on Non-Ionizing Radiation Protection (ICNIRP) certificate has been provided.

Reasons

Character and Appearance

6. The appeal proposal would be located at the back edge of the footpath adjacent to the busy through road of West Hill. It would be set against the relatively utilitarian and bulky structure of the adjacent Health Centre which includes a number of mature trees and smaller bushes along the boundary. Despite the urban character of the area, the busy well-trafficked nature of the adjacent road, and the understated nature of the health centre, this section of the streetscape has a relatively pleasant verdant character.
7. Due to its location close to the shallow brow of a hill, the proposal would be highly prominent in views along the streetscape from the east and west. It would also be prominent in views from residential buildings opposite the site. Some degree of screening would be provided by nearby trees in views along the streetscape, but the mast would project above these and would still be apparent as a bulky and obtrusive feature. The proposed cabinets would also add clutter onto the footpath, adding to the visual harm arising from the mast.
8. There are other features in the vicinity of the mast within the pavement, including a bus stop, street light, telephone box and signage. But these are not of a form or scale which would mitigate for the height, bulk and siting of the proposal.
9. The appeal site is not within a Conservation Area or subject to any environmental designations. But this does not lead me to a different conclusion in respect of the conspicuous appearance of the proposal in this prominent location.
10. I am mindful that the appellant has sought to keep the height of the mast to the minimum required, and that telecommunications masts and equipment cabinets are not unusual in urban areas such as this. But even within that context the proposal would be an obtrusive feature in this prominent location.
11. I conclude that, due to its siting and appearance, the proposal would lead to significant harm to the character and appearance of the area. Insofar as they are relevant to the consideration of siting and appearance, the proposal would be contrary to the design considerations of Policy DP2 of the Dartford Development Policies Plan 2017 (the DDPP) and Policy M1 of the Emerging Local Plan¹ (ELP), although given the stage of preparation of the ELP I give this very limited weight. The proposal would also be contrary to the Framework in respect of the sympathetic design of new electronic communications sites.

¹ Dartford Local Plan - Pre-Submission (Publication) Document February 2021

Consideration of Alternative Sites

12. Paragraph 117 of the Framework sets out that for a new mast or base station, the applicant should provide evidence that they have explored the possibility of erecting antennas on an existing building, mast or other structure. Options for mast and site sharing or using existing buildings and structures are sequentially preferable to a ground based installation. The appellant specifies that a free-standing telecommunications pole with associated ground-based cabinets was quickly considered to be the most appropriate solution.
13. However, even given the limited size of a 5G cell and the constraints of this area, there are a number of buildings in the vicinity of the site which would appear to be suitable for the location of telecommunications apparatus and which would not be as visually intrusive as the appeal proposal. Indeed, one of these buildings (West Hill House) has antenna located on the roof. The appellant has not set out why sequentially preferable locations were discounted, including existing buildings or structures.
14. On the basis of what I have seen and read, the appellant's sequential approach and site selection exercise is not suitably robust. Insofar as it is relevant to this main issue in respect of siting and appearance, the proposal would conflict with the Framework with regards to the consideration of alternative sites.
15. I find no conflict with Policy DP2 of the DDPP or Policy M1 of the ELP as these relate to matters of design rather than site selection, however this does not negate my conclusions on this main issue or in respect of the Framework.

ICNIRP Certificate

16. Paragraph 117 of the Framework sets out that applications for electronic communications development (including applications for prior approval under the GPDO) should be supported by a statement that self-certifies that the cumulative exposure, when operational, will not exceed the ICNIRP guidelines.
17. Based on the evidence before me, an ICNIRP certificate was not submitted with the original application.
18. Subsequently, the appellant has submitted an ICNIRP certificate with the appeal. However, this certificate would appear to be incomplete, as selection boxes at the top of the form have not been completed, and the form does not represent best practice as the site operator's company/group name and address are missing. Also, as explained in the Preliminary Matters section previously, an inaccurate site address has been used on the certificate. When read as a whole, the ICNIRP certificate submitted by the appellant is not fit for purpose.
19. The form has been completed by a 'Trainee Design Technician', and the Council has questioned whether that person is suitably qualified or experienced. However, as long as the form is submitted by an Electronic Communications Code Operator and a recognised Company acting on their behalf, I consider that this would give sufficient confidence for planning purposes that the apparatus would meet ICNIRP guidelines, for example that there is an audit trail to that effect. Within that context, the status of the signatory of the submitted form does not render it invalid. However, this matter does not negate my previous conclusions on the adequacy of the certificate as submitted.

20. Notwithstanding my conclusions in respect of the signatory of the form, I conclude that an appropriate ICNIRP certificate has not been provided for the other reasons stated. Insofar as they are relevant to the consideration of siting, the proposal would therefore be contrary to the public health and safety considerations of Policy DP5 of the DDPP and Policy M2 of the ELP, although for the reasons stated previously I give the policies of the ELP very limited weight. The proposal would also be contrary to the Framework in respect of the submission of necessary evidence to show that the ICNIRP guidelines will be met.

Other Matters

21. I am mindful of the benefits of providing and enhancing electronic communication infrastructure. The appellant emphasises the benefits of improved network coverage and capacity, most notably in relation to 5G. The Framework advises that advanced, high-quality and reliable communication infrastructure is essential for economic growth and social well-being and that the expansion of electronic communication networks, including next generation mobile technology (such as 5G), should be supported. I have also had regard to the communication from the Department for Digital, Culture, Media and Sport provided by the appellant.
22. However, as set out in respect of the consideration of alternative sites, it has not been demonstrated that the benefits of the proposal are not possible on sites in the vicinity of the appeal site which are more suitable in respect of character and appearance. On that basis, although the benefits weigh in the proposal's favour, they carry limited weight in respect of the proposal on this particular site.

Conclusion

23. I have found that the siting and appearance of the proposal would lead to significant harm to the character and appearance of the area. Whilst I have had regard to the need for the installation to be sited in this area, the evidence in respect of the consideration of suitable alternative locations which could address that need is not robust. Therefore, given the significant harm I have identified in respect of character and appearance, I am not persuaded that this is outweighed by a demonstrable need for the appeal proposal on this particular site. The submitted ICNIRP certificate is also flawed.
24. I therefore conclude that the appeal should be dismissed.

David Cross

INSPECTOR