



Appeal Decision

Site visit made on 21 June 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2023

Appeal Ref: APP/N1920/W/22/3310129

Allum Lane, Borehamwood WD6 3PL

- 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 Hertsmere Borough Council.
- The application Ref 22/1327/PD560, dated 24 July 2022, was refused by notice dated 16 September 2022.
- The development proposed is a telecommunications installation: Proposed 16.0m Phase 8 Monopole C/W wraparound Cabinet at the base and associated ancillary works.

Decision

1. The appeal is dismissed.

Procedural 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 based on 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 several development plan policies and the National Planning Policy Framework (the Framework) on its decision notice. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard be had to the development plan. Nevertheless, I have had regard to the development plan and the Framework only insofar as they are material considerations relevant to matters of siting and appearance.
4. On the decision notice, reference is also made to the National Planning Practice Guidance. In respect of telecommunications, this relates more generally to whether or not development falls under permitted development rights or requires prior approval. As such, it is not determinative in the specifics of the appeal.
5. Whilst the associated ancillary equipment cabinets may be within the size limits allowed under permitted development rights, they form part of the appeal scheme before me and would be unlikely to be constructed without the mast. Therefore, I have considered the effect of the appeal scheme as a whole.

Main Issues

6. The main issues are:

- the effect of the siting and appearance of the proposed installation on the character and appearance of the area;
- the effect of the siting on the outlook of occupiers of neighbouring properties; and
- if any harm would occur, whether this is outweighed by the need for the installation to be sited in the proposed location, taking into account the potential availability of alternative sites.

Reasons

Character and appearance

7. The appeal site forms part of a small area of grass alongside Allum Lane and is close to a bus layby with a shelter. Within the grassed area, existing landscape features are present, including several substantial mature trees and large bushes, which create a verdant feature in the predominately residential area. An existing monopole with associated cabinets is also positioned in the grassed area, close to the appeal site.
8. Comprising a monopole and associated cabinets, the proposed installation would be sited in a gap in the landscape features, positioned parallel to the adjacent to the highway. It would fill an otherwise undeveloped section of the grassed area and, given the small separation distances between the cabinets and mast base, would be a solid, incongruous feature against the verdant backdrop.
9. The proposed installation would be no higher than the existing trees and reference has been made to it being restricted to the minimum height necessary to provide suitable coverage, following a recently refused planning application¹ nearby. However, given its position in the break in vegetation and adjacent to the highway on a bend in the road, it would be prominent in views along Allum Lane in both directions. Moreover, the combined bulk of the cabinets would be a discordant feature in the street scene, adding to the overall visual clutter within and adjacent to the highway, and would have an overbearing effect on the road scape. Even if I were able to impose a condition on the granting of prior approval requiring the installation to be painted a specific colour, this would not alter the harmful impact of the appeal scheme.
10. Other street furniture, including the bus shelter, streetlights, crossing island and an illuminated sign indicating the number of spaces available in local car parks are also positioned close to the site. Aside from the existing mast, the proposed monopole would be significantly higher than these elements and wider than the streetlights. Irrespective of the use of a slimline pole, its position near existing street furniture with similar vertical lines and a backdrop of existing trees and bushes, it would not be fully screened by trees. Even if I were able to impose a condition on the granting of prior approval requiring new planting to be used to screen the proposed installation, this would take time to grow to a sufficient size.

¹ Council Ref: 21/0835/PD560 dated 4 June 2021

11. My attention has been drawn to the appellant's contention that the existing mast sets a precedent for telecommunications development in this location thereby indicating that the siting of the proposed installation is acceptable in principle. Notwithstanding that the cabinets associated with the existing mast are set back from the highway, screened by the existing landscape features and despite the mast being painted dark green, the existing pole is taller than the trees and therefore visible above the tree canopies. In such a context and in addition to the harmful impact of the proposed installation identified above, it would add to an already cluttered street scene, to the further detriment of the character and appearance of the area.
12. Even if I were to conclude that the proposed installation had been designed to comply with the Planning and Design Guide Supplementary Planning Document (SPD), as this document has not been adopted by the Council, any weight attributed to the appeal scheme's compliance with the SPD is limited.
13. Consequently, I conclude that the siting and appearance of the proposed installation would be harmful to the character and appearance of the area. Insofar as they are a material consideration, the proposed installation would be contrary to Policy SADM30 of the SADMPP² and Policy CS22 of the Core Strategy³. Amongst other provisions, these policies require development to make a positive contribution to the environment, taking advantage of opportunities to improve the character and quality of an area. It also conflicts with the Framework which seeks to ensure development adds to the overall quality of the area, not just for the short term but over the lifetime of the development.

Outlook

14. Although located in a predominately residential area, the nearest dwellings are set back from the appeal site behind the public highway and the existing landscape features within the grassed area on both sides of Allum Lane. Elements of the proposed installation would be visible from the windows of nearby properties. However, given the distance between the dwellings and the site, and the existing landscape features, even during the months when the trees have dropped their leaves, the proposed installation would not be a harmfully intrusive feature in these views.
15. Consequently, the siting of the proposed installation would not be harmful to the outlook of occupiers of neighbouring properties. Insofar as it is a material consideration, the proposed installation would comply with Policy SADM30 of the SADMPP which requires development to have a limited impact on the outlook of its neighbours. It also accords with the Framework where it promotes places with a high standard of amenity for existing and future users.

Availability of alternative sites

16. Paragraph 117 of the Framework advises that applications for electronic communications development should be supported by the necessary evidence to justify the proposed installation. This includes, in the case of a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure.

² Hertsmere Local Plan Site Allocations and Development Management Policies Plan

³ Hertsmere Local Plan Development Plan Document Core Strategy

17. I have no reason to dispute that new installations are required, given the constraints associated with 5G technology and that a 5G cell search area may be limited by several factors. However, the cell search area is not clearly defined in Figure 4 of the Site Specific Supplementary Information (SSSI) submitted with the application. No further evidence has been provided demonstrating how the alternative sites indicated were selected or assessed, beyond being discounted due to one or more reasons: insufficient pavement width, proximity to residential properties, tree canopies or underground services. Moreover, limited substantive evidence has been provided exploring the possibility of siting antennae on existing buildings or other structures which could reduce the impact of the installation on the surrounding area. Whilst no other sites have been identified by the Council, the Framework requires the applicant to demonstrate how the sequential approach has been applied.
18. Although an existing mast is positioned close to the appeal site and noting various restrictions exist preventing mast sharing, no specific evidence has been presented detailing why the existing mast could not be used to support the required upgrade, particularly given its height.
19. Acknowledging that the search area may be necessarily constrained due to the uses in the surrounding area, the location of existing installations and their current capacity, there may be limited scope to site the mast outside the search area. However, it remains that I am unable to conclude with certainty that the appeal site would be the only viable option for the proposed installation, even if it represents the appellant's optimum solution from a planning and radio coverage perspective.
20. Therefore, I am not satisfied that a robust review of the availability of alternative sites within the cell search area has been undertaken to demonstrate that the appeal site represents the only viable option. As such, the proposed installation would be contrary to the aims of Chapter 10 of the Framework, as set out above, which requires evidence to demonstrate that alternative sites have been explored.

Other Matters

21. The lack of comments from the Council during the pre-application process, even if robust pre-consultation was undertaken, and the absence of objections from highways and environmental health representations during the application determination period are not reasons to permit unacceptable development. The fact that the appeal site would not have an impact on groups with special mobility requirements is a neutral factor in my decision.
22. While the appellant's statement refers to Policy SADM30 of the SADMPP, the text extracted relates to heritage assets. Based on the information before me, I have no substantive evidence to conclude that the appeal site is located within or close to a heritage asset. Therefore, the extracted text is not determinative in the appeal. Furthermore, the fact that the appeal site is not located on sensitive land or in an area subject to a statutory designation does not alter my determination of this appeal. Additionally, although reference has been made by the appellant to Policy DM18, no further detail has been provided regarding the source of this policy nor its relevance to the appeal.

Planning Balance and Conclusion

23. The appellant has demonstrated that there is a particular need for the proposed telecommunications equipment in the area to address existing shortfalls in network coverage. The ability of the proposed installation to facilitate mast sharing in the future weighs in favour of the appeal scheme. There are clear economic and social benefits associated with allowing telecommunications development as promoted by the Framework, including increasing the ability for local residents to work from home, access video meetings, and use mobile phones or other equipment in the home. Additional benefits relate to improved CCTV and traffic monitoring to support crime prevention and increase community safety. However, these social and economic benefits are recognised by the grant of permitted development rights in the GPDO whilst also contributing to the objectives outlined in a Written Ministerial Statement⁴ regarding planning for growth. Consequently, they do not carry additional weight when considering matters of siting and appearance as part of the prior approval process.
24. I apportion significant weight to the harm to the character and appearance of the area arising from the siting of the monopole on the appeal site and this harm is not outweighed by the benefits of the appeal scheme or the need for the installation.
25. For the reasons given above, and having regard to all relevant matters raised, I conclude that the appeal should be dismissed.

Juliet Rogers

INSPECTOR

⁴ Written Ministerial Statement: Planning for Growth (23 March 2011)