



Appeal Decision

Site visit made on 27 June 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2023

Appeal Ref: APP/U5930/W/22/3299955

Pavement outside Edinburgh Primary School, Queens Road, Layton, London

- 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), 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 Waltham Forest London Borough Council.
- The application Ref 213962, dated 16 December 2021, was refused by notice dated 3 February 2022.
- The development proposed is a 5G telecoms installation: H3G Phase 8 18m high street pole c/w wrap-around cabinet and 3 further additional equipment cabinets.

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) (the GPDO) for a 5G telecoms installation: H3G Phase 8 18m high street pole c/w wrap-around cabinet and 3 further additional equipment cabinets at Pavement outside Edinburgh Primary School, Queens Road, Layton, London, in accordance with the terms of the application, Ref 213962, dated 16 December 2021, and the plans submitted with it, subject to the standard conditions set out in Schedule 2, Part 16, Class A of the GPDO.

Preliminary Matters

2. In accordance with the provisions of Article 3(1) and Schedule 2, Part 16 of the GPDO, and subject to any relevant exception, limitation or condition specified therein, development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network is permitted development.
3. The provisions of Paragraph A.3 of Part 16, Class A of Schedule 2 to the GPDO require the local planning authority to assess the proposed development based solely on its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.
4. The main parties have referred to development plan policies in their evidence. However, there is no requirement to have regard to the development plan as there would be for any development requiring planning permission.
5. Nevertheless, Policy CS15 of the Waltham Forest Local Plan Core Strategy (March 2012) (the Core Strategy) and Policies DM29, DM30 and DM37 of the London Borough of Waltham Forest Development Management Policies Local

Plan (October 2013) (the Local Plan) are material considerations as they relate to issues of siting and appearance. In particular, they seek to ensure proposals respond positively to local context and character; reinforce and/or enhance local character and distinctiveness taking account of, amongst other things, features of local and historic significance; respond to their context in terms of scale and height; ensure inclusive design principles are applied; and ensure mast sharing occurs where equally adequate coverage could be provided. Similarly, the National Planning Policy Framework is also a material consideration, and this includes a section on supporting high quality communications.

Main Issues

6. The main issues are:

- the effect of the siting and appearance of the proposal on the character and appearance of the area, including the setting of locally listed buildings; and
- if any harm would occur, whether this is outweighed by the need for the installation to be sited as proposed taking into account any suitable alternatives.

Reasons

Character and appearance including locally listed buildings

7. The appeal site is at the back edge of a wide footway immediately adjacent to tall anti-climb wire mesh fencing that forms the boundary with the short front yard to Edinburgh Primary School (the school). The school appears to be one of the tallest buildings in the vicinity of the appeal site and, other than the large cemetery opposite the site, and the nearby mosque, the area is predominantly residential comprising mostly two-storey dwellings.
8. There are a handful of directional and parking control highways signs nearby, low lighting columns in the school yard and either side of a pedestrian zebra crossing, and taller street lighting columns at the back edge of the footways on either side of the road. These streetlights appeared to be at a height typical to the highway they serve, but lower than the main flat-roofed school building which is shown as being 11m high on the plans.
9. The proposed mast would be 18m in height which is significantly taller than the existing nearby street lighting columns and it would be much higher than any of the buildings in the vicinity with which it would be seen, including the school. Accordingly, the height of the proposed mast would set it apart visually from the tallest structures in the vicinity and the resultant abrupt change in scale would appear discordant in the street scene.
10. The newly planted trees adjacent to the appeal site are less than a quarter of the height of the proposed mast. While there are two more mature trees in the footway opposite the appeal site, and others in the cemetery opposite, the mast would extend noticeably above those trees, the closest tree to the mast being 14m high as noted on the plans. Furthermore, due to the separation distance between the appeal site and those other trees, they would do little to provide screening to the mast other than from within the cemetery, and only at times when the trees are in leaf. The mast would be a largely isolated tall

structure when seen from most vantage points in the public realm, and from the front gardens of some nearby houses.

11. The proposal would involve the installation of equipment cabinets positioned alongside and wrapping around the proposed mast. The cabinets would not be unduly harmful in respect of their appearance due to their position at the back edge of a wide footway, their proximity to tall security fencing bounding the school, and the fact that they would be seen in conjunction with taller trees and street furniture. However, the lack of harm in this respect does not overcome my conclusion that the mast would appear as an intrusive feature that would harmfully detract from the character and appearance of the area.
12. The presence of signage, street light columns, and trees would not mitigate the visual impact of the proposed mast, and there is little in the area that visibly relates to or mitigates the harmful visually intrusive effect that would arise due to its siting and height.

Locally listed buildings

13. The Council note in its Delegated Report (the DR), and in its appeal statement, that, while the appeal site is not in a conservation area, it is near several locally listed buildings/structures, their general locations being identified on a small map. The National Planning Practice Guidance (the PPG) indicates that non-designated heritage assets are buildings, monuments, sites, places or areas identified by plan making bodies as having a degree of heritage significance meriting consideration in planning decisions, but which do not meet the criteria for designated heritage assets.
14. Paragraph 203 of the Framework indicates that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss, and the significance of the heritage asset.
15. I have not been provided with further information regarding the locally listed buildings referred to very briefly in the Council's evidence, and I note that the Council makes no further comment regarding these structures other than recognising their presence. However, from what I saw it was evident that the buildings close to the cemetery entrance on Queens Road, the gates and gate piers at that entrance, and the more centrally located chapel inside the cemetery provide important historical and architectural reference points associated with the creation of this substantial cemetery, and their significance is derived from their age, and that association.
16. These non-designated heritage assets appeared to be some of the older buildings in the vicinity of the appeal site and, because of their distinctive appearance and their historic association with the cemetery, contribute positively to the character and appearance of the area. The chapel towards the centre of the cemetery is seen only at a distance and is separated sufficiently from the appeal site such that its setting would not be affected by the proposal. However, the gates and gate piers and the buildings close to the cemetery entrance are within clear sight from the appeal site and from approaches to the appeal site in a westerly direction along Queens Road.

17. The proposal would not affect the fabric of the non-designated heritage assets. However, it would be sufficiently close to those at, and close to, the entrance to the cemetery to affect their setting. These non-designated heritage assets comprise an important positive element of the character and appearance of the area and the proposed mast, by virtue of its height and siting, would cause harm to their setting. The proposal would conflict with paragraph 130 c) of the Framework which is a material consideration since it requires proposals to be sympathetic to local character and history, including the surrounding built environment and landscape setting. Insofar as they are relevant to siting and appearance, the proposal would also conflict with Policy CS15 of the Core Strategy and Policy DM29 of the Local Plan.
18. For the above reasons, the siting and appearance of the proposed development would harm the character and appearance of the area including the setting of locally listed buildings. Consequently, and having regard to paragraph 203 of the Framework, I must go on to consider whether this harm is outweighed by the need for the installation to be sited as proposed, taking into account any suitable alternatives.

Need and alternative sites

19. The Framework 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, recognising that new sites may be required for new 5G networks.
20. Paragraph 117 of the Framework advises that applications for electronic communications development should be supported by the necessary evidence to justify the proposal. For a new mast or base station, this should include evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure.
21. The proposed installation is required to fill a gap in 5G coverage in an area where access to digital services is poor. Paragraph 115 of the Framework advises that the number of telecommunications masts should be kept to a minimum, consistent with the needs of consumers, the efficient operation of the network, and the provision of reasonable capacity for future expansion. It also encourages the use of existing masts, buildings, and other structures. As is typical of 5G cells, the relevant search area is relatively confined geographically and, in this case, the search area covers a densely populated urban area with most buildings not exceeding two storeys in height. Nevertheless, a sequential approach to site selection as set out in the Framework has been followed by the appellant.
22. The proposed mast would be at the minimum feasible height to bring 5G coverage to this area. There is little information provided regarding any specific opportunities that were investigated for erecting antennas on existing buildings, masts, or other structures. However, from what I saw during my site visit, there appeared to be few existing structures in the search area that could realistically be considered as presenting opportunities for erecting antennas.
23. The appellant contends that, within such a constrained search area, the appeal site presents the only viable solution, bearing in mind technical requirements. The appellant's evidence highlights four alternative sites within the target coverage area that have been considered. Although the reasons given for

discounting them are brief, they are adequate in describing why the alternative sites would not represent less harmful locations for the installation.

24. The appellant has satisfactorily demonstrated that the proposed development is necessary for coverage of the locality. On the evidence before me, I conclude that the appeal site represents the least harmful of the alternative locations considered for a new installation to provide 5G coverage for the area, and in this respect, insofar as it is relevant to siting and appearance, the proposal would accord with Policy DM37 of the Local Plan.
25. There is a clear need for, and importance of, the rollout of the 5G network. The Framework is clear that the provision of high-quality communications infrastructure is essential for economic growth and social well-being. The Framework also outlines that the expansion of electronic communications networks, including next generation mobile technology, should be supported. The proposal would facilitate 5G coverage and I have had regard to the public benefits this upgraded connectivity and technology would provide to residents, businesses and community facilities in the area.
26. Therefore, I conclude that the need for the installation to be sited as proposed, taking into account any suitable alternatives, outweighs the harm to the character and appearance of the area, including the setting of the locally listed buildings.

Other Matters

27. A representation received in response to public consultation carried out by the Council expresses concerns about potential effects on health, particularly the proximity of the proposed installation to neighbouring property. However, the appellant has confirmed that the proposal has been designed to comply with the ICNIRP guidelines. 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.
28. The DR notes comments provided by the 'WF School Asset Team' indicating that the wider pavement outside the school was designed to allow for busy periods when children arrive at and leave the school. That representation expresses concerns about not only the appearance and clutter on the pavement but health and safety. An objection was also made by the school's Head of Business to the appellant, following the pre-application consultation, expressing concerns that a reduction in the available space in the footway, as a result of the siting of the proposal, would impact the health and safety of parents and children arriving at and leaving the school.
29. The Council's Highways Officers confirm they have no grounds for refusal of the application. In noting the width of the footway and the positioning of the mast and cabinets I am satisfied that the installation would not create a substantial or harmful obstruction in the highway for pedestrians, including children arriving at or leaving the school. In this respect, insofar as it is relevant to siting and appearance, the proposal would accord with Policy DM30 of the Local Plan.

Conditions

30. The GPDO does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators contained within it. These specify that the development must be carried out in accordance with the details submitted with the application, begin within 5 years of the date of the approval and 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

31. For the reasons given above the appeal is allowed and prior approval is granted.

David English

INSPECTOR