



Appeal Decision

Site visit made on 24 July 2023

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th September 2023

Appeal Ref: APP/Z5630/W/21/3280478

Area of Footpath, Kingston Hill, Coombe, Kingston KT2 7JP

- 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 Hutchison 3G (UK) Limited against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref 21/00833/TEL, dated 18 March 2021, was refused by notice dated 12 May 2021.
 - The development proposed is 5G telecoms installation: 15m high streetpole and 3no cabinets with ancillary works.
 - This decision supersedes that issued on 14 February 2022. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The name of the appellant on the appeal form differs from the name of the applicant on the application form. Only the applicant has a right of appeal. However, it has been confirmed that the person whose name appears on the application form was acting as agent for the applicant, who is the appellant. I have therefore used the name of the appellant in the banner heading above.
3. The address of the appeal site on the application form is inaccurate. I have used the address on the appeal form, augmented by the postcode provided by the Council on its Decision Notice, in the banner heading above.
4. A prior approval appeal should not be determined, expressly or otherwise, on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004 or as though the development plan must be applied. The principle of development is established through the grant of permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
5. The provisions of 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 this basis.
6. The Council states that the proposal would be located within the Coombe Wood Conservation Area (CWCA), whilst the appellant does not accept this and repeatedly states that the appeal site is not located in a Conservation Area or

an area subject to other environmental designations, such as Tree Preservation Orders (TPOs)¹.

7. The Council is the Local Planning Authority and would be expected to know any formal planning designations in its area, and so whether the site is within the CWCA, or whether there are TPO protected trees that may be affected by the proposal. The appellant makes reference to the Council's online planning policy map but has provided no substantive evidence to support their position and I do not find it to be compelling.
8. From the evidence, I am satisfied that the appeal site is located within the CWCA. Consequently, I am required to give special attention to the desirability of preserving or enhancing the character and appearance of the CWCA in line with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended). I am also satisfied that the nearby Yew tree is protected by a TPO.

Main Issue

9. The main issue is the effect of the siting and appearance of the proposed development on the character and appearance of the area 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 alternative locations.

Reasons

10. The appeal site is located on a footpath on the eastern side of Kingston Hill, a short distance south of its junction with Warren Road. There is a vertical, close-boarded, timber fence, some 2.0 metres in height, which separates the footpath from Warren Cottage, a locally listed building of a traditional design, along this length of Kingston Hill. The fencing forms the public boundary to the property, rounds the corner and extends along Warren Road.
11. A substantial, 2-storey, timber-clad contemporary addition has been made to Warren Cottage at some point in the past, which is readily visible in views of the appeal site from Kingston Hill, more so than the original building, which is largely screened by vegetation in its garden.
12. Kingston Hill is a wide, single carriageway road with designated bicycle lanes and broad footpaths on both sides. Designated as the A308, it is also a bus route. Along its length are lampposts and telegraph poles as well as a telecommunications mast some 250 metres to the south of the appeal site, on the opposite side of the road. A post box and a bus shelter are a short distance to the south of the appeal site on the eastern side of Kingston Hill.
13. This is a predominantly residential area containing a range of different housing types, although mainly substantial detached houses of traditional designs set within large gardens, and with firm boundary treatments, such as walls or fences. The area has a verdant character as a result of the mature trees and bushes to be found within these gardens, often extending over the footpaths, such as with the TPO protected Yew tree behind the timber fence in the grounds of Warren Cottage.

¹ Including paragraphs 3.2 and 7.6 of their Statement; and *Ten Commitments Consultation* and 3. *Proposed Development* of the Site Specific Supplementary Information/Planning Justification Statement (SSSI/PJS)

14. The appeal site is on the edge of the irregularly shaped CWCA, the special character of which the Council describe as 'Large Victorian, Edwardian, and 20th century properties set in a semi-rural street-scene around the open space occupied by Coombe Wood Golf Course²'. In my view, the significance of the CWCA stems from its historical development, and the substantial maturely landscaped properties positioned around the golf course and by local thoroughfares.
15. The appeal development would be a 15 metre high telecommunications mast including a 'wrap-around' cabinet at its base, together with three separate ancillary equipment cabinets to the north. Pedestrian movement along the footpath would not be significantly impeded by the proposal which would be positioned close to the boundary fence of Warren Cottage.
16. The size and design of the proposed mast and equipment cabinets are largely a consequence of their 5G telecommunications function and are not sympathetic to this verdant, residential area. However, the adjacent Yew tree, and other nearby trees, lampposts and telegraph poles provide some visual context to the proposal in medium and longer distance views.
17. Nevertheless, the height of the mast would be significantly greater than Warren Cottage, the TPO protected Yew tree and the nearby street furniture on Kingston Hill. Together with its functional design, this would make it a visually prominent and obtrusive feature in the streetscene, readily visible and incongruous in short distance views from both sides of Kingston Hill and from parts of Warren Road.
18. Consequently, the proposed mast would adversely affect the character and appearance of the CWCA causing less than substantial harm to its significance. It would also detract from the setting of the locally listed building, Warren Cottage, in views from Kingston Hill and from Warren Road, causing less than substantial harm.
19. I have weighed the harm caused to the CWCA against the public benefits of the proposed mast, with reference to paragraph 202 of the Framework. The CWCA is a designated heritage asset and in considering the effect of the proposal on the significance of the CWCA, I have given great weight to its conservation.
20. I have also considered the scale of harm to the setting of Warren Cottage and the significance of this non-designated heritage asset, with reference to paragraph 203 of the Framework.
21. Advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being and I note that planning decisions should support the expansion of electronic communications networks, including 5G telecommunications³. The proposed mast would support the delivery of these public benefits and I give this substantial weight.
22. I note that paragraph 3.2 of the appellant's statement acknowledges the proposal would have a detrimental impact on the character of the area. The appellant states that they have followed a sequential approach to site selection and that 'there is no scope to upgrade existing mast or site share with the

² Conservation Area 17 Coombe Wood

³ Paragraph 114 of the Framework

remaining practical solution...being that of new infill Streetworks infrastructure located within the Public highway⁴.

23. However, very little substantive evidence has been provided to support this assertion or to demonstrate that consideration of existing buildings or structures upon which the equipment could be located was given.
24. Four alternatives are said to have been considered and rejected. However, only one of these, D2, is an actual site, the remainder are *the Coombe target search area; existing mast infrastructure* - no details of which are provided, and *designated areas*. Somewhat confusingly, all four alternatives are shown as identified locations on the annotated photograph at Figure 3.
25. In any event this is not an extensive list, only two of the alternatives identified are within the designated search area (DSA) and none of these is an actual site⁵; the appeal site itself is located outside the DSA.
26. I accept that this is a constrained search area, typical of an urban residential environment. However, it is not clear from the evidence what the area within which the proposed mast could be located is, and so whether more suitable alternative sites were available.
27. There is an existing telecommunications mast some 250 metres to the south on Kingston Hill which is not identified by the appellant and it is not clear that it has been considered. Additionally, little detailed information has been provided to show why the four alternative options were discounted, and no detailed plans to show why these were unsuitable have been provided.
28. The appellant's evidence also contains a significant number of errors, inconsistencies and omissions. The limited information provided at Section 11 of the application form includes reference to seeking the support of Hackney Council; whilst the submitted pre-application consultation note refers to a response received from Brent Council. Neither of these Council's has any jurisdiction regarding this proposal and it is unclear why they were involved.
29. Furthermore, and as previously mentioned, there are repeated assertions that the appeal site is not in a Conservation Area or an area containing TPO trees, or that the DSA does not fall within a visually sensitive area. It is not clear that the appellant has considered these matters in their search for a suitable location. Moreover, given the stated concerns about the residential street layout, no explanation is given why sites by the Coombe Wood Golf Course, partly within the DSA, were not considered.
30. The cumulative effect of the appellant's evidence is to very significantly reduce my confidence in the robustness of their approach to site selection; I am not, therefore, satisfied that a more suitable location does not exist.
31. Regulation 13 e) and f) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (as amended), prohibits the wilful damage or destruction of a TPO protected tree. The proximity of the appeal site to a TPO protected Yew tree means that harm to this tree from the proposed development cannot be excluded.

⁴ 7. *Additional Relevant Information* – SSSI/PJS

⁵ D1 is in the DSA and includes an Easting and Northing. However, the written description makes clear this is not a site.

32. Although not part of my determination, I note that in so far as it relates to the matters contained under relevant parts of Schedule 2, Part 16, Class A of the GPDO, the proposal would conflict with Policies CS8 (character, design and heritage), DM10 (design requirements for new developments) and DM12 (development in conservation areas and affecting heritage assets) and with the Framework.
33. For these reasons, the siting and appearance of the proposed development would cause unacceptable harm to the character and appearance of the area and I am not satisfied that the need for the installation to be sited as proposed has been demonstrated, taking into account potentially suitable alternative sites.

Conclusion

34. For the reasons given above, I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR