



Appeal Decision

Site visit made on 30 August 2023

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

an Inspector appointed by the Secretary of State

Decision date: 21 September 2023

Appeal Ref: APP/N5090/W/23/3314817

O/S 612-614 Finchley Road, London NW11 7RX

- 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 the Council of the London Borough of Barnet.
 - The application Ref 22/4626/PNT, dated 11 September 2022, was refused by notice dated 26 October 2022.
 - The development proposed is telecommunications installation: Proposed 15.0m Phase 8 Monopole C/W wrapround Cabinet at base and associated ancillary works.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The location of the site as given on the Council's decision notice differs from that on the application form. The appellant has confirmed that the appeal should proceed on the basis of the site location stated by the Council, and this is reflected in the heading above.
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; and
 - Pedestrian safety.

Reasons

Character and Appearance

6. The appeal site is located in a broad area of pavement outside a small supermarket on the busy thoroughfare of Finchley Road. Due to its location on the edge of the commercial area, the streetscape to the south is residential in character and the site is overlooked by dwellings opposite. However, due to its mixed commercial setting, the area around the site was busy with pedestrians and through traffic at the time of my visit.
7. The mast would be set within the open area of the pavement. Due to its distinctly separate location set forward of the nearby supermarket, the mast would be highly prominent in views from this busy streetscape. Some degree of screening in views along the streetscape would be provided by nearby buildings which project forward of the supermarket and by a tree in a residential garden. But these features would not be sufficient to mitigate for the free-standing and obtrusive location of the mast, as it would project above the nearby buildings and would still be apparent as a bulky and obtrusive feature. The proposal would also be intrusive in views from the dwellings opposite.
8. The proposed cabinets would add clutter onto the footpath, exacerbating the visual harm arising from the mast. The appellant states that the associated ancillary equipment cabinets are within the size limits to be classified as permitted development without prior approval and should not be considered as a reason for refusal. However, I am not persuaded that there is a greater than theoretical possibility that the installation of the cabinets on their own in this location may occur. My concerns in respect of this main issue and the siting and appearance of the proposal as a whole remain.
9. The appeal site is also located just beyond the boundary of the Golders Green Town Centre Conservation Area (CA). The proposal would be readily visible as a jarring and incongruous feature in views from within and outside of the CA, and would therefore fail to preserve the setting of the CA.
10. There are other features in the vicinity of the mast within the pavement, including a bus stop, seating, streetlights, telephone box and signage. But even allowing for the vertical nature of some of these features, these are not of a form or scale which would mitigate for the height, bulk and siting of the proposal.
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, and would fail to preserve the setting of the CA. Insofar as they are relevant to the consideration of siting and appearance, the proposal would be contrary to the character and amenity requirements of Policies DM01 and DM18 of the Council's Development Management Policies 2012 (the DMP).

Pedestrian Safety

12. The proposed mast and cabinets would align with other elements of street furniture, including a telephone box and seating. Due to the width of the pavement in this area, the proposal would be no more of a barrier to the movement of pedestrians along Finchley Road than existing features. The width of the pavement is also sufficient to allow for maintenance of the cabinets and the opening of doors.
13. However, the mast and cabinets would extend along an area to the front of the entrance to the supermarket. The extent of the cabinets and existing street furniture would present a barrier to the free movement of pedestrians to and from the supermarket. This may deflect pedestrian movements onto an adjacent lane which provides an exit point for vehicular traffic from a service and car parking area. Even given the separation distance of the proposal from the supermarket and the width of the pavement, the deflection of pedestrian movements in the vicinity of this lane and junction would be likely to increase the potential for collisions between pedestrians and vehicles, to the detriment of highway safety.
14. I conclude that due to its siting, the proposal would lead to unacceptable harm to pedestrian safety. Insofar as they are relevant to the consideration of siting, the proposal would be contrary to Policy CS9 of the Core Strategy 2012, Policy DM17 of the DMP, and Policy T2 of the London Plan 2021 in respect of the provision of safe footways and road safety.

Other Matters

15. 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.
16. In respect of site-sharing, the appellant emphasises that many street works designs are no longer structurally capable of hosting all the equipment of 2 operators, and that there is no location in this cell search area where a suitable mast could be housed and thus site sharing is not a viable proposition. However, it has not been set out which existing masts or sites were assessed as part of the sequential search.
17. The appellant's search details include the consideration of a rooftop location on a nearby building which was discounted as the elevation of the building would not be suitable in supporting telecommunications equipment. However, there are other buildings in the area which may be capable of supporting an antenna of the type proposed, including a block closer to the identified nominal location. There are also sites located away from main thoroughfares, such as servicing areas, which may not lead to the harm arising from the proposal.
18. Even given the limited size of a 5G cell and the constraints of this area, the appellant's sequential approach and site selection exercise would not appear to be suitably robust. The appellant has provided no substantive justification for a site as prominent as that proposed or as poorly located with regards to pedestrian safety.

19. I am mindful of the economic and social benefits of providing and enhancing electronic communication infrastructure. The appellant emphasises that the proposal would provide a vastly improved level of service (including coverage, access and speed) to a multitude of users, thus creating a very evident and demonstrable public benefit from the proposed enhancement of this cell's coverage. Furthermore, paragraph 114 of 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. These matters weigh in the proposal's favour.
20. However, it has not been demonstrated that these benefits would not be possible on sites in the vicinity of the appeal proposal which are more suitably located in respect of character and appearance or pedestrian safety. These benefits therefore carry very limited weight in favour of the siting of the proposal.

Conclusion

21. Based on the evidence before me, it has not been demonstrated that the appeal site is the only viable solution with regards to supporting high quality communications. The public benefits of the installation in terms of an enhanced telecommunications network would not outweigh the significant harm that I have identified to the character and appearance of the area, including the setting of the CA, and pedestrian safety.
22. For the reasons given, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR