



Appeal Decision

Site visit made on 4 May 2023

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2023

Appeal Ref: APP/A5840/W/22/3306896

Area of Footpath, Poolmans Street, Rotherhithe, London SE16 6RX

- 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 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 London Borough of Southwark.
 - The application Ref 22/AP/1940, dated 26 May 2022, was refused by notice dated 21 July 2022.
 - The development proposed is a 5G telecoms installation: H3G Phase 8 high street pole c/w wrap-around cabinet, and 3 further additional equipment cabinets.
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Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. 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 (hereafter "the GPDO") permit certain categories of development, including the installation of electronic communications apparatus and ancillary equipment. This is subject to restrictions, limitations, conditions and "prior approval" requirements set out in Paragraphs A.1., A.2. and A.3. of the GPDO.
3. Sub-paragraph A.3.(4) requires the developer to apply to the local planning authority for a determination as to whether prior approval will be needed for the siting and appearance of the proposed development, and sub-paragraph A.3.(7) states that the local planning authority should assess the proposed development taking into account any representations received. My determination of this appeal has been made on the same basis.
4. The decision notice issued by the Council stated that prior approval had been refused for two reasons; the first forms the basis of the main issues in the appeal. The second reason related to whether the developer had submitted the notifications required under Part 16, Class A of the GPDO, and if it would even be possible to grant the prior approval sought. This is not an issue directly related to the siting or appearance of the installation, and I address it in the "Other Matters" section below.
5. The provisions of the GPDO do not require regard be had to the development plan in this case. I have therefore had regard to the policies of the development plan and the National Planning Policy Framework ("the Framework") only in so far as they are material considerations relevant to matters of siting and appearance.

Main Issues

6. The main issues are the effect of the siting of the proposed development on security and safety, and whether any harm caused would be outweighed by the need to site the installation in the proposed location taking into account any suitable alternatives.

Reasons

Siting and security

7. The appeal site is within a predominantly residential area, characterised by modern two- and three-storey housing developed since the 1980s. It is part of the footway alongside Poolmans Street and Timber Pond Road, at a point where a broad paved area opens out beside the junction of the two streets. The proposed development is the installation of a 20m high monopole communications mast with a wraparound base cabinet (though the base cabinet was not shown in the submitted drawings), along with three further equipment cabinets.
8. The Council has referred to the Mayor of London's 2022 *Streetscape Guidance* ("the Guidance") which, among other things, sets out best practice for the design and siting of utility cabinets. It states that, although cabinets should preferably be sited at the back of the footway, this should be "away from windows or walls where they could assist in unlawful entry into properties". While the Guidance is only advisory, it highlights the risks to safety and security which can arise from poorly-sited cabinets.
9. Houses on Stanhope Street, a short cul-de-sac south-west of the appeal site, back onto Poolmans Street and Timber Pond Road; a brick wall around 1.8m high separates their rear gardens from the footway. The footway at the junction around the appeal site is a roughly triangular area around 4m wide (as measured by the Council). The mast itself would be sited towards the centre of that area, with the three ancillary cabinets to its south. Because of the angled shape of the footway, moving away from the mast the distance between the cabinets and the rear wall of No 4 Stanhope Street would decrease, and the southernmost cabinet¹ would be very close to the wall indeed. The middle cabinet² would be around 0.95m high, and the southernmost one around 1.59m high. The siting of the installation, combined with the step up in height between the two cabinets closest to the boundary wall, would make it a relatively simple matter for any reasonably agile would-be burglar or suchlike to scale the boundary wall and enter the rear garden of No 4 Stanhope Street, and potentially also No 5 further south.
10. I therefore conclude that the siting of the development would be likely to have a significant adverse effect on the safety and security of nearby residents. Insofar as the policies of the development plan which seek to ensure that schemes are well-designed, including taking appropriate and proportionate measures to maintain a safe and secure environment which reduces opportunities for and the fear of crime, are relevant to matters of the siting of the proposed installation in this case, I find that there would be conflict with

¹ Described as "Cabinet 1" in the appellant's statement.

² Described as "Cabinet 2" in the appellant's statement.

Policy P16 of the 2022 Southwark Plan and Policies D4 and D11³ of the London Plan 2021. The proposal also conflicts with the requirements of the Framework, notably Chapter 10 which, while supportive of developing high quality communications, requires equipment to be sympathetically designed (and this may reasonably be taken to include its siting), and Chapter 12 which seeks to achieve well-designed places.

Alternative locations and other considerations

11. The Framework supports the provision of high quality and reliable communications which it states are essential for economic growth and social well-being. Paragraph 114 states that planning policies and decisions should support the expansion of the electronic communications network, including next generation mobile technology such as 5G.
12. The supporting information submitted with the application indicates that the proposed development would fill a "hole" in the operator's network coverage in the surrounding area; it would also provide additional and improved 5G capacity in accordance with aspirations in the Framework. The appellant's evidence explains that none of the "sequentially preferable" options set out in the Framework is available, and that the search area for a new mast is tightly constrained by the limited radius which can be covered by a 5G installation. I am satisfied that the appellant has demonstrated that there is an identified need for the proposed development to be located somewhere within the search area.
13. In considering alternative sites, the appellant's evidence indicates that there are no existing masts or other communications sites nearby which could be shared, and that the only nearby possible existing building which might have been used (the Church of Our Lady of Immaculate Conception on St Elmo's Road) is not high enough, and no suitable design for the installation could be identified. Three other potential street sites for new ground-based installations were considered; on St Elmos Road a short way north of the Church of Our Lady, on Fishermans Drive a short way north of the appeal site, and on Archangel Street close to its junction with Timber Pond Road. All were discounted, on account of their narrow pavements, proximity to parking spaces, driveways and other obstructions.
14. The alternatives considered are very close to the appeal site, and I was able to view them all while carrying out my site visit. Although little detail was provided by the appellant (such as plans or other illustrations showing the implications of the constraints identified), based on what I saw I accept the appellant's assessments in respect of St Elmos Road and Fishermans Drive. However, on the south side of Archangel Street there is a wide grassed/planted strip behind the footway which appears to be free of the other constraints identified but which does not appear to have been considered. It is also possible that an alternative layout could be created for the wide area of footway at the junction of Poolmans Street and Timber Pond Road at, or immediately adjacent to, the appeal site, which would avoid siting equipment very close to the rear garden walls and so which would not give rise to the same security concerns.

³ The decision notice referred to "Policy D10" of the London Plan 2021; however, this was clearly a typographical error as it also gave the policy's correct title "Safety, security and resilience to emergency". As this was a minor, rather than significant, error I have simply used the correct policy reference here.

15. Even allowing for the small search area, I cannot be certain that there are not alternative sites available which would not give rise to the same security and safety concerns as the appeal scheme. On the balance of the evidence which has been put before me, I am therefore not satisfied that all reasonable alternatives, which may be less harmful, have been considered.

Other Matters

16. Much of the appellant's statement was directed at matters relating to the appearance of the development and its impact on visual amenity in the surrounding area. In fact, the Council's reasons for refusal did not relate to these matters, a point it reiterated in its appeal statement. None of the evidence before me, or what I saw on site, leads me to a different view on this matter. However, that the appearance of the development would be acceptable would not outweigh the harm in terms of security and safety which would arise from its siting.
17. As I have already outlined, the Council also considered that it had not been demonstrated that the appellant had complied with the notification requirements of the GPDO. Section 15 of the Council's officer report set out how the proposed development had been assessed against the criteria of Part 16, Class A. It included reference to sub-paragraph A.3.(3), which required that:

"Where the proposed development consists of the installation, alteration or replacement of a mast within 3 kilometres of the perimeter of an aerodrome, the developer must notify the Civil Aviation Authority, the Secretary of State for Defence or the aerodrome operator, as appropriate, before making the [prior approval] application required by sub-paragraph (4)".

The Council officer assessing the application then commented:

"Does not comply, the application site is approximately 1.7km from Skyports Helipad located in Canary Wharf, however no evidence of the service of notice has been provided."

18. On the basis of that assessment, the second reason for refusal on the issued decision notice read:

"The application site is located within 3km of Skyports London Helipad, however has failed to serve the required notice to the Civil Aviation Authority, the Secretary of State for Defence or the aerodrome operator, and has failed to evidence the servicing of this notice. As such the proposal has not complied with A.3(3) and A.3(5)(d) of Schedule 2, Part 16 of the General Permitted Development Order (GPDO) (2015)."

19. The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2022⁴ ("the Amendment Order") came into force on 4 April 2022. It amended Part 16 of the GPDO by, among other things, deleting sub-paragraph A.3.(3); sub-paragraph A.3.(5)(d) was also amended. The parts of the GPDO to which the Council had referred in the second reason for refusal were therefore no longer in force at the time it made its decision.

⁴ Statutory Instrument 2022 No. 278 – available online at https://www.legislation.gov.uk/uksi/2022/278/pdfs/uksi_20220278_en.pdf

20. However, the Amendment Order also inserted new provisions in respect of safeguarding areas for civil and defence aerodromes and technical sites, and which refers to the Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002⁵ ("the Safeguarding Direction"). Part 16, Class A of the GPDO therefore includes requirements for developers to notify, and for local planning authorities to consult, the Civil Aviation Authority, the Secretary of State for Defence or other safeguarding area operator (as appropriate) in relevant cases.
21. The helipad at Canary Wharf referred to by the Council is not among the list of safeguarded civil aerodromes in the Safeguarding Direction. London City Airport is, however, and while it is not within the borough of Southwark it is close enough that it may be a relevant consideration. However, the effect of the amendments to the GDPO does not appear to have been picked up by the Council in this case, and the neither the second reason for refusal or the matter of notification requirements (whether before or after the changes brought in by the Amendment Order) was not addressed at all in the appellant's appeal evidence. As a result, there is no evidence before me which provides certainty as to whether the prior approval application complied with the GPDO's current notification requirements in respect of aerodromes. Had the proposal been acceptable in all other respects, I could have sought further information from the main parties on this point. However, given my findings in respect of the main issue I have not done so, as it could not have changed the outcome of the appeal.

Conclusion

22. I acknowledge that the proposal is necessary to expand mobile communications (including 5G) coverage in the area, and I attach significant weight to the economic and social benefits provided by improved communications infrastructure. However, on balance I find that these benefits would be outweighed by the significant harm that the siting of the proposed installation would cause in terms of safety and security.
23. For the reasons set out above, I therefore conclude that the appeal should be dismissed.

M Cryan

Inspector

⁵ Available online at <https://www.gov.uk/government/publications/safeguarding-aerodromes-technical-sites-and-military-explosives-storage-areas/the-town-and-country-planning-safeguarded-aerodromes-technical-sites-and-military-explosives-storage-areas-direction-2002#annex-3-officially-safeguarded-civil-aerodromes>