
Appeal Decision

Site visit made on 22 August 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 3 October 2023

Appeal Ref: APP/N5090/C/22/3306320

Land at Hendon Park, Queens Road, London NW4 2TG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Hutchison UK Ltd against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0692/22, was issued on 8 August 2022.
- The breach of planning control as alleged in the notice is *Without planning permission, the erection of a 15m telecommunications monopole aerial and mast with wrapround Cabinet at base and associated ancillary works.*
- The requirements of the notice are, alternatively, to remove the development and to restore the land to its former condition or to make the development comply with the terms of a permission granted under appeal reference APP/N5090/W/21/3276994.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Main Issue

1. The main issue in the appeal concerns the facility for pedestrian movement on the footway and thus the effects of the development on highway safety.

Reasons

2. Prior approval was 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 ('the 2015 Order') for the siting and appearance of the development as described above. The development has not been carried out in accordance with the terms of that approval, according to the Council by the 'as built' development deviating from the approved plans by having been sited a further 37cm into the footway. The appellant explains this is because of existing services having been found in the approved location. The result of the re-siting, say the Council, is that the footway has been narrowed to an unacceptable width.
3. Both parties refer to various documents that have not been supplied, although relevant extracts are given in the parties' statements. Manual for Streets, although not prescriptive, advises that the minimum unobstructed width for pedestrians should generally be 2 metres in lightly used streets. The relevant policy context is found in the Barnet Local Plan of 2012 and the London Plan of 2021, although the precise asserted conflicts are not explained by the Council.

4. Policy T2 of the London Plan requires development proposals to be permeable by foot and cycle and connect to local walking and cycling networks, and to demonstrate how they will deliver improvements supporting Healthy Streets indicators. Core Strategy policy CS9 seeks to ensure efficient use of the local road network and to make walking more attractive for leisure, health and short trips. Policy DM17 seeks to ensure the safety of road users. DM18 concerns the provision of telecommunications equipment although without specific reference to highway safety.
5. Other documents discussed by the parties include Transport for London's 'Pedestrian Comfort Guidance for London' and 'Streetscape Guidance'. The appellant asserts that the location here is a 'low flow' zone and I have no reason to disagree. It lies to the east of Hendon, away from the centre, facing residences and adjacent to Hendon Park to the south. A small car park lies to the west. Further east of the park entrance, the footway narrows significantly.
6. Various recommended footway widths are discussed by the parties, but the parties appear agreed that a 2m unobstructed width is desirable. The Council have supplied photographs and annotated the appellant's submitted plans to show that a street sign lies 1.58m from the nearest cabinet. However, the plans are inaccurate, depicting the street sign as lying directly in front of one of the middle cabinets. In fact it lies diagonally away from the nearest one. The Council's 1.58m measurement is not taken directly from the cabinet to the street sign, but to a point on the pavement some way west of it.
7. Whilst the distance from the nearest cabinet to the street sign may be under 2m, both the cabinets and the street sign have over 2m clear lateral unobstructed footway adjacent to them. Manual for the Streets advises that the unobstructed width should *generally* be 2m. My observations were of relatively few pedestrian movements, and no conflicting ones, on a sunny summer's day during the school holidays during which good use was being made of the adjacent park. I do not find the proximity to the cabinets of the Council's road sign to unduly restrict pedestrian movement or to constitute the detriment to pedestrian safety for which the Council contend.
8. As Manual for Streets goes on to say, pedestrian congestion through insufficient capacity should be avoided. It is inconvenient and may encourage people to step into the carriageway. Neither are realistic propositions here as a result of the proximity of the road sign to the cabinets. Therefore the appeal will be allowed, as I have found no conflict with the development plan for the area, and permission will be granted.
9. Neither party has suggested any planning conditions that ought to be imposed if permission is granted, but having regard to the previous Inspector's decision and the provisions of the 2015 Order I consider it appropriate to replicate the conditions imposed by the 2015 Order insofar as they are capable of taking effect now that the development has been constructed; which is to say that it is to be removed and the land restored when no longer required.

Other matters

10. I note the representations concerning the effects of the development on the character and appearance of the area; however, any such effects would be likely to materialise even were I to uphold the notice, given the option to comply with the previous (prior approval) permission.

Conclusion

11. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.

Formal Decision

12. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the erection of a 15m telecommunications monopole aerial and mast with wraparound Cabinet at base and associated ancillary works on land at Hendon Park, Queens Road London NW4 2TG, subject to the condition that the electronic communications apparatus provided in accordance with this permission is removed from the land on which it is situated as soon as reasonably practicable after it is no longer required for electronic communications purposes, and that the land is restored to its condition before the development took place, or to any other condition as may be agreed in writing between the local planning authority and the developer.

Laura Renaudon

INSPECTOR