
Appeal Decision

Site visit made on 11 October 2023

by S Leonard BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2023

Appeal Ref: APP/Q1445/W/23/3316623

Grass verge at Copse Hill, Copse Hill, Westdene, Brighton BN1 5GA

- 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 CK Hutchinson (UK) Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2022/03525, dated 3 November 2022, was refused by notice dated 23 December 2022.
 - The development proposed is installation of a 15m high slim-line monopole, supporting 6no. antennas, 1no. wraparound equipment cabinet at the base of the monopole, 2no. equipment cabinets, 1no. electric meter cabinet, and ancillary development thereto.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The *National Planning Policy Framework 2023* (the Framework) supports high quality communications infrastructure and requires that local planning authorities must determine applications on planning grounds only. In accordance with the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (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. Therefore, matters such as the need for, or benefits of, the development, are not at issue in this appeal.
3. The provisions of the GPDO, under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) and (7) 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 the same basis.
4. The provisions of Schedule 2, Part 16, Class A do not require regard be had to the development plan. I have had regard to the policies of the development plan and the Framework only in so far as they are a material consideration relevant to matters of siting and appearance.
5. The appellant has advised that the cabinets do not require planning permission and can be installed under permitted development once the base station is

built. This is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. I have determined the appeal on the basis of the scheme before me, which was the subject of the prior approval application, and includes a wrap-around cabinet and 3no. freestanding cabinets positioned near the proposed monopole.

Main Issue

6. The main issue is the effect of the siting and appearance of the proposal upon the character and appearance of the area, and whether any harm caused would be outweighed by the need to site the installation in the location proposed, having regard to the potential availability of alternative sites.

Reasons

7. The appeal site is located within a grassed and treed highway verge sited on the southwest side of Copse Hill, opposite the junction with Fernwood Rise. It lies within a primarily residential suburban area known as Westdene, located in the northern part of the city. It is hilly, with land levels generally rising northwards, so that the housing area lies in an elevated position in relation to the city centre.
8. The area has a pleasant verdant and spacious character. There are generously sized footpaths incorporating grass verges, open plan site frontages where soft-landscaped front gardens are common, and roads which are interspersed with green open spaces. The northernmost part of the verge containing the appeal site includes a group of mature trees, and it is designated as Open Space in the *Brighton and Hove City Plan Part One* (2016). The identified benefits of such areas include visual amenity and biodiversity contributions to the quality of the city townscape. As such, the wider grass verge within which the appeal site sits, makes a positive contribution to the prevailing character of the area.
9. The proposal would introduce a new 15m high monopole mast in a position within the grass verge where there are no existing built vertical structures of this height. Four equipment cabinets would be sited close to the base of the pole. The proposal is intended to provide continued and enhanced local mobile connectivity to existing services as well as the provision of a new Fifth Generation (5G) service, as part of the Operator's national network.
10. Building heights within the site vicinity are of a residential scale, predominantly comprising single and two storey dwellings. There are few vertical functional structures within the site vicinity. These include street lighting columns, one of which is sited close to the bus shelter. These comprise a thinly-profiled design and a slim, lightweight appearance, and they are positioned in a well-spaced fashion along the street. There are also timber telegraph poles, including one sited close to the proposed mast, as well as road traffic signs.
11. These structures are typical of those found within an urban residential roadside environment and they are functionally designed and low in height. As such, they sit comfortably within the townscape and do not appear incongruous, nor unduly visually prominent within their roadside setting or in comparison with the height of the surrounding built development.
12. The proposal would introduce a discordant form of development into this area as a result of a combination of its commercial nature and its visually intrusive

design in relation to its surroundings. Although exhibiting a vertical monopole design, which would be slimmer than some alternative designs for telecommunications equipment, the proposal would have a notably more visually dominant presence in views from the public realm than the aforesaid existing vertical street structures.

13. This is due to a combination of its significantly greater height and pole width in comparison to the nearby street lighting columns and telegraph pole. Moreover, the head frame and antennas at the top of the supporting pole would add a distinctly bulky element to the top of the structure which would further draw the eye towards it.
14. There are no existing telecommunications installations within the immediate vicinity of the appeal site. Accordingly, the proposal would introduce a discordant form of development into this area as a result of its commercial nature and its visually intrusive design.
15. The new equipment would be sited where it would be visually prominent within the prevailing townscape, in an elevated position on rising land as Copse Hill ascends from south to north, and close to the junctions with Fernwood Rise, Bramble Rise and Highbank. A bus shelter and footpaths are located close to the proposed mast. As such, the site occupies a highly visible location to users of the nearby public thoroughfares, including drivers, cyclists, pedestrians and bus passengers, particularly when approaching the site from the east, west and south.
16. The proposal would also be highly visible from a large number of surrounding residential properties including those on the north and south sides of Copse Hill, the former lying within an elevated position in relation to the site, and the latter being positioned at a lower land level, from where the new structure would appear visually overdominant in views from the front gardens of these properties.
17. The proposed mast would be less visible when approaching the site from the north, due to some screening which would be provided by the nearby group of mature trees. However, this screening would, in the main, be limited to views from the north, and even in those views the monopole structure would project approximately 3m above the highest tree canopy, based upon the information before me. Moreover, in the absence of detailed information regarding the tree species and their characteristics, I have no reason to disagree with the Council's view that tree leaf loss during winter months would render the proposal more highly visible in the public realm during that part of the year.
18. In addition, the adjacent wrap-around and free-standing cabinets would be open to public views at street level and sited in close proximity to passing users of the public highway, and, in conjunction with the proposed mast and existing streetlamp and bus shelter, they would result in a cluttered public realm in this edge-of-footpath location.
19. Moreover, on the basis of the evidence before me, I am unable to be certain that the proposal would not result in demonstrable harm to the closest adjacent mature trees which, due to their visibility in wider views, make a positive contribution to the prevailing verdant suburban environment.

20. Such harm could potentially arise from damage to tree roots during the construction/installation of the appeal scheme. I acknowledge that the Code¹, which sets out best practice when stakeholders are carrying out their responsibilities under the principal legislation, requires masts and cabinets installed near trees to conform to the guidelines contained in the NJUG publication² in respect of utility apparatus close to trees. Whilst noting the tree protection zones set out in Figure 1 of that document, I find that they are guidelines, and note that the document also refers to the relevance of the recommendations of BS 5837 in the consideration of the assessment of the impact of such development upon trees.
21. With this in mind, and noting the Council's concerns regarding the location of the development within the 'no-dig' root protection area of nearby trees, in the absence of more substantial cogent evidence, such as a detailed arboricultural impact assessment, I am unable to be satisfied that this matter has been satisfactorily addressed.
22. I acknowledge that the proposal would be sited outside of the existing tree canopy area, and I have considered whether this matter is capable of being dealt with by means of a condition to ensure that the appellant carries out the installation and any future necessary pruning works in accordance with methodology which would maintain the health of the trees.
23. However, the Order does not provide any specific authority for imposing additional conditions beyond the deemed conditions for the development by electronic communication code operators contained within it. These specify that the development must be carried out in accordance with the details submitted with the application, together with providing timescales for implementation and subsequent removal of the development.
24. As such, in this instance, the proposal is not capable of being made acceptable by means of imposing a planning condition to ensure satisfactory arboricultural impacts.
25. Moreover, notwithstanding the above, harm to the trees could also potentially result from a future need to undertake tree reduction works to ensure the future required amount of unobstructed signal for the proposal. Notwithstanding that the appellant has stated that the presence of the trees has been taken into account in predicting the amount of radio coverage, I do not have sufficient substantive evidence before me as to the maximum height of the trees that would be necessary to be retained to ensure the appellant's required coverage, noting the potential for future tree growth which could affect the future amount of unobstructed signal for the proposal.
26. As a consequence, the pleasant, verdant landscaped setting of this part of the highway edge and setting to the nearby residential development would be detrimentally eroded by the proposed installation of a collection of structures which would appear out of context with the prevailing street scene.
27. For the above reasons, the proposal would appear as a dissonant and over-dominant feature within the townscape. The mast and antennae would appear unduly visually prominent within the skyline, particularly in relation to

¹ *Code of Practice for Wireless Network Development in England* (March 2022)

² *Guidelines for the Planning, Installation and Maintenance of Utility Apparatus in Proximity to Trees – Volume 4*

nearby built development of a lower height. It would draw the attention of a large number of passing highway users and residential occupiers.

28. I acknowledge that there are technical constraints in respect of the design of the apparatus, and that the appellant has sought to minimise its visual impact through certain aspects of its design, such as aiming to minimise the mast height and utilising a monopole design which is less bulky than some other styles of mast. However, this does not justify the harm that would result from its siting in the location proposed.
29. For the above reasons, I therefore conclude that the siting and appearance of the proposal would significantly harm the character and appearance of the area. In so far as they provide advice and are a material consideration in respect of siting and appearance, the development would conflict with Policies DM25 and DM37 of the *Brighton and Hove City Plan Part Two* (2022). These policies, amongst other things, seek to ensure that new development demonstrates that it safeguards and/or contributes positively to the city's network of green and open spaces, and that, whilst supporting the provision and maintenance of efficient and reliable telecommunication infrastructure across the city, communications infrastructure proposals should minimise visual impacts, and have no unacceptable impacts upon the character or appearance of the space within which the equipment is located.
30. For similar reasons, the proposal would also be contrary to policies of the Framework which seek to achieve well-designed places, as set out in Chapter 12, and support high quality communications, subject to electronic communication equipment on new sites being sympathetically designed and camouflaged where appropriate, as set out in Chapter 10.

Other Matters

31. The matter of whether the proposal would harm heritage assets has been referred to by both parties. Although this does not form part of the Council's reasons for refusal, I have taken account of my duty under Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to consider the effects of the proposal on designated heritage assets where relevant.
32. Based on the information before me, including the stated approximate distances between the appeal site and the closest conservation area of Patcham (520m) and listed building (430m), which I have no reason to doubt on the basis of the evidence before me and my site inspection, and the intervening built development and structures between the closest heritage assets and the appeal site, I concur with the appellant that the proposal would not harm the character and appearance and significance of the conservation area nor the setting and any features of special architectural or historic interest of any listed buildings.

Planning Balance and Conclusion

33. The appellant has referred me to allowed appeal³ and costs⁴ decisions, having regard to the decision-making process. Full details, other than decision letters, have not been provided to me within the evidence. However, I note the requirement to balance the public benefits with any harm to the character and

³ APP/B5480/W/20/3251086

⁴ APP/G5180/W/16/3151769

appearance of the area. This is a matter for judgement, given the particular circumstances of each proposal. I have determined the current appeal on its own merits, taking into account the appeal site-specific factors.

34. There would be economic and social benefits arising from proposed improvements to the existing telecommunications infrastructure in the area, including the rolling out of 5G technology. As such, the appeal scheme would be consistent with the Framework's recognition of the importance of high-quality communications to economic growth and social well-being.
35. I have no reason to doubt that the scheme would deliver tangible improvements to communication networks in the area identified by the appellant, which predominantly comprises an urban residential area, noting that call and data traffic is potentially higher in densely developed urban areas, and acknowledging the evidence that supports an increase in mobile data consumption and rising significance of mobile connectivity since the Covid-19 pandemic.
36. Moreover, the Framework indicates that the need for electronic communication systems should not be questioned when determining development schemes.
37. I also accept that the position of the newly proposed equipment would need to complement the existing network, so as to promote continuous network cover. As a result, the search area that was identified for the purposes of site selection was necessarily constrained in size in order for the equipment to be located close to the area which requires coverage.
38. The appellant states that a sequential approach was taken to site selection, and that, following a detailed search of the area, there is no other viable or available alternative location for the proposal, including existing masts, structures or rooftops that could accommodate the development, having regard to the identified local demand and the existing gap in existing network coverage. I have been provided with information in respect of 9 alternative locations that were considered and discounted as part of the appellant's site selection process.
39. I accept that the geographical extent of the area of search is necessarily restricted by operational constraints, and the prevailing residential land-use and a lack of existing masts within the search area restrict the potential for installing the apparatus on an existing building or mast sharing.
40. However, notwithstanding the above, I find that information has been provided in respect of a low number of potential alternative sites, and that the level of detail as to why each of these sites have been discounted is brief. Several have been dismissed due to the non-adopted nature of the land without a more detailed explanation of why this effectively precludes these sites.
41. In other cases, determining issues such as highway safety and local amenity have not been sufficiently detailed to ascertain whether they are capable of being satisfactorily addressed with respect to the proposed alternative sites. Also, where existing underground works are considered to be a prohibitive factor, no detailed analysis of their precise nature and location and how they act as a constraint, has been provided.
42. Moreover, the first listed alternative site lies very close to the appeal proposal and is within the same grass verge. It has been discounted partly due to the

presence of overhanging mature trees and overhead powerlines. However, on the basis of the information before me, the appeal scheme appears to contradict this, by bringing the proposal closer to these identified constraints.

43. As such, I find that detailed supporting information to fully corroborate that an exhaustive search of all possible sites was undertaken, and that potential alternatives were discounted on reasonable grounds, is not before me.
44. I acknowledge that efforts have been taken to position the monopole in proximity to existing trees to achieve partial screening. However, it has not been clearly substantiated that it would be impractical to follow a similar approach elsewhere within (or near to) the designated search area whilst avoiding, or substantially reducing, the specific significant adverse effects that I have identified.
45. There would be benefits arising from the development outlined above. However, and notwithstanding the recent changes to the GPDO⁵ in respect of height allowance on highways land, the siting and appearance of the monopole would result in significant harm to the character and appearance of the area, with consequent conflict with the development plan and the environmental objectives of the Framework, which attracts significant weight against the scheme. While options for siting the development are limited by technical and operational constraints, and the appellant states that alternative locations have been fully assessed, having regard to the evidence before me in respect of other sites, it is not demonstrated that other more suitable and less harmful sites for the development do not exist, and this weighs against the proposal.
46. Consequently, based upon the evidence before me in this case, the harm from its siting and appearance would not be outweighed by the benefits of this development.
47. For the reasons set out above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR

⁵ Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015