



Appeal Decision

Site visit made on 17 August 2023

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th October 2023

Appeal Ref: APP/B1930/W/22/3309848

Area of grass verge, A414 North Orbital Road/Park Street roundabout, St Albans, Hertfordshire, AL1 2QL

- 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 Hutchison Networks (UK) Ltd. against the decision of St Albans City & District Council.
 - The application Ref 5/22/1797 dated 15 July 2022, was refused by notice dated 7 September 2022.
 - The development proposed is a 5G telecoms installation: H3G 18m street pole with additional equipment cabinets.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (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 the same basis.
3. In light of the above, the reference made by the appellant to the scheme's various social and economic benefits have not been taken into account in considering the matters of siting and appearance.
4. The Council submitted 3 letters at the appeal stage from National Highways dated 6 April 2023, 5 June 2023 and 15 September 2023. The appellant was consulted in respect of this evidence, but no response was received.
5. The 'visibility splay diagram' referred to in Appendix 6 of the appellant's appeal statement was not enclosed with their submission. As a consequence, I requested a copy and this was duly submitted by the appellant. The Council was consulted in respect of this evidence and I have taken its response into account. The appellant was accordingly consulted in respect of the Council's response, but no reply was received.
6. The revised National Planning Policy Framework (the 'Framework') was published on 5 September 2023. Having reviewed this document, I am satisfied

that the policy applicable to the scheme before me remains unchanged from the previous Framework¹. As a consequence, I did not consider there to be a need to reconsult the parties and have determined the appeal in light of the new Framework document, which is a material consideration that should be taken into account.

Planning Policy

7. The provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. I have nonetheless had regard to the policies of the development plan and those within the Framework, but only insofar as they are a material consideration relevant to matters of siting and appearance.

Main issue

8. The principle of development is not subject to consideration in a prior approval application as this is established by virtue of the GPDO.
9. Accordingly, the main issue is the effect of the siting and appearance of the proposed installation on highway safety, 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 alternatives.

Reasons

10. The appeal site is located on the southern periphery of St Albans in a modest gap that separates it from the villages of Park Street and Chiswell Green, being characterised by open parkland, scrubland, agricultural fields and the A414/A405. The proposed installation would be located on scrubland to the west of the Park Street roundabout against the backdrop of mature trees and adjacent to the A414/A405 which forms part of the strategic road network. Overall, I found the area to have an edge of settlement semi-rural character.
11. According to National Highways, the appeal site is located on land within its ownership adjacent to the strategic road network. In the absence of any evidence which suggests otherwise, I see no reason to disagree with this.
12. National Highways states that it is unable to support the scheme unless the appellant first obtains a technical approval for its installation to ensure that; (1) it does not cause a safety or environmental hazard to road users, workers or any third party; (2) it does not interfere with its ability to carry out routine or structural maintenance; and (3) it does not cause any harm to the long-term integrity of the highway. To this end, it requires the provision of a full road safety audit and safety risk assessment before it can support the application.
13. The appellant has been made aware of the National Highways response, but has not provided any evidence to demonstrate their compliance with this request or justify why it is unnecessary. I recognise that they did provide a visibility splay plan, but this does not contain sufficient information to address all of the matters raised. In the absence of this, I see no reason to disagree with the professional advice of National Highways and have accordingly given its response substantial weight in my consideration. As a consequence, it is my view that the scheme would result in potential harm to highway safety.

¹ National Planning Policy Framework, Ministry of Housing, Communities and Local Government, 20 July 2021.

14. The Local Highway Authority, Hertfordshire County Council, has also objected to the scheme on the basis that it is in the vicinity of the realignment works to the Park Street roundabout, which are required for off-site highway works relating to the planning permission for the Radlett Strategic Rail Freight Terminal. The appellant was also made aware of this response, but has not provided any evidence to demonstrate why this development is not likely to be forthcoming and/or why the appeal site land is not required.
15. Whilst I see no reason to disagree with the professional advice of the Local Highway Authority, it is unclear if the final detailed design of the realignment works has yet been approved and/or when the appeal site would actually be required for the implementation of this scheme. As a consequence, I consider this to be a civil land ownership matter between the appellant and landowner at this stage.
16. In view of the above, and insofar as they are material considerations relevant to matters of siting and appearance, I conclude that the scheme's potential harm to highway safety would conflict with Paragraphs 110 and 112 of the Framework which collectively seek, amongst other things; (1) to ensure that any significant impacts from the development on highway safety can be cost effectively mitigated to an acceptable degree; and (2) the creation of safe places that minimise the scope for conflicts between pedestrians and vehicles. I am also content that this decision accords with Paragraph 111 which states that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety.
17. Although the Council has referred to Policy 34 of the Local Plan², I do not consider this relevant to the scheme before me as there is no evidence that it falls within the parameters of the opening paragraph of this policy, namely that it is likely to generate a significant amount of traffic or would involve the creation or improvement of an access onto a public highway. I recognise that this policy also states that 'account will be taken' of the advice contained in current documents prepared by local councils and Government departments when assessing applications, but in my view this wording does not mean that proposals must actually comply with them. As a consequence, I am unable to conclude that the scheme conflicts with this policy.
18. I am also unable to conclude that planning permission is not authorised under Article 3(6) of the GPDO as asserted by the Council. This is on the basis that;- (1) there is no evidence that the scheme before me requires or involves the formation, laying out or material widening of a means of access to an existing highway which is a trunk or classified road; and (2) until National Highways has considered an application for technical approval, comprising a full road safety audit and safety risk assessment, there remains the possibility that the scheme might not cause an obstruction to the view of persons using the highway, and not therefore cause danger to such persons.
19. The Government has set out its commitment to supporting the deployment of gigabit broadband across the country and bringing digital connectivity to local businesses & residents to enable faster economic growth and social inclusion³.

² St Albans District Plan, City and District of St Albans District Local Plan Review, Adopted 30 November 1994, Written Statement.

³ Written statements by the Department for Digital, Culture, Media & Sport and Ministry of Housing, Communities and Local Government dated 7 March 2019 and 27 August 2020.

20. This is reinforced by Paragraph 114 of the Framework which states that 'advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being' and that 'planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre connections.'
21. Set against the above context, I recognise that the purpose of the installation is to provide new 5G coverage which would facilitate significantly improved connectivity for the target coverage area and that the scheme would accordingly provide public benefits in accordance with the economic and social objectives of the Framework. I also acknowledge that it would be available for sharing by another operator.
22. Nevertheless, the Framework also states at Paragraph 117 that for a new mast or base station, evidence must be supplied that the operator has explored the possibility of erecting antennas on an existing building, mast or other structure. Although the appellant states that they have carried this objective out and considered a variety of other locations, I do not consider it has been sufficiently evidenced and demonstrated that there exist no other; (1) masts in the locality that could be shared; and (2) alternative sites that could also prove suitable and less harmful (such as recessing the mast into the tree belt behind the appeal site so that it falls on land outside of National Highways ownership, or next to the statutory undertaker's compound adjacent to the St Albans Abbey branch line which is accessed via the A414, or by combining a monopole mast with an existing street light column on the local road network). As a consequence, I am not convinced that no suitable alternatives exist that would prove less harmful to highway safety.
23. The proposed installation is not therefore acceptable in respect of its siting and appearance.

Conclusion

24. For the reasons given above, I conclude that the appeal should be dismissed.

Robert Fallon

INSPECTOR