



Appeal Decision

Site visit made on 10 October 2023

by F Harrison BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2023

Appeal Ref: APP/U5360/W/23/3317543

Highways land, Downham Road, London Borough of Hackney, London N1 5SQ

- 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 the Council of the London Borough of Hackney.
 - The application Ref 2022/2913, dated 24 November 2022, was refused by notice dated 24 January 2023.
 - The development proposed is installation of 20m pole inc. antennas, ground based apparatus and ancillary development.
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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 (GPDO), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the Council 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. The principle of development is established by the GPDO and there is no requirement to have regard to the development plan as there would be for a development requiring planning permission. Nevertheless, Policies D3, D4 and HC1 of the London Plan (2021) (LP) and Policies PP1, LP1, LP3 and LP4 of the Hackney Local Plan (2020) (HLP) are material considerations as they relate to issues of siting and appearance. Similarly, the National Planning Policy Framework (the Framework) is also a material consideration, and this includes policies for conserving and enhancing the historic environment and a section on supporting high quality communications.

Main Issues

4. The main issue is the effect of the siting and appearance of the proposed installation on the character and appearance of the area, taking into account nearby heritage assets, 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

5. The appeal site is an area of footpath at the junction of Downham Road with Clifford Road. There are a number of vertical features nearby to the site, including street lights, road signs and trees. The surrounding area features a mixture of built form including two and three storey properties, and tall blocks of flats.
6. While not within a heritage designation, the boundary of the De Beauvoir Conservation Area (DBCA) runs immediately adjacent to the appeal site and as such, the proposal would be seen in conjunction with views into and out of the conservation area and is part of its setting. From my observations and the DBCA Appraisal (2008) the significance of the conservation area, insofar as it is relevant to this case, is primarily derived from the layout of the buildings within it and the architectural style of properties.
7. The appeal site comprises an area of hardstanding, and in views of the site from the edge of the DBCA it therefore reads as an area of pavement. The site makes little contribution to the significance of the DBCA and its setting. However, while the proposed monopole would occupy only a very small proportion of any views into and out of the DBCA it would, nevertheless, appear significantly taller than other vertical elements nearby. Despite its simplistic design, the proposed monopole would be of considerable height at 20 metres (m) to the top of the tower and when approaching the site, it would be a conspicuous and strident feature in the surrounding area.
8. I acknowledge that the residential blocks of flats in the wider area are taller than the proposed mast would be. Nevertheless, the proposal is located in an open area of pavement, and the taller blocks of flats would not provide a backdrop to the scheme. As such, the proposed monopole would have a noticeable projection above the nearby trees and the buildings nearest to it and it would appear significantly taller than the existing street furniture. Moreover, the height and width of the proposed cabinets would appear large in the context of the generally pedestrian scale of nearby features, and given the open location, would be particularly intrusive within the public realm.
9. While the proposal would have an urban context where monopoles may not be unusual, and even if the least intrusive 5G design has been selected, owing to its height and width the monopole would be a utilitarian structure. The entire mast and cabinets would be visible along Lawford Road and along Downham Road in either direction and in these views, the modern design would draw the eye and be noticeable against the generally open backdrop. Downham Road is described as the gateway to the conservation area in the DBCA Appraisal, as such, viewed in this context, the proposal would appear out of place and would contrast with the architectural qualities of the locality, including the adjacent DBCA, detracting from the streetscape.
10. As a global and urban capital, London may well require substantial telecommunications infrastructure, and even if the site is not subject to any national environmental designations, the mast and cabinets would be clearly visible in views along the adjacent highways as well as the footpaths and would be conspicuous from several directions, by virtue of its prominent corner location. It would also be seen by occupiers of nearby residential properties, including on the opposite side of Downham Road to the appeal site from which the visual intrusion of the proposed mast would be readily apparent.

11. Opposite the appeal site are 60 and 62 Downham Road, identified in the DBCA Appraisal as locally listed buildings, that is non designated heritage assets¹ (NDHA). From my observations their significance is mainly derived from their age and architectural detailing including front steps and grand porches with free-standing columns. Given their status as a NDHA, in determining the appeal I have undertaken a balanced judgement having regard to the scale of any harm or loss and the significance of 60 and 62 Downham Road in accordance with Paragraph 203 of the Framework.
12. The locally listed buildings are part of a row of low rise semi detached pairs of traditional appearance. Despite the more modern developments opposite, including the tall blocks of flats, which contrast with the character and appearance of the DBCA, the utilitarian and modern design of the monopole projecting above the trees and nearest buildings would appear out of place. It would detract from the streetscape and the architectural quality of the NDHAs in views along Downham Road. Consequently, it would have a detrimental effect on the significance of the locally listed buildings.
13. The proposal's appearance is said to be constrained by technical and operational controls and I note that the height of the monopole is below the 25m that can be permitted development under the GPDO. Improved coverage would be provided to those in the DBCA through the proposal without having to locate the mast in the DBCA itself. However, the proposal would nevertheless still be a substantial structure in an open area of pavement. The appellant has drawn my attention to another appeal decision for a telecommunications installation. However, that proposal was in a different borough, was for a replacement mast and was not within the setting of a conservation area. As such it has a different context and is not directly comparable. In any event, I must consider the appeal scheme on its own merits.
14. Having regard to my above findings that the proposal would not blend into the townscape and rather would be a conspicuous and intrusive feature in the surrounding area, and that it would be harmful to the significance of the nearby NDHAs, it follows that I find that the proposal would have a harmful effect on the setting and significance of the DBCA. The harm that I have identified would be 'less than substantial' harm to the contribution that the setting makes to the significance of the DBCA. The Framework indicates that great weight should be given to the conservation of heritage assets, irrespective of the level of harm. Any harm to the significance of a designated heritage asset should also require a clear and convincing justification. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
15. Paragraph 114 of the Framework outlines that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being and planning decisions should support the expansion of electronic communications networks. I also acknowledge that the LP highlights the delivery of a modern communication network across London as an important element in ensuring global competitiveness. The appeal scheme would contribute to the appellant's national communication network in this part of London and the appellant has demonstrated that there is a particular need for the proposed telecommunications equipment in the area, which is said to

¹ National Planning Policy Framework, Paragraph 203; and National Planning Practice Guidance, Paragraph: 039 Reference ID: 18a-039-20190723.

have seen a proportionately greater increase in demand for data. I also acknowledge the numerous economic and social benefits arising from a 5G network and increased connectivity. These are clear public benefits of the appeal scheme.

16. In line with Paragraph 117 of the Framework, the appellant has set out the sequential approach in relation to suitable alternative sites for the proposed development. Siting of the scheme has been driven by coverage requirements and I acknowledge that masts for 5G need to be located where the service is used. Nearby buildings are not suitable and site sharing is said to have been investigated and exhausted. Alternative locations for the siting of the proposal within the search area have been assessed and discounted by the appellant as they have been found to be less suitable than the appeal site.
17. While a number of reasons have been set out, including impact on residential amenity, footway width and overhead wires, it is not clear which reasons apply to which alternative site. As such, based on the evidence before me, it has not been clearly articulated that a robust review of the availability of alternative sites for the appeal scheme has been undertaken, in line with the provisions of Section 10 of the Framework. Consequently, it has not been demonstrated that the appeal site represents the only viable option.
18. The Framework supports the expansion of electronic communications networks, including next generation mobile technology and as stated there would be important social and economic public benefits from the proposed development addressing an identified need for additional communications apparatus in the area which weigh in favour of the appeal scheme. However, I am not satisfied that alternative sites have been properly explored and, in any case, it is my overall view that the need for the proposed development does not outweigh the harm to the character and appearance of the area, including the great weight to be given to the less than substantial harm to the setting of the DBCA, arising from the siting and appearance of the proposed development.
19. To conclude, I find that the siting and appearance of the proposed installation would be harmful to the character and appearance of the area, taking into account nearby heritage assets. Insofar as they are material considerations, the proposed installation would be in conflict with Policies D3, D4 and HC1 of the LP and Policies PP1, LP1, LP3 and LP4 of the HLP. Amongst other things, these policies require mobile digital infrastructure to be suitably located which does not harm local character and avoids street clutter. Proposals are also required to conserve the borough's historic environment, including conservation areas and NDHAs.

Conclusion

20. For the reasons given above, and having regard to all relevant matters raised, I conclude that the appeal is dismissed.

F Harrison

INSPECTOR