



Appeal Decision

Site visit made on 24 October 2023

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th November 2023

Appeal Ref: APP/D5120/W/23/3315621

Days Lane street works, Bexley, DA15 8JX

- 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 Mr Cameron Wilson of CK Hutchison Networks (UK) Limited against the decision of the Council of the London Borough of Bexley.
 - The application Ref 22/02569/GPDO8, dated 13 October 2022, was refused by notice dated 8 December 2022.
 - The development proposed is a 5G 15m telecoms installation: H3G street pole and additional equipment cabinets.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO 2015), 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. The appellant claims the proposed equipment cabinets could be provided under permitted development rights without the need to apply for prior approval. Even so, these are shown on the appeal plans as part of the proposal and so I have taken account of the cabinets in my assessment.
4. The appellant within their statement has provided a plan showing a visibility splay between the junction of Days Lane and Fen Grove. The Council have had the opportunity to comment on this information in their statement. The appeal has been determined on this basis.
5. The Council has advised that since its decision to refuse prior approval for this development, the Bexley Local Plan, April 2023 (BLP) has been adopted. The BLP has superseded the previous development plan. The Council has advised of the new policies of the BLP they consider to be relevant to this appeal, and the appellant has had the opportunity to comment upon them. Consequently, the appeal has been determined on this basis.

Planning Policy

6. The provisions of Schedule 2, Part 16, Class A of the GPDO 2015 (as amended) do not require regard to be had to the development plan. I have however, had

regard to the policies of the development plan and the National Planning Policy Framework (the Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.

Main Issues

7. Having regard to the above and the Council's reason for refusal, the main issues in this case are the effect of the siting and appearance of the proposals on the character and appearance of the area, and 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

Character and appearance

8. The appeal site forms part of a pavement which is sandwiched between one side of Days Lane and a narrower road in front of a small parade of shops, it is also very near to Days Lane's junction with Fen Grove. On various parts of the pavement very near to the appeal site are a cycle stand, bin, lighting column with attached bus stop sign, and bollards. The buildings in this immediate area of Days Lane and Fen Grove are a mixture of mainly one and two storey properties and are mostly set back from the road, and they mainly have street trees along their roadsides. This gives the area a sense of openness and a spacious character particularly at the wide junction of Days Lane/Fen Grove.
9. The siting of the proposed street pole and cabinets would significantly add to the existing clutter on the pavement. It would also exacerbate the ad hoc siting of street furniture in this concentrated part of the pavement, creating an unorderedly and illegible appearance of unconnected structures. This would contrast poorly against the other mainly open pavement areas, which have little or no street furniture in the immediate area.
10. Although the proposed 15-metre high street pole is said to be designed to be located on pavements and alongside public roads, it would be significantly taller than the nearby properties and street lighting columns. It harmfully contrasts against the much lower buildings and structures in this area. Notwithstanding the appellant's claim that the proposal is sited away from residential and commercial properties, it would be prominently sited and very close to the mainly open junction of Days Lane/Fen Grove. Furthermore, its top heavy design would represent an incongruous and stark feature in the proposed location, particularly when viewed in and around the junction of these two roads.
11. Whilst there are tall street trees nearby, the design of the proposed green street pole would be hard edged, and it would appear be as a wholly different and discordant feature against the softer appearance and varying natural shapes of the trees.
12. To conclude, the siting and appearance of the proposal would be harmful to the character and appearance of the surrounding area. Insofar as they are material planning considerations, the proposal would conflict with the relevant parts of Policies DP11, DP8, and SP5 of the BLP which amongst other things require development to compliment and respond to local character in terms of its height, scale and design and its relationship between buildings and spaces, and that telecommunications development is sited to minimise its visual impact.

The proposal also conflicts with paragraph 115 of the Framework, which says that equipment should be sympathetically designed.

13. The Council has referred to Policies SP1, SP8, SP9, SP13, DP13, DP19, DP28, DP29, DP33 of the BLP as being relevant. Policy SP1 is an over-arching policy seeking sustainable development, Policies SP8 and SP9 are focussed on green infrastructure including the Green Belt, and biodiversity and geological assets, respectively. Policy DP13 relates to Local Protected Views, and Policy DP19 relates to the River Thames and its policy area. Finally, Policies DP28, DP29, and DP33 are primarily concerned with matters of drainage, water supply and quality, and contamination. I did not find these policies to be directly relevant to the siting and appearance of the telecommunication proposals on the appeal site.

Highway safety

14. The appellant's plan submitted with their appeal shows that the visibility splay referred to by the Council (2.4 metres by 43 metres) for vehicles entering Days Lane from Fen Grove would not be affected by the siting of the proposed development. I also observed from my site inspection that the siting of the proposed development at the back edge of the footpath, farthest from Days Lane, would be unlikely to impede the visibility splay at this junction or be harmful to highway safety. The Council has not provided any evidence to the contrary or explained why the visibility splay cannot be provided at the junction. Against this background, the proposal would not unacceptably affect the visibility at the junction of Fen Grove and Days Lane.
15. In addition, there have been no other highway safety issues raised by the Council in relation to the appeal proposal. From my own observations on my site inspection and based on the information before me, I have not identified any other unacceptable effects on highway safety.
16. In view of the above, I find the siting of the proposals would not be prejudicial to highway safety. Although not determinative, the proposal in this respect would comply with the relevant parts of with Policy DP24 of the BLP which requires that development does not have a significant negative effect on the safety of highway users. In addition, I found that the proposal would not conflict with paragraph 111 of the Framework, where it states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.
17. The Council has also referred to policies SP10, SP11, DP22 and DP23 of the BLP. Policy SP10 is focussed upon strategic improvements to Bexley's transport network, and Policy SP11 is concerned with safeguarding land for transport schemes. Policies DP22 and DP23 relate to sustainable transport and parking management respectively. I did not find these policies to be directly relevant to the appeal.

Alternative sites

18. As I have found above that the proposals would cause harm to the character and appearance of the area, paragraph 117 of the Framework indicates that applications should be supported by the necessary evidence to justify the proposed development. In particular, it requires evidence to be provided as to

the possibility of erecting antennas on an existing building, masts or other structures before considering a new free-standing mast.

19. The appellant has stated that there are no masts near to their search area that could be utilised for mast sharing, based on their submitted information I have no reason to disagree. Given the largely suburban location and the predominantly residential properties within the area, I am also satisfied that it is unlikely that existing buildings and structures could be utilised in preference to a new installation.
20. The appellant's coverage map shows only existing masts located nearby and their coverage. There is no definitive coverage map of the search area in question, showing its exact level of coverage, nor is there a map showing how the proposal would contribute to coverage of this area. Consequently, I am unable to conclude how the proposal would affect coverage in this area.
21. Furthermore, the nominal point for the proposed installation is some way from the appeal site's location, and outside of its narrow search area.
22. Of the six discounted pavement options, the reasons relating to the close proximity to a school, a bridge location, and due to overhead lines, appear reasonable. However, two options have been discounted solely because they are near to, or because of residential properties, with no clear or convincing reasons as to why such locations are not acceptable or available for the proposals.
23. Overall, based on the evidence before me, I am unconvinced that a thorough review of possible alternative site options has been conducted. Consequently, the arguments in favour of the appeal site, do not outweigh the identified harm to the character and appearance of the area. Insofar as they are material considerations, the proposal would also conflict with Policy DP8 of the BLP and paragraph 117 of the Framework, that amongst other things, collectively require the siting of new telecommunications installations to be fully justified to minimise their impact.

Other Matters

24. Reference has been made to various environmental, social and economic benefits that would arise, but these have not been taken into account in considering the matters of siting and appearance.
25. The appellant has stated that the proposals have been sited to reduce the impact on pedestrians using the pavement. Be that as it may, this does not alter my findings on the proposed development's harm upon the character and appearance of the area and the possibility that there could be alternative sites to accommodate the appeal scheme.
26. Although the appeal site is not in a Conservation Area or has any environmental designations, and that nearby trees do not have a Tree Preservation Order, these are neutral factors that neither weigh in favour or against the proposal.
27. It is noted that the appellant sought pre-application advice and engagement with the Council on the proposal before submitting the application. However, this does not alter my conclusions above.

28. The appellant has drawn my attention to an appeal decision (Ref: APP/A5840/W/20/3254830). That appeal decision related to whether a proposal would constitute permitted development for the purposes of Part 16 of the GPDO 2015 and its effect upon pedestrian safety. These matters are not in dispute in this case; that appeal decision is not directly comparable.

Conclusion

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

A Hunter

INSPECTOR