



Appeal Decision

Site visit made on 7 November 2023

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st December 2023

Appeal Ref: APP/M1520/W/23/3322826

Smallgains Avenue street works, Smallgains Avenue, Castle Point SS8 8LW

- 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 Gallivan (CK Hutchison Networks Limited) against the decision of Castle Point Borough Council.
 - The application Ref 22/0817/TPA, dated 28 October 2022, was refused by notice dated 19 December 2022.
 - The development proposed is 5G telecoms installation: H3G 15m 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), 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. There is no requirement to have regard to the development plan as there would be for any development requiring planning permission.
4. Nevertheless, Policies EC2 and CF16 of the Castle Point Borough Council Local Plan 1998 (CPLP) are material considerations as they relate to issues of siting and appearance. In particular, they require development to be appropriate to its setting and not to harm the character of its surroundings; and decisions relating to telecommunications equipment to have regard to visual impact.
5. Similarly, the National Planning Policy Framework (the Framework) is also a material consideration. A new version of the Framework was published on 5 September 2023. The section on supporting high quality communications has not changed, so there has been no injustice caused by the new Framework.

Main Issues

6. The main issues are:
 - i. the effect of the siting and appearance of the proposed installation on the character and appearance of the surrounding area; and

- ii. 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

7. Smallgains Avenue is a long residential street with modest one or two storey dwellings on one side, and a grass verge and shallow grassy bank on the other. Behind the grassy bank is an extensive area of green open space that affords wide and largely uninterrupted views of the sky, low-rise residential neighbourhoods and Thames Estuary beyond. These views contribute to the flat, verdant and open character of the area. The appeal site is on the grass verge, close to the junction with a residential side street. There are two small trees, a modestly sized lamppost and a street name sign nearby. A slightly taller telegraph pole stands on the corner opposite the site.
8. The proposed 15 metre street pole would be over twice the height of the adjacent trees and lamppost and significantly taller than the houses and telegraph pole opposite. It would stand out as an incongruous vertical feature in marked contrast to the open, flat landscape and low-rise surroundings. The siting of the pole in front of an area of open space would accentuate its prominent visual impact and the shallow bank would do little to mitigate this. Consequently, the pole would dominate the wide, open views that can be appreciated from many locations along Smallgains Avenue and from within the open space itself.
9. I accept the proposed equipment has been reduced in size and scale as far as technically possible for this location and its design is intended to fit alongside street furniture commonly found on public highways. I also acknowledge the site has been selected to reduce proximity to dwellings. However, in this location the proposed grey colour would contrast with the predominantly green backdrop so would do little to assist with assimilation in the street scene. The installation would be noticeably larger than the existing street furniture and the equipment cabinets would detract from the verdant appearance of the grassy verge and bank. Overall, the design considerations cited by the appellant would not outweigh the harm to character and appearance I have found.
10. For the above reasons, I conclude the siting and appearance of the proposed installation would have a harmful effect on the character and appearance of the surrounding area. Insofar as they are a material consideration, the proposal would also be contrary to the aims of Policies EC2 and CF16 of the CPLP.

Alternative sites

11. The proposed installation is necessary to meet the appellant's operational requirements and to provide new 5G coverage in a densely populated area.
12. Given the harm I have found to the character and appearance of the surrounding area, the other options that might be available are an important consideration. In addition, paragraph 117 of the Framework requires that, for a new mast, evidence be provided that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure.

13. I accept the cell search area is limited to meet a very specific technical requirement. The appellant states they did not identify any mast/site sharing opportunities or suitable existing buildings/structures in the search area. However, there is little evidence before me about which masts/sites and buildings/structures have been considered and the reasons they would not be viable options. In addition, I am not satisfied on the evidence before me that the nearby masts and rooftops suggested by the Council have been fully considered.
14. The supporting information refers to several alternative options for the development of a free-standing mast and cabinets at ground level. Reasons given for discounting these include insufficient pavement width, visibility splay issues, proximity to residential uses and being within the fall range of nearby overhead power lines. Nevertheless, the reasons given are brief and unsupported by sufficient evidence to show why they would be less suitable or would not be viable.
15. I recognise there are considerable social and economic benefits associated with the delivery of improved communications networks. Indeed, as set out in the Framework, advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being.
16. However, in the absence of clear and persuasive evidence as to why alternative sites have been discounted, I am unable to establish whether more suitable sites might reasonably be available. Consequently, I am not satisfied that, based on the evidence, suitable alternatives have been properly explored, or that the requirements of paragraph 117 of the Framework have been fully met.
17. I therefore find the siting and appearance of the proposed installation would have a harmful effect on the character and appearance of the surrounding area. Given suitable alternatives have not been properly explored, this harm is not outweighed by the need for the installation to be sited as proposed.

Other Matters

18. The Council has not raised concerns with the effect of the proposed siting on pedestrian movement, highway safety, public health or the living conditions of neighbouring residents. On the evidence before me I see no reason to disagree. However, an absence of harm in these regards does not carry positive weight in favour of the proposal.
19. I note the proposed drawings and supporting information were sent to the Council in advance of submission of the planning application. Be that as it may, I have considered this appeal on its merits based on the evidence before me.
20. Another appeal decision has been brought to my attention¹. From the limited information before me, the main issue in that case was the proposed installation's effect on highway safety rather than character and appearance. Consequently, the circumstances in that appeal are not sufficiently closely related to be comparable.

¹ Reference APP/A5840/W/20/3254830

Conclusion

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

C Carpenter

INSPECTOR