



Appeal Decision

Site visit made on 9 November 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 15 December 2023

Appeal Ref: APP/U1430/W/23/3317769

King Offa Way street works, Bexhill-on-Sea TN40 2HH

- 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) Limited against the decision of Rother District Council.
 - The application Ref RR/2022/2992/TN, dated 21 December 2022, was refused by notice dated 8 February 2023.
 - The development proposed is 5G telecoms installation: H3G 20m street pole and additional equipment cabinets.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GDPO 2015), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) requires 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 has been made on the same basis.
3. There is no requirement to have regard to the development plan as there would be for development requiring planning permission. Nevertheless, policy EN3 of the Rother Local Plan, Core Strategy (CS), September 2014, is a material consideration as it relates to issues of siting and appearance. In particular, it requires new development to be of high design quality by contributing positively to the character of the site and surroundings. Similarly, the National Planning Policy Framework (the Framework), is also a material consideration and this includes a section on supporting high quality communications.
4. The appellant's name was not specified on the appeal form. It has subsequently been clarified in correspondence with the appellant's agent that the appeal was made by CK Hutchison Networks (UK) Limited.

Main Issues

5. The main issues are the effect of the siting and appearance of the proposed installation on the character and appearance of the area 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

6. The proposed installation would be sited within the verge to the side of King Offa Way (A259), this area is part of the public adopted highway. This section of the verge is in a gap between trees and includes mature vegetation. The proposed installation would be sited close to 5 Fairmount Road which is a bungalow. The mixture of properties including apartments, influences the character of Fairmount Road, which could be defined as a medium density, residential road close to the town centre. There is a significant amount of street furniture, including telegraph poles, lampposts and traffic lights on both roads; however, most of which is relatively short, in proximity to the site.
7. Whilst the height of the proposed mast is the lowest required for an improved service, it would be significantly taller than nearby street furniture, and over three times taller than No 5. When viewed against properties on Fairmount Road, the vast scale of the proposed installation compared to other features in the vicinity would appear as a dominant feature, out of character with the road's predominantly residential street scene.
8. The trees and vegetation along this section of the A259 would provide some screening of the lower section of the proposed installation. However, the extent of the vegetation cannot be guaranteed in perpetuity as it could be subject to pruning or removal. In any event, the proposed installation would be significantly taller than existing trees and surrounding vegetation. Therefore, the trees and surrounding vegetation would have limited effect on the development's prominence.
9. Telecommunications equipment has become a common feature of the urban landscape, including adjacent to busy arterial routes such as the A259. Nonetheless, in this instance, it would be viewed against properties on Fairmount Road and its utilitarian appearance would be incongruous and over-dominant in this residential setting.
10. As above, CS Policy EN3 is a material consideration. The proposed installation would conflict with the policy which indicates that proposals should contribute positively to the character of the site and surroundings.
11. I note the proposed siting is not in a conservation area or within an area subject to a restrictive environmental designation, and no surrounding trees are subject to a Tree Preservation Order. However, these measures do not alter my assessment on the acceptability of the appeal proposal.
12. Overall, the proposed installation would have a harmful effect on the character and appearance of the area.

Need for siting

13. The rationale for the proposed installation is to provide improved coverage and capacity, most notably in relation to 5G services. Figure 1 of the appellant's Planning Appeal Statement of Case shows that the appeal site lies within an area of coverage deficiency which the proposal seeks to address. This information is not disputed by the Council and has informed the appellant's search area for new equipment. On this basis, it has been demonstrated that

there is a need for the proposed installation to be located somewhere in the search area.

14. Paragraph 115 of the Framework advises that the use of existing masts, buildings and other structures for new electronic communication capability should be encouraged. Although, there is no substantive evidence that the appellant considered the use of existing masts, buildings and other structures, the Framework specifies that their use should only be encouraged, and it is not a pre-requisite.
15. Several alternative locations for the proposed installation have been discounted, by the appellant, as they are in a residential area and the pavement is unsuitable. Limited evidence has been provided to substantiate why the alternative sites would be unviable or more harmful than the siting proposed. At a few of the identified alternative locations, the proposed street pole would be located further away from residential development than the siting proposed. Also, some of the properties in proximity to those locations are taller than No 5. For these reasons, the alternative locations could be more appropriate, than the siting proposed.
16. The intended search area has a radius of approximately 100m and is therefore relatively constrained. Only one option was put forward after the site search process. However, the map shows that the search area covers an urban area, with many roadside locations available. In the absence of clear and persuasive evidence as to why alternative locations have been discounted, I am unable to establish that the proposed siting is the most appropriate.
17. For the reasons given, I consider that the proposed installation would cause harm to the character and appearance of the area, and I am not satisfied that less harmful alternatives do not exist. Therefore, I conclude that the siting and appearance of the proposed development would be unacceptable.

Other Matters

18. Whilst I acknowledge that there are wider social and economic benefits that would arise from the proposal, the GPDO 2015 is clear that the only considerations should be the siting and appearance of the proposal. Therefore, these benefits have not been considered when assessing the acceptability of the appeal proposal.
19. The appeal decision¹ before me does not set a precedent for the proposed installation. Based on the evidence provided, that decision relates to whether the proposed installation would cause excessive clutter on the footway disrupting the movement of pedestrians. The disruption of pedestrian movements is not a matter of dispute in this appeal, both main parties accept that it would be located off the footpath. In any event, I am not familiar with all of the circumstances of that case, and I am mindful that all planning decisions should be made based on the individual merits of the case.
20. In line with the Framework, I note that planning decisions should support the expansion of electronic communications networks and authorities should not impose a ban on new electronic communications development. In addition, the proposed installation would not have a harmful effect on the living conditions of

¹ Appeal Ref. APP/A5840/W/20/3254830

neighbouring residents. Nonetheless, these factors do not alter my assessment of the acceptability of the appeal proposal.

21. Paragraphs 112, 113 and 124 of the Framework have been referenced in evidence. However, they refer to matters not relevant to the siting or appearance of electronic communications infrastructure, and therefore do not weigh in favour of the appeal proposal.

Conclusion

22. As the siting and appearance of the proposed installation would have a harmful effect on the character and appearance of the area, and I am not satisfied that less harmful alternatives do not exist, I conclude that the appeal should be dismissed.

J Hobbs

INSPECTOR