



Appeal Decision

Site visit made on 11 October 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2023

Appeal Ref: APP/Z4718/W/23/3319626

Whitehall Road street works, Whitehall Road, Bradford BD11 2ER

- 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 Kirklees Council.
 - The application Ref. 2023/90054, dated 6 January 2023, was refused by notice dated 28 February 2023.
 - 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. In accordance with the provisions of Article 3(1) and Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), and subject to any relevant exception, limitation or condition specified therein, development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network is permitted development.
3. The provisions of Paragraph A.3 of Part 16, Class A of Schedule 2 to the GPDO require the local planning authority to assess the proposed development based solely on its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.

Planning Policy

4. The main parties have referred to development plan policies in their evidence. However, there is no requirement to have regard to the development plan as there would be for any development requiring planning permission.
5. Nevertheless, Policy LP24 of the Kirklees Local Plan (February 2019) (the Local Plan) is a material consideration since it relates to issues of siting and appearance. In particular, the policy seeks to ensure that good design is at the core of all proposals and that the form, scale, layout and details of all development respects and enhances the character of the townscape and landscape. Similarly, the National Planning Policy Framework (the Framework) is also a material consideration in that it includes sections on supporting high quality communications and on achieving well-designed places.

Main Issue

6. The main issue is 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

7. The appeal site is located in a wide grassed verge alongside the footway to Whitehall Road close to its junction with Birkenshaw Lane. The site is close to a plateau along this busy undulating section of Whitehall Road which generally slopes upwards in both directions from the appeal site. Birkenshaw Lane slopes relatively steeply downwards from the junction, while opposite the site Old Lane slopes upwards away from its junction with Whitehall Road. The layout of this crossroads junction and the wide areas of open space on all corners, some of which is hard surfaced, lend an expansive and generally open feeling to the space in the vicinity of the appeal site, and this is experienced in views from the public realm and from the gardens of nearby dwellings.
8. The area immediately surrounding the appeal site is residential in character, primarily comprising traditional single-storey and two-storey semi-detached and terraced dwellings. While there are commercial uses on the corners of the junction of Old Lane and Whitehall Road, including a convenience store and an estate agency, these appear to have been created through the conversion and extension of semi-detached houses and accordingly retain a generally domestic scale. The approach to the site along Whitehall Road from the A650 is largely dominated by views of the countryside including small woodland plantations, and in moving eastwards along Whitehall Road towards the site these wooded countryside views provide a verdant backdrop. Accordingly, the wider context is one of an urban edge location where clear views towards nearby countryside from the appeal site are a dominant feature.
9. There are a range of elements in the street scene with a vertical emphasis, including streetlighting columns and telegraph poles. However, these features are slender in form, not particularly tall, and consequently are not especially visually obtrusive in the street scene. There are also various modest items of street furniture close to and visible from the appeal site, including highways signs, traffic lights and guard rails associated with a pedestrian crossing, bus shelters, and various small equipment cabinets. Nevertheless, while not free from development, the grassed verge has a pleasant sense of openness which makes a positive contribution to the character and appearance of the area.
10. The proposed street pole would be some 15m in height and would be sited a short distance from the proposed associated cabinets. The appeal submissions indicate that the proposal is required to provide the infrastructure necessary for 5G coverage to meet an identified need to improve service in the area. The mast would be the minimum height necessary to achieve the operational requirements in this location and, together with the cabinets would be coloured light grey.
11. Due to its height and overall dimensions, in this generally open and exposed location, the proposed street pole would be noticeably taller than the nearby

streetlighting columns and telegraph poles. The small tree adjacent to the proposed installation, and others nearby would provide little screening from public or private vantage points. In more elevated views from Old Lane approaching the junction with Whitehall Road, due to the wider local topography, the street pole would appear as a substantial tall structure that would puncture the skyline, towering above the roofscapes which currently sit below countryside and woodland in distant views. Moreover, while noting comments in the Council's Officer Report regarding residential amenity, the proposed street pole would appear particularly dominant and obtrusive in views from the gardens of the bungalows immediately adjacent to the site, especially from 2 Birkenshaw Lane and the short terrace at 108 – 114 Whitehall Road.

12. Furthermore, whilst the proposed cabinets would be modest in scale and typical of the form of structures seen on roadsides, they would introduce further intrusive structures in the grassed verge. As such, in addition to the proposed street pole and other existing signage and structures near to the site, they would create undue visual clutter. The cabinets themselves could be erected as permitted development. However, there is no compelling evidence that this would take place in the absence of the proposed mast.
13. For these reasons, by virtue of its siting and appearance, the proposed installation would introduce dominant and obtrusive features that would fail to integrate with the surroundings and would detract from the generally open setting of the area. The light grey colouring of the installation would not adequately mitigate these effects. The proposal would therefore result in unacceptable harm to the character and appearance of the area. Insofar as they are material considerations, for the same reasons, the proposal would also be contrary to Policy LP24 of the Local Plan and section 12 of the Framework in respect of achieving well-designed places.
14. The appellant highlights that the site is not located within a conservation area or subject to any other similar constraints. However, this does not diminish the harm I have found.

Availability of alternative sites

15. I have no reason to dispute that new installations are required to enable the roll-out of 5G technology, or that a 5G cell search area may be limited by several factors. However, as I have found that the proposed siting would cause harm to the character and appearance of the area, it is necessary to consider whether other, less harmful, options may be available. In considering this matter I have had regard to the information provided about discounted sites given in the appellant's 5G Site Specific Supplementary Information and Planning Justification Statement (the SSSI), which is repeated in their Statement of Case; and to my appreciation of the site and surroundings gained during my site visit.
16. Paragraph 117 of the Framework advises that applications for electronic communications development should be supported by the necessary evidence to justify the proposal. For a new mast or base station, this includes evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure. The SSSI states that *'In this location, existing mast sites are not capable of supporting additional equipment compliment to extend coverage reach across the target area and prospective 'in-fill' mast sites are extremely limited'*. However, no further information is

provided in the appeal documents to indicate which existing mast sites have been explored and why they have been discounted.

17. I saw that eastwards from the appeal site there is a mast which is partially visible in the countryside behind a plantation to the south side of Whitehall Road on the approach to the A650 junction. I have no further information regarding that structure, and I recognise that it lies beyond the tight search area identified for the 5G coverage sought in this vicinity. However, it seems to me that any exploration regarding the possibility and feasibility of using that specific structure ought to have been explained, in at least a minimal level of detail in the application or in the appeal submission, rather than seeking to rely on a general statement regarding the capabilities of '*...existing mast sites...*'.
18. The Officer Report suggests consideration should have been given to accommodating the installation using other non-residential buildings in the vicinity. While no specific buildings or locations have been suggested by the Council, I saw that there are other tall buildings in the vicinity that would, in my view, be worthy of further exploration. Noting the position of the nominal location (site D1), and the relative distance between that site and the proposal, it is not clear from the information I have seen why further exploration has not been conducted into the potential use of land or buildings around the junction of Whitehall Road and Bradford Road, which is a short distance from the discounted site D4, and specifically, the land and buildings at the West Yorkshire Fire & Rescue Service (the WYFRS) site. The WYFRS site contains several tall buildings and structures, and its extensive grounds are generally well screened by mature trees which assist in assimilating the height of those buildings into the townscape. This setting could therefore act similarly to provide screening and substantial vertical visual context for an installation similar to that proposed.
19. While the reasons given for discounting the potential alternative sites described in the SSSI are very limited, from my observations it did not seem to me that an installation of the scale and design proposed would be any less harmful if it were to be sited in any of those locations, largely for the reasons given by the appellant. Nevertheless, it is incumbent upon the appellant to provide evidence demonstrating that some reasonable effort has been made in searching for alternatives, including the use of buildings or other structures in accordance with the sequential approach described in the Framework. It follows that, where such potential alternatives exist, as seems to me to be the case here, the feasibility of such alternatives should be examined in a proportionate degree of detail.
20. On the basis of the information before me, and from what I observed during my site visit, I am unable to conclude with certainty that a robust review of the availability of less harmful alternative sites or solutions in the search area, or just outside it, has been undertaken to demonstrate that the appeal proposal represents the only viable option. I therefore attach little weight to the contention that the appeal site provides the only feasible option for the development. As such, the proposed installation would be contrary to the aims of the Framework in respect of supporting high quality communications which requires evidence to demonstrate that alternative sites have been explored.
21. I find that, in this instance, notwithstanding the support given to the development and expansion of electronic communications networks in the

Framework, and in the development plan, the harm that would arise to the character and appearance of the area is not outweighed by the need for the installation to be sited as proposed taking into account any suitable alternatives.

Other Matters

22. I acknowledge that advanced, high quality and reliable communications are considered essential for economic growth and social well-being. I recognise that the proposal would contribute to the goal of achieving comprehensive, high-quality coverage across the UK from a choice of network operators. I also recognise that enhanced signal coverage provided by the proposal would facilitate educational benefits, provide access to vital services, and it would bring benefits to local residents and businesses which facilitate remote and home working and the use of mobile phones and other equipment in the home. I also note the encouragement given by the Department for Digital, Culture, Media and Sport for local authorities to support the expansion of networks. However, the relevant provisions of the GPDO indicate that only matters of siting and appearance should be considered. These benefits of the scheme identified by the appellant are not factors I can take into account as they are already recognised through permitted development rights. In any event, the advantages of the proposal do not outweigh the harm I have identified to the character and appearance of the area.
23. I have had regard to the representations made by interested parties which, in addition to the concerns expressed in the Council's reasons for refusal, include concerns about highway safety, noise pollution, vandalism, the effects on house prices and health impacts. The Council's Highways advisors do not object to the proposal. I see no reason to disagree with that advice and it is not a matter in dispute between the main parties. I have not seen substantive evidence to demonstrate that the proposal would result in noise pollution, or that such installations are particularly prone to vandalism, and I note the Council's Environmental Health advisors raise no objection. These are both neutral matters in my consideration of the proposal. The Planning Practice Guidance confirms that the courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property could not be a material consideration. I therefore cannot have regard to any effects the development may have on house prices.
24. The representations about health issues do not raise any specific concerns. However, the appellant has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). In these circumstances, the Framework advises that health safeguards are not something which a decision-maker should determine. No sufficiently authoritative evidence has been provided to indicate that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified.
25. The appellant has drawn my attention to another appeal¹ and, while I have seen the decision on that case, I have seen no other details to aid in any comparison. However, the main issues in that case related to height

¹ Appeal Ref: APP/A5840/W/20/3254830

specifications given in the GPDO, and the effects of that proposed development on the pedestrian environment. Unlike in the appeal before me, the effect of that development on the character and appearance of the area was not a main issue. Furthermore, the effect of the proposal on the pedestrian environment is not a matter in dispute between the main parties in the case before me. I therefore find that the circumstances in that case do not appear to be directly relevant to the appeal proposal which, in any event, I have determined on its own merits.

Conclusion

26. For the reasons given above the appeal is dismissed.

David English

INSPECTOR