



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/23/3319630

Wellington Street street works, Wellington Street, Batley WF17 5HU

- 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. 2023/90058, dated 6 January 2023, was refused by notice dated 2 March 2023.
- The development proposed is 5G telecoms installation: H3G 15m street pole and additional equipment cabinets.

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 as 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. Similarly, the National Planning Policy Framework (the Framework) is also a material consideration, and this 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 alongside the footway in a moderately sized area of grassed open space at the junction of Wellington Street and Purlwell Lane, close to the high point on this section of Wellington Street as it rises steeply away from the centre of Batley. This open space area contains a handful of relatively small, mature, deciduous trees and is of a similar size and general appearance to the open spaces on the opposite side of the Purlwell Lane junction, and those on the opposite side of Wellington Street at its junction with East Street. As a result of these features, the appeal site and its immediate surroundings provide a verdant and relatively open area, prominent in views from the public realm in this otherwise largely compact built-up urban location. Accordingly, the pleasant sense of openness created by the break in built forms in this location makes a positive contribution to the character and appearance of the area.
8. The surrounding area includes a variety of primarily two and three-storey buildings of differing ages in a range of commercial and residential uses. The buildings generally differ from each other in terms of their scale and built footprint and there is no clearly discernible regularity in the arrangement of buildings in the vicinity of the appeal site. The area more generally is characterised by its undulating topography which tends to emphasise the range in the relative heights of buildings in the locality.
9. In addition to the trees in this and the adjacent open spaces there are other elements in the street scene with a vertical emphasis, including lighting columns and telegraph poles. However, those features are slender in form and not particularly tall relative to the nearby buildings. Consequently, they are not visually obtrusive in the street scene and do not detract from the verdant and open character and appearance of the site and immediate area.
10. The proposed street pole mast would be some 15m in height and would be sited a short distance from a number of associated proposed cabinets. The appeal submissions indicate that the development is required to provide the infrastructure necessary for 5G coverage to meet an identified need to improve service in the area. The street pole 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. The presence of mature trees in the immediate vicinity would provide a degree of concealment for the street pole in views from some public vantage points. However, due to its height in a generally open and exposed location, it would be noticeably taller than the existing nearby trees, telegraph poles and streetlights when seen in views from the highways approaching the site from most directions.

12. Furthermore, whilst the proposed cabinets would be modest in scale and typical of the form of structures seen on roadsides, the number would be extensive, and they would appear as intrusive features in the otherwise uncluttered open space. As such, in addition to the proposed street pole, when seen with other existing highway signage and associated structures near to the site, in this location the cabinets would create undue visual clutter. The appellant contends that 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 street pole.
13. For these reasons, by virtue of its siting and appearance, the proposal would be a dominant and obtrusive feature that would stand out as being unusually prominent in an exposed location, and it would thereby fail to integrate with its surroundings. Furthermore, the proposal would be visually imposing and would detract from the open and verdant 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 conclusion to the Council's Officer Report refers to the site being within Birstall Conservation Area. However, the Officer Report also indicates that the site is not on Article 2(3) land (as defined in the GPDO) and the appellant highlights the fact that the site is not located within a conservation area or subject to any other similar constraints. I am satisfied that the site is not in a conservation area. However, this does not weigh in favour of the proposal and 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 proposed development. 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. In this case, and from my observations during my site visit, I have no reason to doubt the appellant's assertion that there are no opportunities for mast sharing in the immediate vicinity.
17. However, the Council suggest that consideration should have been given to '*...siting on the roof of an industrial complex directly over the road which would appear to be a more appropriate location.*'. While the precise location of that industrial complex is not provided by the Council, I saw that there are other tall

buildings in the vicinity that would, in my view, be worthy of further exploration.

18. Having regard to the distance between the proposal and the appellant's nominal location and noting the locations of those sites selected and discounted by the appellant, most specifically site D6, alternative options could include siting equipment on existing tall buildings off the B6123/ Mayman Lane or in less harmful free-standing locations in that area which has a largely commercial character. Alternatively, the five-storey, flat-roofed Fox's Biscuits factory building on Wellington Street located a short distance from the appeal site could be explored further. This is directly opposite site D2 which is described in the SSSI as being discounted because the pavement is too narrow for a streetworks option. In respect of this particular location, I am not convinced with the appellant's claim that, despite having carried out a physical inspection of the area, *'...existing...sites, structures and buildings, which could potentially accommodate the necessary equipment, were not identified.'*
19. It is unclear to me why other potentially less harmful options, including through the use of buildings similarly distant from the nominal location as the proposal, which I note is positioned outside the 100m search area shown in the Pre-Application Consultation documentation, have not been explored further; and why no information is provided about any further exploration of the use of the building suggested by the Council has been undertaken prior to pursuing an appeal. No clear explanation is provided by the appellant on these matters.
20. Although little explanation is given about the criteria applied to the site selection or assessment process associated with the intention to use a street pole solution, and notwithstanding the appellant's comment, about which no further detail is provided, that *'There was one other option put forward during the site search process'*, I note that six potential sites were identified in the SSSI in addition to the appeal site. All those alternative locations for the street pole were discounted for various briefly described reasons, all of which include reference to inadequate pavement widths. However, no explanation has been given about the required pavement width for an installation such as that proposed. Failure to provide at least some minimum site search criteria presents a problem for decision makers when seeking to understand why certain options were identified and subsequently discounted.
21. From my observations, it appeared to me that sites D1 and D5 would not be genuine possible locations largely for the reasons given. It also appeared to me that site D4 would result in a proposal that would be likely to harm the living conditions of the occupiers of the adjacent bungalows due to their proximity to that location. It is therefore unclear why those sites were identified as realistic potential alternative locations.
22. It is incumbent upon the appellant to provide evidence demonstrating that some reasonable effort has been made in searching for genuine alternatives, including the use of buildings or other structures in accordance with the sequential approach described in the Framework. It follows that the feasibility of such alternatives should be examined in a proportionate degree of detail, but this should be based on at least some minimal site selection criteria in addition to the mapped search area. 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, even if it represents the appellant's favoured solution from a coverage perspective. I can 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.

23. 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 I have identified with regard 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

24. 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 bring benefits to local residents and businesses, and this would facilitate remote and home working and the use of mobile phones and other equipment in the home; and I note 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 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.
25. My attention is drawn 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 specifications given in the GPDO, and the effects of the proposed development upon 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

¹ Appeal Ref: APP/A5840/W/20/3254830