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# Appeal Decision

Site visit made on 22 November 2023

**by S Rawle BA (Hons) Dip TP Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 19.12.2023**

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**Appeal Ref: APP/G3110/W/23/3322945**

**Eleanor Close street works, Eleanor Close, Oxford OX4 3ND**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Gallivan of CK Hutchison Networks (UK) Ltd against the decision of Oxford City Council.
  - The application Ref 22/02932/T56, dated 10 December 2022, was refused by notice dated 2 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. 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 GPDO), planning permission is granted for the installation, alteration or replacement of any electronic communications apparatus subject to limitations and conditions.
3. The provisions of the GPDO require the local planning authority to assess the proposed development solely based on its siting and appearance, taking account of any representations received. My determination of this appeal has been made on the same basis.
4. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A do not require consideration of the development plan. I have had regard to the policies of the development plan only in so far as they are factors relevant to matters of siting and appearance, therefore.

## Main Issues

5. The main issues are (i) the effect of the siting and appearance of the proposed installation on the character and appearance of the area and on the setting of a locally listed building, (ii) whether adequate information has been submitted to ensure that the proposal would not have an adverse impact on nearby trees and (iii) 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 or any associated public benefits.

## Reasons

### *Character and appearance*

6. The appeal site lies within an area of grass verge at the junction of Eleanor Close and Church Cowley Road within a suburban, predominantly residential location. Immediately opposite the appeal site is the Rose Hill Cemetery with the locally listed Rose Hill Cemetery Lodge (the Lodge) next to an entrance to the cemetery.
7. The Lodge is a non-designated heritage asset, and its significance derives from the fact that it is an attractive example of a Victorian gothic revival gate lodge that helps to define the entrance of the cemetery which provides both historic and aesthetic value.
8. There are mature trees both on the appeal site and within the cemetery which creates a verdant sense of openness. Further, the trees on the appeal site have a significant public amenity value and complement similar trees within the cemetery. The trees on the appeal site together with the grass verge creates a harmonious sense of green spaciousness which makes a significant contribution to the character and appearance of the area and are important to the setting of the Lodge.
9. In addition to the trees, there are some other vertical features including a telegraph pole, lampposts and traffic signs within the vicinity of the appeal site. However, the 15m street pole would protrude significantly above all these features. Although, the trees on the appeal site would provide a level of screening, nevertheless the pole would be readily visible both from the road and from the Cemetery and would stand out as an isolated and discordant structure. It follows that the proposal would appear as an inappropriately dominant, uncharacteristic and alien feature within the streetscene that would unacceptably harm the character and appearance of the area. It would also unacceptably harm the setting of the Lodge and I give considerable weight to the fact that the proposal would harm the significance of this non-designated heritage asset.
10. I will cover the possible effect of the new cabinets on nearby trees below, but I accept that they are a typical form of structure seen within a suburban area. Given their relatively low height and as they would be set against the backdrop of the trees on the appeal site they would not appear as incongruous features within the grass verge and would not lead to undue visual clutter. However, the fact that this element of the proposal would not cause harm to the character and appearance of the area does not justify the harm that would be caused by the street pole that I have outlined.
11. I therefore conclude that the proposal would have an unacceptable impact on the character and appearance of the area and on the setting of Rose Hill Cemetery Lodge, a locally listed building. As a result, in so far as they are material considerations, the proposal would not accord with Policies DH1, DH5 and V9 of the Oxford Local Plan 2036 adopted 8 June 2020 (OLP) which seeks to ensure the development is of a high quality design that creates or enhances local distinctiveness, that due regard has been given to the impact of development on local heritage assets and that new electronic communications infrastructure should accord with national policy and be sympathetically designed and camouflaged where appropriate.

12. The scheme would also not comply with the National Planning Policy Framework (the Framework) which sets out that new equipment should be sympathetically designed and camouflaged where appropriate as well as requiring developments to be sympathetic to local character.

*Effect of the proposal on mature trees*

13. As outlined above, the mature trees on the appeal site have a significant public amenity value and make a significant contribution to the character and appearance of the area. They are also important to the setting of the Lodge. The appellant has indicated that tree pruning would be required to facilitate the proposed installation. Further, proposed concrete paving and the cabinets are shown to be sited within the spread of the tree located within the northern part of the appeal site. No detailed information has been provided to demonstrate that the pruning would not unacceptably harm the health of these important trees, or that the mast, cabinets and service runs would not have a harmful impact on their roots.
14. I therefore conclude that the appellant has not provided adequate information to demonstrate that the proposal would not unacceptably harm or lead to the loss of the existing mature trees on the appeal site. Accordingly, in so far as they are material considerations, the proposal would not comply with Policy G7 of the OLP which seeks to ensure the protection of trees which have a significant public amenity value.

*The need for the installation, alternative sites, and public benefits*

15. The appellant has a need to provide 5G coverage within this area and has adopted a sequential approach to site selection. This involved considering mast and site sharing, existing buildings and structures and alternative ground-based installations. The appellant highlights that having undertaken a desk top study no mast/site sharing opportunities or existing buildings/structures were identified. However, limited information has been provided to substantiate that finding.
16. Further, the appellant sets out that there is an extremely constrained cell search area, and six other sites were considered and discounted. Despite the constrained cell search area, these alternative sites are located some distance from the appeal site. Moreover, there is very little detail about why they would be unsuitable, and it is not clear why these would be more harmful than the proposed location. Therefore, the information is insufficiently compelling or robust to show that this is the only site on which the proposed development could be located.
17. I have taken account of the public benefits associated with this proposal, including that the proposed installation would provide good, fast, reliable communication infrastructure and would support the rollout of the 5G network which would have economic and societal benefits and are matters supported by the Framework. However, I have given considerable weight to my finding that the proposal would harm the significance of the non-designated heritage asset. Any public benefits associated with the proposal would not be sufficient to outweigh the harm the proposal would have on the setting of the Lodge or the other harm I have identified above.

18. I therefore conclude that the need for the installation to be sited as proposed taking into account any suitable alternatives or any associated public benefits would not outweigh the harm the proposal would have on the character and appearance of the area, on the setting of the Lodge or the fact that insufficient information has been provided to demonstrate that the proposal would not unacceptably harm or potentially lead to the loss of the existing mature trees on the appeal site.

### **Other Matters**

19. 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 decisionmaker should determine. As a result, the fact that the appellant has provided the ICNIRP certificate is a neutral consideration.

### **Conclusion**

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

*S Rawle*

INSPECTOR