



Appeal Decision

Site visit made on 13 November 2023

by F Harrison BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2023

Appeal Ref: APP/A5270/W/22/3310279

Windmill Lane Street Works, London UB2 4NF

- 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) Ltd against the decision of the Council of the London Borough of Ealing.
- The application Ref 223909PNT, dated 8 September 2022, was refused by notice dated 26 October 2022.
- The development proposed is described as 5G 18m telecoms installation: H3G street pole and additional equipment cabinets.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the appeal, a new version of the National Planning Policy Framework (the Framework) came into effect. Those parts of the Framework most relevant to this appeal have not been significantly amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach.

Procedural Matters

3. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the Council 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.
4. The principle of development is established by the GPDO and there is no requirement to have regard to the development plan as there would be for a development requiring planning permission. Nevertheless, Policies D3, D4 and HC1 of the London Plan (2021) (LP) and Policies 7B, 7C and 7.4 of the Development Management Development Plan Document (2013) (DMDPD) are material considerations as they relate to issues of siting and appearance. The Framework is also a material consideration, and this includes policies for conserving and enhancing the historic environment and a section on supporting high quality communications.

Main Issue

5. The main issue is the effect of the siting and appearance of the proposed installation on the character and appearance of the area, including the effect on the setting of the St Marks and Canal Conservation Area (SMCCA) and the nearby scheduled monument, 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

6. The appeal site is located on Windmill Lane and is part of a central verge planted with grass, shrubs and trees that sits within a green corridor. There are a number of vertical features near to the site, including traffic lights, road signs, street lights, as well as a number of trees. The surrounding area features a mixture of built form, including a relatively tall brick boundary wall running alongside the pavement opposite the appeal site and two and three storey dwellings. Despite the urban qualities of the area, this section of Windmill Lane has a verdant character owing to the grass verge, shrubs and tree planting and offers visual relief from the otherwise dense built form.
7. The site is also in proximity to the SMCCA and a scheduled monument known as Windmill Bridge. The boundary of the SMCCA runs horizontally along the middle of the grassed area on the opposite side of Windmill Road to the appeal site and as such, the proposal would be seen in conjunction with views into and out of the conservation area and is part of its setting. Insofar as it relates to this appeal, the significance of the SMCCA is primarily derived from the relationship of the built fabric with the natural surroundings of the canal.
8. The appeal site comprises a grassed area set back from the road. In views of the site from the edge of the SMCCA it therefore reads as an area of grass verge. The site, as part of the green corridor extending from the conservation area makes a positive contribution to the significance of the SMCAA and its setting. The appeal scheme has been designed with urban, roadside locations in mind and would not affect the free flow of pedestrians. I also note that the proposed mast is said to be the minimum height necessary to achieve the required service levels.
9. However, the proposed monopole would be of considerable height at 18 metres to the top of the tower and when approaching the site, it would be a conspicuous and intrusive feature in the surrounding area, with a noticeable projection above the nearby trees and the streetlights which are the tallest street furniture at present. Moreover, given the distance between the appeal site and industrial buildings on the opposite side of the nearby roundabout, these buildings would not mitigate the appeal scheme's dominant scale.
10. While the proposed monopole would occupy only a very small proportion of any views into and out of the SMCCA it would appear significantly taller than other vertical elements nearby. The monopole would be significantly broader than the streetlights and would have relatively bulky antennas and as such the proposed development would be a utilitarian structure. The entire mast and cabinets would be visible along Windmill Lane. In these views, the proposal would appear jarring against the trees and vegetation which provide a soft backdrop. As such, it would be starkly incongruous and would contrast with the verdant qualities of the locality, including the nearby SMCCA.

11. The proposal meets guidelines for non-ionising radiation protection and has been sited to not be directly in front of residential properties. However, the proposal would nevertheless be a substantial structure and would be readily apparent as a prominent, visually intrusive feature from the adjacent highway and footpath.
12. The scheduled monument known as Windmill Bridge is located nearby to the appeal site. Built to a design by Isambard Kingdom Brunel, this single span cast iron bridge and aqueduct retains considerable elements of original fabric. The bridge's significance is primarily derived from the architectural and engineering interest and historic connection with Brunel. The setting of the bridge comprises the canal and surrounding open green spaces, including the appeal site.
13. The designated heritage asset is located further along Windmill Lane, as such, there is to some extent a degree of physical and visual separation with the architectural and engineering interest of the scheduled monument. However, there would be clear views of the monopole projecting above the street lights and trees, and the modern design would be noticeable against the existing verdant backdrop. Viewed in this context, the proposal would appear out of place, detracting from the asset in views along Windmill Lane, having a detrimental effect on the asset's setting. Consequently, the proposal would not preserve the nationally important architectural and engineering interest of the scheduled monument.
14. Having regard to the above and taking into account my findings that the proposal would not blend into the townscape and rather would be a conspicuous and intrusive feature in the surrounding area, it follows that I find that the proposal would have a harmful effect on the setting and significance of both the SMCCA and the scheduled monument. While the appellant suggests that the monopole could be coloured to minimise its appearance, given the site's sensitive location adjacent to heritage assets and the proposals design, this would not resolve the visual effect of the proposal.
15. The harm that I have identified would be 'less than substantial' harm to the contribution that the setting makes to the significance of the SMCCA and the scheduled monument. The Framework indicates that great weight should be given to the conservation of heritage assets, irrespective of the level of harm. Any harm to the significance of a designated heritage asset should also require a clear and convincing justification. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
16. Paragraph 118 of the Framework outlines that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being and planning decisions should support the expansion of electronic communications networks. The scheme is required to improve digital wireless mobile coverage and to facilitate 5G coverage and the appellant has demonstrated that there is a particular need for the proposed telecommunications equipment in this densely populated area. I also acknowledge the numerous economic and social benefits arising from a 5G network. As such, the proposal has clear public benefits.
17. In line with Paragraph 121 of the Framework, the appellant has set out the sequential approach in relation to suitable alternative sites for the proposed

development. Site sharing is said to have been investigated and exhausted and the cell search area for the required new installation is constrained due to the operational requirements. Alternative locations for the siting of the proposal within the search area have been assessed and have been discounted by the appellant for reasons including proximity to residential properties, visibility splay issues and insufficient pavement width.

18. The alternative sites are generally dispersed away from the nominal site where additional infrastructure is required. In the intervening areas, I observed several locations where there are wide footpaths and grass verges. Moreover, there are areas within the search area where no evidence has been provided that alternative sites have been assessed. As such, based on the evidence before me, I am not satisfied that a robust review of the availability of alternative sites for the appeal scheme has been properly explored, in line with the provisions of Section 10 of the Framework. Consequently, it has not been demonstrated that the appeal site represents the only viable option.
19. The Framework supports the expansion of electronic communications networks, including next generation mobile technology and as stated there would be important social and economic public benefits from the proposed development addressing an identified need for additional communications apparatus in the area which weigh in favour of the appeal scheme. However, I am not satisfied that less harmful alternative sites have been properly explored and in any case, it is my overall view that the need for the proposed development does not outweigh the harm to the character and appearance of the area, including the great weight to be given to the less than substantial harm to the setting of the SMCCA and the scheduled monument, arising from the siting and appearance of the proposed development.
20. To conclude, I find that the siting and appearance of the proposed installation would be harmful to the character and appearance of the area, including the setting and significance of the SMCCA and the nearby scheduled monument. Insofar as they are material considerations, the proposed installation would be in conflict with Policies D3, D4 and HC1 of the LP and Policies 7B, 7C and 7.4 of the DMDPD. Amongst other things, these policies require development to deliver good design that is of the most appropriate form for the site, respecting local context and conserving and enhancing the historic environment and heritage assets. It would also be contrary to the heritage protection policies of the Framework, and it's overarching principles for development to achieve well-designed and beautiful places for the long term.

Conclusion

21. For the reasons given above, and having regard to all relevant matters raised, I conclude that the appeal is dismissed.

F Harrison

INSPECTOR