



Appeal Decision

Site visit made on 7 December 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th January 2024

Appeal Ref: APP/G5180/W/23/3322815

Chislehurst Road SW, Chislehurst Road, Orpington BR5 1NT

- 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 Limited against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/22/04259/TELCOM, dated 28 October 2022, was refused by notice dated 16 December 2022.
 - The development proposed is 5G telecoms installation: 15m street pole and 3 additional ancillary equipment cabinets and associated ancillary works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Government published a revised version of the National Planning Policy Framework (the Framework) in December 2023. Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the main issues in this case are largely unchanged. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework from the parties, and that no party would be disadvantaged by such a course of action.
3. 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.
4. 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

5. 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.

6. Nevertheless, Policies 32, 37, 41, and 89 of the Local Plan¹ are material considerations since they relate to issues of siting and appearance. These policies seek to ensure, amongst other things, that development does not adversely affect highway safety, that all proposals should be of a high standard of design, positively contribute to the existing street scene and respect heritage assets, ensure that regard has been given to locating a site which causes least visual impact, and that proposals preserve and enhance the characteristics and appearance of conservation areas. The Framework is also a material consideration in that it includes sections on supporting high quality communications, promoting sustainable transport, and on achieving well-designed and beautiful places.

Main Issues

7. The main issues are the effect of the siting and appearance of the proposed installation on:
- the character and appearance of the area, including the Chislehurst Road, Petts Wood Conservation Area (the Conservation Area);
 - highway safety; 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 including the Conservation Area

8. The appeal site is located in a relatively wide grassed verge which separates the footway from the carriageway of Chislehurst Road which appeared to be heavily trafficked at the time of my site visit in mid-afternoon. The site occupies a prominent position in a gap between mature deciduous street trees in the compact Conservation Area.
9. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
10. The Conservation Area comprises an area of 1930s suburban development of primarily detached houses. It has a cohesive character derived from common design themes and from the limited range of materials used in the development of the houses which are set in large plots. The design and layout of the dwellings, their setting within mature verdant gardens and the regular street trees along Chislehurst Road all contribute positively to the character of the Conservation Area and are all features from which its significance is derived.
11. The mast would be significantly taller than nearby buildings and street furniture such as streetlights, telegraph poles and bus shelters, and it would be noticeably taller than the adjacent mature street trees. I appreciate that there do not appear to be any appropriate nearby buildings or structures onto which the mast could be fixed, and I recognise that the antenna must be positioned above any nearby obstructions in order to operate efficiently. However, the

¹ London Borough of Bromley Local Development Framework Local Plan (January 2019)

height and utilitarian appearance of this obviously engineered structure would appear out of scale and overly prominent within its immediate setting. Overall, the height and appearance of the installation would jar with both the domestic scale of its surroundings and the heritage value and significance of the Conservation Area.

12. The trees along Chislehurst Road would provide some screening to the mast from certain vantage points. However, even when the trees are in full leaf, the mast would still appear conspicuously tall. During the winter months, when leaf cover is diminished, it would stand out further. The grey colour proposed for the mast and equipment would do little to camouflage their presence.
13. The mast would remain highly prominent to pedestrians and other highway users in views from the approaches to the appeal site along Chislehurst Road. Given its location, height and uncompromisingly modern and utilitarian appearance, the pole would be dominant and discordant in this location. The siting and appearance of the proposal would therefore not preserve the character or appearance of the Conservation Area. Consequently, there would be harm to its significance.

Balance and Conclusion on Heritage Assets

14. I assess the harm to the Conservation Area as being less than substantial. In such circumstances, paragraph 208 of the Framework requires that the harm should be weighed against the public benefits of the proposal.
15. Paragraph 118 of the Framework states that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. The proposal would allow for the construction of infrastructure which would enable the roll out of 5G coverage, enhance network speeds and connectivity within the surrounding area. It would therefore contribute towards the Framework's objective of supporting high quality communications infrastructure such as 5G. Those implications may be considered public benefits and carry moderate weight in favour of the proposal.
16. Paragraph 205 of the Framework requires great weight to be given to the heritage asset's conservation. Paragraph 206 requires clear and convincing justification for any harm to or loss of significance of a designated heritage asset. Consequently, the harm I have identified to the significance of the Conservation Area attracts considerable weight against the proposal. The weight that I attach to the public benefits would not outweigh the harm that would be caused.
17. For these reasons, on this main issue I conclude that the proposal would harm the character and appearance of the area, including the Conservation Area. Consequently, insofar as they are a material consideration, the proposal would conflict with Policies 37, 41 and 89 of the Local Plan. There would also be conflict with sections 12 and 16 of the Framework in respect of conserving and enhancing the historic environment and achieving well-designed and beautiful places.

Highway safety

18. The proposal would include a mast and equipment cabinets positioned between mature street trees on the inside of a gentle bend in Chislehurst Road close to and to the northern side of its junction with Kingsway. Due to the siting and

scale of the proposed installation between trees in the grass verge it would interfere with the views of drivers leaving Kingsway.

19. The junction here is complex in that visibility to the right is already poor for drivers leaving Kingsway due to the alignment of Chislehurst Road. Furthermore, there is an awkward off-set junction with Sherborne Road opposite Kingsway. Allied to the general speed and volume of traffic in the vicinity of the appeal site, these circumstances present particular hazards in this location. Drivers exiting Kingsway have limited vision of fast approaching vehicles from the right, and they must concentrate on those vehicles that may be performing manoeuvres across Chislehurst Road into Kingsway from Sherborne Road in addition to vehicles travelling south along Chislehurst Road. Furthermore, drivers need to be aware of pedestrians seeking to use the crossing point over Chislehurst Road where dropped kerbs are positioned within the radius of the junction with Kingsway.
20. Reducing the visibility for drivers exiting Kingsway onto Chislehurst Road, or seeking to cross over that road into Sherborne Road, could lead to an increase in collisions between vehicles and other road users. Furthermore, it could present increased danger to pedestrians seeking to cross Chislehurst Road using the designated crossing point.
21. The appellant has not provided evidence to demonstrate details of the relevant visibility splays as requested by the Council's Highway Development Engineer, and, from my observations, I consider that the Council's concerns in respect of highway safety are well-founded. Accordingly, the appellant has failed to demonstrate that the installation would not have an unacceptable impact upon highway safety.
22. For the reasons given above, on this main issue I conclude that the siting and appearance of the proposal would have an unacceptable impact on highway safety. Consequently, insofar as it is a material consideration, the proposal would conflict with Policy 32 of the Local Plan.

Availability of alternative sites

23. 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. Paragraph 119 of the Framework requires the number of communications masts and the sites for such installations be kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion. The appellant has investigated alternative sites as required by paragraph 121 of the Framework and discounted them, due to unsuitable pavements, proximity to housing and/or concerns around visibility splays.
24. I appreciate that the search area for the proposal is constrained. I am also mindful that there is a limit to how far an operator can reasonably be expected to go to demonstrate no other less intrusive or harmful sites are available. However, only limited information has been provided as to why the alternative sites were discounted or why these were the only possible locations within the search area. Furthermore, there is no information as to the consideration given

to sites outside of the Conservation Area. Therefore, I am not satisfied that all alternative potentially less harmful options have reasonably been explored, or that no more suitable sites are available.

25. 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 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 proposal 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.
26. 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 highway safety and to the character and appearance of the area, including the Conservation Area, is not outweighed by the need for the installation to be sited as proposed taking into account any suitable alternatives.

Other Matters

27. Concerns have been raised about potential effects on health, particularly the proximity of the proposal to residential properties. 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.
28. Representations from interested parties raise various concerns about the proposed development in addition to the matters set out in the Council's reasons for refusal. Whilst I have had regard to those concerns, noting the limitations on matters that may be considered in this appeal and given the unsuccessful outcome of the appeal, it is not necessary for me to examine those additional concerns any further here.

Conclusion

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

David English

INSPECTOR