



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: 24 January 2024

Appeal Ref: APP/G5180/W/23/3322824

Sundridge Avenue SW, Sundridge Avenue, Bromley BR1 2PX

- 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/22/04258/TELCOM, dated 28 October 2022, was refused by notice dated 20 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 37 and 89 of the London Borough of Bromley Local Development Framework Local Plan (January 2019) (the Local Plan) are material considerations since they relate to issues of siting and appearance. These policies seek to ensure, amongst other things, that all proposals should be of a high standard of design, positively contribute to the existing street scene, and ensure that regard has been given to locating a site which causes least visual impact. The Framework also provides relevant national policy in respect of supporting high quality communications and achieving well-designed and beautiful places.

Main Issue

7. 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

8. The appeal site comprises part of a roughly triangular shaped area of public realm, which includes a small, grassed area surrounded by footways, located at the junction of Orchard Road and Sundridge Avenue. Whilst this area of public realm is small, due to its relationship with the highways bounding the space, and the presence of seating and a pillar box, the space has a significant degree of prominence in the street scene, it appears as a local focal point, and these factors assist in defining the positive contribution the space makes to the character and appearance of the area.
9. Whilst the Braeside Preparatory School is located generally opposite the site on Orchard Road, the surrounding area is primarily residential in character with domestic scale buildings, mostly around two storeys in height, some with rooms in roof spaces. Notwithstanding the presence of several street trees nearby, the appeal site has a generally open feeling, particularly in the approach towards it from the east along Sundridge Avenue.
10. The proposed installation would include a 15m high 'street pole' mast which would be significantly taller than nearby buildings and nearby street furniture, the principle vertical elements of which are the relatively low street lighting columns, including the truncated decommissioned column immediately next to the appeal site. Given its height, and the generally open appearance of the appeal site, the proposed street pole would appear significantly out of scale and excessively prominent within the setting created by a backdrop of lower buildings.
11. Notwithstanding the verdant nature of the more distant backdrop provided by some nearby gardens which contain trees and large shrubs of various size and species, overall, the height and appearance of the street pole would jar with the domestic scale of its immediate surroundings and with the open character of the public realm at this prominent highway junction. The presence of mature street trees in the vicinity would provide little concealment of the street pole, and only in a few limited views, mainly from distance. In any event, the proposed street pole would appear noticeably taller than those street trees closest to the appeal site and would thereby appear as a dominant and

incongruous focal point in this location, particularly during months without leaf cover to the nearby trees.

12. Furthermore, whilst the proposed cabinets would be modest in scale and typical of the form of structures seen on roadsides, when seen with other existing nearby structures in the highway, including the public seating, litter bin, pillar box, highway signage, and traffic lights and railings found at the adjacent pedestrian crossing, the number of cabinets would be extensive, and they would create undue visual clutter in the highway in this location. 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, visually imposing, and obtrusive feature that would stand out as being unusually prominent in this location. The proposal would detract from the open character of the public realm adjacent to the road junction and would fail to integrate satisfactorily with its surroundings. 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 37 of the Local Plan and Chapter 12 of the Framework in respect of achieving well-designed and beautiful places.

Availability of alternative sites

14. 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.
15. Paragraph 121 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.
16. 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 or insufficient 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.

17. 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, from my observations during my site visit, sites D4 and D5 appeared to be unsuitable candidate sites in any event given their proximity to, or location in, the Sundridge Avenue Conservation Area.
18. On the basis of the information before me, and from what I observed during my site visit, given the extent of mature tree cover elsewhere in the vicinity, including for example at the Ripley Centre which is said to be in the Council's ownership and is suggested as a potential alternative site in a representation, 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.
19. 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

20. The Council considers that the proposal would not result in a significant impact on the setting of the Sundridge Avenue Conservation Area and the nearby locally listed buildings¹. I have had regard to Chapter 16 of the Framework which requires consideration to be given to the effects development may have on the setting of heritage assets. I agree with the Council's observations set out in the Officer Report and find that the proposed development would not cause harm to the setting of these designated and non-designated heritage assets and would therefore be in line with the Framework in this respect.
21. 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. Enhanced signal coverage provided by the proposal would bring benefits to local residents and businesses, a matter noted in a representation in support of the proposal, and this would facilitate remote and home working, access to vital services, the use of mobile phones and other equipment in the home, and

¹ 17 and 19 Sundridge Avenue.

it would facilitate educational benefits. 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 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.

22. Concerns have been raised about potential effects on health, particularly the proximity of the proposal to residential properties and nearby schools. 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.
23. 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.
24. The appellant has drawn my attention to another appeal² 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 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

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

David English

INSPECTOR

² Appeal Ref: APP/A5840/W/20/3254830