



Appeal Decision

Site visit made on 12 December 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th January 2024

Appeal Ref: APP/Z4718/W/23/3321103

Footway of Fall Lane, Fall Lane, Marsden, West Yorkshire HD7 6GB

- 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 Kirklees Council.
 - The application Ref 2022/93309, dated 30 September 2022, was refused by notice dated 29 November 2022.
 - The development proposed is telecommunications equipment and cabinets.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The principle of development is established by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). The provisions of the GPDO require the local planning authority to assess the proposal solely based on its siting and appearance, taking account of any representations received. I have determined the appeal on the same basis. The provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. I have nevertheless had regard to the policies of the 2019 adopted Kirklees Local Plan Strategy and Policies (the Local Plan) and the December 2023 National Planning Policy Framework (the Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.

Main Issue

3. The main issue is the effect of the siting and appearance of the proposal on the Marsden Conservation Area.

Reasons

Marsden Conservation Area

4. The appeal site is part of the pavement on Fall Lane which is within the Marsden Conservation Area (the Conservation Area). The proposal would comprise a 17 metre high mast with wraparound cabinet and three associated equipment cabinets.
5. The development of Marsden has been influenced by its location at a crossing point in the Pennines and its water sources. The town developed during the

industrial revolution. The significance of the Conservation Area is in part derived from the evidence it provides of the inter-relationship of the industrial buildings to the river; other industrial elements such as the canal and railway; the topography of the surrounding rural landscape into which the industrialisation was set; and the social aspects of industrialisation.

6. While the influences of the river, canal and railway station on the industrial growth of the town may be less apparent in the vicinity of the site compared to other locations within the Conservation Area, some of the characteristics that contribute positively to its significance are apparent. This includes the sports ground at Fall Lane which was used by mill workers; the surviving elements of the Fall Lane mill complex and views of the sloping rural landscape beyond the town. The proposal would be located very close to the Fall Lane underpass which is described in the Conservation Area Appraisal as dating from 1820 and which is thought to be one of the earliest underpasses in the country.
7. Vertical structures in the form of streetlights of regular height and spacing are apparent in the street scape, including one located close to the site. There is a 15 metre high telecommunications mast to the east. There is also a line of street trees on the opposite side of Fall Lane to the site, with the nearest shown on the submitted plans as around 14 metres in height, as well as two smaller trees on the same part of Fall Lane shown as around 5 and 7 metres high.
8. The site sits in a prominent location, visible when approaching along Fall Lane from the south and at the junction with Manchester Road. I appreciate that the height of the mast has been reduced to the minimum necessary for its purpose and meeting the International Commission on Non-Ionizing Radiation Protection standard, and that the 5G antenna technology affects the scope to adopt a very simple and narrow structure. Nevertheless, the mast would appear as an obviously modern and engineered feature of a greater scale and bulk than the existing vertical structures.
9. The roadside trees on Fall Lane and Manchester Road would offer some screening and natural backdrop from certain vantage points. In addition, from several locations to the south the mast would be seen against the backdrop of the hillside and so would not break the skyline. Nevertheless, these factors would not sufficiently reduce the visual impact of the mast, given its size and form. In closer views where the mast would break the skyline, it would appear more prominent, as would the associated cabinets.
10. Given the location, height and uncompromisingly modern and utilitarian appearance, the proposal would appear as a visually disruptive element within the Conservation Area and would jar with the heritage value that contributes to its significance. I therefore conclude that the siting and appearance of the proposal would not preserve the character or appearance of the Conservation Area. Consequently, there would be harm to its significance.

Heritage Balance

11. In terms of the Framework, I assess the harm to the Conservation Area as less than substantial. Even so, less than substantial harm does not equate to a less than substantial planning objection, especially where national policy expectations for conserving such assets have not been met. In such

circumstances, paragraph 208 of the Framework states that the harm should be weighed against the public benefits of the proposal.

12. Information on the rationale for the proposal has been provided by the appellant. On this basis, the proposal would enable the provision of new 3G, 4G and the latest 5G coverage and would improve the existing mobile network where there is currently a hole in coverage. A benefit of the proposal would therefore be faster mobile download/upload speeds and better connectivity within the surrounding area. As such, the proposal would contribute towards the Framework's objective of supporting high quality and reliable communications infrastructure, which paragraph 118 of the Framework identifies as being essential for economic growth and social well-being. In addition to the Framework, the appellant refers to several documents which underline the importance of extending advanced communications infrastructure and lend support to the proposal.
13. I am 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. Nevertheless, given that I have found that the proposal would not preserve, and would harm, the significance of the Conservation Area, I need to be satisfied that alternatives have been reasonably explored.
14. The appellant has investigated alternative sites as required by paragraph 121 of the Framework. Eleven sites have been discounted, as described in the appellant's Supplementary Information document.
15. Four 'streetworks' locations have been discounted due to unresolvable underground services, proximity to a listed building, prominence in the street scene, and flood risk issues. The alternative sites include the rooftops of four buildings including the Marsden sports hall located close to the site. These rooftops have been discounted due to the heights of the roofs being too low to provide the necessary coverage and technical issues associated with the roof support available to hold the necessary equipment. In addition, one of the rooftops identified is a listed building. One of the 'greenfield' sites has been discounted due to flood risk considerations. The other greenfield site is identified as not able to provide the required level of coverage due to its location to the west of the relevant area.
16. The potential option identified by the Council, of sharing the existing mast to the east of the site, which is also within the Conservation Area, is one of the discounted options. It was discounted because significant redevelopment of the existing structure to a more structurally robust mast would be needed to enable it to host the differing antennas and equipment that would be required to address the spectrum variations of both operators. The sharing of this mast would result in a visual change to it. However, based on the submitted evidence, I am not persuaded that this would be more harmful than the introduction of a second mast nearby which would be seen in the same view from several vantage points from within the Conservation Area.
17. I acknowledge that the search area for the proposed site is likely to be small. This is due to the appellant's requirement to fill the hole in coverage to fix coverage and capacity issues currently being experienced by users and to ensure that the new site can work alongside the existing sites in the area to provide the necessary capacity in the network.

18. However, what is not in evidence before me is the location and extent of the search area. As such, it is not possible to determine how it relates to the Conservation Area boundary. I cannot therefore be certain that there are no suitable sites from a technical perspective beyond the Conservation Area. Accordingly, I am not convinced that less harmful alternatives have been properly explored. This limits the weight given to the public benefits of the proposal since I cannot be certain that the benefits outlined above could not be secured by development elsewhere.
19. Paragraph 205 of the Framework states that great weight should 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.
20. Taking all the factors considered above into account, in my judgement, the public benefits arising from the proposal would not outweigh the harm to the Conservation Area.
21. Consequently, insofar as they are a material consideration, the proposal would conflict with the heritage aims of chapter 16 of the Framework as summarised above, and its design objectives in chapter 12. There would also be conflict with Policy LP24 of the Local Plan which requires development to respect and enhance the character of the townscape, heritage assets and landscape amongst other matters, and Policy LP35 where it requires development affecting a designated heritage asset to preserve or enhance the significance of the asset and that proposals within Conservation Areas should conserve those elements which contribute to their significance.

Conclusion

22. For the above reasons, having had regard to all matters raised, I conclude that the appeal should be dismissed.

F Wilkinson

INSPECTOR