



Appeal Decision

Site visit made on 20 December 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 5th February 2024

Appeal Ref: APP/Q1445/W/23/3316438

Footway of Willingdon Road, Bevendean, Brighton BN2 4DF

- 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 (UK) Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2022/03526, dated 3 November 2022, was refused by notice dated 23 December 2022.
- The development proposed is the installation of a 15m high slim-line monopole, supporting 6 no. antennas, 1 no. wraparound equipment cabinet at the base of the monopole, 2 no. equipment cabinets, 1 no. electric meter cabinet, and ancillary development thereto.

Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of the installation of a 15m high slim-line monopole, supporting 6 no. antennas, 1 no. wraparound equipment cabinet at the base of the monopole, 2 no. equipment cabinets, 1 no. electric meter cabinet, and ancillary development thereto at Footway of Willingdon Road, Bevendean, Brighton BN2 4DF in accordance with the terms of the application Ref BH2022/03526, dated 3 November 2023 and drawings Ref BAH25057_GA_M001 Issue A (002 Site Location Plan, 210 Proposed H3G Site Plan, and 260 Proposed H3G Elevation).

Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received.
3. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. The section of the Framework most pertinent to this appeal is unchanged, other than the paragraph numbering. Therefore, it has not been necessary to consult the parties on the Framework.
4. There is no requirement to have regard to the development plan as there would be for development requiring planning permission. Nevertheless, Policy CP9 of the Brighton & Hove City Plan Part One, Brighton & Hove City Council's Development Plan, March 2016 (CPP1), and policies DM25 and DM33 of the

City Plan Part Two, Brighton & Hove City Council's Development Plan, October 2022 (CPP2), are material considerations as they relate to issues of siting and appearance. Similarly, the Framework is also a material consideration, in particular the section on supporting high quality communications.

5. It has been confirmed in correspondence that the appellant's correct name is 'CK Hutchison (UK) Ltd.' I have used this in the banner above.

Main Issues

6. The main issues are:
- the effect of the siting and appearance of the proposed installation on the character and appearance of the area and 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 and highway safety

7. The area surrounding the proposed installation is undulating, with Willingdon Road sloping up toward Bevendean Road and Meadow View sloping upward away from its junction with Willingdon Road. Nearby properties are of varying design, several of which are greater than two storeys. The proposed installation would be sited within a wide footpath in proximity to the junction between Willingdon Road and Meadow View. There is a modest amount of street furniture in proximity to the proposed siting, including two equipment cabinets, a street pole, and several streetlights. The proposed installation would largely be viewed against the tall, flint, boundary wall of the Sussex Beacon, which has vegetation growing above and behind.
8. The immediate area surrounding the siting of the proposed installation is defined by its openness due to the wide public highway, including the footpath. However, the wider area could be characterised as a medium density residential area, due to the generally narrow footpaths with a mixture of houses, including townhouses, terraced houses, and apartments.
9. The proposed monopole would be taller than nearby street furniture and properties. However, it would be largely viewed against properties or boundary features which are increasing in height with the slope of the road. The height of the proposed monopole would be softened by the presence of tall vegetation and the proposed cabinets are shorter than the nearby flint wall. Given the surrounding topography and intervening development the proposal would be largely screened from long distance views.
10. Telecoms equipment has become a common feature of the urban environment and one that would be expected in a medium density residential area. The proposed design, whilst utilitarian in appearance, is conventional for telecoms development. There are already two equipment cabinets next to the flint wall in proximity to the proposed siting; the proposed cabinets would visually assimilate with those cabinets. The wide footpath would be able to accommodate the proposed installation without it appearing cluttered. For these reasons, the presence of telecoms equipment would not appear incongruous and would blend with the urban environment.

11. The siting of the proposed cabinets would reduce the extent of the usable footpath and would be sited opposite the existing street pole. However, due to the extensive width of the footpath, people, including those with pushchairs, would be able to manoeuvre safely past. Moreover, the proposed installation would not create a chicane with the street pole as people would be able to move between the two without having to significantly alter their direction of travel.
12. When people are accessing the cabinet the extent of usable footpath would be reduced. Nonetheless, suitable health and safety provisions would need to be in place, as with any work on the public highway, to allow people to manoeuvre safely past.
13. Disability is a relevant protected characteristic to which the Public Sector Equality Duty (PSED) applies, and I have had due regard to that duty. However, I have no reason to doubt the appellant's evidence that the proposed installation complies with Inclusive Mobility, December 2021, issued by the Department for Transport, and little before me to suggest that the guidance is insufficient in this instance. I therefore conclude that the proposed installation would advance equal opportunities between people who have a protected characteristic and those who do not.
14. Overall, the proposed installation would not have a harmful effect on the character and appearance of the area or highway safety. Whilst CPP1 policies CP9 and DM25 and CPP2 Policy DM33 are non-determinative, the proposal would comply with these policies. These policies indicate that the Council will promote and provide measures that will help to manage and improve mobility and promote active travel, and proposals for communications infrastructure should not have an unacceptable impact on the character and appearance of the area. It would also be in accordance with the Framework, which advises that equipment should be sympathetically designed.

Need for siting

15. It has been suggested that the proposal would be better sited elsewhere within the identified search area and that the appellant has not considered siting the mast on existing buildings. However, as I have not identified any harm associated with the siting and appearance of the development, it is not necessary for me to consider if the appellant has demonstrated that the proposal is the best feasible siting.

Other Matters

16. Concerns have been raised about the potential effects of the proposed installation on health. 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. In these circumstances, the Framework advises that health safeguards are not something which a decision-maker should determine.
17. The proposed installation is located a significant distance and over the ridge of a hill from the nearest listed structures, the gates, gate's piers and wall of the former Bevendean Hospital. There is also a significant amount of intervening development, including several residential properties. The nearest conservation area is located even further away and a significant distance from the proposed

siting with much intervening development. For these reasons, I agree with the Council that the proposed installation would not have an effect on the setting of designated heritage assets.

18. The Council has clarified that the Royal Sussex County Hospital heliport does not meet the definition of an officially safe guarded aerodrome, as defined by The Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002. As such, the appellant is not required to consult the Hospital in relation to the proposed installation. There is no compelling evidence before me to demonstrate that the proposed installation would have an adverse effect on the use of the heliport at Royal Sussex County Hospital.
19. Given the slim design of the proposed monopole and distance to nearby properties, it would not overshadow neighbouring properties. The only noise generated by the proposed installation would be from a cooling fan during hot weather. This fan would only operate for limited periods of time and the noise generated would be less than the noise of nearby traffic. Overall, the proposed installation would not have a harmful effect on the living conditions of neighbouring residents.
20. There is evidence before me that the appellant engaged Council members and officers as well as consulting the local school on the proposal. I am satisfied that consultation with organisations with an interest in the proposed installation was undertaken prior to the application submission, in line with the requirements of the Framework.
21. The Planning Practice Guidance makes it clear that planning is concerned with land use in the public interest, so that the protection of purely private interests, such as property values, could not be a material consideration. Therefore, the effect of the proposed installation on house prices has not been a determinative matter in my consideration of the appeal.

Conditions

22. The Order does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators contained within it. These specify that the development must be carried out in accordance with the details submitted with the application, begin within 5 years of the date of approval and be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.

Conclusion

23. For the reasons given above, I conclude that the appeal should be allowed, and prior approval should be granted.

J Hobbs

INSPECTOR