



Appeal Decision

Site visit made on 24 January 2024

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 FEBRUARY 2024

Appeal Ref: APP/G2625/W/23/3327221

Fiveways Roundabout, Norwich, NR5 8BE

- 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 Norwich City Council.
 - The application Ref 23/00027/T, dated 6 January 2023, was refused by notice dated 2 March 2023.
 - The development proposed is 5G telecoms installation: H3G 15m street pole and additional equipment cabinets.
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Decision

1. The appeal is allowed and prior 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 installation of a H3G 15m street pole and additional equipment cabinets, at Fiveways Roundabout, Norwich, NR5 8BE, in accordance with the application, Ref 23/00027/T, dated 6 January 2023, and the drawing numbers NOR24976_NOR099_TBC_NR0683_GA_REV_A, titled:002 Site Location Plan, 215 Proposed Site Plan, 265 Proposed Site Elevation and the Site Specific Supplementary Information submitted with it.

Procedural Matters

2. 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 local planning authority 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.
3. The Council's reason for refusal relates solely to the size of the proposed street cabinets exceeding that which can benefit from permitted development rights. However, during the appeal process, two separate representations have been made by the Local Highway Authority. Whilst both of these state that no formal assessment of the proposal has been made, they do set out what highway matters should be considered. As the appellant was provided with a copy of these representations and had the opportunity to provide final comments on them, no party would be prejudiced by my consideration of the new matters that have been raised. I have also taken account of representations that were made by the Council's Tree Officer during the application stage.

Main Issues

4. As no objections have been raised to the appearance of the proposed development, the main issues are i) whether the proposed equipment cabinets fall within the criteria set out in Schedule 2, Part 16, Class A of the GPDO; and ii) the effect of the siting of the proposed mast and equipment cabinets on protected trees and highway safety.

Reasons

Whether permitted development

5. Part 16, Class A, A.1(7) of the GPDO states that development consisting of the installation, alteration or replacement of any electronic communications apparatus 'other than': a mast, an antenna, any apparatus which does not project above the level of the surface of the ground, or radio equipment housing, is not permitted by Class A(a) if the ground or base area of the structure would exceed 1.5 square metres. As the development proposed in this case does not relate to anything 'other than' the installation of a mast and radio equipment housing, the 1.5 square metre limit is not relevant. Class A, A.1(9) restricts the size of ancillary radio equipment housing to 90 cubic metres, which is substantially greater than the size of the equipment proposed in this case. I therefore conclude that the proposal is permitted development.

Siting

6. Although the decision notice states that the siting and appearance of the mast is acceptable, concerns have been raised regarding its potential conflict with two nearby trees. The two trees in question are located in the landscaped area to the front of the Tesco Express Store and Petrol Filling Station, which is directly behind the site of the proposed installation. Given the large separation distance between the proposed installation and the nearest tree, there is unlikely to be any conflict with the root protection areas or branches. Furthermore, as the trees are on privately owned land and are covered by a Tree Preservation Order (TPO), no works to prune these trees or to reduce their height could be undertaken without first obtaining both the landowner's consent, and TPO consent from the Local Planning Authority.
7. The Local Highway Authority has not fully assessed the proposal and has not provided me with any measurements or other evidence to demonstrate that the installation would be detrimental to highway safety.
8. The Tesco site operates a one-way system, with vehicles entering it from Earlham Green Lane and exiting it onto Earlham Road. The wide exit point onto Earlham Road is located between a traffic light controlled pedestrian crossing and a pedestrian refuge island crossing, which is adjacent to the junction with Fiveways roundabout. There is a yellow box junction which keeps the Tesco exit clear from queuing traffic, and there is a wide combined footway and cycleway, which starts from the traffic light-controlled crossing on Earlham Road and extends around the whole of the Tesco site and continues along Earlham Green Lane.
9. Given the curved alignment and substantial width of the combined footway and cycleway, the proposed equipment, which would be relatively slim and sited towards the back edge of the shared footway, would not obscure the visibility of drivers exiting the Tesco site. Moreover, when exiting the Tesco site,

oncoming traffic would be to the drivers right, whereas the proposed installation would be to the left. The installation would also not obscure views of traffic approaching from the roundabout, which would be on the opposite side of the carriageway.

10. Drivers approaching the roundabout, would have the proposed installation on their left. As such they would have a clear view of vehicles approaching on the roundabout from the right. As the installation would be set back from the road and from the roundabout junction, visibility of pedestrians using the island crossing on Earlham Green Lane would not be obscured. Vehicles exiting Earlham Green Lane would be on the opposite side of the road and would stop to give way to vehicles approaching from their right on the roundabout.
11. Whilst I acknowledge the shared use of the path by pedestrians and cyclists, and the close proximity of the proposed installation to pedestrian crossing points, the part of the path on which the equipment would be sited is very wide, and the equipment would project less than one metre into it. As such, I am satisfied that the installation would not adversely affect visibility from the petrol station egress, intervisibility at the roundabout junction towards Earlham Green Lane or the shared use of the footpath and cycle path.
12. I therefore conclude that the siting of the installation would not be detrimental to nearby protected trees or to highway safety.

Conditions

13. Development permitted under the GPDO, is subject to the standard conditions, set out within it. These include a time limit for implementation, a requirement that development is carried out in accordance with the submitted details, and a requirement that the equipment is removed when it is no longer required for electronic communications purposes.
14. As the nearby trees are covered by a TPO, the consent of the Local Planning Authority would be required to undertake any works to them. It is not therefore necessary to add a condition duplicating this requirement.

Conclusion

15. For the reasons given above and having considered all matters raised, the appeal is allowed, and prior approval is granted.

R Bartlett

INSPECTOR