



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: 20 February 2024

Appeal Ref: APP/G5180/W/23/3323134

**Adjacent to Substation opposite 161 Crofton Road, Orpington,
London BR6 8JB**

- 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 MBNL (EE UK Ltd & Hutchison UK Ltd) against the decision of the Council of the London Borough of Bromley.
 - The application Ref. DC/23/01095/TELCOM, dated 15 March 2023, was refused by notice dated 10 May 2023.
 - The development proposed is to upgrade the existing 10.0m High T10 Telegraph Pole. It is proposed to install 18.0m High Phase 7 Monopole complete with wrapround cabinet on root foundation 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.
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 LP) 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.
7. The appellant has provided a certificate with the appeal to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). The Council has confirmed that it is satisfied that this addresses its second reason for refusal and this matter is now no longer in dispute between the main parties. I have dealt with the appeal on this basis.
8. During my site visit I saw that a telecommunications mast had been erected relatively recently in a location close to the appeal site, a matter noted in some representations. I invited comments about the status of this structure from the main parties. The appellant has confirmed that this equipment is not part of their proposal before me. The Council was unable to confirm the planning status of that mast and I have therefore noted the uncertain status of that structure in my determination of this appeal. Accordingly, I have not considered it necessary to assess any cumulative effects that would be associated with the siting of the appeal proposal in proximity to that other mast, and I have determined the appeal on this basis and on its own merits.

Main Issues

9. The main issues are 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

10. The appeal site comprises part of a raised island of land in the public realm situated between the main carriageway of the A232 Crofton Road and the access road that serves a row of dwellings, including 161 Crofton Road and the electricity sub-station which is directly adjacent to the eastern side of the appeal site. The elongated stretch of public realm within which the proposal would sit is largely grassed and includes several tall mature trees of various species, mostly deciduous, some of which are in large, raised planters. Together these features lend a pleasant, verdant feeling to this island of land and, along with its substantial extent, assist in defining the positive contribution this area of public realm makes to the character and appearance of the area.
11. The proposed installation would include an 18m high 'monopole' mast which would be significantly taller than nearby buildings, street furniture, the principle vertical elements of which are the relatively low street lighting columns and telegraph poles, and it would extend significantly above the adjacent mature

trees which are shown on the plans as being around 12m high. Notwithstanding that the site is not within or close to a conservation area or other statutorily protected feature, given its height, the proposed monopole would appear out of scale and excessively prominent in this location having regard to those various substantially lower townscape features nearby. Its visually intrusive prominence would be heightened during the months without leaf cover to the nearby trees, and I am not convinced that colouring the monopole would provide camouflage or assist in assimilating the proposed structure sympathetically into its surroundings.

12. I recognise that the proposal would involve the removal of an existing installation. However, the existing pole intended for removal is significantly lower and largely unobtrusive unlike the proposed replacement structure. As such, the existing installation makes a largely neutral contribution to the character and appearance of the area. Whilst the appeal site currently hosts telecommunications infrastructure, the proposed monopole would, due to its height above the nearby street trees, be prominent in views along Crofton Road, and from Crofton Avenue, Crofton Lane and Grange Road. Consequently, the proposal would be significantly more noticeable than the existing mast, and it would appear visually disruptive in nearby views due to its siting and relationship to surrounding features. As a result, the siting of the proposed monopole mast would be unduly harmful to the character and appearance of the area.
13. The proposed equipment cabinets would be modest in scale and typical of the form of structures seen on roadsides, and 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 monopole. Furthermore, whilst the proposed cabinets may not in themselves appear harmful to the character and appearance of the area, this does not overcome the harm that would be caused by the monopole.
14. For these reasons, by virtue of its siting and appearance, the proposal would be a prominent and obtrusive feature that would stand out as an excessively tall and incongruous vertical structure projecting significantly above the nearby trees. The proposal would detract from the verdant character of this pleasant area of the public realm, and it would not integrate satisfactorily with its surroundings. 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 LP and Chapter 12 of the Framework in respect of achieving well-designed and beautiful places.

Availability of alternative sites

15. Telecommunications installations are required to enable the roll-out of 5G technology, and the Framework supports the development of high-quality reliable communication infrastructure as this is deemed to be essential for economic growth and social well-being. I recognise that 5G cell search areas may be limited by several factors. I also acknowledge that the proposal would replace an existing mast and it would result in no net increase in masts in the area. This would generally align with the encouragement given in the Framework for the reuse and adaptation of existing base stations, and the requirement to keep sites to a minimum.

16. However, whilst the proposal does not constitute an additional mast, it is nevertheless a new mast. Paragraph 121 c) of the Framework expects evidence to be submitted to justify all applications. For a new mast this includes evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure. The proposal does not involve erecting antennas on the existing mast and, as I have found that, due to its height, the proposed siting of the monopole would cause harm to the character and appearance of the area, it is necessary to consider whether other less harmful options may be available.
17. The appellant contends that, having regard to the Framework and development plan policy, the proposal is the most sequentially preferable option and explains that discounted options were supplied with the original planning submission for the existing mast. I have not been provided with further information in this respect. However, the consideration given to alternative options associated with the existing mast would be of little relevance to the merits of the proposal before me given the substantial difference in scale and height between that existing mast and the current proposal. Further, whilst the appellant states that '...there is no scope to move the proposed site to an alternative location...' this position is not substantiated by evidence as required by the Framework.
18. From the information before me, I am unable to conclude with certainty that a reasonable and robust review of the availability of less harmful alternative sites in the search area, or just outside it, has been undertaken to support the contention that the appeal proposal represents the only feasible viable option to provide upgraded telecommunications services. As such, the proposal would be contrary to the aims of the Framework in respect of supporting high quality communications since this requires evidence to demonstrate that alternative sites have been explored and discounted based on cogent reasons.
19. I find that, in this instance, whilst having regard to representations in support of improved network coverage, and 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. This is because it has not been substantiated in the submitted evidence that alternative sites have been explored to demonstrate the absence of a less harmful site. Insofar as it is a material consideration, for the same reasons, the proposal would also be contrary to Policy 89 of the LP.

Other Matters

20. 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, and this would facilitate remote and home working, access to vital services, the use of mobile phones and other equipment in the home, and 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.

21. 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 with the appeal to confirm compliance with the ICNIRP guidelines. 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.
22. 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

23. For the reasons given above, the appeal is dismissed.

David English

INSPECTOR