



Appeal Decision

Site visit made on 28 February 2024

by C Billings BA (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2024

Appeal Ref: APP/C4615/W/23/3326885

**Tansey Green Road Street Works, Tansey Green Road, Kingswinford
DY6 7LR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against 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) Order 2015 (as amended).
 - The appeal is made by Gallivan of CK Hutchison Networks (UK) Ltd against the decision of Dudley Metropolitan Borough Council.
 - The application Ref is P23/0344/PN16A.
 - The development proposed is a 5G telecoms installation: H3G 15m street pole and additional equipment cabinets.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO 2015), 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 has referred to development plan policies in its decision notice, however, the provisions of Schedule 2, Part 16, Class A of the GPDO 2015 do not require that regard be had to the development plan. Therefore, I have only had regard to the policies of the development plan and the National Planning Policy Framework (the Framework) (December 2023), insofar as they are a material consideration relevant to matters of siting and appearance.
4. An updated Framework was published in December 2023. Whilst section 10 of the Framework, entitled, supporting high quality communications, was unaltered in the revised Framework, the paragraph numbering changed. Therefore, I have referred to the updated paragraph numbering.

Main Issues

5. The main issues are:
 - the effect of the siting and appearance of the proposed telecommunications installation on the character and appearance of the surrounding 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

6. The proposed telecommunications installation (the installation) would be located within a small grass highway verge area between the pavement and the road, near to the roundabout at the junction of Tansey Green Road, Stallings Lane, and Oak Lane. These appear to be distributor routes through the area, so the proposal would be sited at a busy road junction, within a predominately residential area.
7. Whilst the appeal site is not within a conservation area nor an area of any other designation, the local area appears to be in a stage of regeneration and enhancement, with newly constructed two-storey residential properties in Herringbone Way and Pinwheel Close nearby. Also, on the opposite roundabout corners, there is a new residential development currently being built on the corner of Oak Lane and Stallings Lane and, on the opposite corner of Tansey Green Road and Stallings Lane are three storey residential apartments set significantly back from the road with landscaping in front.
8. Where the installation is proposed, the street scene is very open and uncluttered. Set behind the pavement there is a significant area of grassed embankment that slopes gently up to the level of the newly built housing beyond, which provides a pleasant green aspect to this corner of the roundabout and continuing along Tansey Green Road and Stallings Lane. Whilst there are lampposts along Tansey Green Road, they are generally set at the back of the pavement area and form a rhythm of similarly spaced slimline structures continuing along the road.
9. The proposed installation would be set significantly forward within the highway verge area, and the installation would be considerably taller and bulkier in girth than the existing slimline street lampposts found within the surrounding area. Therefore, it would appear overly dominant in comparison to the location and slimline design of lampposts within the surrounding area. Also, the harm would be exacerbated by the proposed cabinets, which might not otherwise need to be installed without the mast, as the cabinets would add clutter to the otherwise uncluttered highway verge. However, as it appears they do not require planning permission, they are not determinative in my findings, which specifically relate to the proposed mast.
10. Whilst the proposed telecommunication mast is at the minimum height of 15 metres for a mast required for improved 5G service that is needed in the area, the pole would be much higher than the nearby newly built residential properties. The proposed installation would be approximately 6 metres taller than the height of nearby dwellings at Nos 44 and 46 Herringbone Way. Thereby, the mast would appear as an overly dominant feature when viewed against these properties and, when comparing it to the scale of these nearby dwellings and the local context.
11. Due to its height, design, and siting the proposed mast would appear as a highly dominant and somewhat incongruous feature within the street scene.

This would be clearly visible from a significant distance along the surrounding main roads and from a number of nearby residential properties.

12. In view of the above, the proposal would cause harm to the character and appearance of the surrounding area. Accordingly, insofar as they are a material consideration, the siting and appearance of the proposal would be contrary to Policy D8 of the Dudley Borough Development Strategy (March 2017), which requires telecommunication installations to be sensitively designed and sited to minimise the impact of the development on the environment and the surrounding area. The proposal would also conflict with Policy ENV2 of the Black Country Core Strategy (February 2011), which requires, amongst other matters, that all development proposals preserve and, where appropriate, enhance local character.

Alternative sites

13. The proposal would provide for an improved telecommunications network within the local area by supporting 5G mobile coverage. Due to the high frequency and low power outputs of such installations, the cell areas are generally constrained. The cell target area for the proposed installation, as included at Figure 1 of the appellant's statement of case shows the intended target area for the installation is further over to the west than the appeal site, mostly set within an industrial area.
14. The sequential approach to site selection for the proposal refers to the fact that site sharing is the first option that would be considered, although no substantive evidence has been provided about the potential mast sharing sites that were considered. I observed that there is an existing telecommunications mast located further along Tansey Green Road, which is visible from the appeal site. However, I do not have any substantive evidence why this is an unsuitable option for mast sharing.
15. The appellant's statement of case asserts that there was only one other local site option put forward for a new free-standing telecommunications pole, although it is not explained in any detail in the evidence provided why that is the case. There are locations within the local area that were identified by the appellant as potential sites for the proposed installation. Some were within industrial areas, and these were discounted due to them being within a private industrial estate. However, the evidence does not explain in any substantive detail why private ownership precludes the option to site a telecommunication installation or whether the private landowners were approached in considering such options. Therefore, I consider there could be opportunities for more suitable locations where the proposed installation would be less dominant and harmful to the character and appearance of the area.
16. There is recognised national government support for improved digital infrastructure, including within the Framework and other government publications, as noted by the appellant. Also, the expansion of 5G network would bring appreciable benefits, including economic, social, and environmental benefits, due to the increased access and speed of communication this would bring to the surrounding population. Such matters weigh in favour of the proposal.
17. Whilst there is evidenced need for improvement to the telecommunications network, including 5G coverage in the local area, which weighs in favour of the

proposed installation, by virtue of its siting and appearance the proposal would be harmful to the character and appearance of the surrounding area. Based upon the evidence before me, it has not been demonstrated that less harmful alternative locations for the installation within the local area are not reasonably available and have been adequately explored in this instance.

18. In view of the above, it has not been demonstrated that the need for the installation to be sited as proposed, outweighs the harm that would be caused, due to its siting and appearance.

Other Matters

19. The appellant has referred to its pre-application consultation with the Council, but within Appendix 1 of their statement of case, some of the figures, photographs and information refer to a site in Doncaster, which is not within the Borough Council's area and accordingly, is not directly relevant to the appeal proposal.
20. Also, the appellant has referred to an appeal decision that allowed a 20m high monopole in Walworth, London. The information provided related thereto is limited and so does not allow me to fully compare this example with the appeal proposal. Furthermore, this example is not located within the area surrounding the appeal site or in the same borough. Therefore, this has limited weight in favour of the proposal.
21. I appreciate that the proposal is a revised scheme with a telecommunications pole height lower than that previously refused by the Council. However, in having regard to the merits of the current proposal, I have found it would cause harm to the character and appearance of the surrounding area, even with the reduced height proposed.

Conclusion

22. Paragraph 118 (previously paragraph 114) of the Framework states that advanced, high quality and reliable communications infrastructure is essential for economic and social well-being. Planning policies and decisions should support the expansion of electronic communication networks, including next generation mobile technology, such as 5G. The proposal would provide significant benefits through the upgrade to digital communications in the local area, including service provision, capacity, and coverage.
23. However, I have found that the siting and appearance of the proposed installation would cause harm to the character and appearance of the surrounding area. While options for siting the installation are limited, the evidence does not demonstrate that potentially more suitable sites and less harmful sites or solutions, within the area of requirement are not available. Therefore, overall, the resultant harm from its siting and appearance are not outweighed by the need for it to be sited as proposed and the benefits the installation would provide.
24. For these reasons, I conclude that the appeal should be dismissed.

C Billings
INSPECTOR