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# Appeal Decision

Site visit made on 28 February 2024

**by H Wilkinson BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25<sup>th</sup> March 2024**

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**Appeal Ref: APP/C3105/W/23/3326806**

**Banbury Road Street Works, Banbury Road, Oxford OX15 0TN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 Cherwell District Council.
  - The application Ref is 23/00379/TEL56.
  - 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 (the GPDO) under Article 3(1) and Schedule 2, Part 16, Paragraph A.3(4) require the local planning authority to assess the proposed development based solely on its siting and appearance, considering any representations received. My determination of this appeal has been made on the same basis.
3. The principle of development is established by the GPDO. The provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. However, the Council's decision notice refers to policy ESD 15 of the Cherwell Local Plan 2011-2031 (Local Plan), saved Policies C28 and C39 of the Cherwell Local Plan 1996 together with the National Planning Policy Framework (the Framework). In determining this appeal, I have had regard to these policies and the Framework in so far as they are a material consideration relevant to the matters of siting and appearance.
4. The Council's decision notice alleges harm to protected species. However, the GPDO does not in Article 3(1) or otherwise provide that permitted development is subject to the section 40 duty under the Natural Environment and Rural Communities Act 2006. Therefore, in determining the appeal, I have not considered this matter.

## Main Issues

5. The main issues in this appeal are:
  - the effect of the siting and appearance of the proposed installation on the character and appearance of the area, including the significance of a

designated heritage asset; highway safety and the living conditions of the occupants of nearby properties with particular regard to outlook; 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 appeal site comprises an area of grassed highway verge located alongside Banbury Road. This area of verge is prominent within the street scene and together with the line of mature trees marks the transition between the open, rural landscape and the settlement of Deddington – a designated Conservation Area (CA).
7. The site lies outside of, but within proximity to the boundary of the CA. The significance of the CA is derived in part from the linear street pattern and predominance of vernacular stone buildings throughout the village. This provides a generally homogenous, traditional character. The abundance of greenery and open, undeveloped space on the edge of the village provides a verdant, semi-rural setting which positively contributes to the significance of the CA.
8. The proposed installation would be located to the rear edge of the verge which comprises of a grassed area. The existing trees along this section of verge are notable in size and prominent within their immediate setting and make a strong and attractive contribution to the local character. As indicated on the proposed plans, the monopole and associated cabinets would be sited in between two established trees and against the backdrop of a mature hedgerow and existing built form. Existing street furniture within the vicinity of the appeal site includes road signs and lighting columns together with a modestly proportioned bus shelter. Although these features provide a degree of verticality, by virtue of their height, scale, and muted finish, they are not visually prominent in the street scene.
9. The evidence explains that the height of the proposed monopole and number of cabinets is the absolute minimum required to bring the benefits of 5G coverage whilst limiting clutter. However, at a height of 15 metres, the monopole would exceed the height of the existing street furniture and those trees located immediately adjacent to the proposed installation by a significant margin. Thus, in this context, the monopole would be conspicuously tall. Therefore, whilst the equipment has been designed to be installed along public roads and would utilise established landscape features, it would nevertheless read as a highly obtrusive and utilitarian addition to the street scene. This would be at odds with the verdant, semi-rural character and appearance of the locality, particularly in the winter months when the tree canopies are reduced.
10. Furthermore, despite being described as slimline, the monopole would be substantially wider than the other vertical structures in the immediate area and the associated ground-based cabinets would extend further along the grassed verge. Overall, the installation would be perceived as a bulky and unduly dominant form of development and would further result in the undesirable accumulation of clutter on a generally verdant, open area of verge. The

prominent roadside location and proximity to residential properties would contribute to the visual dominance of the proposal.

11. In the absence of sufficient detail outlining the construction methods including the extent of groundworks and foundations, I cannot be certain that the proposal would not compromise the integrity and well-being of the nearby trees. These trees make a significant positive contribution to the semi-rural, verdant character and appearance of the surrounding area and their loss or diminution would be harmful to this local distinctiveness.
12. Accordingly, I find that the proposed development, by virtue of its siting and appearance would be an unsympathetic and incongruous addition to the street scene which would erode the rural, verdant setting of the CA. Accordingly, the development would be harmful to the character and appearance of the area, including the significance of a designated heritage asset.

#### *Highway safety*

13. Banbury Road is a main A road into the settlement. At the time of my site visit, I observed a steady flow of traffic passing the appeal site. Although this was only a snapshot in time, there is no evidence before me to suggest that my observations were untypical of the road.
14. The submitted site location plan indicates that associated site parking would be at the entrance to the residential estate located on the opposite side of the road. Personnel would have to cross the main road to access the appeal site during both the construction period and ongoing maintenance. Having regard to the road traffic movements, and in the absence of a suitable crossing point, I find that this would be hazardous to highway safety.
15. Moreover, there is a lack of substantive evidence before me to indicate the number and type of vehicles associated with the construction of the development, the future maintenance, or that the appellant has sufficient control of the proposed parking area to ensure that the provision would be available at the times required. Indeed, I saw at my site visit that parking at the location shown is limited owing to the width of the estate road and the proximity to the road junction. Considering the lack of detail and parking limitations, I consider that the proposal could lead to instances of dangerous and obstructive parking on the highway and at nearby road junctions. This would contribute to highway congestion which would be harmful to highway safety.

#### *Living conditions*

16. The proposed installation would be in reasonable proximity to Nos 9, 11, 13 and 15 Flux Drive, which lie to the rear of the appeal site.
17. There would be oblique views of the proposed installation from the windows of Nos 9, 11, and 15. However, from these houses, the monopole would be a peripheral feature and the ground-based equipment would be largely screened by the intervening landscaping. Therefore, the proposal would not be unduly dominant in views from these houses. The proposed monopole would however be far more prominent when viewed from the windows of No 13. Nevertheless, due to the intervening distance and landscape features combined with the form of the proposed monopole, views of the wider area would not be obstructed to

such an extent that the proposal would be perceived as an oppressive form of development.

18. For these reasons, I find that the proposed installation, by reasons of its siting and appearance would not harm the living conditions of the occupants of nearby properties with particular regard to outlook.

#### *Alternative sites*

19. The Framework establishes that the need for the proposed installation should not be questioned. However, there is an expectation that the need for the proposal to be sited in the proposed location is demonstrated.
20. The evidence sets out that there are no mast/site sharing opportunities in the area. Owing to the constraints of the search area, the appellant submits that a free-standing telecommunications pole with associated ground-based equipment is the most appropriate solution. The Site Specific Supplementary Information (SSSI) thereafter indicates that several alternative sites were considered however these were discounted for reasons including insufficient pavement widths, restricted access for rear steer vehicles, proximity to residential development and overhead cables. There is nevertheless limited detail before me to sufficiently justify why these factors could not be overcome.
21. Further, the SSSI goes on to explain that the cells search areas for 5G are extremely constrained with a typical cell radius of approximately 50 metres. Whilst the evidence suggests that the proposal is the optimum solution from the perspective of cell planning and radio coverage, the appeal site would appear to be located a considerable distance from the target search area as indicated in the SSSI.
22. I understand that the proposal is required to improve service in and around the appeal site. However, based on the available evidence, I am not persuaded that the proposed installation could not be provided in a less harmful location elsewhere in the locality. Therefore, whilst having had regard to the alternative sites put to me by the appellant, I find that the harm identified would not be outweighed by the need for the installation to be sited as proposed.

#### **Other Matters**

23. The proposal would not impact the free flow of pedestrians. I am also told that pre-consultation was undertaken with the local planning authority and that the relevant Ward Members were notified. These factors however have no bearing on my considerations of the merits of the proposal.

#### **Heritage Balance and Conclusion**

24. I have found that the proposal would erode the rural and verdant setting of the CA. Consequently, the appeal proposal would have a negative effect on the significance of a designated heritage asset. Paragraph 205 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 206 goes on to explain that significance can be harmed or lost through the alteration or destruction of the assets, or from development within their setting. Any harm will require clear and convincing justification.

25. Given the scale of the development, I find the harm to be less than substantial. In these circumstances, the Framework advises that the harm identified should be weighed against the public benefits of the proposal. The proposal would enhance telecommunications infrastructure and contribute to the delivery of high-speed, reliable communication in an area where there is reduced coverage. The social and economic benefits of improved connectivity weigh in favour of the proposal and I attribute these benefits moderate weight.
26. Whilst these benefits carry moderate weight, they would not outweigh the less than substantial harm that the proposal would cause to the setting of the CA, to which I attach great weight. Consequently, the appeal proposal would fail to satisfy the requirements of paragraph 203 of the Framework. In addition, the proposal would conflict with Local Plan Policy ESD 15 and saved Policies C28 and C39 of the Cherwell Local Plan 1996 in so far as they are a material consideration. Collectively, these policies seek to ensure that development conserves the historic environment and complements and enhances the character of its context through sensitive siting, layout, and high-quality design. It would also be inconsistent with the Framework where it seeks to conserve and enhance the historic environment.
27. Therefore, for the reasons given above, the appeal is dismissed.

*H Wilkinson*

INSPECTOR