



Appeal Decision

Site visit made on 4 April 2024

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2024

Appeal Ref: APP/T5720/W/23/3327411

**Area of Footpath, Durnsford Road Street Works, Durnsford Road, Merton.
(Grid Ref Easting: 525436; Grid Ref Northing: 172354)**

- 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 GPDO)
 - The appeal is made by CK Hutchison Networks (UK) Ltd against the decision of London Borough of Merton.
 - The application Ref is 23/P0374.
 - The development proposed is 5G telecoms installation: H3G 16m street pole and additional equipment cabinets.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Because this is an application for prior approval the provisions of the GPDO 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. This appeal will be determined on the same basis.
3. A revised National Planning Policy Framework (the Framework) was published in December 2023 but there are no material changes relevant to the substance of the appeal.
4. I have taken the location of the development from the planning appeal form as this accurately represents the proposal.

Background and Main Issues

5. The Council's sole reason for refusal refers to the location of the proposed mast within 3km of the perimeter of an aerodrome and the failure to serve notice on the appropriate parties. However, the GPDO has been updated in respect of this criteria and both the Council and the appellant were given the opportunity to respond on this matter. As a result, the Council has confirmed that it does not oppose the appeal and no longer seeks to defend the reason for refusal.
6. Nevertheless, in considering this appeal I am required by the GPDO to assess the proposal in respect of its siting and appearance.
7. On that basis, the main issue is whether the siting and appearance of the appeal proposal is appropriate, 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

Siting and Appearance

8. The appeal site is located within the pavement of Durnsford Road, which is one of the main roads leading through the area. It would be located adjacent to railings on the boundary of a commercial area, and would be viewed against the backdrop of a commercial building of a significant bulk. Although there is a commercial estate and railway sidings to the east of the site, the area is also of a residential character, including dwellings and a community use which would face onto the site across Durnsford Road.
9. The mast would be prominent in views along the streetscape and would be located adjacent to a busy through-road. There are existing vertical features in the vicinity of the site, including streetlights, telegraph poles and signage. However, the proposed mast would be higher and of a greater bulk. A nearby community building also includes tower features, but they are of a distinctly different character to the proposed mast. Existing vertical features in the area do not set a prevailing context for the design and scale of the proposal to enable it to visually assimilate with its surroundings.
10. The mast would be viewed against the backdrop of a large commercial building, but the projection of the proposal above this building would be readily apparent from the streetscape. The proposal would also be apparent in views from housing on the opposite side of the road. Although there are trees in the vicinity which would provide a degree of screening, these would not be sufficient to mitigate for the prominent location, design and height of the proposal.
11. The proposed cabinets would introduce further clutter to the streetscape. Although they would be located adjacent to railings, the solid cabinets would be viewed against the relatively open aspect provided by the railings. The projection of the cabinets above the railings would also be a jarring feature which would add to their unsympathetic appearance. The cabinets may be typical of control boxes along public highways, and I saw that there is an existing cabinet in the vicinity as well as other features set against the railings, including a bus shelter and a litter bin. However, the size of the proposed cabinets would be greater than the existing cabinet, and they would be of a different character to the shelter and bin. The number, size and location of the proposed cabinets would therefore add unsympathetic clutter to the streetscape.
12. Drawing the above together, I conclude that the siting and appearance of the proposal would harm the character and appearance of the area. However, given the backdrop of a commercial building of a significant scale, that harm would only be of a limited degree.
13. I am mindful that the Council's Planning Officer Report sets out that the height of the proposal is not considered excessive and that the design is not unsightly. However, based on what I have seen and read, including representations from interested parties, this does not lead me to a different conclusion on this issue.

14. The Council's Officer Report sets out that the proposal would comply with a number of development plan policies on this issue. However, insofar as they are relevant to the siting and appearance of the proposal, I consider that the proposal conflicts with Policies DM D1 and DM D6 of the Merton Sites and Policies Plan 2014 which together aim to encourage high quality design and have a positive effect on the character and quality of the public realm, including in respect of telecommunications. Policies DM D4 and DM O1 are not relevant as, based on the evidence before me, the proposal does not affect heritage assets or open space. The proposal would also be contrary to the Framework in respect of the sympathetic design of new sites for communications infrastructure as well as achieving well-designed and beautiful places.

Alternative Sites

15. The appellant refers to a site selection process which reflects the sequential approach set out in paragraph 121(c) of the Framework. This requires evidence that the possibility of erecting antennas on an existing building, mast or other structure has been explored.
16. The appellant states that a street pole with associated cabinets is deemed to be the only and most appropriate solution available. However, no substantive evidence to support this conclusion has been provided.
17. Even given the constraints of the 5G cell search area, it is apparent from the submitted evidence and observations on my visit that there are buildings in the area which may be capable of supporting a mast which would not be as visually harmful as the appeal proposal. This includes buildings on the commercial estate adjacent to the site. If a ground based installation is required there are also locations in this area which are not as prominent as the appeal site, particularly within the adjacent commercial estate. It has not been demonstrated why these alternative options have not been considered as potential sites, and I am therefore not persuaded that the appellant's consideration of alternative sites is suitably robust.
18. The Council has not raised concerns in respect of the site selection process. However, this process is set out in the Framework, and as the appellant has sought to address this in its evidence then I have had regard to it accordingly.
19. It has therefore not been demonstrated that the appeal site is the only viable option and that there are no suitable alternatives, even given the constraints of the 5G cell search area and operational requirements. On that basis, I am not satisfied that the harm I have identified above is outweighed by the need for the installation to be sited as proposed. The proposal is therefore contrary to the Framework with regards to the submission of necessary evidence to justify the proposed development.

Other Matters

20. The appellant has referred to an Appeal Decision in Walworth¹. However, it has not been demonstrated that the circumstances of that appeal are a direct parallel to the appeal before me, which I have determined on its own merits.

¹ Appeal Ref: APP/A5840/W/20/3254830

Conclusion

21. I have found that the siting and appearance of the proposal would lead to limited harm to the character and appearance of the area. Whilst I have had regard to the need for the installation to be sited in this area and the support for high quality communications, including within the Framework, the evidence in respect of suitable alternative locations which could address those considerations is not sufficient. On that basis, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR