



Appeal Decision

Site visit made on 25 March 2024

by Lewis Condé BSc, MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2024

Appeal Ref: APP/Y9507/W/23/3331919

Nevill Road Street Works, Lewes BN7 1PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Cameron Wilson, CK Hutchison Networks (UK) Limited, against the decision of South Downs National Park Authority.
 - The application Ref is SDNP/23/02873/FUL.
 - The development proposed is an 18m 5G telecoms installation: H3G street pole and additional equipment cabinets.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address and description of development in the banner heading above have been taken directly from the original planning application form.
3. The appellant's submission documents vary between referring to the subject application (ref: SDNP/23/02873/FUL), as being a full application for planning permission (i.e. under the Town and Country Planning Act 1990, as amended (TCPA)), and an application for prior approval under Part 16 Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2016 (the GPDO). The planning application form, however, relates to an application for (full) planning permission under the TCPA. Additionally, the background to the proposal also suggests that any references to the application as being for prior approval are made in error.
4. The planning committee report has also referred to the application as having been made under Section 73 of the TCPA, albeit this does not tally with the appellant's submissions, while there is no substantive evidence before me to suggest this to be accurate.
5. Based on the above, I have therefore determined the appeal on the basis that it is made under Section 78 of the TCPA.
6. A second reason for refusal is listed on the Local Planning Authority's (LPA) decision notice, but it instead merely indicates the relevant plans/documents that the decision was based upon.
7. I observed on my site visit that telecommunication infrastructure has already been installed at the appeal site, while the application submission was clear in acknowledging the retrospective nature of the proposal. Concerns have been expressed by third parties regarding the accuracy of the submitted plans.

Nonetheless, I have determined the appeal based on the plans provided, should there be any discrepancies between the plans and the development as built, it will be for the LPA and appellant to address the implications.

8. During the appeal, third parties, amongst other matters, also raised concerns in respect of the legitimacy and validity of the appellant's self-certification that the appeal scheme complies with guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). The appellant was given the opportunity to respond to the third-party comments and the response received has been considered in my determination of this appeal.

Background and Main Issues

9. The appellant originally submitted an application (ref: SDNP/22/03133/PA16) for prior approval, under Part 16, Schedule 2 of the GPDO, for the installation of telecommunications infrastructure on Nevill Road, Lewes that was of a similar design to the current appeal proposal. In August 2022, the LPA determined that prior approval for that development was not required and could proceed under permitted development rights (PDR). However, the development that subsequently took place differed to that considered by the LPA, including that its precise siting did not conform to that for which prior approval had been sought.
10. Subsequently, the appellant applied for full planning permission to regularise the works that had been carried out. However, the planning application (ref: SDNP/23/02873/FUL), which is subject of this appeal, was refused by the LPA's planning committee on the grounds that it is harmful to the landscape character of the area and detrimental to visual amenity.
11. As indicated above, concerns have also been raised by third parties during this appeal regarding the potential implications of the development on human health, due to a lack of appropriate certification that the development would meet ICNIRP guidelines.
12. In light of the above, the main issues are:
 - i) whether appropriate evidence that the proposal would comply with International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines has been provided; and
 - ii) the effect of the proposal on the character and appearance of the area, having regard to its location within the South Downs National Park.

Reasons

ICNIRP Guidelines

13. Paragraph 121c) of the National Planning Policy Framework (the Framework) sets out that applications for electronic communications development should be supported by the necessary evidence to justify the proposed development. Notably, this includes (for a new mast or base station) a statement that self-certifies that, when operational, International Commission guidelines will be met.
14. Given the proximity of the development to residential dwellings and a school, and the potential for implications to human health, I find that it is particularly

important that the appeal scheme can be verified as complying with ICNIRP guidelines.

15. A declaration that the proposed equipment and installation is designed in compliance with ICNIRP guidelines was submitted alongside the original application and this appeal. The declaration is not in the appellant's name, but rather that of a company that is seemingly no longer in existence¹. I am therefore not convinced that this equates to self-certification. I note the appellant's agent's comments that the company name, "Three UK Limited" was used in error and is a reference to the entity who trade as Three UK, Hutchinson 3G UK Limited. However, this still does not persuade me that the declaration can be suitably relied upon or is binding to the appellant.
16. Moreover, the declaration provided does not refer to any plan or document numbers associated with the proposed development. The declaration therefore cannot be appropriately linked to the development under consideration. It therefore does not provide suitable assurance that the detailed design of development being pursued under this appeal, in terms of its technical specifications or precise siting, has been considered and found to comply with the relevant standards. The fact that the appellant's wider submission documents also contain frequent errors and conflicting information, makes me further question the robustness of the declaration of ICNIRP conformity and whether it relates specifically to the development under consideration in this appeal.
17. The declaration is dated and is signed off via a Design Lead for Great British Communications Ltd. The date on the declaration is likely to correspond to when the planning application for the works was being prepared. It also states a site address 'Nevill Road, Wallands Park, Lewes, East Sussex, BN7 1PD', which broadly aligns with that referred to on the planning application form and within the appellant's submitted documents. However, the address on the declaration could equally relate to other locations along Nevill Road that share the specified postcode. Regardless of whether the correct site address has been considered, it remains that I cannot be satisfied that the submitted declaration has been informed by, or is sufficiently linked to, the specific telecommunications infrastructure being considered under this appeal.
18. When read as a whole, I deem the declaration of ICNIRP conformity submitted alongside the appeal is highly inadequate. It therefore does not provide sufficient confidence that the development before me meets the relevant guidelines. In reaching this view, I recognise that the appellant is an Electronic Communication Code Operator and a key provider of 5G telecommunications infrastructure across the UK. However, this does not remove the need to provide suitable evidence, which can withstand scrutiny, to support the planning proposal.
19. Overall, there is insufficient authoritative evidence to indicate that the appeal proposal would comply with ICNIRP guidelines. Consequently, I am not satisfied that it has been appropriately demonstrated that the appeal scheme would not lead to harm to human health. It would therefore be contrary to the provisions of the Framework, namely paragraph 121c).

¹ Based on evidence of Companies House records provided by third-parties and the subsequent response of the appellant's agent.

Character and Appearance

20. The appeal site is located within the South Downs National Park (SDNP). National Parks are designated for the purposes of a) conserving and enhancing natural beauty, wildlife and cultural heritage, and b) promoting opportunities for their understanding and enjoyment of their special qualities by the public. Section 11A(2) of the National Parks and Access to the Countryside Act 1949 (the Act) places a duty upon me to have regard to these purposes in this decision.
21. Meanwhile, paragraph 182 of the Framework sets out that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, which have the highest status of protection in relation to these issues.
22. The above requirements are also reflected in several of the policies of the South Downs Local Plan (adopted 2019) (the Local Plan). In particular, Local Plan Policy SD44 relates specifically to telecommunications and utilities infrastructure. Amongst other matters, this policy establishes that telecommunications development will be permitted where it is of an appropriate design that would not have an adverse impact on the National Park's special qualities and minimises the impact on landscape and general amenity.
23. The appeal site is an area of grass verge, adjoining a pavement alongside a busy road (A257), near its junction with Highdown Road. The site is located on the outskirts of Lewes and outside of the Lewes Conservation Area (LCA). The appeal scheme is within a suburban location with, predominantly, built-up surroundings that mainly include residential and community buildings. The A257 in this area is also largely lined by dense vegetation, including a mature belt of trees immediately alongside the appeal scheme. As such, the character of the area is one of a verdant, suburban townscape, which although in the SDNP is not highly sensitive in nature.
24. The development is largely screened from many public vantage points by the adjacent mature trees, more so when in leaf. Additionally, a combination of topography, the curvature of the road (A257), presence of significant vegetation, and built form also restrict many intermediate views of the appeal proposal.
25. The telecommunications mast would be readily visible when approaching nearby to the site along the A257 and near the junction of Highdown Road. However, vertical structures including lighting columns, telegraph poles, traffic lights and road signs can be found in the near vicinity along the A257, with several of these features viewed closely alongside the appeal development. The appeal scheme therefore does not appear as an alien or incongruous feature within the streetscene.
26. The mast, nevertheless, remains a larger, more strident, and starker structure than other vertical elements nearby. However, given the surrounding context the visual harm is highly limited and could be overcome through the development being painted an alternative colour to more closely assimilate with the adjacent vegetation. In this respect, I note that the appellant has previously indicated a willingness to accept a planning condition that the mast is painted dark green to reduce its visual impact.

27. The proposal also involves multiple cabinets in a row near the footpaths edge. These appear typical of the form of structures often seen on roadsides. Accordingly, they do not appear as incongruous features on the grass verge, nor result in undue visual clutter.
28. Consequently, although the appeal proposal results in some change to the aspect of the immediate area, subject to the condition referred to above, I do not consider it is of a nature or degree that results in harmful visual consequences.
29. The telecommunications mast is also visible from longer range views, most notably to the west from open access downland. However, given the distant nature of views, and its backdrop of trees, the appeal scheme is not a highly prominent feature. Where visible, it is also viewed as part of a wider scene involving significant built form. Furthermore, a change in colour to the infrastructure, as referred to above would further integrate the development, such that I do not consider it would have any adverse impacts on the wider landscape setting. Nor would it harm the setting of the LCA, including views of its roofscape or historic form.
30. Overall, subject to the imposition of a condition on any grant of planning permission, requiring the infrastructure to be painted an alternative colour, I am satisfied that the appeal scheme would not cause harm to the character and appearance of the area. While it would also conserve the landscape and scenic beauty of the SDNP. It therefore adheres to Local Plan policies SD4, SD5, SD6 and SD44 and policies PL2 and HC3A/B of the Lewes Neighbourhood Plan (Made 2019) (the Neighbourhood Plan). Together, amongst other matters these policies seek to ensure that development conserves and enhances the landscape of the National Park, as well as protects the townscape of Lewes and conserves the LCA. This includes through promoting design that respects local character and preserves the visual, integrity, identity and scenic quality of the National Park. It also follows that the proposal would not conflict with the purposes of the National Park under the Act.
31. Nonetheless, this does not overcome my previous concerns in respect of the first main issue.

Other Matters

32. The proposal would provide a valuable enhancement to digital communications, improving both coverage and capacity of 5G technology, for residents and businesses in the surrounding locality. Indeed, the Framework advises that advanced, high quality and reliable communication infrastructure is essential for economic growth and social well-being. It further advises that planning decisions should support the expansion of electronic communications networks including next generation mobile technology (such as 5G). Nonetheless, this does not alleviate the need to show compliance with International Commission guidelines. Indeed, such benefits would still be capable of being delivered by a scheme that has been suitably demonstrated to conform to ICNIRP guidelines.
33. Given the existing telecommunication installation did not go through a prior approval process it cannot benefit from permitted development rights (PDR) provided under Part 16, Schedule 2 of the GPDO. It still remains that the appellant has a legitimate fallback position of implementing PDR for a very similar designed scheme approximately 3m from the location of the appeal

development. Given the appellant's seemingly significant role in delivering such infrastructure across the UK, and the likely resources available, I consider that the prospect of the PDR fallback being implemented is realistic. However, I do not have the full details of the fallback scheme, including whether the design of that development was appropriately certified to comply with ICNIRP standards. In any case, the fallback position still does not diminish the need to appropriately demonstrate the safety of the proposal before me.

Conclusion

34. For the reasons given above, the appeal scheme adheres to the development plan, however, there are material considerations including the approach of the Framework, which justify a decision other than in accordance with the development plan. The appeal is therefore dismissed.

Lewis Condé

INSPECTOR