



Appeal Decision

Site visit made on 19 June 2024

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th July 2024

Appeal Ref: APP/A5840/W/23/3323116

Area of Footpath, Surrey Quays Road, Surrey Quays, SE16 7PW

- 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 Gallivan of CK Hutchison Networks (UK) Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref is 22/AP/3957.
 - The development proposed is 5G telecoms installation: H3G 15m street pole and additional equipment cabinets.
 - This decision supersedes that issued on 17 January 2024. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 19 December 2023, a revised National Planning Policy Framework (the Framework) was published. Those parts of the Framework most relevant to this appeal have not been significantly amended. As a result, I have not sought further submissions.
3. In this case, the principle of the development is established by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) and the provisions of Schedule 2, Part 16, Class A do not require regard be had to the development plan or other material considerations. While I may have regard to planning policy, that would only be in so far as it relates to matters of siting and appearance.
4. In addition to the Masterplan drawing 'Proposed Vehicular Access from Planning Application Boundary'¹, I have been provided with a copy of several other parameter plans that relate to the Canada Water Masterplan. The appellant has had an opportunity to comment on these documents as part of the redetermination exchanges and therefore no party would be prejudiced by my consideration of them as part of the appeal.

Background and Main Issues

5. There is no dispute between the parties that the siting and appearance of the proposed installation would be acceptable when assessed within its current

¹ Reference: CWM-AAM-MP-ZZ-DR-A-07006

surroundings. The Inspector of the previously quashed decision² came to the same view, and from the evidence before me and my observations on site, I can find no reason to disagree.

6. The Council's reason for refusal and the concerns of British Land (BL), an interested party to the appeal, relate specifically to the effect of the proposed installation on the delivery of the Canada Water Masterplan (Masterplan), which was granted outline permission in May 2020³ (outline permission). While under current arrangements the installation would not impede vehicular access from Surrey Quays Road, when the Masterplan is built out, the Council and BL consider the installation would impede vehicular access to Development Zone E of the Masterplan, which would prejudice its wider delivery.
7. The provisions of the GPDO require the proposed development to be assessed solely on the basis of its siting and appearance, taking into account any representations received. While matters of siting and appearance are not defined, in my view, they can include a broad suite of matters directly related to siting and appearance, including the proper planning of an area.
8. BL also contend that the proposed installation would prevent access to premises adjoining a footway and would therefore not constitute permitted development, as it would conflict with condition A.2(1)(d)(ii) of Schedule 2, Part 16, Class A of the GPDO. Although the Council has not raised this as a concern, from the evidence before me and my observations on site, the proposed installation would not currently prevent access to any of the existing premises. Accordingly, at this point in time, the proposed installation would not conflict with condition A.2(1)(d)(ii) of Schedule 2, Part 16, Class A of the GPDO. In my view the proposal would therefore constitute permitted development until either a conflict with condition A.2(1)(d)(ii) or another relevant requirement under Schedule 2, Part 16, Class A of the GPDO occurred prior to its installation. I am therefore satisfied that the proposed installation would currently be permitted subject to matters relating to siting and appearance.
9. Based on this context, the main issue in this appeal is the effect of the siting of the proposed installation on the delivery of the Masterplan, with particular regard to vehicular access to Development Zone E; 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

10. It has been put to me by BL that the Masterplan is one of the most significant urban regeneration projects in London and the UK, and the first new town centre in London in 50 years. The delivery of the Masterplan would result in significant social and economic regeneration benefits, including a new high street and town square, up to 3,000 new homes with a minimum of 35% affordable homes, 2 million square feet of workspace, accommodating 20,000 workers, a new leisure centre, community uses and 16 acres of public realm including a new park.

² Appeal Decision for Surrey Quays Road street works, Surrey Quays Road, Southwark SE16 7PW, Appeal Ref: APP/A5840/W/23/3323116, dated 17th January 2024

³ Application Reference: 18/AP/1604.

11. The proposed installation would be located within the red line boundary of the Masterplan⁴, on the pedestrian footway serving Surrey Quays Road, adjacent to Development Zone E. The composition and detailed design of the buildings within Development Zone E was not fixed through the Masterplan. However, a Development Specification, Parameter Plans and Design Guidelines secured through conditions on the outline permission dictate how the Masterplan must be delivered.
12. The Inspector of the previously quashed decision had limited information regarding the Masterplan and the evidence submitted did not demonstrate why the siting or appearance of the proposal would prejudice the development contained within the Masterplan. Based on this limited evidence, she concluded the siting and appearance of the proposed installation would be unlikely to prejudice the future redevelopment of the area covered by the Masterplan.
13. However, as part of the redetermination process, I have been provided with additional information and evidence setting out why the siting or appearance of the proposal would prejudice the development contained within the Masterplan. This information includes the Development Specification, Parameter Plans and Design Guidelines that form part of the outline permission.
14. The evidence shows that Development Zone E should provide 36,600 square metres of mixed-use development, which would be accessed from Surrey Quays Road, as well as from the south-west of the zone. The permitted land uses include residential and/or assisted living, and/or workspace, with retail uses at lower levels. There is potential for community uses, leisure/cultural uses, a primary sub-station, multi-storey car park and petrol filling station. The development zone would include buildings up to 30 metres tall and must also provide a public route through its centre, referred to as the 'Middle Cut'.
15. The proposed installation would be positioned at the back edge of a wide footway. Given this, I am of a similar view to the Inspector of the previously quashed decision, that, even after the redevelopment of the area, it is unlikely that it would impede pedestrian access to the proposed town centre or the uses within Development Zone E.
16. Nevertheless, the Proposed Servicing and Access Plan⁵ shows where vehicular access to car parking or direct service yard access is permitted across the Masterplan area. This includes a section of Development Zone E adjacent to Surrey Quays Road. The Inspector of the previously quashed decision did not have a copy of this plan before her.
17. The proposed installation would be sited directly in front of the section permitted for vehicular access. While it would not completely inhibit vehicular access into Development Zone E from Surrey Quays Road, it would significantly reduce the amount of highway that vehicular access could be taken from. I note that the remaining length of highway that would be available for vehicular access into Development Zone E from Surrey Quays Road would be far less than the permitted vehicular access areas into most of the other development zones.
18. Given this, I am of the view, that the siting of the proposed installation would prejudice the detailed design of Development Zone E, by limiting the options

⁴ Location Plan, Drawing No: 802_SK_018

⁵ Reference: CWM-AAM-MP-ZZ-DR-A-07007

for future vehicular access into the development zone from Surrey Quays Road. There would be a considerable risk that this would restrict the type and amount of the permitted uses delivered in Development Zone E, which consequently could have an appreciable detrimental impact on the delivery of the Masterplan.

19. The proximity of the proposed installation to the boundary of Development Zone E would also likely restrict other elements of the design of the buildings within this development zone. Moreover, given there is limited information regarding the future context of the proposed installation, it would be difficult to assess whether its appearance would be visually acceptable in its new surroundings.
20. The Inspector of the previously quashed decision had no details as to the timescales for the delivery of the development covered by the Masterplan. Nonetheless, from the evidence before me, its delivery appears to be proceeding at a reasonable pace. This is not disputed by the appellant. It is evident that a significant amount of work has gone into developing the Masterplan, it has outline permission and brings with it significant social and economic benefits. Therefore, in this case, I afford the Masterplan and its unfettered delivery decisive weight.
21. The appellant has not referred to the future redevelopment of the area in their representations and has made no comment regarding the effect of the proposed installation on the delivery of the Masterplan. The appellant's statement of case assesses the effect the siting and appearance of the proposed installation would have on the existing surroundings and does not consider the potential constraints arising from the approved Masterplan. Nor has the appellant considered this when assessing suitable alternatives for the proposed installation, which I consider under "Suitable Alternatives" below.
22. In coming to this finding, it is material to record that the proposal would conflict with Policy P14 of the Southwark Plan 2019-2036 (2022) (Local Plan), which requires development to provide innovative design solutions that are specific to, among other things, the site's constraints, which in this case would include the approved Masterplan. It would also conflict with Policies D4 of the London Plan (2021) and Policy P13 of the Local Plan, which seek to ensure that new development delivers good design that improves the environment.
23. For the reasons above, I conclude that, based on additional evidence provided as part of the redetermination process, it has been substantiated that the siting of the proposed installation would likely prejudice the future redevelopment of the area covered by the Masterplan, to the detriment of its delivery and the proper planning of the area.

Suitable Alternatives

24. The extent and detail of the information setting out why alternative locations for the proposed installation have been discounted is brief, generic, and unsupported by further evidence. There is also no explanation setting out why these sites were chosen as alternatives and no substantive evidence demonstrating why other areas of land within or close to the search area were not considered.

25. Nevertheless, the wider area is going to change significantly as part of its future redevelopment, including most of the alternative locations assessed by the appellant. Also, while there may be no current opportunities to erect antennas on existing buildings, masts, or other structures, there may be the opportunity as part of the future redevelopment. I note that BL is willing to work with the appellant to find a suitable alternative location within the Masterplan area. Furthermore, as the appellant's assessment does not consider the future redevelopment of the area, it is unclear whether this would have any effect on the operational requirements, effectiveness, or efficiency of the proposed installation.
26. Accordingly, in the absence of any assessment by the appellant to address the constraints of the approved Masterplan or attempt to identify the most appropriate location for the proposed installation in light of the future redevelopment of the area, I cannot be certain that there are not alternative sites available, which would not detrimentally affect the delivery of the Masterplan. I am therefore not satisfied that all reasonable alternatives, which may be less harmful, have been considered, or that the potential harm that I have identified to the delivery of the Masterplan is outweighed by the need for the installation to be sited as proposed. To the contrary, the evidence before me suggests that the proposed installation could be more appropriately sited if considered in a co-ordinated manner as part of the redevelopment, which could include opportunities for mast or site sharing, as well as erecting the antenna(s) on new buildings and/or structures.
27. The proposed installation would therefore conflict with Policy SI 6 of the London Plan (2021), which requires development proposals to support the effective use of rooftops to accommodate well-designed and suitably located mobile digital infrastructure. It would also conflict with Policy P44 of the Local Plan, which requires digital infrastructure to demonstrate an absence of alternative sites. These policies deal specifically with digital infrastructure and are therefore material in this case.

Other Matters

28. It has been put to me by the appellant that the Council did not fully consider the significant efforts made to ensure the appeal site and design of the proposed installation struck an appropriate balance between operational requirements and the significant improvements enhanced 5G bring, and the environmental considerations of planning policy. However, while I acknowledge the references made to various social and economic benefits, as well as the importance given to digital infrastructure in both the Local Plan and the Framework, they have not been taken into account in considering matters of siting and appearance. 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, and I have determined the appeal on the same basis.

Conclusion

29. For the reasons given above, I conclude that the appeal is dismissed.

Hannah Guest INSPECTOR