

Appeal Decision

Site visit made on 21 August 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2024

Appeal Ref: APP/P5870/W/24/3345442

**Plough Lane Close, Land Rear of Bandon Hill Cemetery, Wallington,
London SM6 8JN**

- 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 Cornerstone against the decision of the Council of the London Borough of Sutton.
 - The application Ref is DM2023/01575.
 - The development proposed is the installation of a 17.5-metre-high slimline monopole supporting 6no. antennas and 2no. 300mm dishes, the installation of 2no. cabinets along with associated ancillary development thereto, within a fenced compound.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the installation of a 17.5-metre-high slimline monopole supporting 6no. antennas and 2no. 300mm dishes, the installation of 2no. cabinets along with associated ancillary development thereto, within a fenced compound at Plough Lane Close, Land Rear of Bandon Hill Cemetery, Wallington, London SM6 8JN in accordance with the application DM2023/01575 and the details submitted with it including plan nos: 100A Rev D Site Location Maps; 200A Rev D Existing Site Plan; 300B Rev D Existing Site Elevation; 201C Rev D Proposed Site Plan; and 301D Rev D Proposed Site Elevation.

Preliminary Matters

2. The appellant has clarified the appellant name is Cornerstone, which is the trading name for Cornerstone Telecommunications Infrastructure Limited. Accordingly, I have used the name 'Cornerstone' in the banner heading and my decision above.
3. The appellant has confirmed the operator of the proposed installation would be VMO2, which is a trading name for Telefonica UK Ltd, a company listed on the Ofcom register and with powers under the Electronic Communications

Code. I do not have full details of the Mole Valley decision¹ brought to my attention. Consequently, this reference is not sufficiently compelling to lead me to a different finding about the status of the operator of the proposed installation in this appeal.

4. It has been suggested the plans of the proposed installation show four cabinets rather than two. I am satisfied the plans show two proposed cabinets, which is consistent with the description of development above.
5. The appellant has submitted revised plans with the appeal. These show the effect of the proposal on two saplings planted since the application, and amendments to the colour of the proposed cabinets and chain-link fence to be fir green like the rest of the proposed installation. I am satisfied these amendments do not involve a substantial difference or fundamental change to the application and there would be no procedural unfairness if I were to take them into account in my decision.
6. The appellant has also submitted an updated tree report and a preliminary ecological appraisal with the appeal. On the evidence before me, whilst these additional reports were available to view by interested parties, the existence of additional evidence was not specifically brought to the attention of interested parties when they were notified of the appeal. There is therefore a risk of procedural unfairness if I were to take these reports into account. Accordingly, I have had regard to the originally submitted tree report only, which is the report considered by the Council when it made its decision.
7. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO), 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.
8. There is no requirement to have regard to the development plan as there would be for any development requiring planning permission.
9. Nevertheless, Policies 23, 24, 25, 26 and 28 of the Sutton Local Plan 2018 (SLP) are material considerations insofar as they relate to issues of siting and appearance, such as where they require telecommunications development not adversely to affect the appearance of the surrounding area; and require all development to maintain the setting and visual amenity of Metropolitan Open Land (MOL) and Public Open Space (POS).
10. Similarly, the National Planning Policy Framework (the Framework) is also a material consideration, and this includes a section on supporting high quality communications. The Framework was updated in December 2023, after the Council made its decision. However, the appeal was lodged after that date, so I am satisfied both parties have had an opportunity to comment on the revised Framework.
11. On 30 July 2024 the Government published a consultation on proposed reforms to the Framework and other changes to the planning system. The draft revisions to the Framework and other proposed reforms are not directly

¹ Reference provided MO/2024/0788

relevant to this appeal so no party would be disadvantaged by not having the opportunity to comment on them.

12. The proposal does not fall within the descriptions of Environmental Impact Assessment (EIA) development in Schedule 1 or Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. Therefore, under Article 3(10)-(12) of the GPDO, no EIA is required.

Main Issue

13. The main issue is the effect of the siting and appearance of the proposed installation on the character and appearance of the surrounding area.

Reasons

14. The appeal site comprises an area of land behind a fence that borders the footway along Plough Lane Close. Mature trees line much of this side of the road and form a dense cluster between the site and Bandon Hill Cemetery. There are telegraph poles at regular intervals along one side of Plough Lane Close and lampposts along the other. Opposite the site is a single-storey brick structure with trees behind it. Overall, mature trees dominate the appearance of the area surrounding the appeal site and give it a secluded and relatively enclosed character.
15. The proposed monopole would be seen in the street-scene as a relatively slim, vertical structure against a backdrop of tall, vertical trees and amongst existing vertical street furniture and infrastructure. The proposed fir green colour of the installation would help camouflage it amongst the trees. The cabinets would be largely concealed behind the timber fence, with visible elements such as the protective chain-link fencing and cabinet door within the fence line also painted fir green, which would help them blend into the surrounding context.
16. The antennae would protrude above the nearest trees, some of which could require some pruning to protect the installation's 'occupation zone'. Nevertheless, in medium and longer views from Plough Lane and from within Bandon Hill Cemetery, the top section of the monopole would not be unduly prominent given the extent and maturity of the wooded area. In the winter, when some of the trees would lose their leaves, the pole would be seen amongst numerous tree trunks and other vertical elements in the street-scene, so would not stand out. Even if the top of the pole could be glimpsed from private residential gardens in the area, it would appear as a relatively small structure and would not be visually intrusive or overbearing or detract from the predominantly wooded backdrop.
17. The appellant's tree report states the proposed installation would have little detrimental effect on the mature trees in the vicinity of the site. There is no sufficiently compelling evidence to lead me to a different conclusion. Consequently, I find there would be no material adverse effect on the contribution of these trees to the character and appearance of the surrounding area.
18. I note the site falls within MOL, POS and Metropolitan Green Chain (MGC). However, given its location between woods and a fence and the enclosed character of the area immediately surrounding it, the proposal would have

little material effect on the openness of these designated areas. In addition, as the site is not easy to access from public areas and is not directly on a walking or cycling route, its contribution to recreational activity in the POS/MGC is limited. Therefore, the potential for recreational activity in these spaces would not be diminished by the proposed development.

19. The question of whether the development would be inappropriate in principle in MOL is not relevant to this appeal because the GPDO allows for consideration of the proposed development's siting and appearance only.
20. The proposed installation would be within a local Site of Importance for Nature Conservation (SINC) and it has been suggested its siting would have a detrimental effect on wildlife and plants within this, which would in turn detract from the character and appearance of the surrounding area. The GPDO does not provide that permitted development is subject to the duty to have regard to the purpose of conserving biodiversity in section 40 of the Natural Environment and Rural Communities Act 2006. In any case, no sufficiently authoritative or site-specific evidence has been provided to persuade me the proposed installation would materially harm biodiversity in the SINC. Consequently, I find there would be no detriment to the SINC's contribution to the character and appearance of the area.
21. Therefore, insofar as they are material considerations, the proposal would not be contrary to the aims of SLP Policies 23, 24, 25, 26 and 28. I also find no conflict with the Framework as a material consideration, where it requires development to be sympathetic to local character.
22. For the above reasons, I conclude the siting and appearance of the proposed installation would not have a harmful effect on the character and appearance of the surrounding area.

Other Matters

23. It has been put to me the area would be better served by a fixed cable communications network rather than a mobile network. The Framework is clear that decisions should support the expansion of next generation mobile technology such as 5G, in addition to full fibre broadband, to achieve economic growth and social well-being. Moreover, the Framework states local planning authorities should not question the need for an electronic communication system. As regards the suggestion that there is already good phone coverage in the area, there is little evidence to demonstrate this amounts to a complete assessment of need or capacity issues in building coverage and signal strength. I am therefore unpersuaded by these arguments.
24. Concerns have been raised about potential effects on health. However, the appellant has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). In these circumstances, the Framework advises that health safeguards are not something which a decision-maker should determine. This advice is specific to communications infrastructure, and I see no tension between it and the Framework's advice on pollution or with other regulatory regimes for pollution.

25. No sufficiently authoritative evidence has been provided to indicate that the ICNIRP is not valid, that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified. This is notwithstanding the presence of dwellings in the area; or the location of High View Primary School, which is in any case several streets away from the appeal site.
26. The Council has raised no concern about the effect of the siting of the proposed installation on traffic and, on the evidence before me, I see no reason to disagree. There is no pertinent evidence to substantiate the suggestion that the proposed cabinets would generate noise sufficient to disturb users of the cemetery. The proposal's effect on energy usage and carbon emissions is outside the scope of matters that can be considered in this case. It is a well-founded principle that the planning system does not exist to protect private interests such as the value of property.

Conditions

27. The GPDO 2015 does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators contained within it. These specify that the development must be carried out in accordance with the details submitted with the application, begin within 5 years of the date of the approval, and be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.

Conclusion

28. For the reasons given above the appeal should be allowed and prior approval should be granted.

C Carpenter

INSPECTOR