



STAND LANE, BURY

Application for Lawful Development Certificate for proposed addition of antennae to an existing pole 15m in height installed in the highway that supports fibre internet cables.

SUPPORTING STATEMENT

September 2022



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CONTENTS

1	INTRODUCTION
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2	RELEVANT LEGISLATION
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3	BACKGROUND INFORMATION
---	------------------------

4	LAWFUL DEVELOPMENT JUSTIFICATION AND CONCLUSION
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/1 INTRODUCTION

1.1. IX Wireless ('the Applicant') submits this statement in support of its application for a for a Lawful Development Certificate ("LDC") to confirm that the addition of antennae to an existing street pole 15m in height ('the Proposed Development') is lawful.

1.2. The Applicant is a registered company with powers under the Electronic Communications Code. See the below link to the Ofcom register:

<https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code/register-of-persons-with-powers-under-the-electronic-communications-code>

1.3. The Town and Country Planning Act (TCPA) 1990 under Section 192 (1) states that if any person wishes to ascertain whether—

a) any proposed use of buildings or other land; or

b) any operations proposed to be carried out in, on, over or under land,

would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

1.4. In accordance with the legislation, the purpose of this Statement is to expand upon the information provided, which demonstrates that the development in question constitutes permitted development in line with the GPDO and the TCPA 1990 and is by extension lawful and should be granted a certificate certifying as much. It has been prepared having received the advice of legal counsel from Kings Chambers.

/2 RELEVANT LEGISLATION

2.1 As a Code Operator, the Applicant has the benefit of Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO"). Save where stated to the contrary, references to paragraph numbers in this Planning Statement are references to the corresponding paragraphs of the GPDO.

2.2 Class A of the GPDO states that permitted development is: -

Development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network in, on, over or under land controlled by that operator or in accordance with the electronic communications code, consisting of—

(a) the installation, alteration or replacement of any electronic communications apparatus,

2.3 The relevant exclusions under para.A.1 are:

Development not permitted: ground-based apparatus

A.1— (1) Development consisting of the installation, alteration or replacement of electronic communications apparatus (other than on a building) is not permitted by Class A (a) if—

(a) in the case of the installation of electronic communications apparatus (other than a mast), the apparatus, excluding any antenna, would exceed a height of 15 metres above ground level;

(b) in the case of the alteration or replacement of electronic communications apparatus (other than a mast) that is already installed, the apparatus, excluding any antenna, would when altered or replaced exceed the height of the existing apparatus or a height of 15 metres above ground level, whichever is the greater;

- (c) *in the case of the installation of a mast, the mast, excluding any antenna, would exceed a height of—*
 - (i) *25 metres above ground level on unprotected land; or*
 - (ii) *20 metres above ground level on article 2(3) land or land which is on a highway; or*
- (d) *in the case of the alteration or replacement of a mast, the mast, excluding any antenna, would when altered or replaced—*
 - (i) *exceed the greater of the height of the existing mast or a height of—*
 - (aa) *25 metres above ground level on unprotected land; or*
 - (bb) *20 metres above ground level on article 2(3) land or land which is on a highway; or*
 - (ii) *together with any antenna support structures on the mast, exceed the width of the existing mast and any antenna support structures on it by more than one third, at any given height.*

2.4 The restrictions set out in A.1(2) relate to building based apparatus and are not relevant.

2.5 The restrictions at A.1(3) provides:

"(3) Development consisting of the installation, alteration or replacement of electronic communications apparatus (other than an antenna) on a mast is not permitted by Class A(a) if the height of the mast (including the apparatus installed, altered or replaced) would exceed any relevant height limit specified in paragraph A.1(1)(c) or (d) or A.1(2)(a) or (b). For the purposes of applying the limit specified in paragraph A.1(2)(a), the words "taken by itself" in that paragraph are omitted.

2.6 For reasons expanded upon below, this restriction is not relevant as the existing structure is not a 'mast'.

- 2.7 Whilst the restrictions at A.1(4) relate to the installation of antenna (operating to limit the size and number) they apply only to development on Article 2(3) land and are, therefore, not relevant.
- 2.8 A.1(5) restrictions apply solely to apparatus on a dwelling house and are not relevant.
- 2.9 A.1(6) restrictions apply to small antenna installed on buildings (other than dwelling houses) are not relevant.
- 2.10 A.1(7) operates to restrict the ground or base area of structures and expressly excludes antenna so is not relevant.
- 2.11 The remaining A.1 restrictions at A.1(8), A.1(9) and A.1(10) apply to driver information systems, radio equipment housing and public call boxes respectively and are, therefore, not relevant.
- 2.12 A.2 of Class A imposes conditions upon permitted development rights.

Conditions

A.2—

(1) Class A(a) and A(c) development is permitted subject to the condition that—

- (a) [relates to apparatus on buildings so not relevant]*
- (b) the siting and appearance of a mast which has been altered or replaced in a manner which does not require prior approval under paragraph A.2(3), and any electronic communications apparatus installed, altered or replaced on it, are such that the visual impact of the development on the surrounding area is minimised, so far as practicable.*

(2) Class A development is permitted subject to the condition that—

- (a) any electronic communications apparatus provided in accordance with that permission is removed from the land or building on which it is situated—*
- (i) if such development was carried out in an emergency, at the expiry of the relevant period; or*

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/3 BACKGROUND INFORMATION

- 3.1. A Lawful Development Certificate for the erection of poles up to 15m in height to support the carrying of fibre internet cables was approved by the LPA on 23 December 2019 under Ref: 64846. This confirms that except for structures to be erected on protected land, the poles of up to 15m in height can be erected by the Applicant without the need for further consent. In other words, it is permitted development under Class A of GPDO because the pole does not exceed the height of 15m (the limitation exclusion introduced by section A.1(1)(a)). The LPA has no control over the siting and appearance of these structures provided they do not exceed 15m above ground level.

/4 **LAWFUL DEVELOPMENT JUSTIFICATION**

- 4.1 The Applicant applies for a Lawful Development Certificate for the proposed addition of antennae to an existing 15m metal pole ("the Existing Structure") that supports fibre cable forming part of the Applicant's existing distribution network ("the Proposed Development").
- 4.2 The Existing Structure was erected on or about 8th August 2022 under permitted development rights, falling squarely within A.1(1). The distribution network is erected as the necessary foundation to IX's broadband provision. Thereafter local access networks can be connected to the distribution network as required.
- 4.3 To deliver broadband services to users, local access networks must be created at various points on the distribution network to connect the user's premises to the distribution network. These intersection points (where the local access networks connect to the distribution network) are determined by several technical factors, but with the overarching objective of achieving maximum network coverage through the deployment of the minimum amount of infrastructure.
- 4.4 Local access networks can be created either wirelessly, through the deployment of radio antenna (each able to connect multiple premises wirelessly), or through the deployment of GPON (gigabit passive optical network) aerial fibre, supported by additional wooden telegraph poles, to make connections from the intersection point on the distribution network to service addresses. The amount of additional passive infrastructure required to create local access networks using aerial GPON fibre is considerable, involving the erection of large numbers of additional telegraph poles to support the additional aerial fibre. Absent demand for faster services that necessitate the deployment of GPON, the Applicant's preference from an environmental, financial and speed of deployment perspective is to deploy wireless local access networks wherever technically possible.

- 4.5 The network infrastructure and electronic communications apparatus that must be deployed at each intersection point to create local access networks is materially the same, whether the local access network is deployed wirelessly or using GPON, and comprises street cabinetry to house electronic communications apparatus (connected to an electricity supply) and a 15m metal street pole ("a Street Pole"). Street Poles are a multifunctional piece of electronic communications infrastructure which support both aerial fibre that forms part of the distribution ring and apparatus required for the deployment of the local access networks (whether using wireless apparatus or GPON). In the case of wireless local access network deployment, small antennae are mounted on the Street Pole. In the case of GPON deployment, additional aerial fibre cables must be supported at height (together with switch gear and splice boxes). In both cases, cabling must be run down the centre of the hollow metal Street Pole to connect to electronic communications apparatus housed within street cabinetry.
- 4.6 Drawings showing how Street Poles are deployed to create wireless and aerial fibre local access networks are seen in Figure 1.

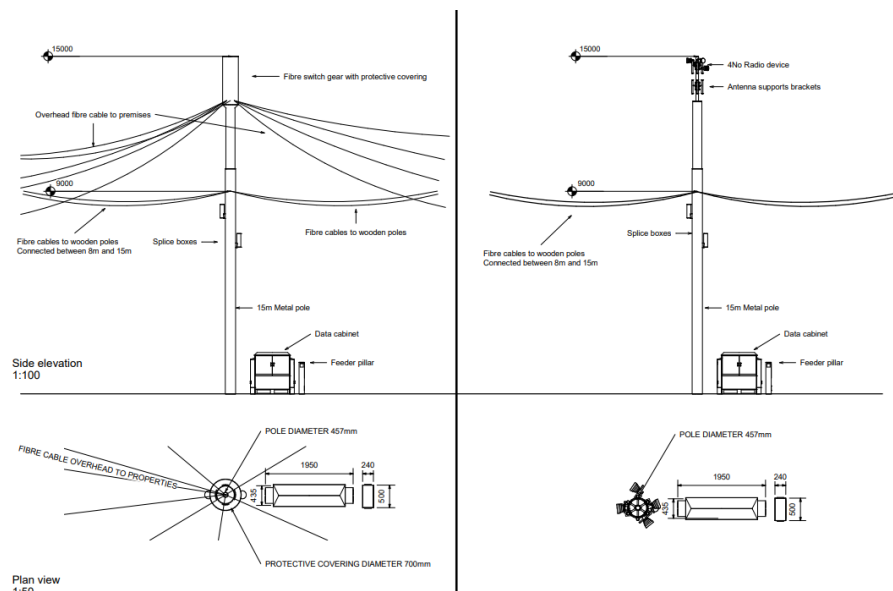


Figure 1

- 4.7 The Existing Structure was erected to form a fibre-based distribution ring under simple permitted development rights. Applying the judgment in the case of Mawbey (endorsed

by the Court of Appeal) the Existing Structure is not a mast, as it does not support apparatus that receives and transmits radio signals. It is ground based apparatus falling squarely within A.1(1). Likewise, the antenna (each no larger than a shoe box) are not 'masts'.

- 4.8 The Proposed Development comprises the addition of radio antennae to the Existing Structure. The installation of antenna falls within Class A as it is *'development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network'*. This is confirmed by the written advice of Anthony Gill of Kings Chambers dated 1st June 2022 (Counsel's Advice) a copy of which can be found at Appendix 1 of this Statement.

Exclusions

- 4.9 Para.A.1 ('Development not permitted') contains a list of exclusions from the general permission under Class A(a) for *"the installation, alteration or replacement of any electronic communications apparatus"*. In other words, development comprising the installation of antenna is not permitted if it falls within any of the exclusions. It is therefore necessary to consider each of the exclusions (A.1(1) to (10) inclusive) in turn, in the context of the Proposed Development.
- 4.10 The exclusions contained in A.1(2) and A.1(4) to (10) inclusive are clearly not relevant for the reasons set out in paragraphs 2.4 to 2.8 (inclusive). A.1(2) applied to building based apparatus; A.1(4) applies only to Article 2(3) land; A.1(5) applies to dwelling-houses only; A.1(6) applies to small antenna on buildings; A.1(7) expressly excludes antenna, whilst A.1(8) to A.1(10) inclusive apply solely to driver information systems, radio housing equipment and public call boxes, which are likewise not relevant.
- 4.11 A.1(3) relates to apparatus on masts and excludes antennae. Whilst antennae on masts are expressly excluded from the A.1(3) exclusion, meaning they can be installed, altered, or replaced under simple Class A permitted development rights, the Existing Structure is not a 'mast' for reasons given in paragraph 4.7. A.1(3) is not, therefore, relevant.

4.12 A.1(1) relates to the installation, alteration, or replacement of electronic communications apparatus other than on a building. The Existing Structure is neither a building nor a 'mast'. It is ground based apparatus. The Proposed Development is the addition of electronic communications apparatus (antennae) to existing ground-based apparatus. A.1(1) is therefore the relevant exclusion to consider. A.1(1) contains four sub-provisions (A.1(1)(a) to (d)). Dealing with each in turn:

4.12.1 A.1(1)(a) excludes from permitted development the installation of apparatus other than antennae above 15m in height. In other words, the installation of antennae is *excluded* from the A.1(1)(a) *exclusion* and, therefore, can be installed under Class A permitted development rights.

4.12.2 A.1(1)(b) relates to alterations or replacements other than masts. The proposed development is the installation of antennae and does not replace or alter any. Alternatively, should the proposed addition of antennae amount to an alteration of the Existing Structure the height of the Existing Structure would remain unchanged and not exceed 15m. In either case the Proposed Development is not excluded by A.1(1)(b).

4.12.3 A.1(1)(c) relates to the installation of a mast. The Existing Structure is already in situ. It is not a 'mast' nor are the antennae that the Applicant intends to add to the Existing Structure masts in themselves. The Proposed Development is not, therefore, excluded by A.1 (1)(c).

4.12.4 A.1(1)(d) relates to the alteration or replacement of a mast. The Existing Structure is neither a mast, nor is it being altered or replaced. The Proposed Development is the installation of antennae on existing ground-based apparatus. This sub-provision is plainly not relevant as it applies solely to alteration or replacement of structures that are 'masts' **before** they are altered or replaced.

4.13 From the foregoing it is clear when considering the Proposed Development that none of the Class A.1(1) exclusions operate to restrict the Class A right to install electronic communications apparatus. This is confirmed by counsel's advice.

4.14 Conditions

- 4.15 A.2 of Class A imposes conditions upon permitted development rights as set out in A.2(1) to (5) inclusive. The conditions set out in A.2(1) are plainly not relevant. A.2(1)(a) only applies to buildings, whilst A.2(1)(b) applies to the alteration and replacement of masts, where such alteration or replacement does not require prior approval, but imposes the condition that the visual impact of the development on the surrounding area be minimised, so far as is practicable.
- 4.16 A.2(2) is relevant and imposes the condition that the apparatus is removed in good time upon it no longer being required.
- 4.17 A.2(3) requires the observance of the prior approval process under A.3 for development that relates to Article 2(3) land, sites of scientific interest and/or or the installation of a mast or the alteration or replacement of a mast where the height of the altered mast or replacement mast exceeds 20m. The Proposed Development relates to unprotected land, not Article 2(3) land or to a site of scientific interest, and is not the alternation or replacement of a mast.
- 4.18 As noted above, following the judgement of Lang J in Mawbey, the Existing Structure is not a mast. The Proposed Development comprises the installation of antennae not the installation of a mast. Likewise, the Proposed Development is not the alteration or replacement of an existing mast. The Proposed Development does not fall within A.2(3) and is not subject to a condition requiring prior approval for the purposes of siting and appearance under A.3. Even if the Proposed Development were said to amount to the alteration or replacement of an existing mast, which the Applicant does not accept to be the case, such alteration or replacement would not exceed the 20m height threshold (see A.2(3)) and prior approval would still not be required.
- 4.19 A.2(5) excludes from the prior approval requirement certain communications apparatus in connection with the provision of fixed line broadband.
- 4.20 For the foregoing reasons the Proposed Development (the addition of small antennae to the Existing Structure) falls within Class A and does not fall within any of the A.1(1)

exclusions. Furthermore, it is not subject to the A.2(3) condition, which provides that prior approval under A.3 is required for the purposes of siting and appearance. The only relevant applicable condition is A.2(2) requiring the removal of the apparatus when they are no longer required. Again, this analysis is confirmed by Counsel's Advice.

Conclusions

- 4.21 It is submitted that this Planning Statement and Counsel's Advice then demonstrate that:
- 4.22 The Proposed Development is 'simple permitted development' within Class A(a)
- 4.23 There is no requirement to seek prior approval for the Proposed Development under A.3.
- 4.24 The plans and documents submitted in support of the application should be sufficient to enable the positive assessment of the application. Therefore, it is requested that the LDC is issued at the earliest opportunity.



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