



Appendix 3 – Post Application Correspondence

Correspondence received from the Bury Metropolitan Borough Council

BRY21703 – Jubilee Way

- **Copy of Officers Report refusing application**

DELEGATED REPORT

Report by Helen Leach	Date of report: 05/10/2022	Ref: 68819/TEL
Registration: 24/08/2022	LDfC: 27/09/2022	Expiry Date: 19/10/2022
Site Visit: 31/08/2022	Site Notice: 31/08/2022	Press Date: N/A
Objections: 1	Con Area: N/A	Adv Type: PI
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: NREQ

Proposal: Prior approval for proposed 5G 20m telecoms installation: H3G street pole and additional equipment cabinets.

Location: Corner of Jubilee Way & Tenters Street, Bury, BL9 0AL

Description

The application site relates to a grassed area between the former Magistrates Court site and Jubilee Way. The site is close to a junction of a pedestrian and cycle path and is at a lower level than Jubilee Way. The grass slopes up to Jubilee Way and there are mature trees adjacent to the road. There is a line of mature trees to the west of the site, which forms the boundary with the former Magistrates Court site.

Jubilee Way forms the boundary to the east with offices and residential dwellings beyond. There is a car park and childrens nursery to the south of the site. The former Magistrates Court is located to the west, which has planning permission for its conversion to apartments and the erection of the new dwellings.

The proposed development involves the installation of a mast and associated equipment cabinets on a grass verge between Jubilee Way and Tenters Street. The proposed mast would be 20 metres in height and would be located 2.1 metres to the east of the path. The equipment cabinets would be located to the north of the proposed mast.

Relevant Planning History

Adjacent site

64093 - Conversion of the existing building to 39 no. apartments and erection of 10 no. townhouses with associated landscaping works at Former Magistrates Court, Tenters Street, Bury. Approved with conditions - 19 May 2020

67396 - Non-material amendment following approval of planning permission 64093 to external elevations relating to window placement, subdivision, sizes etc. / positioning of blanking panels / and other minor infilling to areas with matching cladding/brickwork at Former Magistrates Court, Tenters Street, Bury. Approved - 6 October 2021.

67913 - Non-material amendment following grant of planning permission 64093 for conversion of the existing building to 39 no. apartments and erection of 10 no. townhouses with associated landscaping works:

Change to materials of the second floor and roof of townhouses from metal cladding to use of render to the elevations of the second floors and concrete roof tiles. Approved with conditions - 14 January 2022

Publicity

The neighbouring properties were notified by means of a letter on 25 August and 6 September 2022 and site notices were

Statutory/Non-Statutory Consultations

Traffic Section - Object - insufficient information to ensure that the highway verge can be properly maintained and the impact upon the trees.

Pre-start Conditions - Not relevant.

Unitary Development Plan and Policies

EN1/2	Townscape and Built Design
EN1/3	Landscaping Provision
EN1/7	Throughroutes and Gateways
EN1/10	Telecommunications
EN7	Pollution Control
EN8	Woodland and Trees
HT6/2	Pedestrian/Vehicular Conflict
NPPF	National Planning Policy Framework

Issues and Analysis

The following report includes analysis of the merits of the application against the relevant policies of both the National Planning Policy Framework (NPPF) and the adopted Bury Unitary Development Plan (UDP) together with other relevant material planning considerations. The policies of the UDP that have been used to assess this application are considered to be in accordance with the NPPF and as such are material planning considerations. For simplicity, just the UDP Policy will be referred to in the report, unless there is a particular matter to highlight arising from the NPPF where it would otherwise be specifically mentioned.

Equality Act 2010: All planning applications are considered in light of the Equality Act 2010 and associated Public Sector Equality Duty, where the Council is required to have due regard for:

The elimination of discrimination, harassment and victimisation;

The advancement of equality of opportunity between persons who share a relevant protected characteristic and person who do not share it;

The fostering of good relations between persons who share a relevant protected characteristic and person who do not share it; which applies to people from the protected equality groups.

Human Rights: All planning applications are considered against the provisions of the Human Rights Act 1998.

Under Article 6 the applicants (and those third parties who have made representations) have the right to a fair hearing and to this end full consideration will be given to their comments.

Article 8 and Protocol 1 of the First Article confer a right to respect private and family life and a right to the protection of property, ie peaceful enjoyment of one's possessions which could include a person's home, and other land and business assets.

In taking account of the Council policy as set out in the Bury Unitary Development Plan 1997 and all material planning considerations, it is concluded on balance that the rights conferred upon the applicant/ objectors/ residents/ other interested party by Article 8 and Article 1 of the First Protocol may be interfered with, since such interference is in accordance with the law and is justified in the public interest. Any restriction of these rights posed by refusal/ approval of the application is legitimate since it is proportionate to the wider benefits of such a decision, is based upon the merits of the proposal, and falls within the margin of discretion afforded to the Council under the Town & Country Planning Acts.

The Crime and Disorder Act 1998 imposes (without prejudice to any other obligation imposed on it) a duty upon the Council to exercise its functions and have due regard to the

likely effect of the exercise of its functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. In so doing and on making planning decisions under the Town and Country Planning Acts, the material Planning considerations shall have due regard to the provisions of the Crime and Disorder Act 1998 and its implications in the exercise of its functions.

Health issue - The NPPF states that applications for telecommunications development should include a statement that self certifies that the cumulative exposure, when operational, will not exceed the International Commission on non-ionising radiation protection guidelines. Local Planning Authorities must determine applications on planning grounds. They should not seek to determine health safeguards if the proposal meets International Commission guidelines for public exposure. In this case, the applicant has indicated that the proposal would meet the ICNIRP guidelines through the submission of a certificate.

Supporting information - The agent confirms within Section 6 of the SSSI that a sequential approach has been adopted when looking for sites. Firstly, consideration is always given to mast and site sharing, consideration is then given to utilising any suitable existing structures or buildings and thirdly, sites for freestanding ground based installations are investigated.

The agent has provided a list of 6 sites, which were discounted for the following reasons:

- D1 - Nominal location - very residential with insufficient pavements and rest of search area is the same
- D2 - Unsuitable pavements and visibility splay issues
- D3 - Unsuitable pavements and visibility splay issues
- D4 - Unsuitable pavements and visibility splay issues
- D5 - Unsuitable pavements and visibility splay issues
- D6 - Unsuitable pavements and visibility splay issues and in a residential area

5G radio technologies operate in higher frequency bands than older technologies, such as 2G and 3G. As it operates at higher frequencies where attenuation of the radio signal is naturally higher, the effects of clutter are much greater. In other words, the antennae would need to be located closer to the target area to achieve coverage than previously.

There is no red edge provided on figure 4, which is the coverage map, within the SSSI and as such, it is not possible to ascertain what is the target search area.

All of the above sites are freestanding ground installations. There is an existing mast at the junction of Haymarket Street and Angouleme Way, which is 320 metres away from site D2. Given that the sequential approach gives priority to existing sites and mast sharing, it is surprising that this site does not feature within the discounted options. It is unclear as to whether the applicant/agent has visited the site. Site D1 is located near a subway with a cleared site to the north and east and offices to the west. The nearest residential properties are some 75 metres away and consists of a terrace heading north. As such, this site is not a residential area, but would be classed as commercial. There are alternative sites on existing buildings or on-street installations, which have not been assessed or discounted. Given that the sequential approach gives priority to existing sites and mast sharing, it is surprising that no sites within the land on the opposite side of Jubilee Way have not been included within the discounted options.

Therefore, there is insufficient information provided to demonstrate that there are no alternative sites available and the proposed development would conflict with Policy EN1/10 of the Bury Unitary Development Plan and Section 5 of the NPPF.

Design and layout - The proposed mast would be 20 metres in height with 3 cabinets and would be located to the east and north of the existing paths near Jubilee Way and Tenters Street.

5G radio technologies operate in higher frequency bands than older technologies, such as 2G and 3G. Since it operates at higher frequencies where attenuation of the radio signal is naturally higher, and the effects of clutter are much greater, it will normally require a higher structure to achieve the same coverage footprint.

There is a large bank of trees between the application site and the site of the former Magistrates Court, which are 17 metres in height and there are individual street trees located adjacent to Jubilee Way, which are at a higher level and are 10 metres in height. Given the height of the trees, it is considered that the proposed mast would be viewed against the backdrop of the trees and would not be unduly prominent within the locality. Similarly the proposed cabinets would be located at the lower level when compared to Jubilee Way and would not be a prominent feature in the streetscene.

Impact upon residential amenity - The proposed development would be located to the front of dwellings, which are currently under construction on the former magistrates court site.

The dwellings would be located 16 metres from the proposed mast and there would be a direct view of the proposed mast from habitable rooms. As such, the proposed development would have an adverse impact upon the visual amenity of the area and would conflict with Policy EN1/2 and EN1/10 of the Bury Unitary Development Plan.

Trees - The proposed mast would be located on the grassed verge and the canopy of one of the mature trees does overhang the application site. A tree survey has not been provided and it is unclear if the proposed mast would require any works to the tree. As such, there is insufficient information to assess the impact upon the tree, which is mature and contributes positively to the character of the area. Therefore, the proposal conflicts with Policy EN8 of the Bury Unitary Development Plan.

Highways issues - The proposed development would be located on a grassed verge between Jubilee Way and Tenters Street. The proposed development would be located adjacent to the pavement and as such, would not impact upon visibility splays. The Traffic Section has objected to the proposal, as there is insufficient information to ensure that adequate accommodation works around the perimeter of the installation will be provided to ensure that the highway verge can continue to be properly maintained and there is insufficient information to assess the impact of the proposed development upon the highway trees. Therefore, the proposed development would conflict with Policies EN1/2, EN1/4, EN1/7 and EN1/10 of the Bury Unitary Development Plan.

Pre-application discussions - The applicant states on the Site Specific Supplementary Information (SSSI) that the LPA was contacted with regard to pre-application discussions on 9 August. On Thursday 11 August, the LPA replied confirming that a fee is payable for pre-application enquiries. The LPA has charged a fee for pre-application advice for 10 years and no fees were paid for the pre-app enquiry. As such, it was not progressed and no comments have been provided by the LPA. It is unclear who provided the comments on page 2 of the Supplementary Information. The agents have been made aware of the fees and the fact that no pre-application enquiry will be progressed without the relevant fee on several occasions.

Statement in accordance with Article 35(2) Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2015

The proposal would not improve the economic, social and environmental conditions of the area nor does it comply with the development plan and therefore does not comprise sustainable development. There were no amendments to the scheme, or conditions which could reasonably have been imposed, which could have made the development acceptable

and it was therefore not possible to approve the application. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.

Recommendation: Prior Approval Required and Refused

Conditions and Reasons:

- 1 The application and submitted documents contain insufficient information to enable the alternative sites to be discounted. Therefore, the proposed development would conflict with Policy EN1/10 - Telecommunications of the Bury Unitary Development Plan.
- 2 The proposed development would be detrimental to the amenities of the neighbouring properties property by reason of its height, size and position. The proposed development therefore conflicts with the following policy(ies) of the Bury Unitary Development Plan:
Policy EN1/2 - Townscape and Built Design
Policy EN1/10 - Telecommunications
- 3 The application and submitted plans contain insufficient information to enable the impact of the proposed development upon nearby trees to be properly assessed. Therefore, the proposed development conflicts with Policy EN8 - Woodland and Trees of the Bury Unitary Development Plan.
- 5 The application and submitted plans contain insufficient information to properly assess the impact of the proposed installation on the adjacent highway trees and does not provide adequate accommodation works around the perimeter of the installation will be provided to ensure that the highway verge can continue to be properly maintained. Therefore, the proposed development would conflict with the following Policies of the Bury Unitary Development Plan:
Policy EN1/2 - Townscape and Built Design
Policy EN1/3 - Landscaping Provision
Policy EN1/10 - Telecommunications
Policy EN8 - Woodland and Trees

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
HL - 05/10/2022			