



Appendix 3 – Post Application Correspondence

Correspondence received from the Bury Metropolitan Borough Council

BRY21766 – Brookshaw Street

- **Copy of Officers Report refusing application**

DELEGATED REPORT

Report by Jennie Townsend	Date of report: 14/10/2022	Ref: 68818/TEL
Registration: 24/08/2022	LDFC: 16/09/2022	Expiry Date: 19/10/2022
Site Visit: 28/08/2022	Site Notice: 28/08/2022	Press Date: N/A
Objections: 0	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 15m telecoms installation: H3G street pole and additional equipment cabinets.

Location: Land opposite Brookshaw Centre, Brook Street, Bury, BL9 6EB

Description

The application relates to a site which is located within a predominantly residential setting with some commercial and industrial premises in the vicinity.

The site is part of a piece of open space in the middle of residential dwellings and relates to part of a pedestrian pavement area set between 3 pieces of grassed areas which are allocated as Protected Recreation in the Urban Area, with interconnecting footpaths. A commercial building, Bury Works is located to the east of the site with further commercial development behind this to the rear.

The application seeks the installation of a 15m telecoms mast and associated cabinet equipment to provide 5G coverage to the area.

The equipment would be set at the back edge of the pavement area with the grassed area behind.

The mast would be 15m high with 3 cabinets at the side, the highest being 1.7m.

The supporting statement submitted with the application states that the new equipment is needed to provide the 5G service provision to this particular area.

The application has been submitted for determination as to whether the prior approval of the LPA will be required to the siting and appearance of the proposed installation under Part 16, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Relevant Planning History

N/a

Publicity

Letters sent to 26 properties on 25/8/22

No responses received

Statutory/Non-Statutory Consultations

Traffic Section - No objection subject to condition

Pre-start Conditions - Not relevant

Unitary Development Plan and Policies

NPPF National Planning Policy Framework

EN1/2	Townscape and Built Design
EN1/10	Telecommunications
HT6/1	Pedestrian and Cyclist Movement
EN1/4	Street Furniture
RT1/1	Protection of Recreation Provision in the Urban Area

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.

With regard to prior approval, para A.3(4) of Class A provides that before beginning the development described in paragraph A.2(3), the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be

required as to the siting and appearance of the development.

Chapter 10 of the NPPF - Supporting high quality communications of the NPPF at para 114 states that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including the next generation mobile technology (such as 5G) and full fibre broadband connections.

At para 115, use of existing masts, buildings and other structures for new electronic communications capability should be encouraged. Where new sites are required, equipment should be sympathetically designed and camouflaged where appropriate.

At para 117, applications should be supported by the necessary evidence to justify the proposed development, which should include a statement that self-certifies that the cumulative exposure, when operational, will not exceed International Commission guidelines on non-ionising radiation protection.

The applicant should also demonstrate that the sequential approach outlined in the NPPF has been adopted, with consideration given first to mast sharing, possibility of erecting antennas on an existing building or structures and following that, ground base installations.

UDP Policy EN1/10 - Telecommunications states that the Council will give favourable consideration to proposals for new telecommunications developments. In assessing such proposals, the Council will have regard to the following:

- the operating requirements of available and new telecommunications technology, and the national telecommunications network;
- the legal requirements of the telecommunications code systems operators;
- siting and design - including the opportunity for sharing masts or siting on existing buildings, height and ancillary development, landscaping, screening and the type and colour of materials used;
- the visual and physical impact especially on sensitive or special landscapes/buildings.

UDP Policy EN1/2 - Townscape and Built Design considers factors including the external appearance and design of the proposal in relation to height, scale, density and layout, relationship to the surrounding area and access and servicing.

UDP Policy EN1/4 - Street Furniture - Seeks to ensure that amongst other factors, the siting and design meets the needs of all users including the mobility impaired, does not detract from highway safety and does not interrupt main pedestrian flows.

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.

Site selection - The applicant states at Section 6 of the SSSI that a sequential approach has been adopted when looking at potential sites in line with the NPPF.

In accordance with the sequential approach the following search criteria has been adopted -

- a) Mast and Site Sharing
- b) Existing Buildings Structures
- c) Ground Bases Installations

The site is required to provide new 5G coverage improving service in and around this area subject to this application. The applicant states that this is an extremely constrained cell search area and that in this location, a new street pole with associated cabinets was deemed to be the only and most appropriate solution available.

Six alternative sites were investigated and discounted due to reasons of dense residential development, areas with insufficient and unsuitable pavement areas and visibility splay issues -

D1 - Nominal location - very residential, 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 located in residential area

All of the above would be for freestanding ground installations.

No further information has been provided to expand on why these sites are unsuitable.

The applicant states that the cell search areas for 5G are extremely constrained with a typical cell radius of approximately 50m, yet in this case, no red edge was provided on figure 4, which is the coverage map within the SSSI and as such, it is not possible to ascertain the applicant's target search area.

The applicant states that in this location, existing mast sites are not capable of supporting additional equipment compliment to extend coverage reach across the target area. There is an existing mast located within commercial buildings at Freetown Business Park which approximately 87m to the east of the application site but no reason has been put forward as to why the existing site and mast could not be utilised. Given that the sequential approach gives priority to existing sites and mast sharing, the application fails sequential approach a) above.

In addition, there are potential alternative sites either within Freetown Industrial estate and/or on commercial/industrial units within the industrial estate. This has not been considered by the applicant.

Furthermore, directly to the south of the site, no more than 40m away are commercial/industrial units. The applicant has not provided evidence that any existing buildings in this vicinity have been investigated.

The application would therefore fail sequential approach b), to utilise existing buildings.

In terms of the Discounted Options, Site D1 at Hudcar Lane was discounted as 'very residential in character with insufficient pavements'. Hudcar Lane is in fact located within Freetown Industrial Estate with a number of sizeable and wide areas of pavements or verges. There are no residential properties in the vicinity, it is therefore considered this area cannot be discounted until a thorough search has been conducted.

Site D5 on Chesham Road has been discounted due to unsuitable pavements and visibility issues. However, this part of Chesham Road is predominantly commercial in character, with a parade of shops set back from the main road, a car park and wide pavement areas along a fairly long stretch of main road and there are a number of potential sites along the route which could be investigated further.

It is unclear as to whether the applicant/agent has visited the site or those sites put forward as Discounted Options or the nearby vicinity in general.

It is therefore considered that the application fails to demonstrate that a robust or

comprehensive sequential site selection approach was taken prior to the submission of the application.

It is therefore considered that there is insufficient information provided to demonstrate that there are no alternative sites available and the proposed development would therefore conflict with the principles of the NPPF and UDP Policy EN1/10.

Impact on amenity - The site and immediate area is an area of open space which is located within a predominantly residential setting.

The proposed mast would be 15m in height with 3 equipment cabinets. The applicant states that the height of the proposed mast would be the minimum required to bring the benefits of 5G to the area.

The top of the mast would not have a shroud covering and the applicant has confirmed this is not possible due to the type of equipment.

Nos 26-34 Brookshaw Street to the south of the site would more or less have a direct view of the site and equipment and are located to the south approx 24m away.

The other property which would have a view would be No 8 Hilton street, approx 35m away to the west. The remaining residential dwellings which surround the site either do not have direct views or have blank gable walls which are set side on to the site.

The equipment would be located in an open and spacious setting, between 3 pieces of grassed land which are allocated as Protected Recreation provision in the Urban Area under Policy RT1/1 and would be viewed in isolation without the benefit of any screening or back drop of buildings. It is therefore considered that the proposed equipment would add a visual intrusion

The site and area has a high degree of usage, being located close to residential streets which provides a connection through to Chesham Road and Walmersley Road and local facilities such as shops and community services, as well as connecting to Walmersley Road and high access areas. The site is an important part of the public realm in this location and well used by pedestrian traffic and therefore has a high degree of sensitivity.

The equipment would therefore add bulky and highly visible structures in the middle of an open space and residential area where there is currently none.

There are more suitable sites in the locality which would be able to provide the 5G coverage needed for the site which should be investigated first.

It is therefore considered that given the lack of consideration of alternative sites by the applicant, no justification for the proposed siting of the equipment has been provided which would outweigh the harm caused to the visual amenity of the area.

It is therefore considered that the proposed development would be contrary to UDP policies EN1/2, EN1/4, EN1/10 and the principles of the NPPF.

Highways issues - The proposed equipment would be set at the back edge of a wide pedestrian pavement and would not encroach significantly so as to cause obstruction to uses of the footway including those in mobility scooters, wheelchairs or pushing prams for example.

The monopole would not be sited so as to impact on visibility splays.

The Traffic Section have not raised an objection to the proposed development.

As such it is considered the proposed development would comply with EN1/4 and EN1/10.

Pre-application

DELEGATED REPORT

Within the submitted Site Specific Supplementary Information (SSSI) the applicant states that a pre-consultation to the LPA was submitted, inviting comments and the opportunity to discuss development proposals and identify site specific issues.

On Thursday 11 August, the LPA replied to the agent confirming that a fee is payable for pre-application enquires. The LPA has charged a fee for pre-application advice for 10 years. No fee was paid for a pre-app enquiry for this site.

As such, it was not progressed by the LPA and no comments had been provided back to the applicant on the development proposals.

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 alternative sites to be discounted. Therefore, the proposed development would conflict with Policy EN1/10 - Telecommunications of the Bury Unitary Development Plan and chapter 10 of the NPPF.
- 2 The applicant has failed to demonstrate that there are suitable, satisfactory alternative sites available within or close to the area required for 5G coverage. As such, the proposed equipment, by reason of its size, design and siting, would introduce a discordant and incongruous feature to the public open space and the area in general which would be harmful to the visual amenity of the surrounding area and nearby residential properties and therefore contrary to UDP policies EN1/2 - Townscape and Built Design, EN1/4 - Street Furniture and EN1/10 - Telecommunications. and chapter 10 of the NPPF.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
JT	14/10/22		