

DELEGATED REPORT

Report by Dean Clapworthy	Date of report: 06/07/2023	Ref: 69605/TEL
Registration: 27/04/2023	LDfC: 23/05/2023	Expiry Date: 22/06/2023
Site Visit: 15/05/2023	Site Notice: 15/05/2023	Press Date: N/A
Objections: 0	Con Area:	Adv Type: PI
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: NREQ

Proposal: Prior approval for proposed 5G telecoms installation: H3G 15m street pole and additional equipment cabinets

Location: Public footway north of The Frigate, Thatch Leach Lane, Whitefield, Manchester, M45 6FW

Description

The proposal relates to an area of the public footway immediately adjacent to the car park pertaining to The Frigate public house to the east of a bus shelter. Opposing the site are detached dwellings set at a higher level than the adopted road and with mature landscaped front gardens. The M60 motorway is routed east-west to the rear of The Frigate and there is a 15m high telecoms mast positioned around 60m to the south-east of the proposed site.

Prior approval was sought for a proposed 5G telecoms installation including a H3G slimline 15m street pole and 3no. equipment cabinets.

Relevant Planning History

48038 - TELECOMMUNICATIONS INSTALLATION - Prior Approval Required and Granted 20/06/2007

Publicity

Advertised by direct neighbour notification and site notice. No representations received.

Statutory/Non-Statutory Consultations

Traffic Section: No objection, subject to a condition requiring remedial works to the perimeter of the installation.

Pre-start Conditions - Not relevant

Unitary Development Plan and Policies

EN1/2 Townscape and Built Design
EN1/10 Telecommunications
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.

RELEVANT LEGISLATION

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Class A of Schedule 2, Part 16 of the above Order provides that development as described below is permitted:

'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,
- (b) the use of land in an emergency for a period not exceeding 18 months to station and operate moveable electronic communications apparatus required for the replacement of unserviceable electronic communications apparatus, including the provision of moveable structures on the land for the purposes of that use, or

(c) development ancillary to radio equipment housing'.

The proposal comprises of development described under (a) and (c) above and could therefore be permitted development.

However, in relation to ground based apparatus, para A.1 (1) of Class A provides that development as described below would not be permitted development in certain instances and these include:

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) 30 metres above ground level on unprotected land; or

(ii) 25 metres above ground level on article 2(3) land or land which is on a highway;

(d) in the case of the alteration or replacement of a mast, the height of the mast, excluding any antenna, would when altered or replaced exceed the greater of the height of the existing mast or a height of—

(i) 30 metres above ground level on unprotected land; or

(ii) 25 metres above ground level on article 2(3) land or land which is on a highway;

or

(e) in the case of the alteration or replacement of a mast—

(i) the mast is on any land which is, or is within, a site of special scientific interest;

and

(ii) the mast would, when altered or replaced, exceed the original width of the mast by more than one third.

The equipment would be positioned upon unprotected land and would not exceed the relevant threshold under para A.1(1) above.

In relation to radio equipment housing, para A.1(9) provides that the following would not be permitted development:

(9) Development consisting of the installation, alteration or replacement of radio equipment housing is not permitted by Class A(a) if—

(a) the development is not ancillary to the use of any other electronic communications apparatus;

(b) the cumulative volume of such development would exceed 90 cubic metres or, if located on the roof of a building, the cumulative volume of such development would exceed 30 cubic metres; or

(c) on any land which is, or is within, a site of special scientific interest, any single development would exceed 2.5 cubic metres, unless the development is carried out in an emergency.

The proposed equipment housing would be ancillary to the use of the other electronic communications apparatus proposed, would not exceed (b) and would not relate to a SSSI.

Para A.2 of Class A sets out conditions to be satisfied for development to be permitted under Class A and relevant to this proposal are the provisions of paras. A.2(2) and A.2(3) which state:

(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 (ii) in any other case, as soon as reasonably practicable after it is no longer required for electronic communications purposes; and

(b) such land or building is restored to its condition before the development took place, or to any other condition as may be agreed in writing between the local planning authority and the developer.

(3) Subject to sub-paragraph (5), Class A development—

(a) on article 2(3) land, excluding development specified in sub-paragraph (4);

(b) on land which is, or is within, a site of special scientific interest; or

(c) on unprotected land where that development consists of— (i) the installation of a mast; (ii) the alteration or replacement of a mast which, when completed— (aa) is taller than the mast which existed prior to such alteration or replacement; and (bb) exceeds a height of 25 metres above ground level; (iii) the construction, installation, alteration or replacement of radio equipment housing, where the volume of any single development exceeds 2.5 cubic metres, is permitted subject, except in case of emergency (in which case only paragraph A.3(12) applies), to the conditions set out in paragraph A.3 (prior approval).

The site relates to unprotected land and concerns the installation of ground based equipment. Accordingly, the requirements of a prior approval are applicable. In relation to para A.2(2), it is for the developer to comply with this requirement should the equipment be removed.

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.

National Planning Policy Framework

The NPPF clarifies the government's stance on communication infrastructure and identifies that this supports sustainable economic growth and benefits communities. Paragraph 114 of the NPPF states: '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 next generation mobile technology (such as 5G) and full fibre broadband connections.'

The NPPF, at paragraph 115, advises Local Planning Authorities to support the expansion of telecommunications networks whilst aiming to keep the number of radio and telecommunications masts and the sites for such installations to a minimum consistent with the efficient operation of the network. Existing masts, buildings and other structures is encouraged.

Paragraph 117 of the NPPF goes further by stating that 'Applications for telecommunications development should be supported by the necessary evidence to justify the proposed development. This should include:

- the outcome of consultations with organisations with an interest in the proposed development, in particular with the relevant body where a mast is to be installed near a school or college or within a statutory safeguarding zone surrounding an aerodrome or technical site; and
- for an addition to an existing mast or base station, a statement that self certifies that the cumulative exposure, when operational, will not exceed International Commission guidelines on non-ionising radiation protection (ICNIRP); or
- for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure and a statement that self-certifies that, when operational, International Commission guidelines will be met.'

Consultations

As noted in the 'Supplementary Information':

- the Local Planning Authority was consulted pre-application on 12/04/2023. However, their is a formal pre-application scheme that incurs a fee. No further enquiry was submitted.
- the applicant states that no schools/colleges were notified as none are located within 200m of the proposed site (the nearest school is Whitefield Community High School, over 450m to the west of the site).
- the site does not fall within 3km of an aerodrome or airfield.

ICNIRP compliance

The NPPF states that Local Planning Authorities must determine applications on planning grounds and that 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 relevant certificate.

Site Selection Process

The 'Supplementary Information' states that the search area relatesto an extremely constrained cell search area. It is recognised that the very nature of installing new 5G mast infrastructure within a dense urban setting requires a well-considered balance between the need to extend practical coverage with that of increasing risk of visual intrusion. A street pole with associated cabinets is deemed to be the only and most appropriate solution available.

The submission claims that no existing mast sites are capable of supporting additional equipment.

Thereafter, it states that the sequential approach outlined in the NPPF has been followed and that all attempts to utilise any existing telecommunication structures where they represent the optimum environmental solution have been employed and that the Mast Data register has been examined.

- The application lists 6 sites (including the existing mast to the south of the site), which were discounted for the detailed reasons set out in the supplementary information.

Sufficient information has been provided to justify the need of the proposed development that would deliver improved 5G coverage for the site. Therefore, the proposed development would be in accordance with Policy EN1/10 of the adopted Unitary Development Plan.

PLANNING CONSIDERATIONS

Given the above, The proposed development is permitted by Class A, Part 16, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the Order) subject to the prior approval procedure set out in the Order. In accordance with the provisions of para A.3(4) of Class A, the scope matters to be considered is limited to the siting and appearance of the development only.

Siting and appearance

The site relates to a footway immediately flanked by a public house and associated curtilage for about 25m either side of the site. This is largely made up of a surface car park with a beer garden set on fake grass. Opposing dwellings on the north-west side of Thatch Leach Lane are around 21m (nearest) from the proposed installation. However, they are set at a higher level and the two dwellings directly opposite the site have mature landscaped gardens. The proposed site is flanked and backdropped by mature trees of a similar height and due to the wide curtilage of the grounds to the public house, the site has a sense of spaciousness that can absorb and assimilate tall vertical features such as the proposed slimline pole.

The existing antenna is over 60m from the site, set back behind the grounds of the public house.

In such circumstances, it is not considered that the proposed mast and associated equipment would have unacceptable visual impacts.

The public benefits resulting from the improved telecommunication service in the area would significantly outweigh any minor impacts on the appearance and character of the area.

Given the above circumstances, the proposed development would not be contrary to policies EN1/2 and EN1/10 of the Bury Unitary Development Plan.

Highway safety

The proposed development would be located on wide footway and would not therefore unacceptably obstruct pedestrians and would not impact upon visibility splays relating to the access into the car park to the public house. The Highway Officer is satisfied that the proposal is acceptable, subject to condition.

CONCLUSION

As assessed within this report, the proposed development is permitted development by virtue of Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Having regard to the siting and appearance of the proposed telecommunications installation, it is considered that the proposal would not unacceptably impact upon the character and appearance of the area. Prior approval is therefore granted.

Recommendation: Prior Approval Required and Granted

Conditions and Reasons:

- 1 This decision relates to drawings
002 Site Location Plan (Dwg No. BRY132/88205/m1352 Rev.b) dated 13/06/2023
005 Visual Splay Plan (Dwg No. BRY132/88205/M1352 Rev.B) dated 13/06/2023
215 Proposed Site Plan (Dwg No. BRY132/88205/M1352 Rev. B) dated 13/06/2023
265 Proposed Site Elevation (Dwg No. BRY132/88205/M1352 Rev. B) dated 13/06/2023
and the development shall not be carried out except in accordance with the drawings hereby approved.
Reason. For the avoidance of doubt and to ensure a satisfactory standard of design pursuant to the policies of the Bury Unitary Development Plan listed.
- 2 The development hereby approved shall not be brought into use unless and until a scheme of remedial works around the perimeter of the proposed installation, required to reinstate the footway to its former condition prior to commencement of the development, have been implemented to the satisfaction of the Local Planning Authority and to a scope and specification to be agreed with the Highway Authority.
Reason. - To ensure good highway design and maintain the integrity of the adopted highway, in the interests of highway safety, pursuant to policies EN1/2 and EN1/10 of the Bury Unitary Development Plan.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
DSC	06/07/2023	HL	06/07/23