

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

**Town and Country Planning (General Permitted Development) (England)
Order 2015 - Schedule 2, Part 16**

**DELEGATED DECISION FOR DISCHARGE OF CONDITION -
NOTIFICATION OF TELECOMMUNICATIONS DEVELOPMENT**

Reference no.	2021/N /92130/E
Site Address	Rochester Road, Birstall, Batley, WF17 9BU
Description	Prior notification for proposed 18.0m Phase 8 Monopole C/W wrapround Cabinet at base and associated ancillary works
Recommending Officer	Callum Harrison

DECISION – PRIOR NOTIFICATION REFUSED

**I hereby authorise the refusal of this application for the reasons set out
in the officer's report and recommendation annexed below in respect of
the above matter.**

Paul Dowd

AUTHORISED OFFICER

Date: 22-Jul-2021

Officer Report

Site: Rochester Road, Birstall, Batley, WF17 9BU

Proposal: 2021/92130 – Prior-notification for proposed 18.0m Phase 8 Monopole C/W wraparound Cabinet at base and associated ancillary works.

Site Description

The site relates to a part of the public footpath of the south west side of Rochester Road, an adopted but unclassified road. The location of the apparatus would be adjacent to an existing bus stop, given this, the footpath has been widened at this point.

Description of Proposal

The mast would have an overall height of 18m, to include a single antenna and would be used by a single telecommunications operator. The mast is to have a 'wrap around' cabinet base, measuring 1.8m in overall height, 1.8m in width and 0.8m in depth. The mast excluding the base cabinet would have a diameter of 0.4m.

Two cabinets and a G-100876 cabinet are shown on plan but are Permitted Development, without needing prior notification, therefore not forming part of the application.

Relevant planning history

None at the application site.

Procedural Matters and Policy Context

The above-described proposal constitutes development as defined within Section 55 of the Town and Country Planning Act 1990. The General Permitted Development Order 2015, Schedule 2 Part 16 Class A permits the following development:

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,
- a) the use of land in an emergency for a period not exceeding 6 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
- b) development ancillary to radio equipment housing.

The proposal is considered covered within this Class, and is thus authorised subject to the restrictions, conditions and prior notification procedure outlined in Paragraphs A.1, A.2 and A.3 (as amended by The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2016).

Subsection 1: ground-based apparatus	
(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;	Pass: The height of the equipment excluding the mast and antenna, would be below 15m.
(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;	N/A: The proposal seeks a new installation.
(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	Pass: The site is on the highway but is not within article 2(3) land. The mast's height excluding the antennae would not exceed 20m
(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.	N/A: The proposal seeks a new installation.

The proposal has been assessed to comply with Paragraph A.1. Thus, the proposal is authorised via Class A, subject to the conditions and restrictions outlined in Paragraph A.2 and Paragraph A.3.

Paragraph A.2 outlines a set of five conditions that the developer must adhere too. Condition (4) stipulates the need for the developer to comply with paragraph A.3, which includes the requirement to submit an application for Prior Notification from the Local Planning Authority. Prior Notification is required for the following considerations:

- Siting
- Appearance

Furthermore, under the procedures outlined in paragraph A.3, the council is required to consult relevant bodies and advertise the application.

Relevant Policy

Kirklees Local Plan

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

The site is without notation on the Kirklees Local Plan proposals map.

- **LP3** – Location of new development
- **LP7** – Efficient and effective use of land and buildings
- **LP21** – Highway safety
- **LP24** – Design

National Policies and Guidance

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 20th July 2021, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- **Chapter 10** – Supporting high quality communications
- **Chapter 11** – Making effective use of land
- **Chapter 12** – Achieving well-designed places

Representations

The application was advertised in accordance with the requirements of Subsection A.3, 6(d) of Schedule 2, Part 16, Class A of the General Permitted Development Order 2015. Publicity expired on 21st July 2021. No representations were received from the general public. Ward member comments were received:

Cllr M Thompson and Cllr E Smaje raised concerns regard the visual and residential amenity impacts of the proposed mast.

Consultations

K.C. Highways Development Management (informally) – No objections to the scheme, as acceptable sight lines can be achieved and the footpath is particularly wide at this point.

Assessment

As per Part 16, Class A, A.3(3), the following matters are considered in the assessment below –

- 1) Siting and Appearance
- 1) Representations
- 2) Conclusion

1) Siting and Appearance

1.1 – Sequential approach, land allocation and visual amenity

The proposal is to provide new 5G services for a single operator. The supporting document demonstrates the necessary cell search area where the proposed cell must be located to fit into the network. Cells must be strategically located to form a 'patchwork of coverage' as the network expands.

Within an identified cell search area, the NPPF establishes the following sequential approach when looking to installed new telecommunication equipment:

1. Mast and site sharing
1. Existing buildings structures
2. New ground-based installations

In this instance, the applicant has provided a sequential test contained within the Site-Specific Supplementary Information document. There is a requirement to upgrade the UK H3G (Three) network to provide improved coverage and capacity. The Supplementary Information states that Three are in the process of building out the UK's fastest 5G network. Three has 140MHz of 5G spectrum (and 100MHz of it contiguous), which means that their service will be much faster and able to handle more data. However, to bring this new technology to the people CK Hutchison Networks (UK) Ltd will need to provide

a mix of upgrades to existing sites and the building of new sites. New sites will be needed for many reasons, including that the higher radio frequencies used for 5G do not travel as far as those frequencies currently in use and that sometimes not all existing sites can be upgraded. In this area there is an acute need for a new mast to deliver the above.

The nature of 5G and the network services it provides, means the equipment and antennas required are quite different to the previous, and existing, service requirements. In particular, the nature of the antennas, and the separation required from other items of associated equipment, is such that it cannot utilise some existing structures that provide an installation for another operator, most notably in a street works or highways environment.

In this case, eight options for the location of the telecommunications mast have been explored within the local vicinity. Several options were discounted due to insufficient pavement or verge widths, whilst residential amenity implications, proximity to the M62 and distance from the nominal were also reasons for the other sites being discounted. This information was not shared with the Local Planning Authority as part of the 'pre-application consultation process'. The shortcomings of this pre-application consultation are expanded later in this report.

Nonetheless, officers have noted that the new mast and equipment is to be installed on the existing footpath to the south-west side of Rochester Road. The applicant has outlined within their supplementary information that they have considered the detailed siting and design carefully to ensure that the scheme has a limited impact on the locality and general visual amenity. However, officers disagree with this finding and whilst the mast is to be a slim pole design which will support one antenna, it would be of a substantial height substantially above and beyond anything else in the street scene. Whilst the mast is close to a set of apartments, the roof height of these apartments is 10m. Furthermore, none of the other dwelling, trees or street furniture, including telegraph poles and lampposts exceed 10m in height. The 18m height will thus appear incongruous in the street scene. Furthermore, other street furniture such as lampposts do appear to be well hidden close to the existing boundary walls, whereas the mast in this case, would be situated on the public footpath with a significant amount of equipment around its base heightening its incongruous utilitarian impact within this predominantly residential area. Officers note trees will somewhat screen the lower half of the mast. This would only be through a handful of months a year whilst the top of the mast would protrude greatly above the top of the trees. Therefore, the screening offered by the trees would not overcome would be overly dominant of the mast within the wider street scene.

This viewpoint is reinforced by the appeal decisions APP/Q3305/W/17/3185165 and APP/T0355/W/20/3265640 whereby 15m masts (3m smaller than those proposed were deemed incongruous given the unsympathetic design, which includes the height. The overall size of the mast would appear incongruous in this area, which is primarily residential with low level development. The steel grey colour also would not appear aesthetically

pleasing in the street scene. The design can thus not be considered in keeping with the townscape as required by Policy LP24 of the Kirklees Local Plan. Whilst officers note that similar proposals have been considered acceptable regarding visual amenity within Kirklees, none of these have been set within such a strongly formed residential area but have been approved in more commercial area.

Whilst the size of the mast would mean it would be seen from a good distance away from the application site, it would not materially impact on the setting of any conservation areas or listed buildings.

Concerns regarding the siting and appearance of the mast would have been raised during the pre-application consultation stage, however, in this case, the application was subsequently submitted four days after the date of a letter inviting the Local Planning Authority to comment on the proposal. This did not allow for 14-days to comment on the proposal and implied that the Council, whilst offered the chance to comment on the proposal, had not done so. This matter has been raised directly with the applicant on previous occasions relating to similar applications. Given that the pre-application and prior notification application had been submitted a mere four days after the pre-application request, our records system had not been updated, thus, a different officer to whom was allocated the prior notification provided the pre-application response three weeks after the prior notification was lodged. Nevertheless, this short response was labelled as informal, given the prior notification had already been submitted, and simply detailed what will be considered as opposed to supporting the application. Furthermore, this pre-app response was conducted as a desk-based study, whereas the assessment above has been made following a site visit, a review of case law and a closer assessment of the impact in the street scene. Advice in the NPPF at para 117 states that application for electronic communication development should be supported by the necessary evidence to justify the proposed development. This should include: (inter alia) 'the outcome of consultations with organisations with an interest in the proposed development'. This was not possible as the applicants did not wait for a reasonable consultation period to elapse.

Overall, whilst significant weight has been given to telecommunications development by the National Planning Policy Framework, for the reasons given, the proposed siting and appearance of the proposed mast would be unduly harmful to the visual amenity of the area and would be in breach of Policy LP24a of the Kirklees Local Plan.

1.2 – Impact on Residential Amenity

The mast would be located on the public highway on the south west of Rochester Road. The mast would be surrounded by residential dwellings. The flats of no.36 to no.58 are set to the south west of the site no's 63, 65 and 67 are set across the highway from the application site to the north east and east. However, all these dwellings are set at an oblique angle and not facing

directly towards the mast. Furthermore, the mast is 8m away from flats, and 17m+ away from the dwellings to the east/north east. Therefore, whilst a mast of this scale in this location would somewhat overbear these neighbouring properties, its design to include a slim monopole would help mitigate against any undue overbearing impact. As such, any overbearing and overshadowing on balance, by virtue of the separation distances and the oblique angle siting of the dwellings, is not considered to detrimentally impact upon these neighbours' amenity.

1.3 – Impact on Highway Safety

KC Highways DM haven been informally consulted as part of this application. Given that the mast would be set where the pavement is 3.9m wide, Highways DM have no objections whatsoever. Whilst the mast is set near a bus stop and bin, these are further to the south east, thus, the mast will not impact on these. The mast will also not obscure any sight lines given that it is set 2m+ back from the vehicular highway. Therefore, the proposed development is not considered to have an adverse effect on highway safety or the function of the public highway in general.

2) Representations

As a result of the publicity, comments from ward members were received. Cllr M Thompson and Cllr E Smaje raised concerns regard the visual and residential amenity impacts of the proposed mast. These matters have been considered as part of this application.

3) Conclusion

The principle of development is established by the General Permitted Development Order 2015 (England) (as amended). However, in accordance with prior notification procedure of A.2, an assessment of the development's siting and appearance has been undertaken.

For the reasons outlined above, it is considered that the siting and appearance of the development would cause material harm to the built environment, contrary to the aims and objectives of policy LP24a of the Kirklees Local Plan and chapters 10 and 12 of the NPPF.

Recommendation: Refuse Prior Consent

Decision Authorisation - Delegated Powers**Application Number:** 2021/92130**Officer Recommendation:** REFUSED PRIOR APPROVAL**Reason for Refusal**

1. The proposed mast, by reason of its siting, size and appearance in regard to form and colour would be a visually intrusive and incongruous feature in the streetscape appearing wholly out of scale with the surrounding residential properties and failing to respect the character of the area. The proposed siting and appearance of this mast would be contrary to policy LP24a of the Kirklees Local Plan and chapters 10 and 12 of the National Planning Policy Framework.

Plans and specifications schedule: -

Plan Type	Reference	Version	Date Received
Existing Elevations	150	1	24/05/2021
Existing Site / Block Layout	100	1	24/05/2021
Location Plan	002	1	24/05/2021
Proposed Elevations	303	1	24/05/2021
Proposed Elevations	260	1	24/05/2021
Proposed Site / Block Layout	210	1	24/05/2021
ICNIRP Certificate	KKS17095-3UK_ICNIRP	1	24/05/2021
Covering Letter	KKS17095 GDPO Covering Letter	1	24/05/2021
Covering Letter	KKS17095 Site Provider Letter	1	24/05/2021
General	305 EQUIPMENT SCHEDULE & SUPPORT STRUCTURE DETAILS	1	24/05/2021
General	KKS17095 SSSI NEW SITE 2020 England v7	1	24/05/2021
Supp Info KKS17095	KKS17095 Developers Notice	1	24/05/2021