

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) Section 191/192

**DELEGATED DECISION FOR APPLICATION FOR CERTIFICATE OF
LAWFUL DEVELOPMENT**

Reference no.: 2022/CL/93243/E

Site: Land adj, High Street and Challenge Way,
Hanging Heaton, Batley, WF17 6DP

Description: Certificate of Lawful Development for Proposed
Erection of NPG sub-station

Case Officer: Jennifer Booth

Decision Reference: PROPOSED OPERATIONS 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.**

Kevin Walton

AUTHORISED OFFICER

Date 08-Feb-2023

Reference:	2022/CLD/93243/E
Applicant: -	Vistry Partnerships Yorkshire
Location: -	Land adj, High Street and Challenge Way, Hanging Heaton, Batley, WF17 6DP
Proposal: -	Certificate of lawfulness for proposed Erection of NPG sub-station

Site Description

The application relates to an ongoing residential development at Challenge Way, Hanging Heaton, Batley.

Application Proposal

The application is for a certificate of lawful proposed sub station. The onus is on the applicant to provide evidence which states why the proposal fits with the permitted development legislation. In this case, the applicant has stated on the application form that the proposal is permitted development.

The building would have a width of 4.2m, a depth of 3m and a height of 2.6m to enclose equipment for the supply of electricity for a new development of housing and would have a floor space of less than 27sqm.

Relevant Planning History

1991/00742 – road improvement scheme – granted

1989/06322 – outline for highway construction and B8 storage – granted

1989/06323 – outline for highway construction and B1 development – granted

1989/06321 – outline for highway construction and B2 development – granted

2021/91871 – erection of residential development for 55 dwellings – granted

202/90294 – discharge of conditions for 2021/91871 – split decision

2022/90295 – discharge of conditions for 2021/91871 – split decision

2022/90307 – discharge of conditions for 2021/91871 – pending

2022/93196 – variation of condition for 2021/91871 - pending

Consultations

This is an application for a Lawful Development Certificate and for this reason, no consultations are necessary.

Legislation

The Town and Country Planning Act 1990 Section 55 and the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Assessment: -

The main considerations in the determination of this application are:

1. Whether the proposed development would constitute development as defined section 55 of the Town and Country Planning Act 1990.
1. If so, whether Permitted Development rights apply to the property; and
2. Given the nature of the proposed development whether the proposed development falls within permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 15 (Power related development), Class B (electricity undertakings).

The proposal comprises a substation. Thus, the proposal constitutes the carrying out of building on and over land. As such, it is regarded as development as defined by section 55 of the Town and Country Planning Act 1990.

The application therefore falls to be considered under The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 15 (Power related development), Class B (electricity undertakings).

Permitted development

B. Development by statutory undertakers for the generation, transmission, distribution or supply of electricity for the purposes of their undertaking consisting of—

(a) the installation or replacement in, on, over or under land of an electric line and the construction of shafts and tunnels and the installation or replacement of feeder or

service pillars or transforming or switching stations or chambers reasonably necessary in connection with an electric line;

(b) the installation or replacement of any electronic communications line which connects any part of an electric line to any electrical plant or building, and the installation or replacement of any support for any such line;

- (c) the sinking of boreholes to ascertain the nature of the subsoil and the installation of any plant or machinery reasonably necessary in connection with such boreholes;
- (d) the extension or alteration of buildings on operational land;
- (e) the erection on operational land of the undertaking of a building solely for the protection of plant or machinery;
- (f) any other development carried out in, on, over or under the operational land of the undertaking.

The building would have a width of 4.2m, a depth of 3m and a height of 2.6m to enclose equipment for the supply of electricity for a new development of housing and would have an internal chamber dimension of 2.4m x 3.9m x 2.8 which is less than 27 cubic metres as required by paragraph B.1(a)(ii). However, the application has been submitted by the developers of the residential development and not a statutory undertaker.

A statutory undertaker is defined under Article 1 of the Order and section 262(1) of the Town and Country Planning Act 1990 as:-

- (a) a universal service provider (within the meaning of Part 3 of the Postal Services Act 2011) in connection with the provision of a universal postal service (within the meaning of that Part);*
- (b) the Civil Aviation Authority;*
- (c) a person who holds a licence under Chapter 1 of Part 1 of the Transport Act 2000(f) (air traffic services);*
- (d) the Environment Agency;*
- (e) any water undertaker;*
- (f) any gas transporter; and*
- (g) any licence holder under section 6 of the Electricity Act 1989;;*

Section 262(1) echoes the above definition other than for sub-paragraph (g).

The applicants have not demonstrated they have a licence under the provisions of Section 6 of the Electricity Act 1989.

Development not permitted

B.1 Development is not permitted by Class B if—

(a) in the case of any Class B(a) development—

- (i) it would consist of or include the installation or replacement of an electric line to which section 37(1) of the Electricity Act 1989 (consent required for overhead lines)(a) applies; or**
- (ii) it would consist of or include the installation or replacement at or above ground level or under a highway used by vehicular traffic, of a**

- chamber for housing apparatus and the chamber would exceed 29 cubic metres in capacity;
- (b) in the case of any Class B(b) development—
 - (i) the development would take place in a National Park, an area of outstanding natural beauty, or a site of special scientific interest;
 - (ii) the height of any support would exceed 15 metres; or
 - (iii) the electronic communications line would exceed 1,000 metres in length;
- (c) in the case of any Class B(d) development—
 - (i) the height of the original building would be exceeded;
 - (ii) the cubic content of the original building would be exceeded by more than 25% or, in the case of any building on article 2(3) land, by more than 10%, or
 - (iii) the floor space of the original building would be exceeded by more than 1,000 square metres or, in the case of any building on article 2(3) land, by more than 500 square metres;
- (d) in the case of any Class B(e) development, the building would exceed 15 metres in height, or
- (e) in the case of any Class B(f) development, it would consist of or include—
 - (i) the erection of a building, or the reconstruction or alteration of a building where its design or external appearance would be materially affected, or
 - (ii) the installation or erection by way of addition or replacement of any plant or machinery exceeding 15 metres in height or the height of any plant or machinery replaced, whichever is the greater.

Conditions

- B.2 Development is permitted by Class B subject to the following conditions—
- (a) in the case of any Class B(a) development consisting of or including the replacement of an existing electric line, compliance with any conditions contained in a planning permission relating to the height, design or position of the existing electric line which are capable of being applied to the replacement line;
 - (b) in the case of any Class B(a) development consisting of or including the installation of a temporary electric line providing a diversion for an existing electric line, on the ending of the diversion or at the end of a period of 6 months from the completion of the installation (whichever is the sooner) the temporary electric line is removed and the land on which any operations have been carried out to install that line is restored as soon as reasonably practicable to its condition before the installation took place;
 - (c) in the case of any Class B(c) development, on the completion of that development, or at the end of a period of 6 months from the beginning of that development (whichever is the sooner) any plant or machinery installed is removed and the land is restored as soon as reasonably practicable to its condition before the development took place; and
 - (d) in the case of any Class B(e) development, approval of details of the design and external appearance of the buildings must be obtained, before development is begun, from—

- (i) in Greater London or a metropolitan county, the local planning authority,
- (ii) in a National Park, outside a metropolitan county, the county planning authority,
- (iii) in any other case, the district planning authority.

Interpretation of Class B

B.3 For the purposes of Class B(a), “electric line” has the meaning given by section 64(1) of the Electricity Act 1989 (interpretation etc. of Part 1)(a).

B.4 For the purposes of Class B(b)—
“electrical plant” has the meaning given by section 64(1)(b) to that Act; and
“electronic communications line” means a line which forms part of an electronic communications apparatus, (and both line and electronic communications apparatus have the meaning given in paragraph 1 of Schedule 2 to the Telecommunications Act 1984 (the electronic communications code))(c)).

B.5 For the purposes of Class B(d), (e) and (f), the land of the holder of a licence under section 6(1) of the Electricity Act 1989 (licensing of supply etc.)(d) is treated as operational land if it would be operational land within section 263 of the Act (meaning of “operational land”)(e) if such licence holders were statutory undertakers for the purpose of that section.

The applicant has also not demonstrated the erection of the sub-station can benefit from any other planning permission or was granted under the provisions of the permission for the wider residential development.

Conclusion

The proposed substation at land adjacent to High Street and Challenge Way would not be permitted development as set out in Schedule 2, Part 15, Class B of the Town and Country Planning (General Permitted Development) Order 2015 as the applicant has not demonstrated the development is being undertaken by a statutory undertaker or that it benefits from any other planning permission granted by the Local Planning Authority.

Recommendation: REFUSE certificate

Decision Authorisation - Delegated Powers**Application Number:** 2022/93243**Officer Recommendation:** Refuse certificate

The proposed substation at land adjacent to High Street and Challenge Way would not be permitted development as set out in Schedule 2, Part 15, Class B of the Town and Country Planning (General Permitted Development) Order 2015 as the applicant has not demonstrated the development is being undertaken by a statutory undertaker or that it benefits from any other planning permission granted by the Local Planning Authority.

Plans and specifications schedule: -

Plan Type	Reference	Web ID	Date Received
Application form	-	955263	06/10/2022
Location plan	-	955392	06/10/2022
Proposed site plan	08	955393	06/10/2022
Enclosure details	-	955267	06/10/2022
Proposed elevations	-	955266	06/10/2022
Decision notice – 2021/91871	-	955264	06/10/2022

Report Dated 17/01/2023