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.	**2022/N /94090/W**
Site Address	**New Hey Road, Oakes, Huddersfield, HD3 4GQ**
Description	**Prior notification for proposed 5G telecoms installation: H3G 15m street pole and additional equipment cabinets**
Recommending Officer	**Katie Chew**

DECISION - 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: 13-Feb-2023

Officer Report

Site Description

New Hey Road, Oakes, Huddersfield, HD3 4GQ

The site relates to a portion of hardstanding/pavement adjacent to New Hey Road in Oakes. Surrounding the site are a number of residential dwellings to the north, east, west and south-east, to the south is Huddersfield New College.

The site is also located directly adjacent to a zebra crossing. In respect to other street furniture along this stretch of pavement, metal railings, lampposts and street signs, bins and a bus stop are present.

The site is not located within a Conservation Area and there are no Listed Building within close proximity.

Description of development

The applicant is seeking prior notification for proposed 5G telecoms installation: H3G 15m street pole and additional equipment cabinets.

The mast would have an overall height of 15m and is to include a GPS module which is to be mounted at the top of the pole. The mast would have a diameter of 0.4m and is to be used by a single telecommunications operator – CK Hutchinson Networks (UK) Ltd (commonly known as Three). The proposed new facility will require the installation of a limited number of equipment cabinets at ground level in close proximity to the base of the mast. These include a CommScope bowler cabinet, Ericsson 6130 equipment cabinet and AC transmission cabinet however, as these cabinets would be Permitted Development without needing prior notification, they do not form part of the application.

The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2022 amended part 16 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 on 4th April 2022 and are the regulations against which this application is submitted.

Relevant planning history

There is no relevant planning history at the application site, or at adjacent sites.

<u>Pre-application</u>

2022/21862 – Telecommunication notification. Comments sent on the 22nd December 2022. These comments outlined officers' concerns with regard to the siting and impact that a mast in this location could have on the amenities of nearby residents, most specifically no. 364 New Hey Road. This dwelling is

sat at a higher land level and therefore would appear even close to the proposed antenna. Whilst discounted sites have been provided these do not include Huddersfield New College or the land within the college which there is a covered reservoir. Both of these options would be visually preferable to that proposed and would have a significantly reduced impact on neighbouring residents.

Officers also noted that whilst pre-application advice has been sought, a formal submission was submitted to the Council just 7 days after this advice was requested and therefore this response has not been taking into account within the formal submission.

Procedural Matters and Policy Context

The proposal constitutes development as defined within Section 55 of the Town and Country Planning Act 1990. Class A of Part 16 of Schedule 2 of The General Permitted Development (England) Order 2015 (as amended), 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,*

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 is considered to be 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 of the Town and Country Planning (General Permitted Development) Order 2015 (England)(as amended).

Paragraph A.1 is broken down into 10 subsections, covering a wide array of communication-based development. Subsection 1 – 'ground-based apparatus' is relevant to the proposed development.

Subsection 1: ground-based apparatus	
(a) In the case of the installation of electronic communications apparatus (other than a mast),	**Pass:** The height of the equipment excluding the mast and GPS module mounted at the top of the pole would

the apparatus, excluding any antenna, would exceed a height of 15 metres above ground level;	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) 30 metres above ground level on unprotected land; or (ii) 25 metres above ground level on article 2(3) land which is on a highway; or	**Pass:** The site is on the highway but not within article 2(3) land. The masts height excluding the GPS module mounted at the top of the pole is also 15m.
(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	**N/A:** The proposal seeks a new installation.
(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.	**N/A:** The proposal seeks a new installation which is not located on any land that is within a site of special scientific interest.

The proposal is in accordance 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 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 by site notice, this has been undertaken.

Representations

Publication of the application has been undertaken in accordance with the Table 1 of the Kirklees Development Management Charter. As such, this application has been publicised by site notice. The expiry date of the publicity period was the 16th January 2023.

As a result of the above publicity, no representations have been received.

Parish/Town Council Comments

N/A.

Consultation responses

KC Highways Development Management – Comments received 9th February 2023. Officers are unable to provide formal comments as there are discrepancies within the submitted plans.

Highways Street works – Comments received 6th January 2023. Officers noted that the site plan and elevation plan were not reflective of one another with the telecommunications pole being shown at different locations. Officers required clarification of this to ensure that the monopole will not obstruct forward visibility of the 'No U-turn sign', as this is a regulatory sign, forward visibility is critical for enforcement.

Officer note: Whilst amended plans were requested from the outset, the discrepancies were not overcome at the time of making a decision on this application. Given the tight timescales Officers did not enter into further engagement with the applicant's agent on this matter.

KC Environmental Health – Comments received 13th January 2023. No objections.

The responses of the above consultees are discussed in greater length within the 'Assessment' section of this report.

Relevant Policy

The application is for a telecommunications notification for approval of siting and design and is not an application for planning permission. Notwithstanding this fact, insofar as it relates to siting and design local and national planning policy is used as a frame of reference against which to assess this proposal.

Local guidance and policy is provided by the Kirklees Local Plan as such the following legislation, policy and guidance is considered most relevant to the determination of this application: -

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).

LP1 – Achieving Sustainable Development
LP2 – Place Shaping
LP3 – Location of New Development
LP4 – Providing Infrastructure
LP7 – Efficient and Effective use of Land and Buildings
LP21 – Highway Safety
LP22 - Parking
LP24 - Design

National Planning Policy 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 2 – Achieving sustainable development
Chapter 4 – Decision-making
Chapter 10 – Supporting high quality communications
Chapter 11 – Making effective use of land
Chapter 12 – Achieving well-design places

Chapter 14 – Meeting the Challenge of Climate Change, Flooding and Coastal Change
Chapter 15 – Conversing and enhancing the natural environment

Legislation

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

Assessment

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

1) Sitting and Appearance
2) Conclusion

1) Siting and Appearance

1.1 – Sequential Approach, Land Allocated and Visual Amenity

The site is required to provide new 5G coverage for H3G LTE, improving service in and around this area subject to this application. The cell search areas for 5G are outlined as being extremely constrained with a typical cell radius of approximately 50m.

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

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

The applicant states that a new mast and ancillary equipment is required in this location as existing mast sites are not capable of supporting additional equipment to extend coverage reach across the target area and prospective 'in-fill' mast sites are extremely limited. They note that there is an acute need for a new base station to provide effective service coverage and in this case, the height of the proposed street pole is the minimum required to bring the benefits of 5G to this area.

The submitted information also highlights that as is typical to most 5G cell site deployment within the urban environment, this is 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.

In this instance, the applicant has provided a sequential test contained within the Site-Specific Supplementary Information (SSSI) document.

In this case, six options for the location of the telecommunications mast have been explored within the local vicinity, these were all dismissed based on a multitude of reasons such as the location being in a residential area, insufficient pavement space, overhead cables, and visibility splay issues.

The new mast would be located on an existing pavement adjacent to the highway (New Hey Road). There are examples of street furniture along this stretch of pavement, including a zebra crossing, metal railings, lampposts and street signs, bins and a bus stop are also present. Whilst this is acknowledged the existing street furniture is considered to be significantly lower in height and less obtrusive than the proposed 15m mast which would be located in a prominent and openly visible location, on a busy main road, adjacent to a school and college. The proposals would also add further clutter within the streetscene. In addition, there are also a large number of residential properties in the area which are all two-storey in height, these are set back from the highway, and whilst even at a higher ground level than the mast, they would be of a significantly lower scale than the proposed development. The 15m high mast would therefore appearance incongruous and out of keeping against these adjacent properties.

It is acknowledged that chapter 10 of NPPF places weight on the development of high-quality communications paragraph 115 states that new masts should be sympathetically designed and camouflaged where appropriate. In this instance it is considered the mast is significantly overt and dominant on the street scene and this coupled with Officers concerns relating to residential amenity, is not considered to outweigh infrastructure needs on this occasion.

Overall, whilst significant weight has been afforded to the development for telecommunication within the NPPF, for the reasons set out above in relation to the siting and appearance of the proposed mast, the proposal would result in harm to the visual amenity of the street scene, contrary to Policy LP24a of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

1.2 – Impact on Residential Amenity

The proposed mast would be located directly adjacent to numerous properties located on New Hey Road. However, no. 364 New Hey Road is the closest property to the proposed mast being located approximately just 6.9m away.

It is considered that due to the scale of the proposal compared to no. 364 New Hey Road, the limited separation distances, the differences in ground levels between the application site and this neighbouring property and the limited screening between both of the sites, Officers do have concerns with regards to the proposal having a significant overbearing impact on the front

garden/amenity space of this property as well as habitable room windows within the front elevation.

Whilst it is noted that there are a number of other residential properties located along New Hey Road which may be impacted by the proposals, their views out towards the mast would be oblique and the siting and appearance of the development is not considered to be significantly detrimental in these cases.

Therefore, it is considered that the proposal would fail to comply with the aims of Policy LP24 and Chapter 12 of the NPPF which seek to ensure development does not harm the amenity of the neighbouring residents.

1.3 – Impact on Highway Safety

KC Highways Development Management have been formally consulted as part of this application however, due to discrepancies on the submitted plans formal comments have not been able to be provided on this occasion. Within the submitted drawings the telecommunications pole is shown on the right side of the cabinets on the elevation plan, and on the left side of the cabinets on the site layout plan and visibility plan. If the monopole is to be provided on the left side of the cabinets there would be no highway safety concerns however, given the current uncertainty, should the pole be installed on the right side of the cabinets it would obstruct the existing 'NO-U Turn' sign and therefore would be unacceptable from a highway's perspective.

Furthermore, one of the concerns Highways Officers would have is in relation to the maintenance of a sufficient footway. From looking at the submitted plans, there would be a footway width of around 3.9m available should permission be granted for the mast and cabinets, and this would cover whether the mast was constructed to the left or right of the proposed cabinets. Typically, a minimum of 1.1m should be allowed for footways to be useable. It is therefore considered that the proposals would meet with this requirement and therefore would be acceptable.

Taking the above into account, it is concluded that the proposals may be acceptable from a highway's perspective however, without having clear and correct plans this conclusion cannot be made. Highways Officers would also wish to see details of the proposed traffic management at the site given its location adjacent to the busy New Hey Road. On this occasion the proposal is therefore not considered to be in accordance with Policy LP21 of the Kirklees Local Plan, the Council's adopted SPD and the aims of the National Planning Policy Framework.

Conclusion

The application has been submitted with an ICNIRP certificate which details that the impact upon health would not be over and above that which is recognised as being acceptable by recognised guidelines.

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 and the residential amenity of neighbouring residents contrary to the aims and objectives of Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework. Insufficient information has also been provided in regards to highway safety and therefore the proposals are also considered to not be in accordance with Policy LP21 of the Kirklees Local Plan, the Council's adopted Highways Design Guide SPD and the Chapter 9 of the National Planning Policy Framework.

Recommendation: Refuse Prior Approval

Reason for Refusal:

1. The proposed mast by reason of its siting, overall height and appearance, would introduce a visually intrusive and incongruous feature within the street scene, adding to visual 'clutter' and appearing out of scale with the surrounding residential properties. The proposed development would therefore be contrary to Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

2. The proposed mast, by reason of its close proximity, overall height and appearance, would appear incongruous and visually intrusive, creating a harmful overbearing impact on habitable room windows and front garden/amenity space belonging to adjacent neighbouring property no. 364 New Hey Road. The proposed development would therefore be contrary to Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

3. In the absence of the submission of clear and precise plans outlining the location of the proposed telecommunications mast, a full and proper assessment of the impact of the proposal upon highways safety cannot be undertaken contrary to Policy LP21 of the Kirklees Local Plan, the Council's adopted SPD and Chapter 9 of the National Planning Policy Framework.

Plans and Specifications Schedule:

Plan Type	**Reference**	**Web ID**	**Date Received**
001 Drawing Register	KKS26014_KKS287_TM_HD0302_GA_REV_B	B	22nd December 2022

002 Site Location Plan	KKS26014_KKS287_TM_HD0302_GA_REV_B	B	22nd December 2022
005 Visual Splay Plan	KKS26014_KKS287_TM_HD0302_GA_REV_B	B	22nd December 2022
215 Proposed Site Plan	KKS26014_KKS287_TM_HD0302_GA_REV_B	B	22nd December 2022
265 Proposed Site Elevation	KKS26014_KKS287_TM_HD0302_GA_REV_B	B	22nd December 2022
ICNIRP Declaration – Supporting Information	-	-	22nd December 2022
Mobile UK Briefing Note: 5G and Health – Supporting Information	-	-	22nd December 2022
GPDO Notice by Dot Surveying – Supporting Information	KKS26014	-	22nd December 2022
Site Specific Supplementary Information – Supporting Information	-	-	22nd December 2022
DCMS MHCLG Collaborating for Digital Connectivity Letter – Supporting Information	-	-	22nd December 2022

Pursuant to article 35(2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Authority has, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. In this instance no amendments were sought as the proposals were deemed to be wholly unacceptable upon submission. The applicant was provided with the opportunity to withdraw the application to allow a revised location to be discussed with officers, however they did not

seek to choose this route and therefore the prior notification application is recommended for refusal.

Report Dated: 09/02/2023