

**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. 2023/N /90198/E

Site Address	West Park Road, Healey, Batley, WF17 7EN
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Description	Prior notification for proposed 5G telecoms installation: H3G 15m street pole and additional equipment cabinets
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Recommending Officer	Elenya Jackson
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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: 16-Mar-2023

Officer Report

Site Description

The application site relates to the grass verge adjacent to West Park Road and across from Eastby Avenue and South of Healy Infant and Junior School.

The area is predominantly residential in nature with a primary school playground 28m away from the application site and the school building 61m north of the application site.

The site is flat with very good visibility

Description of Proposal

The application is seeking Prior Notification for a proposed 15m high steel monopole and additional equipment cabinets.

Planning History

2014/92328: Outline application for residential development (15 dwellings) Granted under reg.4

2017/94229: served matters application pursuant to outline permission 2014/92328 for residential development (15 dwellings). Refused

Procedural Matters and Policy Context

The proposal constitutes development as defined within Section 55 of the Town and Country Planning Act 1990. The General Permitted Development (England) Order 2015 (as amended), 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,
- b) 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

c) development ancillary to radio equipment housing.

The proposed development is considered to be covered within this Class, and is thus authorised subject to the restrictions, conditions and 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 and The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2022).

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 would not exceed 15m in height.
(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;	Pass: 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 or land which is on a highway;	Pass: The site is on the highway but is not within article 2(3) land. The masts height, excluding the antenna, would not exceed 25m.
(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 –	Pass: The proposal seeks a new installation.

(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.	
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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 to. 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. This has been undertaken.

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.

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).

- LP 21 – Highway safety
- LP 24 – 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 19th February 2019, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

- Chapter 10 – Supporting high quality communications
- Chapter 12 – Achieving well-designed places

Consultation Responses

KC Highways Development Management (HDM) – Object to the proposal for Highway Safety
Environmental Health: No Objections

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) Siting and appearance
- 2) Representations
- 3) Conclusion

1) Siting and Appearance

1.1 Sequential Approach, Land Allocated and Visual Amenity

The proposal is to provide additional 5G service due to ‘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 supporting document is unclear in so far as the cell search area shown where the proposed cell must be located to fit into the network is indicated approximately 3 kilometres from the proposed location. This is presumed to be an error in the submission.

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

In this instance there are a number of industrial buildings within 400 metres of the proposed location and within 300m of the some discounted locations which may be within sufficient distance of the targeted area. As the targeted area is unclear it is considered some justification why siting on an existing building cannot be utilised would be necessary before weight in favour of the proposed location could be supported.

It is noted, however the four potential locations for the telecommunications mast have been discounted within the locality. One has been discounted due to unsuitable pavement, one due to visibility issues, one due to narrow pavements and two of them due to being in a residential area.

With regard to the proposed location below are extracts taken from Local Plan Policy LP24, the thrust of these policies are further supported by Chapter 12 of the National Planning Policy Framework.

Extract from LP24 ‘Proposals should promote good design by ensuring: The form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape;

The new mast would be located within a grass verge adjacent to the Highway. The telephone poles and lighting columns within the immediate vicinity of the site are approximately half the height of the proposed mast. Similarly the mast would be 6 metres higher than the row of trees immediately behind the mast.

The Supplementary Information does not provide additional information regarding the proposed design of the structure other than it being a ‘better fit’

and the justification for the proposed location of the new mast is that it would 'assimilate well into the immediate street scene and not be detrimental'

It is acknowledged the need for 5G and It is acknowledged that chapter 10 of NPPF places weight on the development of high quality communications. However paragraph 115 states that new masts should be sympathetically designed and camouflaged where appropriate. In this case it is considered that there are no other tall structures/buildings within the immediate and wider area and the street lighting columns are of significantly smaller scale than the proposal.

The mast would be located in a very prominent position within the public realm and would be significantly higher than all other features in the area and add additional 'clutter' within the street scene which is open in terms of its character and would therefore dominate the existing infrastructure. Moreover, there are a large number of residential properties in the area which are all two-storey in height but significantly lower scale than the proposed development. The introduction of the 15 metre mast into this low lying residential area would therefore appear incongruous within the street scene. The proposed siting of the mast on the grass verge between the carriageway and footpath also exacerbates the prominence of the mast.

In addition to the overt appearance of the mast, the open nature of the site without screening or a change in topography which may reduce the prominence of the mast the 15 metre mast would be significantly visible for some distance along West Park Road.

In this instance it is considered the mast is significantly overt and dominant on the streetscene. As the applicant has not fully demonstrated an alternative location on nearby industrial buildings cannot be considered, the benefit of quality infrastructure does not outweigh the harm to visual appearance within the chosen location.

Overall, whilst significant weight has been afforded to development for telecommunications in 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 KLP as well as Chapter 12 of the NPPF.

1.2 – Impact on Residential Amenity

The mast would be located on the pavement and would be in an open position not within the immediate vicinity of any residential properties. Despite the substantial height of the mast, its positioning and separation distance in

relation to neighbouring properties considered sufficient to prevent there from being any detrimental harm upon the amenity of these neighbours.

In summary, it is considered that the proposal would not have a detrimental in terms of residential amenity, complying with Policy LP24 and Chapter 12 of the NPPF which seek to ensure development does not harm to amenity of neighbouring residential.

1.3 – Impact on Highway Safety

The mast would be located within an existing grass verge, marginally set back from the edge of the highway. Highways have been consulted on the application and have raised concerns regarding location of the proposal. The verge is approximately 1m wide and any equipment will need to be set back a minimum of 450mm from the kerb. Therefore, the equipment and mast cannot be sited wholly within the verge as shown on the plans submitted and will likely encroach onto the adjacent footway. KC Highways have requested additional information to check the scale of the proposed cabinets to ensure they would be contained within the grass verge or preferably sited on the grassed area adjacent to the school fields. However, it is considered that the installation of the mast on the opposite grassed area would not likely be possible by reason of the trees and would therefore need be located within the Highway. Consequently the proposed location would not be supported by the Council's Highway officers and is therefore contrary to Local Plan policy LP21.

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2) 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. consultations were held with Highways on 6.03.2023 and a formal consultation from KC Environmental Health was received on 7.02.2023. No additional representations have been received.

3) Conclusion

The principle of development is established by the General Permitted Development Order 2015 (England) (as amended) other than the siting and appearance of the development. 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 would result in the siting of the mast and equipment over a footway within the highway, contrary to the aims and objectives of LP

21 and LP24 of the Kirklees Local Plan and Chapters 10 & 12 of the NPPF. This harm is not outweighed by the benefit of 5G technology as it has not been demonstrated the mast could be located in more suitable alternative site

Recommendation: Refuse Prior Approval

Decision Authorisation - Delegated Powers

Application Number: 2023/90198

Officer Recommendation: Refuse Prior Approval

Reasons for Refusal

The proposed mast, by reason of its siting, overall height and appearance, would introduce a visually intrusive and incongruous feature within the street scene, appearing out of scale with the surrounding development and failing to respect the open character of the streetscape and wider area. This harm is not outweighed by the benefit of quality telecommunication infrastructure as the applicant has not fully demonstrated the mast and equipment could not be located at a more suitable site within the vicinity of the proposed location. The

proposed development would be contrary to policy LP24 of the Kirklees Local Plan and Chapters 10 & 12 of the National Planning Policy Framework.

The proposed location within the grass verge is unlikely to be supported by the Highway Authority by reason of the close proximity to the kerb. Consequently insufficient detail have been provided to assess the proposals potential impact to the Highway and is therefore contrary policy LP21 of the Kirklees Local Plan.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Proposed Site Elevation	kkKS25889_KKS274_TBC_WF0500_GA_REV_A	A	
215 Proposed Site Plan	kkKS25889_KKS274_TBC_WF0500_GA_REV_A	A	
002 Site Location Plan	kkKS25889_KKS274_TBC_WF0500_GA_REV_A	A	
Ionising Statement			
Gov Statement			
Site Specific Supplementary Information			
5G Briefing			

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 Planning Authority have, 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. Given that the proposal is for a prior notification and issues relate to siting, there were no possible amendments that could have been made to overcome the issues raised whilst remaining within the scope of the application and prior notification procedure.