

15M POLE AT MATTHEWS LANE, MANCHESTER

Application for Prior Approval under Para A.3 of Schedule 2, Part 16, of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the erection of a pole up to 15m in height to carry a fibre cable and radio antennae and street cabinet for the housing of electronic communications apparatus.

2 Lockside Office Park
Lockside Road
Preston, PR2 2YS

T: 08726 245000
E: planning@internexus.co.uk
W: www.ixwbuild.co.uk

Company Registration Number 11009144

REPORT CONTROL

Document	Application for Prior Approval Matthews Lane, Manchester
Project	Manchester – IXW roll out Scheme 1 Pole 1
Client	IX Wireless Ltd

Document Checking

Primary Author:	Joanne Kay	Initialled:	JK
Contributor:		Initialled:	
Reviewer:	Deborah Grogan	Initialled:	

Revision Status

CONTENTS

1 INTRODUCTION

2 RELEVANT LEGISLATION

3 PRE-APPLICATION ADVICE

4 PLANNING CONSIDERATIONS

5 PLANNING CONSIDERATIONS AND CONCLUSIONS

APPENDIX 1: COPY OF COUNSEL ADVICE FROM DAVID MANLEY QC

/1 INTRODUCTION

1.1. IX Wireless Ltd ('the Applicant') is making an application for a Prior Notification for the erection of a pole up to 15m in height ("a street pole") supporting fibre cables and radio antennae and a street cabinet for the housing of electronic communications apparatus all of which will facilitate the creation and/or extension of a gigabit capable fixed wireless electronic communications network.

1.2. The Applicant (a limited company) is a Code Operator by virtue of a direction made by OFCOM on 20 February 2018 in accordance with section 106 of the Communications Act 2003 (as amended). See the below link to the Ofcom register:

<https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code/register-of-persons-with-powers-under-the-electronic-communications-code>

1.3. The Applicant's typical town network deployment comprises two distinct elements: a distribution 'ring' network, which distributes bandwidth and provides network redundancy, and a local access network that enables users to connect to the Applicant's network and the wider Internet via the distribution network.

1.4. The distribution network is a full-fibre network, whilst the local access network can be created either wirelessly, through the deployment of radio antennae mounted on street poles, or by flying additional GPON fibre supported by the street pole and additional wooden poles. Typically, however, the local access network is deployed wirelessly as this significantly reduces the amount of passive infrastructure (poles supporting fibre) and aerial fibre that needs to be deployed.

1.5. Street Poles are located at the junction between the distribution network and the local access network and perform several functions, including supporting aerial

fibre that forms part of the distribution network, radio antennae and/or GPON fibre to form local access networks and other telecommunication apparatus.

- 1.6. The radio antenna used in the deployment of the local access network have an operational range of approximately 1km and are dependent on achieving 'line of sight'. Street Pole locations are chosen carefully within a search area confined by technical limitations and a desire to maximise network coverage from a particular location, whilst deploying as few mast structures as possible. Locations are also selected to allow for possible future upgrades without the need to deploy additional structures within the locale.
- 1.7. This statement consists of Section 2 – Relevant Legislation, Section 3 – Pre-Application Advice and Planning History, Section 4 – Planning Considerations and Section 5 - Conclusions. It should be read and considered alongside the accompanying forms, location plans, pole details and elevation plan which have been submitted with the application.
- 1.8. Should the Local Planning Authority (LPA) require any further information to enable the positive and speedy determination of the application, it is requested to contact the Applicant.

/2 RELEVANT LEGISLATION

2.1. Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), states that: -

A. *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,*

Development not permitted: ground-based apparatus

A.1— (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;*

(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 on article 2(3) land or land which is on a highway.

Development not permitted: ground or base area

(7) Development consisting of the installation, alteration or replacement of any electronic communications apparatus other than —

(a) *A mast;*

(b) *An antenna;*

- (c)** ~~A public call box;~~
- (d)** Any apparatus which does not project above the level of the surface of the ground; or
- (e)** Radio equipment housing.

Is not permitted by Class A(a) if the ground or base area of the structure would exceed 1.5 square metres.

Development not permitted: radio equipment housing

- (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 article 2(3) land, or 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.*

Conditions

A.2 – (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 practical 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 20 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 the case of emergency (in which case only paragraph A.3(12) applies), to the conditions set out in paragraph A.3 (prior approval).

2.2. In summary, the above provisions of the GPDO allow for the erection of poles, provided they do not exceed a height of 15 metres above ground level. Any ancillary street cabinets can be installed provided that the ground area occupied by a cabinet does not exceed 1.5m² as confirmed in Para A.1– (7). The poles must be removed, and land returned to its original state when no longer needed for communications purposes. Such rights do not involve the need for any 'Prior Approval' process with the LPA and are permitted development.

2.3. Prior Approval is required where the proposal is to erect a 'mast' (or radio equipment housing exceeding 2.5 cubic metres and less than 90 cubic metres in size), or where the application site relates to protected land, including conservation areas, national parks, areas of outstanding natural beauty or sites of special scientific interest (Article 2(3) land).

- 2.4. Where Prior Approval is required, the requirements for the application and determination process are set out under Para A.3. Importantly, it is clarified at Para A.3- (4) that the scope of assessment is limited only to the 'siting' and 'appearance' of the development.

/3 PRE-APPLICATION ADVICE AND PLANNING HISTORY

- 3.1. The Applicant first approached the LPA in May 2018 seeking pre-application advice regarding the rollout of the wireless network across the Borough. In addition to written correspondence with officers and their agent Jacobs, it was explained by the Applicant how the roll-out would involve the provision of poles carrying suspended fibre cables, which would in turn connect to poles with antennae for the transmission of radio signals.
- 3.2. A Lawful Development Certificate for a series of 15m high telegraph poles was validated by the LPA on 31 July 2019 under Ref: 124384/LP2019. Lawful Development Certificates, received from several LPA's across the North West, confirm that except for structures to be erected on protected land, the telegraph poles can be erected by the Applicant without the need for further consent. In other words, it is permitted development under Class A of GPDO because the pole does not exceed the height of 15m (the limitation exclusion introduced by section A.1(1)(a)). The LPA has no control over the siting and appearance of these structures provided they do not exceed 15m above ground level
- 3.3. On the 5/12/2019 under reference 125200/TEL/2019 the LPA granted approval for the installation of 15M pole high pole mounted antennas for the provision of high speed wireless internet.
- 3.4. On the 7/01/2020 under reference 125467/TEL/2019 the LPA granted approval for the addition of antennae to an existing 8m high telegraph pole.

/4 PLANNING CONSIDERATIONS

- 4.1. As stated above, the Applicant is an electronic communications code operator and therefore benefits from provisions of Schedule 2, Part 16, Class A of the GPDO.
- 4.2. This application relates to the erection of a 15 metre high pole to support fibre-optic cable required as part of, and to extend, the Applicant's electronic communications distribution network. The pole will also support antennae, which will transmit and receive radio signals, to create a local access network allowing wireless connections from the users' premises to the Applicant's distribution network.
- 4.3. Taken in isolation, it is clear the pole and fibre cable do not require Prior Approval. This is confirmed by section A.1-(1) of the GPDO, which provides that as long as the pole supporting the fibre cable is no greater than 15 metres in height from ground level it does not require Prior Approval. If the pole does not include any devices that would enable the pole to receive or transmit radio waves, it cannot be considered a 'mast'. As such, the supporting structure (the pole) would not require the prior approval of the LPA.
- 4.4. This is further confirmed by both:
 - 4.4.1.** Lawful Development Certificates received from the LPA on 5 December 2019 under reference 124384/LP2019; and
 - 4.4.2.** the written advice of David Manley QC (a leading planning law Barrister) dated 16th May 2019 ("Counsel's Advice") a copy of which can be found at Appendix 1 of this Statement.
- 4.5. Counsel's Advice confirms that poles of up to 15m in height carrying suspended fibre cables (described in the Advice as Type A development) are not 'masts' and therefore, unless located in a protected area, no further consent is needed for the erection these structures.

- 4.6. The application in this case does not relate to Article 2(3) land or land that forms part of an area of special scientific interest. Therefore, the Prior Approval of the LPA is not and would not be required for the erection of a 15m pole carrying only suspended fibre cables.
- 4.7. Given the above, it is considered the pole and fibre cable alone can be (and would be) erected without the need for Prior Approval of the LPA. This clearly provides the planning 'fall-back' position against which to consider the inclusion of antennae on the pole, which would then create a 'mast' for the purposes of the GPDO and requiring the prior approval of the LPA.
- 4.8. Having regard to the planning 'fall back' position, and the fact that the pole supporting fibre would be erected in any event to create the electronic communications distribution network, it is submitted that when considering this Prior Approval application, the LPA ought to restrict its assessment of 'siting' and 'appearance' solely to the effects of the inclusion of the antennae, and not the pole or any other elements which are covered in the fall-back position. In other words the pole will be erected in any event to create/extend the electronic communications distribution network and should properly be ignored, as it is permitted development.
- 4.9. Therefore, whilst Prior Approval is required because of the inclusion of antennae, the potential scope for an assessment of the 'siting and appearance' through a Prior Approval application would ultimately, given the fall back position, be limited to the size and appearance of the antennae i.e the pole structure will be erected under permitted development in any event to support fibre cables. In other words, the assessment should properly be confined to the antennae and not an assessment of the host structure as a whole. Very exceptional justification would be required for the LPA not to issue Prior Approval given the very limited impact associated with the antennae and associated equipment (supports), which is illustrated on the drawing below.

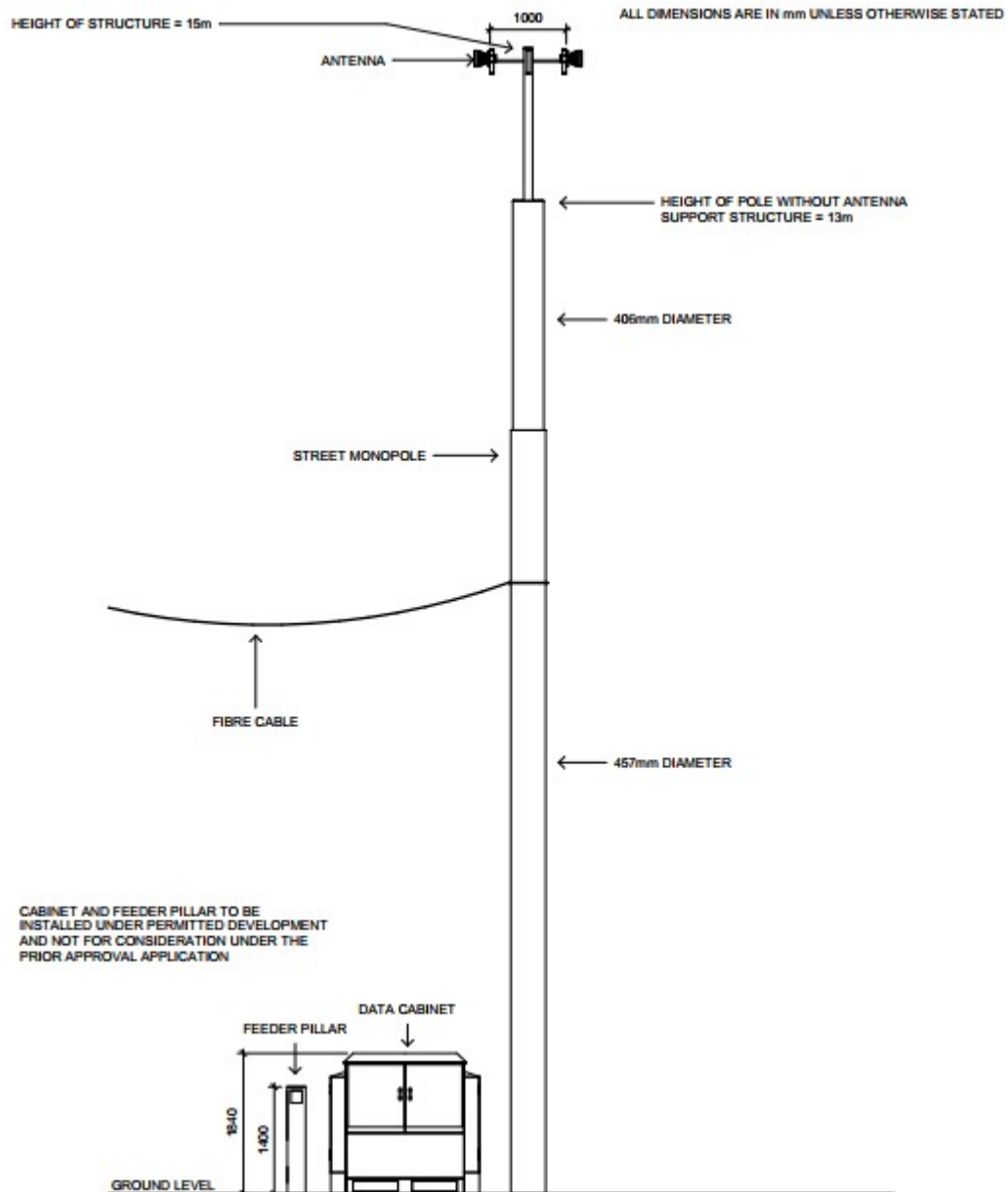


Figure 1: Extract from the proposed elevation plans

- 4.10. In respect of the current application, the submitted plans and elevations demonstrate that the proposed antennae would be located 15m from the ground (also the precise height will be determined by 'line of sight' considerations). It is considered that the antennae are so small that in terms of their siting and appearance there would be no material impact beyond that of the pole and cable

in isolation and hence could not reasonably be considered unacceptable by virtue of their prominence or impact on amenity.

- 4.11. Indeed, it is submitted that the addition of the antenna would be no greater in terms of their impact than fibre cable 'splice boxes' commonly seen on poles (see figure 2 below), for which Prior Approval is not required. It is therefore considered that there could be no reasonable justification for the LPA to object to the erection of the pole and cable with antennae (the mast) and hence that the LPA should not seek to intervene to prevent its erection.



Figure 2: Photograph of splice boxes commonly seen on poles supporting fibre

- 4.12. Even with the antennae, the structure continues to be very similar to, if not less intrusive than other forms of vertical structures which are already evident across the local authority area and country more generally; including poles carrying CCTV equipment and telegraph poles of varying type. These are also most often erected

under the provisions of the GPDO (and will continue to be erected) without any application having been made to the LPA. This alone forms an additional important material consideration in favour of the application.

- 4.13. The Applicant's overriding objective is to deploy infrastructure to achieve the maximum network coverage with the minimum number of masts and to avoid proliferation of mast structures. Locations are carefully selected, including those that allow for coverage to be increased (subject to demand) by upgrading apparatus at a location and without the need to install further masts in the surrounding area that may otherwise be required.
- 4.14. The subject street pole location has been chosen carefully within a highly constrained search area (from a network coverage perspective) where there are only an extremely limited number of options. Should one location need to be moved in excess of 50m (dependant on terrain) then all other poles in the network would need to be adjusted or require the installation of additional masts. This can set back the roll out by several months.
- 4.15. IXW has no existing mast sites or structure in these areas capable of being utilised.
- 4.16. To the extent there are existing third party mobile mast structures, their positioning (which satisfies the technical requirements for mobile technologies but not fixed wireless technologies - radio frequencies used in 4G networks can pass through structures and do not require line of sight) is likely to be unsuitable so that, even to the extent sufficient space is available on any such masts (which is unlikely given the current deployment of 5G mobile technologies) the required coverage is unlikely to be achieved, meaning that the overall number of deployed masts is unlikely to be reduced
- 4.17. Consideration has been given to any existing tall buildings in the immediate vicinity of the proposed poles. Generally, deployment of apparatus on tall buildings is not optimal due to the shadowing effect (an area not covered) associated with tall buildings. Even to the extent tall buildings are available this rarely results in a

reduction in the number of deployed masts, as further mast deployment is invariably required to achieve 360-degree coverage i.e., combat shadowing. In any event, we can confirm there are no suitable tall buildings in the proposed location.

- 4.18. In summary, the required network coverage can only be achieved by erecting pole in a new location, albeit in a location where the pole structure would in any event be erected under permitted development rights to support fibre cable.
- 4.19. Whilst the scope of the assessment in terms of 'siting and appearance' should properly be confined to the antennae, the proposed position of the street pole;
- a. Provides maximum coverage with minimal number of poles
 - b. Complies with Cabinet Siting and Pole Siting Code of Practice Nov 2016
 - c. Has no utilities located in footway that would impede installation
 - d. Sited against the gable end of property with no windows and opposite commercial area to limit impact to residential properties
 - e. Wide remaining footway- over 3m width for pedestrians
 - f. The street pole is a simple monopole design that is similar and in keeping with other vertical structures present in the street scene, including 8m lighting columns and 8m telegraph poles, so as to reduce its visual impact.
 - g. The pole will be grey/left galvanised so as to reduce its visual impact when seen against the sky and is consistent in colour with existing vertical structures (particularly street lighting columns) already present in the street scene.
- 4.20. Under the provisions of the GPDO, there are no other material considerations to assess.
- 4.21. In accordance with Para A.3 – (1), Evidence has also been provided to confirm that notice has been served on the landowner.

/5 PLANNING CONSIDERATIONS AND CONCLUSIONS

5.1. The Applicant is a registered electronic communications code operator and therefore benefits from provisions of Schedule 2, Part 16, Class A of the GPDO.

5.2. It has been demonstrated, with the support of Counsel's Advice, that the pole and fibre cable alone would fall within the provisions of the GDPO without the need for Prior Approval and hence provides the planning 'fall back' position. Inclusion of the antennae on the host structure would create a 'mast' for the purposes of GPDO requiring this Prior Approval application to be made. However, in determining the application, it is clear that regard should be had to the 'fall-back' position and considerations of 'siting' and 'appearance' should be confined to the antennae alone and it would be inappropriate to consider the whole structure.

5.3. Taking into account then the following matters: -

- a.** The planning fall-back position which would permit the pole and cable to be erected without recourse to the LPA;
- b.** The small size of the antennae and extremely limited changes to the appearance of the supporting structure as a result of their inclusion;
- c.** The fact that the structure will be comparable to other street-furniture that can often be erected without the prior consent of the LPA.
- d.** Should Prior Approval be refused it would still be necessary for the Applicant to install the same supporting structure to support the fibre cables to create its electronic communications distribution network, and connect user's premises by 'flying' additional fibre cables from the pole.

Whilst the scope of the assessment in terms of 'siting and appearance' should properly be confined to the antennae, the Applicant has, nonetheless, considered the positioning of the pole to reduce its visual impact in the street scene. It is considered that any impact in terms of 'siting' and 'appearance' by the introduction

of the antennae will be imperceptible, and that the LPA would only be justified in refusing consent in the most exceptional of circumstances.

- 5.4. The radio equipment housing is less than 2.5 cubic metres and is permitted development.
- 5.5. The suite of plans and documents submitted in support of the application is sufficient to enable the positive assessment of the application. Therefore, it is requested that consent is provided at the earliest opportunity
- 5.6. Whilst not referred to within the GPDO, the Applicant has also voluntarily provided a copy of the ICNIRP Certificate relating to the antennae. Should any further information be considered necessary and justified, then the Applicant is willing to discuss this with the LPA. Evidence has also been provided that the owner of the land has been notified of the application.

APPENDIX 1: COPY OF COUNSEL ADVICE FROM DAVID MANLEY QC



2 Lockside Office Park
Lockside Road
Preston, PR2 2YS

08726 245000
planning@internexus.co.uk
www.internexus.co.uk