

Planning

Growth & Development

Delegated officer report for planning application

Application no. 134035/LP/2022

Date registered valid: 5 July 2022

Proposal: Addition of antennae to an existing 15 metre high pole structure that supports fibre cable

Address: Grass Verge Opposite 18 & 20 Barmouth Street, Manchester, M11 3BZ

Ward(s): Ancoats & Beswick Ward

Applicant: Joanne Kay IX Wireless Limited Ribble House, Ribble Business Park, Blackburn, BB1 5RB

Agent (if any):

Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: GRANT

Date of recommendation: 30 August 2022

Application details

Type of application: Certificate Lawful Developmnt Proposed

Development type: Certificates of lawfulness

Date of site visit: 5 August 2022

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

No neighbour notifications have been printed and sent.

Site notice

No site notice has been produced

Press advert

No press advert had been published

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building



Photograph 1 Application Site as viewed on the 5th August 2022.

The application site relates to a 15 metre high pole and cabinet that houses electronic communications apparatus and electrical supply, located on a grass verge opposite 19 and 20 Barmouth Street.

The supporting documentation reveals that the existing structure was erected on or about the 21st March 2022.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The area is predominantly residential in nature comprising a mixture of two storey modern detached and semi-detached dwellinghouses and more traditional two storey brick built terraced properties. The area is well served by both primary and secondary schools and contains areas of green open spaces.

Description of development

The applicant is seeking a certificate of lawful proposed development for the addition of antennae to an existing 15 metre high pole structure that supports fibre cable.

Consultations & Notification Responses

None Required - There is no statutory requirement to consult third parties including neighbours; views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

Issues

Legislative Issues

Sections 191 and 192 of the Town and Country Planning Act 1990 provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

- (1) in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or
- (2) in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

The onus of proof in regard to (1) is firmly on the applicant and the issue of a certificate will depend on the on factual evidence provided about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The relevant test of the evidence in this matter is “the balance of probability” and the applicants own evidence does not need to be corroborated by independent evidence. If the LPA have no evidence to contradict the applicants version of events or make them less than probable, there is no good reason to refuse the issue of a certificate.

In regard to (2), this provides that, if the LPA are supplied with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

In short, the purpose section 192 is to enable any person who wishes to find out whether any proposed use or operations would be lawful to apply to the LPA for that purpose

The application needs to describe the proposal with sufficient clarity and precision to enable the LPA to understand (from a written description and plans) exactly what is involved in the proposal; and to submit whatever supporting information or legal submission that are to be relied upon in order to satisfy the LPA that a certificate should be granted for the proposal.

In making their decision on an application under section 192, the LPA ask themselves the hypothetical question - *"If this proposed change of use had already occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"* In doing so, the LPA will not only consider whether the proposal would involve "development" requiring an application for planning permission, but whether it would involve a breach of any existing condition or limitation imposed on a grant of planning permission which has been acted upon, and which therefore constrains what can be done on the land. The LPA will not make a proposal fit a scenario; the only question is whether the proposal made by the applicant is lawful at the time of submission.

The Application

This application is pursued under subsection (1) of section 192, which provides for an application to determine whether any proposed use or operations would be lawful for planning purposes.

The applicant is seeking a certificate of proposed lawful development for the addition of antennae to an existing 15 metre high pole structure that supports fibre cable.

The proposal will be considered under Schedule 2, Part 16, Class A of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) - the relevant legislation when considering 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 the installation, alteration or replacement of any electronic communications apparatus.

Class A –electronic communications code operators

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;

Complies [✓]

- (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;

Complies [✓]

- (c) in the case of the installation of a mast, the mast, excluding any antenna, would exceed a height of—
- (i) 2530 metres above ground level on unprotected land; or
 - (ii) 2025 metres above ground level on article 2(3) land or land which is on a highway;

Complies [✓]

A.1(2) applies to building based apparatus and are not relevant to this proposal.

A.1(3) applies to apparatus on masts and are not relevant to this proposal.

A.1 (4) applies to antennas and supporting structures installed, replaced or altered on article 2(3) land or land which is a site of special scientific interest.

The application site is not located within article 2(3) nor is it a site of special scientific interest.

A.1(5) applies to electronically communicates apparatus installed, replaced or altered on a dwellinghouse and are not relevant to this proposal.

A.1(6) relates to small antennas installed, replaced or altered on a building which is not a dwellinghouse.

A.1(7) relates to ground or base area which excludes antenna.

A.1(8) applies to driver information systems and is not relevant to this proposal.

A.1(9) applies to radio equipment housing and is not relevant to this proposal.

A.1(10) relates to public call boxes and is not relevant to this proposal.

A.2— (1) Class A(a) and A(c) development is permitted subject to the condition that—

(a) the siting and appearance of any—

- (i) mast;
- (ii) electronic communications apparatus installed, altered or replaced on a mast;
- (iii) antenna or supporting apparatus;
- (iv) radio equipment housing; or
- (v) development ancillary to radio equipment housing,

constructed, installed, altered or replaced on a building (other than a building which is a mast) are such that the effect of the development on the external appearance of that building is minimised, so far as practicable;

Complies [N/A] relates to a building.

(b) the siting and appearance of any—

- (i) mast;
- (ii) electronic communications apparatus installed, altered or replaced on a mast;
- (iii) antenna or supporting apparatus;
- (iv) radio equipment housing; or

(v) development ancillary to radio equipment housing,

which has been constructed, installed, altered or replaced in a manner which does not require prior approval under paragraph A.2(3) are such that the visual impact of the development on the surrounding area is minimised, so far as practicable;

Complies [✓]

(c) the siting and appearance of any development which is visible from a site which is—

- (i) article 2(3) land;
- (ii) a scheduled monument or a listed building;
- (iii) the curtilage of a scheduled monument or a listed building;
- (iv) a World Heritage Site;
- (v) a site designated by the Secretary of State under section 1 of the Protection of Wrecks Act 1973¹⁵⁷; or
- (vi) land registered by Historic England in a register described in section 8C of the Historic Buildings and Ancient Monuments Act 1953¹⁵⁸,

are such that the visual impact of the development on the site is minimised so far as practicable, taking into account the nature and purposes of the site;

(d) the siting of any development is such that it—

- (i) does not prevent pedestrians from passing along a footway;
- (ii) does not prevent access to premises adjoining a footway; and
- (iii) is determined having regard to—
 - (aa) the needs of disabled people; and
 - (bb) the guidance document “Inclusive Mobility” issued by the Department for Transport in December 2021

Complies [✓]

(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 practicable after it is no longer required for electronic communications purposes; and

Complies [✓*] - This condition will apply and imposes the condition that apparatus is removed in good time upon it no longer being required.

(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.

Complies [✓*] - This condition will apply and imposes the condition that apparatus is removed in good time upon it no longer being required.

(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, other than the installation of a mast on a building where the height of the mast (including any antenna and supporting apparatus) does not exceed the height of the highest part of the building by more than 6 metres;
 - (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 25 metres above ground level;
 - (iia) the alteration or replacement of a mast which—
 - (aa) is less than one metre wide where the mast would, when altered or replaced, exceed the original width of the mast by two thirds; or
 - (bb) is one metre wide or wider where the mast would, when altered or replaced, exceed the original width of the mast by more than one half or 2 metres, whichever is the greater; or
 - (iii) the construction, installation, alteration or replacement of radio equipment housing, where the volume of any single development, other than a single development within a permitted compound, exceeds 2.5 cubic metres;

Complies [✓]

- (d) on a highway where that development consists of—
 - (i) 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;
 - (ii) the alteration or replacement of a mast which—
 - (aa) is less than one metre wide where the mast would, when altered or replaced, exceed the original width of the mast by two thirds; or
 - (bb) is one metre wide or wider where the mast would, when altered or replaced, exceed the original width of the mast by more than one half or 2 metres, whichever is the greater; or

Complies [✓]

- (e) which consists of the installation, alteration or replacement of a mast on a defence safeguarding area, is permitted subject, except in case of emergency (in which case only paragraph A.3(12) applies), to the conditions set out in paragraph A.3 (prior approval).

Complies [N/A]

A.2 (4) and (5) relate to proposals on article 2(3) land and a civil safeguarding area or a defence safe guarding area.

A.3 relates to applications required by sub-paragraph (4) for prior-approval.

Human Rights Act 1998 considerations

This application needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the applicants (and those third parties, including local residents, who have

made representations) have a right to a fair hearing and to this end the local planning authority must give full consideration to their comments.

Protocol 1 Article 1, and Article 8 where appropriate, confer(s) a right of respect for a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Director of Planning, Building Control & Licensing has concluded that some rights conferred by these articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that that interference is in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. She believes that any restriction on these rights posed by the recommendation given is proportionate to the wider benefits of and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation: GRANT

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

1) Grant on the basis that the addition of antennae to an existing 15 metre high pole structure that supports fibre cable constitutes permitted development as the works proposed would comply with the requirements of Schedule 2, Part 16, Class A , A.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Appendix 1 – List of consultees & neighbours notified

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Coal Authority - Surface Coal Resources - Name: Coal bearing strata at surface
Area Team Boundary - Name: CMPLNC