

EAST RENFREWSHIRE COUNCILPLANNING APPLICATIONS COMMITTEE14th February 2024Report by Director of EnvironmentEnforcement Notice requiring the re-siting of a 15m high telecommunications mast and wraparound base units erected on Addison Road, Thornliebank, East Renfrewshire**1.0 INTRODUCTION**

- 1.1. This report is to request that Members authorise the service of a Enforcement Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 as it appears to the Planning service that there has been a breach of planning control as defined by section 123 (1)(a) of said Act at the land described in the attached plan.

2.0 BACKGROUND

- 2.1 The Planning Service first received a complaint on the 23rd May 2023 in relation to a 5G telecoms mast being erected on the footpath at Addison Road in Thornliebank, in close proximity to the residential flats at 194 Carnwadric Road. The matter was investigated and a site visit was carried out that day.
- 2.2 At the time of the site visit a 15m high telecommunications mast and wraparound cabinets were currently under construction. The development was subject to a Prior Notification application (2021/0783/PN) submitted to the Council 27th September 2021. However, further investigation confirmed that approval had not been given by the Council and that WHP Telecoms Ltd (the agent working on behalf of CK Hutchison (UK) Ltd) had been informed that the application had not been registered on three separate dates prior to the invalid application being returned to them.
- 2.3 The application was considered to be invalid due to inaccurate information submitted on ownership, without which it was invalid and this was notified by the Planning Service to the agent by letter on the 29th October 2021, with follow up letters issued on the 19th November and 7th December. The agent was given until the 21st December to respond. When the agent still did not respond, the application was removed as a current application on the 23rd December, with the applicant notified on this date.
- 2.4 The applicant's agent sought to amend the application on the 19th January 2022, however by this time the application had been removed and it was not possible to make the amendment. The agent was notified of this on the 3rd February 2022.
- 2.5 Notwithstanding that there had been no valid application or consideration of the merits by the Planning Service, the applicant proceeded to erect the mast and base units without the required planning approval.
- 2.6 The telecommunication mast and base units have been erected in very close proximity to residential flats at 194 Carnwadric Road. The occupants of the flats have not had the opportunity to comment on the application as, being invalid, it was not registered. It could not therefore appear on any public website and as such neighbouring properties had no opportunity to comment or object. In the absence of a valid prior

notification application; the planning merits and effect on amenity could not be considered.

- 2.7 The mast, where erected, is approximately 7 metres from the nearest windows which is causing significant distress to local residents.

3.0 PLANNING STATUS/LEGISLATIVE BACKGROUND

- 3.1 Class 67 of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 allows for the construction of new ground-based apparatus including new masts which do not exceed 30 metres in height, subject to a number of specified criteria. The criteria include a requirement for an operator to apply to the planning authority to establish whether prior approval is required. Guidance provided by the Scottish Government (Circular 2/2015) states that while new ground based masts within the specified parameters should generally be acceptable in principle in planning terms, the planning authority can impose a requirement for prior approval with regard to the siting and/ or appearance of a specific proposal.

- 3.2 The mast, therefore, did not require planning permission as a mast at the height proposed is permitted development, subject to the prior approval of the planning authority. The prior approval process for a telecoms mast is similar to a planning application in that detailed drawings, an application form (including ownership certificate) and fee are required, together with neighbour notification. What differs is that once a valid prior notification application is submitted, the planning authority has 56 days to determine whether prior approval is required or not and either approve (which can include conditions) or refuse prior approval. If the planning authority does not issue a decision within 56 days, the applicant is able to erect the mast and supporting infrastructure subject to the application. In this case, the applicant's position is that due to the 56 days from the date of their submission elapsing, they had the authority to erect the mast by virtue of no prior approval refusal notice having been received. However, as explained above, the planning authority never made the application valid and therefore did not assess the proposal or carry out neighbour notification. The Planning Service therefore considers that the mast is unauthorised as the prior approval process was not undertaken in line with permitted development legislation.

- 3.3 In terms of the impact/acceptability of this mast, Section 25 of the Town and Country Planning (Scotland) Act 1997 does not apply to applications for prior approval, so the development plan does not have primacy in decision making. Relevant policies may however be useful in providing guidance on the assessment of the impact of the siting and appearance of the mast, and therefore be a material consideration. The relevant development plan policies are 24 of the National Planning Framework 4 (NPF4) and SG8 of the Local Development Plan 2. The development plan policies generally support the provision and expansion of digital communications equipment, provided they will not result in adverse visual and amenity impacts.

- 3.4 In December 2023 the Scottish Government published planning guidance on Digital Communications, which is a material consideration and replaces previous guidance (Planning Advice Note 62: Radio Telecommunications). Of direct relevance in this case is guidance in respect of masts in urban areas, which states that "where located in suburban or residential areas, larger new masts should, where possible, be located away from direct views from main habitable windows."

4.0 ASSESSMENT AND ACTION TAKEN TO DATE

- 4.1 It is recognised that Carnwadric Road is relatively wide in this location and that the site lies in close proximity to a non-residential site (the Council's Roads Depot). It is

therefore considered that a 15m high telecommunications mast could be accommodated in this general area. However, the position chosen by the operator is considered to be unacceptable due to the adverse visual impact on direct views from the front windows of residential properties on the corner of Carnwadric Road and Addison Road.

- 4.2 Following the erection of the mast, due to the disagreement over the valid status of the application, the Planning Service initially sought to resolve this matter without commencing formal enforcement action. As such, the Council wrote to the site operator to explain that the prior approval process had not been followed and requested that the mast be removed from site and relocated to a more appropriate location. The mast operator (Three) has not agreed to remove and relocate the mast, therefore, it is considered necessary to serve an enforcement notice seeking removal and relocation of the mast.
- 4.3 It should be noted that a previous application by the applicant (2021/0359/PN) for a 20m high telecommunications mast and base units was withdrawn on the 15th July 2021. It is considered that the proposed site on the opposite side of Addison Road may be a more appropriate location.

5.0. CONCLUSIONS

- 3.1. CK Hutchison Networks (UK) Ltd have erected the 15m high mast and base units without the required prior approval.
- 5.2 Section 127 of the “Act” allows the planning authority to issue an Enforcement Notice where it appears to them that there has been a breach of planning control and that it is expedient to do so, having regard to the development plan and to any other material considerations.
- 5.3 The recipient of the Notice has the right of appeal to Scottish Ministers. If an appeal is submitted within the statutory time-scale, the Notice is held ‘in abeyance’ until the determination of the appeal.
- 5.4. The development is not acceptable to the Planning service. In order to address the unauthorised works and re-site the telecommunications mast and base units at a more acceptable location, an Enforcement Notice is considered appropriate and necessary in this case.

6.0. RECOMMENDATION

- 6.1 Members are requested to authorise the service of an Enforcement Notice requiring the re-siting of the telecoms mast and base units to a more acceptable location.

7.0 BACKGROUND PAPERS:

- 7.1 Further information on background papers can be obtained from Mr Alan Pepler on 0141 577 3001.

DATE: 7th February 2024

DIRECTOR OF ENVIRONMENT

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