

Agenda

MUNICIPAL YEAR 2021-2022



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Planning Committee

Tuesday, 15 June 2021 at 3.00 pm,
Council Chamber, Town Hall, Accrington

Membership

Chair: Councillor Eamonn Higgins
Vice-Chair: Councillor Dave Parkins

Councillors Judith Addison, Kate Walsh, Terry Hurn, June Harrison, Melissa Fisher, Kath Pratt, Susan Hayes, Sajid Mahmood, Mohammad Ayub, Diane Fielding and Caroline Montague

S U P P L E M E N T A L A G E N D A

The following item is submitted as urgent business with the Chair's agreement in accordance with Section 100b(4) of the Local Government Act 1972, the reason being these are urgent items.

4. **11/21/0260 - On the footway opposite No 82 Marlborough Road, Accrington** (Pages 3 - 8)

Erection of 15m pole fibre cable antennae and associated cabins for the installation of high speed wireless internet.

5. **11/19/0453 - Land at Broadfield Garage, Broadfield, Oswaldtwistle.** (Pages 9 - 12)

Town and Country Planning Act 1990, Section 257 Stopping Up or Diversion of a Public Footpath, Bridleway or Restricted Byway.



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Application Ref: 11/21/0260

Application Address: On the footway opposite No 82 Marlborough Road,
Accrington

Date Validated: 17th May 2021

Date for Decision: 12th July 2021

Date Report Written: 7th June 2021

Scheme of Delegation

This application is being presented to Planning Committee at the request of Cllr Paul Cox on the grounds of visual impact amenity and environmental impact.

Description of Development

Telecommunications Prior Notification: Erection of 15m pole fibre cable antennae and associated cabins for the installation of high speed wireless internet.

This is not a planning application.

This is an application giving the local planning authority prior notification of the applicant's intention to erect the proposed mast in the location described. The local authority must determine the application within 56 days of its submission, if no decision is made within that time then the development is granted deemed consent. If the application is not determined by 12th July 2021 the development will therefore be granted deemed consent.

The application has been submitted under the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 which requires the local authority to consider whether prior approval is required for the development.

If the local authority reach the view that prior approval is not required, it will effectively be granted consent subject to standard conditions set out in the legislation.

If the local authority reach the view that prior approval is required, the assessment of the development is limited to the "siting" and "appearance" of the development. In considering these matters, the local authority is able to consider relevant policy and other matters provided they only relate to the "siting" and "appearance" of the proposed mast.

Site and Proposal

This is an application for prior notification by an electronic communications code operator for the erection of a 15m pole and associated cabinets to support high speed wireless broadband internet. The application has been submitted under Part A3 of Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

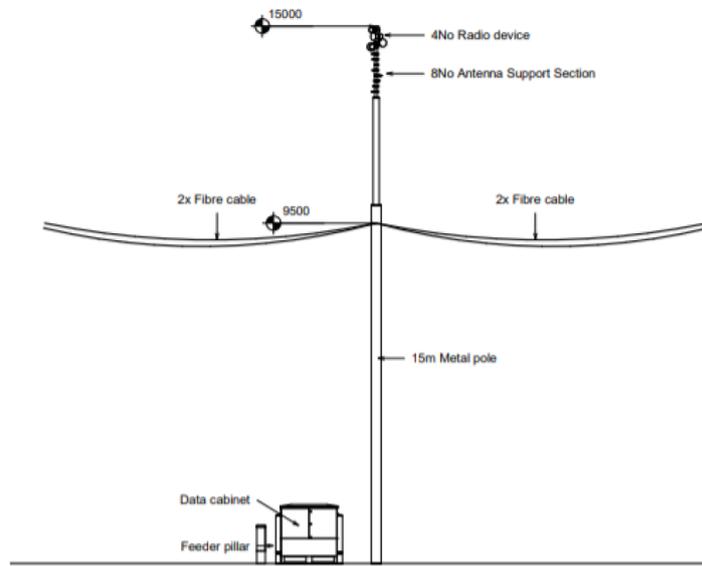


Fig 1. Diagram submitted with application to illustrate the type of pole and cabinets proposed.

The application seeks consent for the erection of a 15m pole, antennae and associated cabinets. The antennae will be located between 12m and 15m from the ground. The antennae are small in size (but positioned at the top of a pole) and will be used to support the installation of high speed wireless broadband internet.



Fig 2. Photograph illustrating the location of the site on Marlborough Road adjacent to the green telecommunications cabinet on the footway.



Fig 3. Photograph illustrating detail on telecommunications cabinet.

Summary of Consultations:

Neighbour consultations

A site notice was placed at the site. The proposed development was also brought to the attention of local residents through the poster on the cabinet at the site as illustrated above. No representations have been received although the consultation period has not yet expired. Any representations received from the date the report was completed to the date of Planning Committee will be reported verbally at the meeting.

Other consultations

Lancashire County Council Highways No observations received.

Relevant Policies:

There are a number of policies that are relevant to the “siting” and “appearance” of the development. These are set out below:

Hyndburn Core Strategy Policies

Policy Env6 High Quality Design
Policy Env7 Environmental Amenity

Hyndburn Development Management DPD

Policy DM9 Telecommunications

1. Proposals for telecommunications development will be permitted provided that the following criteria are met:
 - a. if proposing a new mast, it should be demonstrated that the applicant has explored the possibility of erecting apparatus on existing buildings, masts or other structures. Such evidence should accompany any application made to the local planning authority;
 - b. The siting and appearance of the proposed apparatus and associated structures should seek to minimise impact on the visual and residential amenity, character and appearance of the surrounding area;
 - c. [this part is not relevant]
 - d. [this part is not relevant]
 - e. [the development is not attached to a building, this part is not therefore relevant]

National Planning Policy Framework (NPPF)

Section 10 of NPPF is titled “Supporting high quality communications”. The full text of this section of NPPF is attached at Appendix 1 of this report for the information of Planning Committee.

Other matters:

The Council must determine the application on relevant grounds only. In determining the application it must not seek to prevent competition between different operators, question the

need for telecommunications systems, or determine health safeguards if the proposal meets with the International Commission Guidelines.

The applicant has submitted a declaration of conformity with ICNIRP Public Exposure Guidelines dated 10 May 2021.

Observations

In considering the acceptability of the proposed development it is necessary to consider whether the “siting” and “appearance” of the mast are acceptable. It is important to note that this application for prior approval is one of five applications submitted by the applicant for masts of this type across Accrington. These applications have been submitted by the applicant pursuant to their desire to develop their broadband service in this area. The applicant has advised that this is not a 5G service.

The Siting of the Mast

Both national and local policy recognise that “*the number of radio and electronic communications masts, and the sites for such installations, should be kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion.*”¹ It is for this reason that NPPF and Policy DM9 of the Development Management DPD require telecommunications operators to consider the use of existing masts, buildings and other structures where possible and to submit evidence that these have been considered.

In this instance the applicant has not submitted information in support of the application that demonstrates that they have considered the use of alternative existing structures when considering the “siting” of the proposed mast. Although the Council believed that prior approval was not required for a similar application² (ref 11/19/0370) on Manor Street in Accrington no representations were made in relation to that development. Each application should be treated on its merits and the fact that one proposal was considered acceptable in terms of its siting and appearance does not mean that prior approval is not required for similar masts in different locations.

The Appearance of the Mast

No information has been submitted by the applicant on the appearance of the mast other than the elevation illustrated at Fig 1 above. No site elevations illustrating the height of the mast against the neighbouring property or photomontages of the street that illustrate the appearance of the mast have been submitted. The proposed mast will be almost twice as high as the wooden telegraph poles in the area and will add to overall quantity of street furniture in this area.

In considering the appearance of the proposed mast, the applicant relies on legal advice that argues that pole up to 15m in height carrying suspended fibre cables could be erected without the need for prior notification and that the material difference between such a pole and the proposed mast is so slight that it could not reasonably be considered unacceptable by virtue of their prominence or impact on amenity.

Whilst the applicant may be able to erect a 15m pole, this would not serve the same purpose as the proposed mast so it is difficult to see how this creates a “fall-back” position for the applicant.

¹ NPPF, para 113.

² Application 11.19.0370, application for prior notification of a 15m pole mounted antennae etc... to the rear of garage on Manor Street, Accrington.

The advice provided by the applicant recognises that for the purposes of the GPDO a pole with broadband cables suspended from it is materially different from a pole with an antennae fixed to the top of it.

Notwithstanding this, subject to the applicant being able to satisfactorily demonstrate that they have considered alternative existing structures and buildings on which to site the mast, Officers do not believe that the appearance of the proposed mast would be so unacceptable in this area of Accrington that prior approval should be refused for this reason.

Conclusion

The National Planning Policy Framework and Policy DM9 of the Development Management DPD both require applicants seeking prior approval for telecommunications masts to demonstrate that they have considered the use of existing masts and structures when proposing the development of new masts.

Although the applicant has submitted a Planning Statement in support of their application, no consideration is given in this statement to the use of any existing masts or structures to justify the siting of the proposed mast.

Recommendation:

That prior approval of the proposed development is required, and that it is refused for the following reason:

1. The applicant has failed to demonstrate that they have explored the possibility of erecting apparatus on existing buildings, masts or other structures in the vicinity of the proposed mast to keep the number of telecommunications masts to the minimum required and that a new mast (and the associated environmental impact) is therefore required to be sited in this location, contrary to Policy Env7 of the Hyndburn Core Strategy, Policy DM9 of the Hyndburn Development Management DPD and the requirements of paragraphs 113 and 115 of National Planning Policy Framework.

Appendix 1. National Planning Policy Framework, Section 10, Supporting high quality communications.

- 112.** Advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections. Policies should set out how high quality digital infrastructure, providing access to services from a range of providers, is expected to be delivered and upgraded over time; and should prioritise full fibre connections to existing and new developments (as these connections will, in almost all cases, provide the optimum solution).
- 113.** The number of radio and electronic communications masts, and the sites for such installations, should be kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion. Use of existing masts, buildings and other structures for new electronic communications capability (including wireless) should be encouraged. Where new sites are required (such as for new 5G networks, or for connected transport and smart city applications), equipment should be sympathetically designed and camouflaged where appropriate.
- 114.** Local planning authorities should not impose a ban on new electronic communications development in certain areas, impose blanket Article 4 directions over a wide area or a wide range of electronic communications development, or insist on minimum distances between new electronic communications development and existing development. They should ensure that:
- (a) they have evidence to demonstrate that electronic communications infrastructure is not expected to cause significant and irremediable interference with other electrical equipment, air traffic services or instrumentation operated in the national interest; and
 - (b) they have considered the possibility of the construction of new buildings or other structures interfering with broadcast and electronic communications services.
- 115.** Applications for electronic communications development (including applications for prior approval under the General Permitted Development Order) should be supported by the necessary evidence to justify the proposed development. This should include:
- (a) the outcome of consultations with organisations with an interest in the proposed development, in particular with the relevant body where a mast is to be installed near a school or college, or within a statutory safeguarding zone surrounding an aerodrome, technical site or military explosives storage area; and
 - (b) for an addition to an existing mast or base station, a statement that self-certifies that the cumulative exposure, when operational, will not exceed International Commission guidelines on non-ionising radiation protection; or
 - (c) for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure and a statement that self-certifies that, when operational, International Commission guidelines will be met.
- 116.** Local planning authorities must determine applications on planning grounds only. They should not seek to prevent competition between different operators, question the need for an electronic communications system, or set health safeguards different from the International Commission guidelines for public exposure.

Hyndburn Borough Council – Report for Planning Committee

Application Number: 11/19/0453

Application Description: Town and Country Planning Act 1990, Section 257
Stopping Up or Diversion of a Public Footpath, Bridleway
or Restricted Byway.

Application Address: Land at Broadfield Garage, Broadfield, Oswaldtwistle.

Date Report Written: 9th June 2021

Scheme of Delegation

This application is being presented to Planning Committee on the grounds that the Council's Scheme of Delegation makes no provision for applications for the stopping up or diversion of a public footpath under s.257 of the Act to be determined using delegated powers.

1. Background

- 1.1 Planning permission was granted in November 2016 for the development of 12 dwellings on the site of the former Broadfield Garage, reference 11/16/0126. Footpath 96 crosses the site and in order for the whole of the development to be carried out the applicant has applied to the Council for the public footpath to be diverted under s.257 of the Town and Country Planning Act 1990 (as amended).
- 1.2 The official route of the public footpath does not correspond to the actual route that is walked by people. The proposal is therefore to divert the official route of the footpath so that it corresponds with the route that is walked and which exists on the ground.
- 1.3 s.257 of the Town and Country Planning act provides that subject to s.259, the authority may authorise the stopping up or diversion of a footpath if they are satisfied that it is necessary to do so to enable the development to be carried out in accordance with a planning permission granted under the act. In making an order, the authority must be satisfied that there is an alternative route that is available for use.
- 1.4 This report represents the first stage of the order, once the order is made it will be consulted on before being taking into account representations made and the order being confirmed if appropriate. Having granted planning permission for a development that affects a public right of way, the authority must have good reason not to authorise the diversion of the affected public right of way provided an alternative is in place. For this reason, delegated authority is requested to confirm the order subject to no objections being made by statutory consultees.

2. The Existing Route – Continuous black line A-B on the plan at Appendix 1.

2.1 The existing right of way (11-5-FP 96) is a footpath. It is shown as a continuous black line from point A to B on the map shown at Appendix 1 and measures 96m in length. This is the route shown on the maps that illustrate the legal routes of public rights of way, although as explained it does not correspond to the route that is walked by pedestrians.

3. The Proposed Route – Dashed black line A-C-B on the plan at Appendix 1.

3.1 The length of the proposed new route is 138m. It is shown on the accompanying map at Appendix 1 as a black dashed line A-C-B. Although this is the proposed new route, it is the route that is actually walked by pedestrians.



Plan illustrating the layout of the proposed development and the existing / proposed footpath routes. The proposed route is the more prominent / darker dashed line.

4. Public / Statutory Consultation

4.1 Public / statutory consultation is undertaken once the order is made and any representations made are taken into consideration on confirmation of the order.

5. Observations

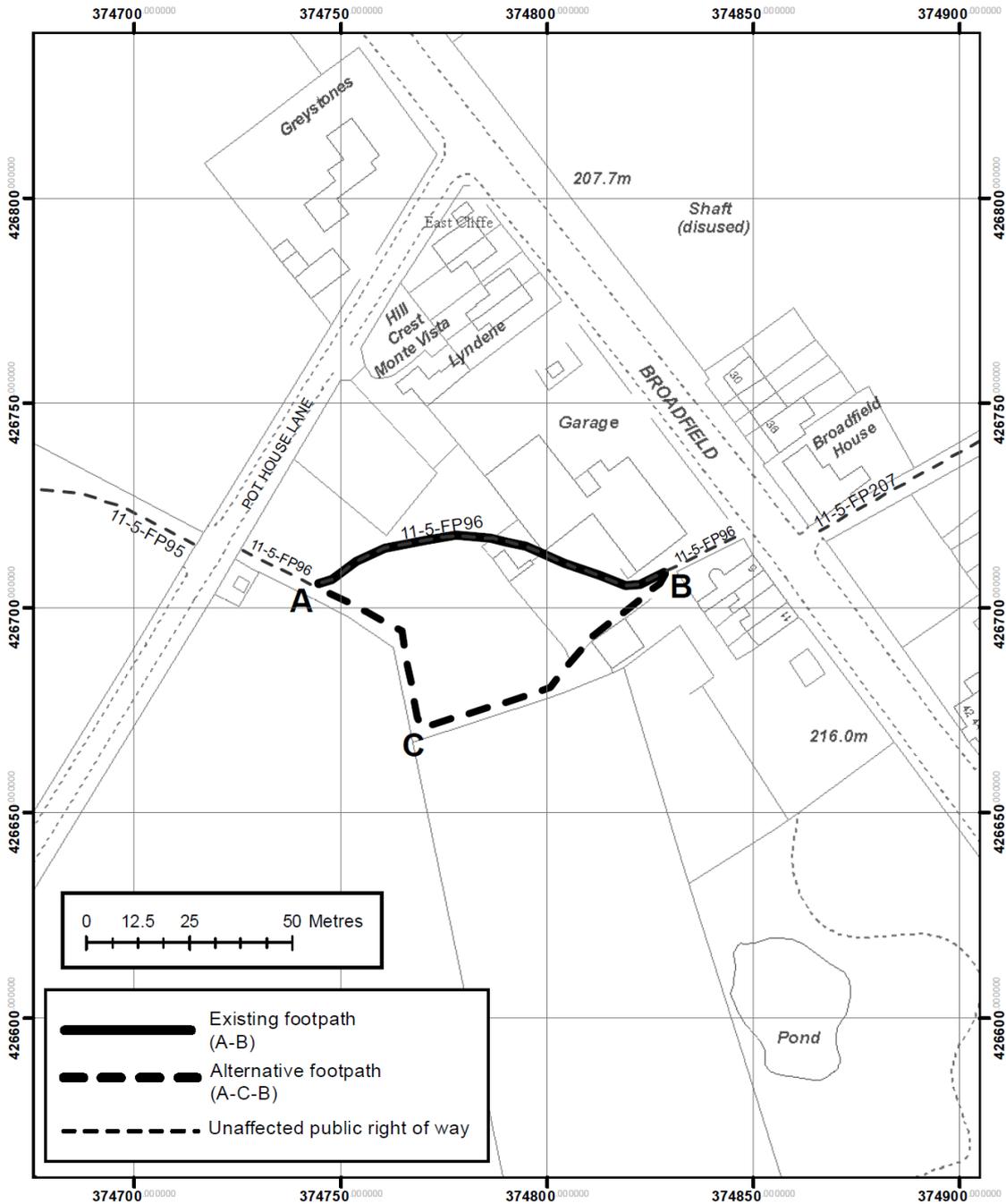
5.1 Officers are satisfied that the diversion of the public right of way is necessary to enable the development to be carried out in accordance with the planning permission that has been granted.

5.2 Officers are satisfied that an alternative route for the public right of way is available as illustrated by the plan at Appendix 1.

6. Recommendation

- 6.1 That Planning Committee agree to make the order and that consultation takes place.
- 6.2 That subject to no objections being raised by statutory consultees, that Planning Committee delegate authority to the Chief Planning and Transportation Officer in conjunction with the Director of Legal Services to confirm the Order.

Appendix 1. Plan illustrating the route of the proposed footpath diversion.



<p>PUBLIC PATH DIVERSION ORDER TOWN AND COUNTRY PLANNING ACT 1990, SECTION 257 HYNDBURN BOROUGH COUNCIL (PART OF FOOTPATH OSWALDTWISTLE 96 11-5-FP96 AT LAND AT BROADFIELD GARAGE, BROADFIELD, OSWALDTWISTLE) PUBLIC FOOTPATH DIVERSION ORDER 2020</p>	<p>Drawing No: 11-5-96 v4 Scale 1:1250 @A4</p>
<p>This Map is reproduced from the 1:1250 Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320 The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.</p>	