

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 14 MAY 2024

PRIOR APPROVAL APPLICATION – LAND AT BUS TERMINUS ADJACENT TO
FORMER ASHLUDIE HOSPITAL, VICTORIA STREET, MONIFIETH

GRID REF: 356069: 733143

REPORT BY SERVICE LEADER – PLANNING & SUSTAINABLE GROWTH

1. ABSTRACT

- 1.1 This report deals with application [23/00783/PRIORN](#) which seeks prior approval for the siting and appearance of a 20 metre (m) high monopole mast incorporating antennas, dishes and ancillary equipment cabinets for MBNL (EE UK Ltd & Hutchison UK Ltd) on land at the bus terminus adjacent to the former Ashludie Hospital, Victoria Street, Monifieth. The application is recommended for approval subject to conditions.

2. RECOMMENDATION

- 2.1 It is recommended that the application be approved for the reason and subject to the conditions given in Section 10 of this report.

3. INTRODUCTION

- 3.1 The applicant seeks prior approval for the siting and appearance of a 20m high monopole mast incorporating antennas, dishes and ancillary equipment cabinets for MBNL (EE UK Ltd & Hutchison UK Ltd) on land at the bus terminus adjacent to the former Ashludie Hospital, Victoria Street, Monifieth. A plan showing the location of the site is provided at Appendix 1.
- 3.2 The site is located to the east of Victoria Street on a grassed area within a bus layby. It is predominantly a residential area, but the site would be separated from nearby housing by the carriageway of the public road and bus layby. There are trees to the east of Victoria Street within the grounds of the former Ashludie Hospital.
- 3.3 The proposal involves the erection of a 20m high monopole style telecom mast incorporating antennas, 1 no. 600mm dish, 1 no. 300mm dish, and ancillary equipment cabinets. The equipment would provide 4G and 5G mobile phone coverage.
- 3.4 The application has been subject of statutory neighbour notification as required by legislation.

4. RELEVANT PLANNING HISTORY

- 4.1 An application ([20/00228/PRIORN](#)) which sought prior approval for the installation of a 20m high monopole mast and associated apparatus on the current application site was refused by Angus Council on 22 May 2020. The application was refused as officers considered that the siting and appearance of the proposed apparatus would not minimise impact on visual amenity or impacts on the character or appearance of the surrounding area contrary to Policy TC13 of the Angus Local Development Plan and Angus Council Advice Note 5/2018. The principal concern at that time was that

the applicant had not adequately demonstrated why other alternative sites, including potential mast share had been discounted.

- 4.2 That decision was subject of appeal to the Scottish Ministers (ref: [PAC-120-2001](#)). A Reporter appointed to determine the appeal found that although the proposed mast would have an adverse impact on general visual amenity, this would mainly affect passers-by on Victoria Street and therefore be relatively fleeting. He determined that the impact was not sufficiently adverse as to justify dismissing the appeal, taking into account substantial support from national policies as well as the local development plan, and he reached similar conclusion in relation to any impact on residential amenity. He stated that he was satisfied that alternative sites had been considered and none more suitable had been found, and that no other alternative sites had been drawn to his attention. The Reporter concluded that the benefits of the proposal outweigh the adverse impact on local visual amenity and granted prior approval on 15 October 2020. A copy of that appeal decision is provided as Appendix 2.
- 4.3 The Reporters decision was subject of legal challenge by a number of parties who had raised objection to the proposed mast. However, that action was not pursued and the Reporters decision was not quashed. It is understood that the developer provided an undertaking that the development would not commence until further assessment of alternative sites had been provided to interested parties.
- 4.4 The prior approval granted on appeal has not been implemented and it has lapsed.

5. APPLICANT'S CASE

- 5.1 The applicant has provided information in support of the application which indicates why a new mast is required. It provides some information on the site selection process and why alternative sites have been discounted. An ICNIRP certificate has been provided which indicates that the installation would comply with the International Commission on Non-Ionizing Radiation Protection standards. The certificate indicates that it covers updated ICNIRP Guidelines published in March 2020.
- 5.2 The information submitted in support of the application is available to view on the [Public Access](#) system.

6. CONSULTATIONS

- 6.1 **Angus Council – Roads** – no objection.
- 6.2 **Ministry of Defence** – no objection.
- 6.3 **Monifieth Community Council** – no comments received.
- 6.4 **Highlands and Island Airports Ltd** – no objection.

7. REPRESENTATIONS

- 7.1 143 letters of representation have been received which raise objection or provide general comment on the application. This includes multiple submissions from the same individuals or households. Those letters are provided at Appendix 3 and are available to view on the council's [Public Access](#) system.
- 7.2 In summary terms the following material planning matters are raised in objection: -
- Proposal is contrary to development plan and relevant policy guidance
 - Adverse amenity, visual, and townscape impact, including development of

- greenfield land and loss of open space
- Adverse impact on traffic and road safety
- Proximity to school
- Adverse environmental impacts, including on listed buildings, wildlife and trees
- Proliferation of masts in the area
- Potential target for vandalism and anti-social behaviour
- Alternative sites, including mast share, that are better suited to accommodate the proposed development are available and the applicants assessment of those is inadequate
- Accuracy of supporting information and visualisations
- Previous appeal decision should not be treated as a material consideration as the Reporters decision and planning authority report were flawed

7.3 Material planning issues are taken into account below under planning considerations. However, the following matters raised in objection are addressed at this stage: -

- **Lack of notification of neighbours and community council** – publicity and consultation has been undertaken in accordance with relevant statutory requirements. The application was notified to the community council in the usual manner by means of the weekly list of applications.
- **Mast is not needed as there is already a replacement mast to north and coverage in the area is good** – consideration of this application is limited to the issues of siting and appearance of the apparatus. The need for the mast is not a relevant consideration. However, the applicant has provided information which indicates that the proposal seeks to provide improved coverage in the area and that there is an operational requirement for additional infrastructure to serve this area.
- **Adverse health impacts associated with mobile phone masts** – the emissions of radio frequency affecting health are controlled and regulated under other legislation and government guidance states they are not to be treated as a material planning consideration. However, as required by planning regulations, the applicant has provided an ICNIRP declaration which confirms that the equipment and installation is designed to comply with the appropriate guidelines for public exposure to radio frequency radiation.

7.4 Representations raise further issues that are not material planning considerations including matters such as loss of view, adverse impact on house prices, commercial matters relating to companies involved in the proposal, compliance with other legislation, legal proceedings in other countries, the identity of the manufacturer of equipment, and complaint regarding the actions of the council.

8. PLANNING CONSIDERATIONS

8.1 Part 20 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended) provides planning permission for certain types of development by electronic communications code operators. Class 67 of that order allows for 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. The principle of the proposed development is therefore established.

8.2 The procedure allows only for the consideration of the acceptability of the siting and appearance of the proposed development and those are the only matters relevant to determination of this application. Members are advised that, by virtue of the provisions of Class 67, the proposed development may proceed if a decision is not issued on the application by 17 May 2024.

- 8.3 Scottish Government indicates that 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 thus be a material consideration.
- 8.4 In this case the development plan comprises: -
- [National Planning Framework 4](#) (NPF4)
 - [Angus Local Development Plan](#) (ALDP)
- 8.5 The development plan policies relevant to the determination of the application are reproduced at Appendix 4 and have been taken into account in preparing this report.
- 8.6 The ALDP was adopted in September 2016 while NPF4 was adopted on 13 February 2023. Planning legislation indicates that where there is any incompatibility between the provision of the national planning framework and a provision of a local development plan, whichever of them is the later in date is to prevail.
- 8.7 NPF4 policy 24 deals with digital Infrastructure and seeks to encourage, promote and facilitate the rollout of digital infrastructure across Scotland to unlock the potential of all our places and the economy. It provides support for development proposals where the visual and amenity impacts of the proposed development have been minimised through careful siting, design, height, materials and landscaping, taking into account cumulative impacts and relevant technical constraints. It must be demonstrated that, before erecting a new ground-based mast, the possibility of erecting antennas on an existing building, mast or other structure, replacing an existing mast and/ or site sharing has been explored.
- 8.8 Policy TC13 of the Angus Local Development Plan (2016) deals with telecommunications development. It indicates that development will be permitted provided that the siting and appearance of the proposed apparatus and associated structures minimise impact on the visual amenity, character or appearance of the surrounding area. Where a new mast is proposed, it indicates that it should be demonstrated that the applicant has explored the possibility of erecting apparatus on existing buildings, masts or other structures. It indicates that when considering applications, the Planning Authority will have regard to the operational requirements of telecommunications networks and the technical limitations of the technology.
- 8.9 Scottish Government published '[Digital telecommunications: planning guidance](#)' in December 2023. It states that with a prior approval application, the planning authority are only to consider the siting and/or appearance of the development when an application is made to them. It provides guidance on siting and design factors. Amongst other things it highlights the value of site sharing; installing the smallest suitable equipment; seeking to conceal or disguise equipment; siting where there is other infrastructure, near traffic junctions, or in or adjacent to trees. It indicates that if to be located in suburban or residential areas, larger new masts should, where possible, be located away from direct views from main habitable windows.
- 8.10 Angus Council's [planning advice note 5/2018](#) provides non-statutory planning guidance on considerations which will be applied when assessing applications for planning permission or prior notification for telecommunications developments. It suggests that the preferred location is within industrial areas, town centres, and brownfield site which are not close to a boundary with residential property. It advises that sites close to a school, nursery, hospital, and sites within public open space/ parkland are not generally favoured. The advice note suggests that residential areas are best avoided as an installation is likely to be intrusive and unsightly. In

circumstances where it is impossible to avoid predominantly existing residential areas due to operational reasons, careful siting and design will be important.

- 8.11 As indicated above, the principle of this development is established by virtue of Class 67 and issues regarding need for the development are not relevant to consideration of this application. However, the applicant has indicated that additional infrastructure is required to provide coverage in this area due to the removal of a 25m high mast ([07/00452/TEL](#)) previously located within the grounds of the former Ashludie Hospital which provided coverage for two operators. A 20m high mast has been erected on land at Victoria Street around 420m north of the current application site ([16/00399/FULL](#)) but this only provides partial coverage of the area for one operator. While the remainder of the replacement coverage for that operator was to be achieved by a proposed development at an existing mast site at the BT exchange on Hill Street (around 630m to the south of the current site), the applicant indicates that this has been discounted for a number of reasons, including technical constraints including required separation distances between components and a requirement for a replacement mast of greater height (potentially in the region of 30m) to accommodate all antennae (the existing equipment is around 16m in height). It is indicated that the proposed mast subject of this application would provide coverage for the two operators affected by the removal of the previous mast.
- 8.12 The mast and cabinets would be located to the east of Victoria Street within the urban area. The site comprises a semi-circular area of grass that sits between the carriageway of the public road and a bus layby. There are trees and hedgerows of varying height in the immediate vicinity of the site, and this includes deciduous trees in the region of 15m height. The trees within the grounds of the former hospital are not protected by a preservation order. However, planning conditions attached to the housing development require the planning authority to be notified of any significant works to the trees. This provides opportunity for a tree preservation order to be issued in appropriate circumstances as the trees are important features that add character to the area. The area is also characterised by high fences and walls that separate private garden areas of houses from the public road and by infrastructure commonly found in urban areas including street lighting columns and public transport infrastructure.
- 8.13 While Victoria Street functions as a local distributor road in the town, it is predominantly residential in nature. Near the application site, houses and their gardens are typically separated from the carriageway and the application site by high walls and/ or fences augmented by hedges. The houses in that area are generally orientated such that their main elevations and principal windows do not face Victoria Street and they generally benefit from some screening provided by the trees and hedges.
- 8.14 Submitted information indicates that there are no suitable sites within the search area that would allow mast sharing. The applicant has provided information to demonstrate why the previously proposed Hill Street mast share option has been discounted. Similarly, no option to locate the apparatus on a building or other structure within the search area has been identified.
- 8.15 The proposed site is not a preferred location in terms of the council's planning advice note. However, there are no apparent industrial, employment, town centre, or brownfield areas within the identified search area for the equipment that would provide the necessary coverage, and this is not a location that is subject of any townscape designation. The applicant proposes a monopole structure which would be located adjacent to public transport infrastructure and on a site that sits close to trees. While it is of simple form, it would be a visible and prominent when viewed from its immediate environs on Victoria Street and for those passing the site. However, it would be seen in context of other vertical elements in the streetscape and the geometry of the road, combined with mature trees are such that the

application site is not readily visible from the public roadway at short distance to the north or south, and the impact of the development would otherwise be localised.

- 8.16 Those houses closest to the site are separated from it by the carriageway and verge or footways associated with the public road or bus layby, and they are generally orientated such that they would not have direct views of the proposed development from main habitable room windows. In addition, some screening or filtering of views would be provided from residential properties by virtue of boundary walls or hedges and trees, accepting that the effectiveness of any screening would be reduced when trees are not in leaf. While the mast would be visible from some properties, it would not be a dominant or oppressive feature and could not be considered to have unacceptable impact on the residential amenity of occupants of nearby property.
- 8.17 The mast and its associated apparatus would be located on an area of land that has the characteristics of road verge and it is of limited amenity value. The development would not impinge on the adjacent footway, and it is not unusual for masts of this nature to be located close to footways. The roads service has confirmed no objection in relation to road traffic or pedestrian safety, including potential impact in relation to visibility splays. The site is further from the primary school than existing telecommunications infrastructure. There are heritage buildings in the vicinity including Ashludie House and its boundary walls as well as its former walled garden, stables, and lodge buildings. The proposed development would be visible from and intervisible with some of those listed structures. However, there would be no direct impact on the listed structures and there would be no significant adverse impact on their setting. The site is separated from nearby trees by road or bus layby and there is no reason or evidence to suggest that trees or wildlife would be impacted by the siting of the mast. Published advice suggests that results from studies carried out investigating the aversive effect of electromagnetic radiation on foraging bats have been largely unclear. There are other telecommunication masts in the wider area as discussed above, but they are several hundred metres apart with limited intervisibility between them, and they are in areas with different townscape characteristics. The cumulative impacts would not be significant or unacceptable. The development would be located on a reasonably busy road where passing traffic is commonplace and there is no reasonable evidence to suggest that its siting or appearance would make it especially prone to vandalism or that it would result in anti-social behaviour.
- 8.18 The applicant has provided information in relation to alternative sites that have been considered and discounted. Those include sites identified by interested parties. Those objecting to the application question the rationale and appropriateness of the applicants assessment, and suggest that alternative discounted sites have similar characteristics to the application site and might not be subject to the same level of public objection. Planning officers have visited each of the alternative sites identified. As indicated by those raising objection to the application, some of those sites have similar characteristics to the application site. Officers have assessed those sites and consider that they would give rise to impacts of similar or potentially greater magnitude than those associated with this application. The proposition that an alternative site might give rise to less public objection is conjecture and cannot be relied upon in the determination of this application. Previous concern regarding the absence of justification to discount the potential for mast share at Hill Street has been addressed. The existing mast on Victoria Street to the north does not provide full coverage of the area and mast share would not provide the required coverage. That mast is in direct view from main habitable room windows of dwellings with little by way of screening or backdrop and any significant alteration to its height would result in potentially significant impact. There is no evidence of an alternative site which would give rise to materially reduced impact in terms of the relevant considerations of siting and appearance.
- 8.19 As indicated above, there has been a recent planning appeal decision in relation to development of the same nature on the same site. There is established case law to

the effect that a previous appeal decision which is materially indistinguishable will be a material consideration in the determination of another application. Case law also confirms that this includes appeal decisions that have expired. While the decision-maker is not bound by the earlier decision, case law recognises the importance of ensuring consistent decisions, and reasons should be given if there is a departure from the earlier decision. The approval granted by the previous appeal has expired, additional houses have been erected in the wider area, alternative sites have been identified for consideration, and development plan policy has changed in the intervening period. However, the Reporters general conclusions in relation to impact of the development on the area are broadly consistent with assessment set out above. The new houses in the wider area were a known factor when the appeal decision was made. There is no evidence of an alternative site which would give rise to materially reduced impact in terms of siting and appearance. The revised policy provided by NPF4 is broadly similar to those that were considered at time of the appeal decision.

- 8.20 The information submitted in support of the application is adequate to allow an informed decision to be made. It is not uncommon for photomontages to be submitted in support of an application. Those are generally treated as illustrative rather than fully representative, and that is how they have been used in the assessment of the proposal. Officers have visited the site and relied upon knowledge and experience of similar proposals to undertake the assessment.
- 8.21 The proposed site is not in an area favoured by the council's planning guidance and the mast and its associated apparatus would have some adverse impact on the visual amenity of the area. However, relevant guidance does not preclude new masts in residential areas and development plan policy, and relevant guidance recognises that development of this nature will generally result in some adverse visual impact and aims to ensure that any such impact is minimised rather than eliminated. In this case, the adverse visual impact would be localised and there is no evidence to suggest that such impact would be materially reduced by any other alternative site within the area where the requirement for the apparatus has been identified. The proposal is otherwise generally compatible with relevant guidance on the siting and appearance of telecommunications masts and apparatus. Localised adverse impact must be balanced against the benefits that the proposal would deliver in terms of improving digital connectivity and the support for that within the development plan. The proposal is compatible with development plan policy. All matters raised in support and objection to the application have been considered and there are no material considerations that justify refusal of the siting and appearance of the apparatus. The previous appeal decision supports the assessment set out in this report.
- 8.22 The mast and cabinets would generally be seen against the background of trees and vegetation and guidance suggests that in such circumstances impact can be further reduced by using a green colour for the finish. A condition requiring the mast and cabinets to be coloured green is proposed.
- 8.23 In these circumstances and having regard to the intent of NPF4 and relevant development plan policy and guidance, along with all material considerations, the siting and appearance of the proposal is considered acceptable subject to the proposed condition.

9. HUMAN RIGHTS IMPLICATIONS

- 9.1 The recommendation in this report for grant of prior approval has potential implications for neighbours in terms of alleged interference with privacy, home or family life (Article 8) and peaceful enjoyment of their possessions (First Protocol, Article 1). For the reasons referred to elsewhere in this report justifying this recommendation in planning terms, it is considered that any actual or apprehended

infringement of such Convention Rights, is justified. The conditions constitute a justified and proportional control of the use of the property in accordance with the general interest and have regard to the necessary balance of the applicant's freedom to enjoy his property against the public interest and the freedom of others to enjoy neighbouring property/home life/privacy without undue interference.

10. CONCLUSION

10.1 It is recommended that the application be approved subject to the following condition.

Condition:

1. That, notwithstanding the details shown on the approved drawings, the mast and its associated apparatus, including the ancillary cabinets shall be finished in a green colour and prior to the start of works full details or a sample of the colours of the finishing materials to be used shall be submitted to and approved in writing by the planning authority.

Reason: To ensure that the development is sympathetic to its setting.

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

REPORT AUTHOR: JILL PATERSON
EMAIL DETAILS: planning@angus.gov.uk

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APPENDIX 1: LOCATION PLAN
APPENDIX 2: APPEAL DECISION: PAC-120-2001
APPENDIX 3: LETTERS OF REPRESENTATION
APPENDIX 4: DEVELOPMENT PLAN POLICIES