APPLICATION NUMBER: 19/01304/CPL

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
19/01304/CPL	Mubeen Patel	20 January 2020

Address: Pavement On Salkeld Street (side Of 124 Milkstone Road), Rochdale

Proposal: Application for a certificate of lawfulness for the proposed erection of a pole up to 15m in height to support the carrying of fibre internet cables with associated street cabinet

PUBLICITY	**Weekly list expired?**	N/a	**Site notice expired?**	N/a
	Neighbour letters expired?	N/a	**Press Notice expired?**	N/a

DELEGATION	**Significant departure from local plan?**	N/a	**Contrary to national policy?**	N/a
	Applicant a Council Member or officer?	N	**Contrary to previous decision?**	N/a
	Major with 10 or more objections and recommending approval?	N/a	**Called in or Planning Panel objection?**	N/a

COMMENTS	**Planning Panel comments received?**	N
	Neighbour comments received?	N

EIA	**Screening opinion completed and saved to Onbase?**	N/a

CONDITIONS	**Pre-commencement conditions proposed?**	N/a
	Pre-commencement conditions agreed (or notification period expired)?	N/a

RECOMMENDATION	

CHECKED AND SIGNED OFF BY: AT **DATE: 22.01.2020**

SITE

The application site relates to a small section of pavement area located on Salkeld Street adjacent to the western side elevation of 124 Milkstone Road, Rochdale. The site is located in the defined urban area.

PROPOSAL

The application seeks a Certificate of Lawfulness for a proposed 15m high pole to support the carrying of fibre interment cables together with a street cabinet. The pole and cabin would be located within the pavement which runs along the gable of 124 Milkstone Road. The pole will carry fibre cables together with a covered switch gear and cable devices, as well as splice boxes. The applicant has submitted a supporting statement which advises that the pole will not carry equipment that enables the reception or transmission of radio waves.

An associated equipment cabin will be installed alongside the pole. The cabin will measure 900mm by 900mm in depth and width, with an overall height of 1.4 metres.

RELEVANT SITE HISTORY

None of relevance.

CONSULTATION RESPONSES

- Not applicable.

RELEVANT PLANNING POLICY

The Town and Country Planning (General Permitted Development) (England) Order 2015, Class A of Part 16, Schedule 2 permits development by, or on behalf of an electronic communication code operator for the purpose of the operators electronic communications network in, or 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,
>
> (b) the use of land in an emergency for a period not exceeding 18 months to station and operate moveable electronic communications apparatus required for the replacement of unserviceable electronic communications apparatus, including the provision of moveable structures on the land for the purposes of that use, or
>
> (c) development ancillary to radio equipment housing.

In accordance with the Act Development 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;
>
> (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;
>
> (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 level on article 2(3) land or land which is on a highway; or
(d) in the case of the alteration or replacement of a mast, the mast, excluding any antenna, would when altered or replaced;
(i) exceed the greater of the height of the existing mast or a height of; (aa) 25 metres above ground level on unprotected land; or
(bb) 20 metres above ground level on article 2(3) land or land which is on a highway; or
(ii) together with any antenna support structures on the mast, exceed the width of the existing mast and any antenna support structures on it by more than one third, at any given height.

ANALYSIS

The applicant proposes the siting of a 15m high pole to support the carrying of fibre interment cables together. The applicant has submitted a supporting statement in which the applicant has confirmed that the pole will carry fibre cables and will not carry equipment that enables the reception or transmission of radio wave. In accordance with Schedule 2, Part 16, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015, development on behalf of an electronic communications code operator is permitted subject to the criteria referred to above. In this case, the height of the pole and is its intended purpose is relevant in the assessment.

Paragraph A1(a) states that the installation, alteration or replacement of any electronic communications apparatus is not permitted if "in the case of the installation of apparatus (other than a mast) the apparatus, excluding any antenna, would exceed a height of 15 metres above ground level".

The submitted plans indicates that the proposed pole would be no higher than 15 metres in height. The applicant has also confirmed that the pole and equipment will not transmit radio waves and in this instance the pole is not a mast. This determination is reinforced by the High Court decision 'Nigel Mawbey and Lewisham Council' 2018 which concludes that "a general definition of a 'mast' as "….a freestanding structure that supports antennas at a height where they can transmit and receive radio waves". As referred to above the applicant has clearly specified that the equipment proposed will not transit or receive radio waves and its intended purpose is to carry internet fibre cables.

The applicant has confirmed the right to install electronic communications apparatus on a street is granted by paragraph 58(1) of the Electronic Communications Code.

Given these factors the proposal complies with paragraph A1(a) of Part 16 and is Permitted Development as the equipment proposed is not categorised as a mast and does not exceed 15 metres in height.

The applicant also proposes the installation of a street cabinet to house equipment associated with the pole. Paragraph A permits development ancillary to radio equipment housing.

In accordance with A paragraph 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.

The street cabinet measures 900mm by 900mm and covers a floor area of 0.8 square metres and is therefore Permitted Development in accordance with the above.

RECOMMENDATION: Grant

The proposed pole and cabinet constitute permitted development by virtue of compliance with the requirements set out in Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Notes for Applicant:

For the avoidance of doubt, the decision relates to the following drawings:-

- Site Location Plan – Ordnance survey
- General Arrangement – 15m Pole –Drawing Number IX-LDC-001

Report Author Mubeen Patel