

Item no.

Report to: **Development Control and Regulatory Panel**

Date: **3 February 2009**

Report of: **Head of Planning and Building Control Services**

Subject: **Applications under the Town and Country Planning Acts
Town and Country Planning Act 1990
Planning (Listed Buildings and Conservation Areas) Act 1990**

Ward: **All**

A INTRODUCTION

Members are advised that in preparing the attached report full consultation responses are not presented. Care is taken to ensure that principal issues of all relevant responses are incorporated into the report. Notwithstanding this Members are invited to view all submitted plans and consultation responses prior to the Panel meeting by contacting the Head of Planning and Building Control Services.

The District of Easington Local Plan was adopted by the District of Easington on 28th December 2001 and together with the Durham County Structure Plan it has been a material consideration in the determination of planning applications. However the Planning and Compulsory Purchase Act 2004 determined that all Local Plans would expire three years after the Act came into force. This took effect on the 27th September 2007. In order to maintain continuity in the development plan system, the Council identified policies that should be 'saved' for an extended period until alternative policies are adopted in Local Development Frameworks. Direction from the Secretary of State has been received and all of those policies have been retained. The saved policies and Planning Policy Statements from the Government will be considered in the determination of planning applications. A view as to whether the proposals generally accord with them is identified in the relevant section.

Section 54A of the 1990 Town & Country Planning Act (as amended) requires the Local Planning Authority to have regard to the development plan policies when they are relevant to an application and hence are a material consideration. Where such policies are material to a proposal, section 54A requires the application to be determined in accordance with the Development Plan policies unless material considerations indicate otherwise.

The recommendations contained in this report have been made taking into account all material planning considerations including any representations received and Government guidance in Planning Policy Guidance Notes and Circulars. Consideration has been given to whether proposals cause harm to interests of acknowledged importance.

Members' attention is drawn to information now provided in respect of time taken to determine applications. Following each recommendation a determination time is provided based on a decision at this Panel. Where a decision time exceeds the 8 week target a reason for this is given in brackets.

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In considering the applications and preparing the report the District of Easington has fully taken into account the duties imposed on Local Planning Authorities by the Human Rights Act 1998. In particular, regard has been given to Articles 6, 7, and 8, the First Protocol and Section 6. Where specific issues of compliance with this legislation have been raised these are dealt with within each report.

B SPEAKING AT THE PANEL

The District Council is one of the few Councils in the country who allows verbal representations when decisions on planning applications are being made. The Panel has to balance listening to views with the efficient conduct of the business of the Panel. The following procedures have therefore been agreed. These procedures will be adhered to in respect of the items within this report. Members of the public will also be expected to follow these both in their own interests and that of other users of the service.

1. The Planning Officer will present his report.
2. Objectors and supporters will be given the opportunity to speak. Five minutes will be given to each speaker. If there is more than one speaker upon an issue, the District Council recommends the appointment of a spokesperson and that speakers register their request prior to the Panel meeting.
3. After registered speakers have had their say the Chair of the Panel will ask if there is any other member of the public who wishes to speak. Those who do may be allowed to speak. The Chair of the Panel will exercise discretion in this regard. Where the number of speakers or the repetitive nature of the points that may be raised may impact on the other business of the Panel then the Chair will restrict the number of speakers and progress the matter.
4. The applicant or representative may then speak for a duration of up to five minutes.
5. At the discretion of the Chair, objectors or supporters or applicants may ask officers questions then may be asked questions by Members and Officers
6. The Members of the Panel will then finally debate and determine the application with the assistance of officers if required.

C RISK ASSESSMENT

A risk assessment has been carried out in respect of individual cases. Overall, it is concluded that any risks to the Council, for example relating to an appeal being lost and costs awarded against the Council, are low, provided that decisions are made in accordance with recommendations. Risks will increase when decisions are made contrary to recommendations, and the degree will vary depending on the particular case.

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D GENERAL APPLICATIONS

PLAN/2008/0647

Seaham (Seaham Harbour) - REMOVAL OF EXISTING MAST AND REPLACEMENT WITH 20M MONOPOLE, BASE STATION AND ASSOCIATED ANTENNAS, EQUIPMENT CABIN ETC. at ENFIELD ROAD GARAGE ENFIELD ROAD, SEAHAM for TELEFONICA O2 UK Ltd

Location Plan



The Application Site

The application site is situated at the end of an unmade track adjacent allotment gardens and the former Seaham Colliery site.

The Proposed Development

Planning permission was granted in 2007 for a 17 metre mast on this site, this application proposes a mast on the same site with a total height of 22.5 metres (including antennas) which would provide 3G coverage to the Seaham area. The development would involve a monopole mast with antennas and an equipment cabin which would be sited within a fenced compound.

Site History

TDD/00/39 – Telecommunications mast (approved)
O2/155 – Replacement of mast with 20m high mast (refused)
PLAN/2006/0527 - Replacement of mast with 20m high mast (withdrawn)
PLAN/2006/0821 - Replacement of mast with 20m high mast (refused)
PLAN/2007/0802 – Relocation of mast (no increase in height) – (approved)
PLAN/2008/0306 – Variation of condition to allow 3 months to remove existing mast (approved)

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Planning Policy

District of Easington Local Plan

GEN01 - General Principles of Development
PPG8 - Telecommunications

Consultations and Publicity

Town Council – no response
DCC Highways – no objections
Environmental Health – no objections
Regeneration – no objections
Durham County Council estates – objection, the mast will be very close to the proposed new school and playing fields
School Headmaster – objection, health concerns – too close to school grounds
Neighbours – one objection, health concerns – too close to school grounds

Planning Considerations and Assessment

The Government's general policy on telecommunications is PPG8 - 'Telecommunications' which seeks to facilitate the growth of new and existing systems.

Local Planning Authorities are advised by PPG8 not to question the need for the services which a proposed development is to provide and are encouraged to respond positively to telecommunications development proposals, especially where the proposed location is constrained by technical considerations, while taking account of the advice on the protection of urban and rural areas in other planning policy guidance notes.

The applicants have discussed the proposals (as advised in PPG8) with the Building Schools for the Future team and the Headmaster of Seaham School of Technology who propose to relocate to a new school adjacent the application site. There have been concerns raised by these consultees regarding the proximity of the proposed mast in relation to the site adjacent, which may be the site for a new school in the future. However, given that there are currently no definite plans showing locations of school buildings, and the proposal would be located outside of the far north western edge of the large site identified for the new school development. This proposal seeks only to increase the height of an approved mast by 5 metres, and it would not be considered reasonable to refuse planning permission based on the concerns raised.

In relation to health PPG8 'Telecommunications' states:-

“Health considerations and public concern can in principle be material considerations in determining applications for planning permission and prior approval. Whether such matters are material in a particular case is ultimately a matter for the courts. It is for the decision-maker (usually the Local Planning Authority) to determine what weight to attach to such considerations in any particular case.

However, it is the Government's firm view that the planning system is not the place for determining health safeguards. It remains Central Government's responsibility to decide what measures are necessary to protect public health. In the Government's view, if a proposed mobile phone base station meets the ICNIRP guidelines for public exposure it should not be necessary for a Local Planning Authority, in processing an

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application for planning permission or prior approval, to consider further the health aspects and concerns about them.”

The applicants have confirmed that these telecommunications proposals are designed to be in full compliance with the requirements of the radio frequency (RF) public exposure guidelines on the International Commission on Non-Ionising Radiation Protection (ICNIRP) as expressed in EU Council recommendation of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz). Standards have been set by the ICNIRP to ensure that the telecommunications equipment operates at low power levels.

In addition to the above, the siting and design of the proposed mast are considered acceptable. The mast is of slimline monopole design and would be located along an unmade track adjacent to allotment gardens and a considerable distance (approx. 100 metres) away from nearest residents and as such, would not have an adverse impact on the street scene or residential amenity sufficient to warrant refusal of planning permission.

Conclusion

The proposal is for a 22.5 metre high mast in a location previously agreed for a 17.5 metre high mast. It would be of similar monopole design and is not adjacent residential properties. It is considered that a 5 metre increase in height of a previously approved mast would not have any significant additional impacts on the street scene. It is also noted that the proposals are in compliance with the public exposure guidelines and on this basis it is not considered that health is a planning consideration that should warrant refusal of planning permission.

Recommendation

Approval subject to the following conditions:

removal of existing mast within three months of erection of new mast

Reason for Approval

It is considered that the proposal is in accordance with the following policies and guidance:

District of Easington Local Plan

GEN01 - General Principles of Development

PPG8 - Telecommunications

Decision time

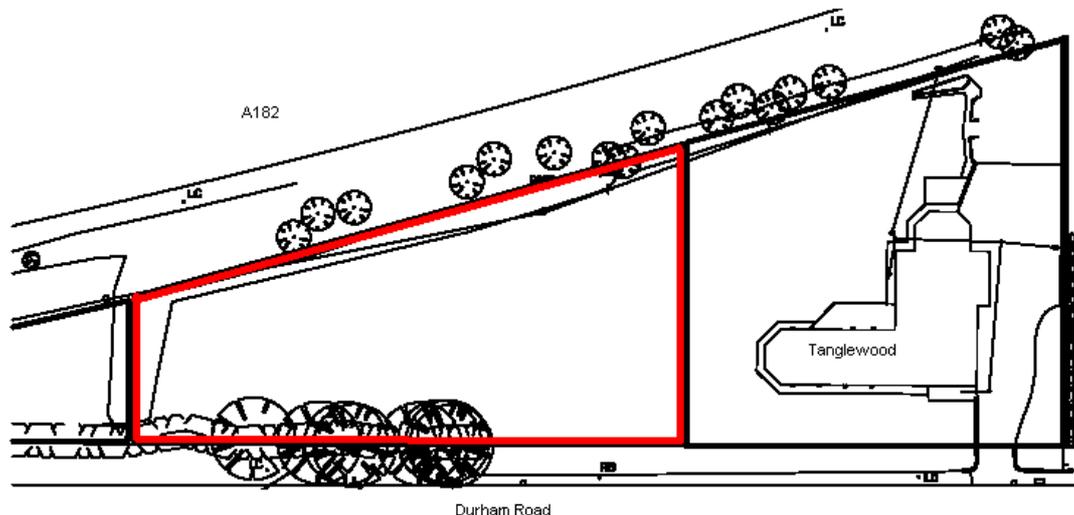
11 weeks (expired due to additional consultations)

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PLAN/2008/0711

Wingate (Wingate) - USE OF LAND AS PART OF RESIDENTIAL CURTILAGE (RETROSPECTIVE) at TANGLEWOOD, DURHAM ROAD, WINGATE for MR C WALKER

Location Plan



The Application Site

The application relates to an area of land situated to the west of the residential property known as Tanglewood, situated on Durham Road in Wingate. The area of land is bounded to the north by the highway verge of the A182, to the east by Tanglewood, to the south by Durham Road and to the west by an area of land also in the ownership of the applicant which forms a landscape buffer between the application site and junction between Durham Road and the A182. The area of land has most recently been used as part of the residential curtilage associated with Tanglewood. It was previously part of a larger area of land that remained undeveloped following the development of Tanglewood, and that lay outside the curtilage of the residential plot.

The Proposed Development

Planning permission is sought to regularise the use of the area of land as domestic curtilage associated with the adjacent residential property known as Tanglewood. The applicant has indicated that the land has been used as a domestic garden and maintained in a similar way to the established garden since an original boundary fence was removed at some point since 2002.

Site History

92/659 - Dormer Bungalow with Associated Landscaping – Approved Mar 1993
02/636 – Dwelling (Outline) – Withdrawn Nov 2002
03/224 – Dwelling (Outline) – Refused May 2003 – Appeal dismissed by Planning Inspectorate
03/766 - Bungalow (Outline) – Refused Feb 2004
PLAN/2008/0491 – Application for Certificate of Lawful Use of Land as Garden Area – Refused Oct 2008

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Planning Policy

District of Easington Local Plan

GEN01 - General Principles of Development

ENV03 - Protection of the Countryside

ENV35 - Environmental Design: Impact of Development

Consultations and Publicity

The application has been advertised in the local press and by a site notice. Neighbouring properties have also been consulted. No letters of representation had been received at the time of finalising the report.

Easington District Council, Planning Policy Officer, comments:

- The site is located outside of the settlement boundary on the northern edge of Wingate and as such is deemed to be development in the countryside. However, the site is a triangular piece formed between the junction of two roads, and as such the proposal to incorporate this land into the residential curtilage is unlikely to cause demonstrable harm to justify a refusal of permission.

Durham County Council, Highways Authority, comments:

- There would not appear to be any highway/traffic implications as a result of these proposals, which are therefore deemed acceptable from a highway point of view.

Wingate Parish Council, comments:

- No objections.

In order to meet the target decision time for determining this application the recommendation report was finalised prior to the expiration of the statutory consultation period. Any further comments received will be reported to Members at the Development Control and Regulatory Panel meeting.

Planning Considerations and Assessment

Planning permission is sought for the regularisation of a change of use of land. The area of land in question is already in use as part of the domestic curtilage, however in planning terms the application is to be determined as if the works have not already taken place. It is considered that the main issues to consider in determining this application are:

- Impact on Character of the Area
- Relevant Planning History

Impact on the Character of the Area

The relevant development plan policies presume against development in the countryside, unless allowed for by other development plan policies. Development would include a material change in the use of land. However in this case, although the proposed change of use is not specifically allowed for by any other development plan policies, the change of use is considered acceptable. Due to the location of the site on a triangular piece of land situated between two roads it is not considered that the proposed change of use would have any detrimental effects on the character of

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the area or openness of the countryside to justify refusal of the application. The proposed change of use is considered to be an acceptable departure from the local plan.

It is considered that any impact the proposed change of use may have on the character of the area can be mitigated against by the incorporation of a suitable landscape scheme for the area of land to the west of the application site and bounded by the two roads. It is suggested that any grant of planning permission be conditional on the agreement of a suitable landscaping scheme being agreed with the Local Planning Authority and implemented in the first available planting season. The required landscaping would be secured by the use of a Section 106 Legal Agreement.

Relevant Planning History

The application site has been subject to various applications in recent years. Originally the area of land was to form part of the landscaping area associated with the residential dwelling known as Tanglewood, as approved under 92/659. Substantial tree planting was to be secured on the site through a legal agreement. According to the applicant, the landscaping was implemented initially, as required, and was also replaced following theft of the trees. The second scheme was also unsuccessful, and there is no record of the Council pursuing the requirements of the legal agreement at that time. Recent legal advice confirms that the Council no longer has the necessary power to secure compliance.

Planning permission was sought for the erection of a new dwelling on the site on three occasions during 2002 and 2003, although none of the applications were successful. The planning applications were refused due to the site's location outside the settlement boundary, as no justification was provided for the dwelling in keeping with development plan policies; the proposals were considered to represent inappropriate development in the countryside.

Most recently an application was made for the lawful use of the land as private garden linked to the residential property known as Tanglewood. The application for a certificate of lawful use was refused, as it was considered that insufficient evidence had been provided to show that the land in question had been used as part of the garden for at least ten years, the minimum period necessary to justify a certificate of lawful use. The applicant has advised that the change of use effectively occurred in 2002 when a boundary fence was removed from the site to link the two areas of land.

Conclusion

Despite the mixed planning history, and the failure to secure the agreed landscaping scheme, the current use of the land as domestic garden is not considered to significantly harm the character or appearance of the locality, or the general openness of the countryside. In these circumstances, the change of use is considered to represent an acceptable minor departure from the relevant development plan policies providing adequate landscaping is provided to strengthen the extended boundaries of the residential curtilage. The development is not of such a scale as to require referral to the Secretary of State, and planning permission should be approved.

Recommendation

Approval subject to the Section 106 Legal Agreement in relation to Landscaping and Landscape Timing.

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Reason for Approval

The development does not significantly harm the character or appearance of the area or the openness of the countryside, and is thus considered to be an acceptable minor departure from the Statutory Development Plan.

Decision time Within 8 weeks. Target Achieved.

E Background Papers

The following background papers have been used in the compilation of this report.

Durham County Structure Plan
District of Easington Local Plan
Planning Policy Guidance Notes
Planning Policy Statements
Regional Spatial Strategy
DETR Circulars
Individual application forms, certificates, plans and consultation responses
Previous Appeal Decisions



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