

EAST AYRSHIRE COUNCIL

**CENTRAL LOCAL PLANNING COMMITTEE: 4 MARCH 2005
05/0025/FL: PROPOSED INSTALLATION OF 2 No. 300mm DIAMETER
TELECOMMUNICATIONS DISHES, 1 No. 600mm DIAMETER
TELECOMMUNICATIONS DISH AND ANCILLARY DEVELOPMENT
AT: RUGBY PARK, RUGBY ROAD, KILMARNOCK
BY HUTCHISON 3G UK LTD**

EXECUTIVE SUMMARY STREET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning consent is sought for the installation of 2 No. 300mm diameter telecommunications dishes and 1 No. 600mm telecommunications dish, with ancillary development. All equipment is to be located on the rooftop of the East Stand of Rugby Road, Kilmarnock, and all equipment is proposed to be grey in colour.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions on the attached sheet.

3. CONCLUSIONS

3.1 As indicated in Section 5 of this report, the application is considered to be in accordance with the development plan. Therefore given the terms of Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 the application should be approved unless material considerations indicate otherwise.

3.2 As indicated in Section 6 there are material considerations relevant to this application. The consultation responses received have no adverse comments to make in relation to the application. Whilst noting the concerns of the objectors it is not considered that any aspects of the letters of objection are of sufficient weight to merit the refusal of this planning application. The development is supported by Government guidance NPPG 19 and PAN 62, which advocate that telecommunications apparatus, must be undertaken in a manner that keeps environmental impact to a minimum.

3.3 Recent Government advice in the form of NPPG 19 gives very clear guidance that health matters and Radio Frequency Emissions are not a material planning consideration and are safeguarded by other legislation and bodies. It further advises that it is the responsibility of the Scottish Executive and UK Government to decide what measures are required to protect public health. Provided the guidance in NPPG 19 is followed it is unlikely that Authorities could find justification for applying extended or alternative

requirements in development control. They also advise that the approach advocated in NPPG 19 will be applied in the determination of appeals.

3.4 The proposed telecommunications equipment is relatively small scale, with 2 No. 300 mm dishes, and 1 No. 600 mm dish. There are antennas existing on the floodlighting tower, which are approximately 4.3 metres high. The proposed dishes would be mounted on two poles, the highest of which is approximately 3.4 metres high, lower than the existing equipment. It is considered that the proposed apparatus and associated equipment would be sited so as to minimise their impact on the amenity of the surrounding area.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards the application will not require to be referred to the Development Services Committee and it would not be a significant departure from Council policies.

Alan Neish
Head of Planning, Development and Building Standards

Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.

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Report by Head of Planning, Development and Building Standards

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Local Planning Committee as it is subject to objections.

2. APPLICATION DETAILS

2.1 Site Description: This application relates to the ground of Kilmarnock Football Club at Rugby Park. The application site is on the rooftop of the East Stand, at a height of 18.4 metres, on the second most southerly floodlighting tower. There is existing telecommunications apparatus on this floodlighting tower, including 3 No. antennas. Rugby Park is within an established residential area, immediately adjacent to Dundonald Road Outstanding Conservation Area. The surrounding streets, including South Hamilton Street, Dundonald Road and McLelland Drive comprise detached and semi-detached properties and several Listed Buildings on Dundonald Road overlook the site.

2.2 Proposed Development: Full planning consent is sought for the installation of 2 No. 300mm diameter telecommunications dishes and 1 No. 600mm telecommunications dish, with ancillary development. All equipment is to be located on the rooftop of the East Stand of Rugby Road, Kilmarnock, and all equipment is proposed to be grey in colour.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayshire Council Environmental Health Division have no adverse comments to make regarding the proposed development, provided that the installation is in accordance with current National Radiological Protection Board Guidelines.

Noted. This application has been accompanied by an ICNIRP certificate, in accordance with guidelines.

3.2 Grange Howard Community Council has objected to the proposal on the grounds that it has not been proved that biological health dangers do not exist, residents' well-being may be affected by the fear of perceived effects, and children and babies who live near the proposed installation may be at risk since they will be in their properties a large proportion of the time.

The role of the Planning Authority in considering health matters is addressed in Section 4.4 below.

4. REPRESENTATIONS

4.1 There are 82 objectors to the proposed development including one from Grange/Howard Community Council detailed in 3.2 above plus a petition of 142 signatures. The issues raised are as follows:-

4.2 National Planning Policy Guidance and Planning Advice recommends siting equipment to minimise public concern, and this may include less visually sensitive areas such as industrial areas. The proposed installation is within a densely populated residential area, on the boundary of a Conservation Area, and close to three schools. Have Hutchison 3G UK Ltd properly demonstrated their need to locate the equipment at this particular site?

Planning Advice also states that locating equipment on existing buildings may be acceptable, with this including floodlighting towers. In this respect, the Council does not dispute that the applicant has considered the series of options as per Government guidance. The location of the antennas in relation to continuously occupied premises including housing is not a matter which is material in the consideration of this application as NPPG 19 on Radio Telecommunications states that radio frequency emissions are regulated by other agencies outwith the planning process. (It is also noted that the nearest school is in excess of 250 metres from the site). The location adjacent to a Conservation Area is noted, and discussed further in Sections 4.8 and 4.9 below.

With regard to the choice of location, Hutchison 3G's agents have advised that this proposal is to upgrade the equipment existing at this site; they advised that the proposed transmission dishes are intended to connect the existing antennas on the floodlighting tower, into the existing network. They have stated that this is required due to the increase of 3G usage in the Rugby Park area.

4.3 Rugby Park is already considered an eyesore by many neighbouring residents, and the proposed dishes will create more visual clutter. Planning Advice Note (PAN) 62 should be considered, in relation to cumulative effects where two or more masts are simultaneously visible. Additionally, at the time the new stadium was built, there were

commitments made regarding its height; are the antennas existing on the rooftop not breaching these commitments?

The visual impact of the proposal has been considered and photomontages have been submitted by the agent. It is considered that the proposed dishes, and the poles onto which they are mounted, are acceptable in terms of visual amenity. The overall height of the structure is not increased, and it is considered that the photomontages demonstrate that the proposed equipment will assimilate well with the existing structures, and not represent visual intrusion or clutter.

PAN 62 advises to avoid equipment on structures which has a visually damaging cumulative effect. It is not considered that in this instance the antennas would create a visually damaging cumulative effect given the nature and scale of the feature on which they would be situated.

With regard to the redevelopment of the stadium, planning application No. KL/W/FL/80/078E was approved with conditions on 30 March 1994. No conditions relate to the height of the stand, other than to confirm that the development should be carried out in accordance with the approved plans. Correspondence from the Director of Planning in March 1995 confirmed that the measurements of the East stand were in accordance with the approved plans. This proposal does not conflict with the previous consent.

4.4 The Independent Expert Group on Mobile Phones (IEGMP) concluded that it was not possible to say that exposure to radio frequency radiation was totally without potential adverse health effects. A precautionary approach was recommended and this should be adopted in determining this application by not siting masts within residential areas.

NPPG 19 on Radio Telecommunication issued by the Scottish Executive, states that emissions of radio frequency (RF) radiation are controlled and regulated under the appropriate legislation by the DTI (Department of Trade and Industry), Radiocommunications Agency and the Health and Safety Executive. With these mechanisms in place the Scottish Executive concludes that it is not necessary for Planning Authorities to treat RF emissions as material considerations when determining a planning application. It is the responsibility of the Scottish Executive and UK Government to decide what measures are required to protect public health.

It is however requested that any applicant demonstrates that the known health effects have been properly addressed. Applications involving antennas must be accompanied by a declaration that the equipment is designed to be in full

compliance with the appropriate International Commission on Non-Ionising Radiation Protection (ICNIRP) guidelines for public exposure to radio frequency radiation.

This application was accompanied by the required declaration of conformity with ICNIRP public exposure guidelines.

NPPG 19 further advises that provided this guidance is followed it is unlikely that planning authorities could find justification for applying extended or alternative requirements either in development plans or development control. This approach and policy will also be applied in the determination of appeals.

4.5 The IEGMP also recommended that the beam of greatest intensity should not be permitted to fall on any part of a school without the agreement of the school and parents. This beam may fall on the homes of local residents, or one of the schools, or the nursery within the area, causing detriment to health. The Council may be exposing itself to a risk of litigation should this installation be allowed within a densely populated area.

See response 4.4 above.

4.6 The Mobile Operators Association have introduced ten best practice commitments, including a "Traffic Light Rating Model for Public Consultation." Given the proximity to housing and a Conservation Area, nearby residents should have been consulted previously but this did not happen.

The proposal was assessed against the Traffic Light criteria as per guidance, and it was given an Amber rating. Hutchison's agent advised the Council that the decision taken on whom to consult prior to an application is considered on a site by site basis. Since there is existing telecommunications equipment at this site and the property is commercial in nature, the agent decided not to extend pre-application consultation beyond writing to the local Councillor and Community Council. There is no statutory requirement for the applicant to carry out extensive community consultation prior to the submission of a planning application. The applicant has carried out the statutory neighbour notification procedure and an advertisement has been placed in the local paper. It is considered that appropriate notification has taken place, indeed the level of representations received suggests that general awareness of the proposal is significant.

4.7 House prices will be reduced and in the longer term this may raise the prospect of litigation for the Council.

The impact of development on property prices is not a material planning consideration. There are no implications for the Council where determination is carried out in an appropriate manner.

4.8 Given the location on the boundary of a Conservation Area, have Hutchison been asked for visual impact assessments and montages from key view points?

The applicant has submitted photomontages to assess the visual impact from McLelland Drive, since this is considered to be the point at which any equipment may be most prominent. Photomontages have also been received regarding viewpoints from Dundonald Road and from Rugby Crescent. These have formed a key element in assessing the application.

4.9 Historic Scotland's Guidance on Listed Buildings and Conservation Areas states that any proposal that maximises transmitter performance at the expense of building or streetscape character should not be permitted.

Rugby Park is just outwith the Conservation Area, however it is accepted that the potential impact upon the amenity of the Conservation Area is material to the determination of this application. This Division considers that the equipment is not proposed at the expense of the streetscape character.

4.10 Decent reception is already achievable in Kilmarnock. Just as there is a limit to the desirable and practical number of supermarkets so there should be a limit to telecommunications apparatus.

National planning policy guidance states clearly that, "Planning Authorities should not question whether the service to be provided is needed nor seek to prevent competition between operators, but must determine applications on planning grounds." Guidance also states that in determining applications, it is unlikely that refusal would be warranted where applicants demonstrate that they have given proper regard to siting and design issues. It is considered that proper regard has been given to siting and design issues, and this has been the key factor in assessing the application, as per guidance.

4.11 The objectors request that if consent is granted, conditions are attached regarding monitoring the site for public exposure guidelines, beam of greatest intensity, television, radio or satellite reception and removal of the equipment if adverse health effects are found.

As discussed in Section 4.4 above, these are matters which are safeguarded through other bodies and legislation and cannot be controlled through the planning process.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the

development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Adopted East Ayrshire Local Plan (EALP) and the Approved Ayrshire Joint Structure Plan.

Approved Ayrshire Joint Structure Plan

5.1 There are no policies within the Structure Plan relevant to the determination of this planning application.

Adopted East Ayrshire Local Plan

5.2 Policy CS2 sets out the criteria against which applications for telecommunications developments should be assessed, with these including their visual impact, possibility of shared operational facilities and available alternative sites.

It is considered that the proposed development will not have a detrimental impact on the visual amenity of the area as it is not as high as the existing equipment, which is not considered to be overly dominant or imposing on the skyline. The proposed dishes are of small enough dimensions to represent minimal visual impact, and it is not considered that they would have a negative impact of the Conservation Area, or on the amenity of the surrounding area. Furthermore, this proposal is for an upgrade of an existing site, with the utilisation of existing sites being in accordance with Government guidance. It is therefore considered that this proposal accords with Policy CS2.

5.3 Policy CS3 of the Adopted EALP refers to the need for telecommunications operators to take account of radiation emissions in their planning submissions and to be at least 100 metres from continually occupied premises in educational or residential use.

It should be noted that the content of Policy CS3 has been superseded by the provisions of NPPG 19: Radio Telecommunications. Under Paragraph 53 of this guidance, which took effect after Policy CS3 had been agreed by the Council, the planning system should not be used to secure objectives that are more properly achieved under other legislation, including those referring specifically to the potential effects of radiation emissions on public health.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of this application are the consultation responses that are addressed in Section 3 of this report and letters of objection addressed in Section 4 of this report, NPPG 19 Radio Telecommunications and planning history of the site.

6.2 It is considered that Grange Howard Community Council's and the other objector's concern in relation to health and safety matters are not a material consideration in the determination of this application. The objectors have also expressed concern regarding the visual impact of the proposed equipment which will be minimal, and these concerns are therefore not considered sufficient to warrant refusal of this application.

6.3 NPPG 19 outlines Scottish Executive Policy on telecommunications development. With regard to new ground based masts the guideline states that the siting and design of ground based masts must have regard to the landscape or townscape and make use of existing features to minimise any adverse visual affects. More environmentally sensitive solutions can be achieved though greater use of smaller and less visually intrusive equipment with less conspicuous fittings. All the components of the proposed development should be considered together, and sited and designed to minimise visual impact. This should include the antennas, any supporting structure, equipment housing, cable runs, fencing, planting, landscaping, access power supply and land lines. Sensitive siting and design can play a part in allaying public concerns.

The proposed dishes are considered to comply with Scottish Executive Policy, since they do not protrude above the existing equipment, the equipment is relatively slimline, and the grey colour minimises contrast with the sky. Given these details and the submission of the ICNIRP declaration, it is considered that reasonable measures have been taken to address public concerns.

6.4 Paragraph 53 of the NPPG 19 states that the planning system should not be used to secure objectives that are more properly achieved under other legislation. Emissions of radio frequency (RF) radiation are controlled and regulated under the appropriate legislation by the DTI and the Radiocommunications Agency. The Health and Safety Executive also have responsibilities. With these mechanisms in place, the Scottish Executive concludes that it is not necessary for Planning Authorities to treat RF emissions as a material consideration.

The NPPG confirms that this approach and policy will be applied in the determination of any appeals arising from the refusal of telecommunications apparatus on the basis of RF emissions.

6.5 NPPG 19 required that all applications for planning permission involving antennas must be accompanied by a declaration that the equipment is designed in compliance with the appropriate ICNIRP guidelines. The NPPG further states that reassurance should be drawn from the fact that the RF outputs from mobile phone base stations are set at the minimum levels commensurate with effective service provision. The technical conditions under which base stations operate are also specified in the operator's Wireless Technology licence.

Health concerns are thus safeguarded by means other than through the planning process.

Planning Advice Note 62: Radio Telecommunications

6.6 PAN 62 offers advice on good practice when dealing with Radio Telecommunications development. It emphasises that development must be undertaken in a manner that keeps environmental impact to a minimum. It states that siting and design can reduce visual intrusion and help allay public concerns. Equipment housing can be painted to blend in with its background, disguised as street furniture and compliments the urban landscape. The Planning Advice Note whilst encouraging the installation of equipment on existing buildings and structures advises that it should have minimal impact on the roof line, respect important views or skylines to be coloured to match the background, and be in proportion to the size of the structure.

The proposed siting and design of the dishes accords with the advice advocated in PAN 62 as they create minimal visual impact, are located on an existing building, and are considered to be of appropriate size to the host structure.

Planning History

6.7 There are 2 existing antennas on the floodlight structure which were erected before changes to the Town and Country Planning General Permitted Development Order 1992 required planning permission for this type of development.

6.8 A previous telecommunications application at this site was withdrawn before going to Committee (Planning Reference: 04/1145/FL: Proposed installation of 3 No. Vodafone poles with 2 No. 2G and 3G antennas attached, supporting equipment includes 2 No. equipment cabinets, placed on steel grillage with a platform, hand-railing and access and extension to roof walkway).

6.9 The application referred to above was withdrawn just before it was due to be determined by the Central Local Planning Committee, with a recommendation for refusal. It was considered by the Planning Division that this proposal was visually unacceptable, since it was 1.9 metres higher than the antennas existing on the rooftop, and the proposed structures were bulkier, which would detract from the visual quality of the area. However, the scale of the equipment in this instance is considered appropriate, and in accordance with national planning policy.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial or legal implications for the Council in the determination of this application.

8. CONCLUSIONS

8.1 As indicated in Section 5 of this report, the application is considered to be in accordance with the development plan. Therefore given the terms of Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 the application should be approved unless material considerations indicate otherwise.

8.2 As indicated in Section 6 there are material considerations relevant to this application. The consultation responses received have no adverse comments to make in relation to the application. Whilst noting the concerns of the objectors it is not considered that any aspects of the letters of objection are of sufficient weight to merit the refusal of this planning application. The development is supported by Government guidance NPPG 19 and PAN 62, which advocate that telecommunications apparatus, must be undertaken in a manner that keeps environmental impact to a minimum.

8.3 Recent Government advice in the form of NPPG 19 gives very clear guidance that health matters and Radio Frequency Emissions are not a material planning consideration and are safeguarded by other legislation and bodies. It further advises that it is the responsibility of the Scottish Executive and UK Government to decide what measures are required to protect public health. Provided the guidance in NPPG 19 is followed it is unlikely that Authorities could find justification for applying extended or alternative requirements in development control. They also advise that the approach advocated in NPPG 19 will be applied in the determination of appeals.

8.4 The proposed telecommunications equipment is relatively small scale, with 2 No. 300 mm dishes, and 1 No. 600 mm dish. There are antennas existing on the floodlighting tower, which are approximately 4.3 metres high. The proposed dishes would be mounted on two poles, the highest of which is approximately 3.4 metres high, lower than the existing equipment. It is considered that the proposed apparatus and associated equipment would be sited so as to minimise their impact on the amenity of the surrounding area.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions on the attached sheet.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards the application will not require to be referred to the Development

Services Committee as it would not be a significant departure from Council policies.

Alan Neish
Head of Planning, Development and Building Standards

(CP/IMB)

FV/DVM

24 February 2005

LIST OF BACKGROUND PAPERS

1. Application Forms/Plans.
2. Statutory Letters/Certificates.
3. Consultations.
4. Letters of Objection.
5. Approved Ayrshire Joint Structure Plan.
6. Adopted East Ayrshire Local Plan.
7. National Planning Policy Guideline 19: Radio Telecommunications.
8. Planning Advice Note 62: Radio Telecommunications.

Anyone wishing to inspect the above papers please contact Claire Peters on 01563 576779.

Implementation Officer: Dave Morris

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Site of Proposal:	Rugby Park Rugby Road KILMARNOCK KA1 2DP
Nature of Proposal:	Proposed installation of 2 No. 300 mm diameter telecommunications dishes, 1 No. 600 mm diameter telecommunications dish and ancillary development.
Name & Address of Applicant:	Hutchison 3G UK Ltd 123 St Vincent Street GLASGOW G2 5EA

DPO's Reference: CP

The above FULL application should be granted subject to the following conditions:-

1. In the event that equipment becomes obsolete or redundant it must be removed and the site reinstated to the satisfaction of the Planning Authority within 6 months of the date that the equipment became obsolete or redundant.

REASON To minimise the level of visual intrusion, and ensure the reinstatement of the site to a satisfactory standard.

2. In the event that equipment is removed from the building for any reason, all cablings, fixings and ancillary items shall be removed and all fixing holes made good to the satisfaction of the Planning Authority within 6 months of the date on which the equipment is removed.

REASON To minimise the effect on the fabric of the building, and ensure the reinstatement of the site to a satisfactory standard.

**DUE TO ORDNANCE SURVEY REGULATIONS AND COPYRIGHT
THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S
PLANNING OFFICE IN KILMARNOCK. FOR INFORMATION ON**

VIEWING PLEASE CONTACT (01563) 576790.