

EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE: 2 AUGUST 2002

**02/0384/FL: INSTALLATION OF 17.5M HIGH TIMBER EFFECT
MONOPOLE, ACCOMMODATING 3 NO. ANTENNAS, 1 NO.
TRANSMISSION DISH, A GROUND BASED EQUIPMENT CABINET, 1.2M
HIGH FENCING AND ANCILLARY DEVELOPMENT AT WHINPARK FARM,
OFF A77, GRASSYARDS ROAD, KILMARNOCK BY HUTCHISON 3G UK
LTD**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning consent is sought for the erection of a 17.5m high slimline timber-effect telecommunications monopole, supporting 3 no. Hutchison 3G antenna and 1 no. 600mm transmission dish. The application also relates to the installation of an equipment cabin and all other ancillary development at Whinpark Farm. These developments would all be located within a compound measuring 10m x 10m and would be surrounded by a 1.2m high post and rail stockproof fence with rylock.

2. RECOMMENDATION

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

3. CONCLUSIONS

3.1 As indicated at Section 5 of the report, applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise. There are no applicable policies contained within the Adopted Stewarton Local Plan or the Ayrshire Joint Structure Plan relevant to the determination of this application and as such, greater weight should be given to other material considerations. As is indicated at Section 6 of the report, there are material considerations relevant to this application.

3.2 Until such time as the EALP is adopted and in view of the more recent guidance issued by the Scottish Executive, the material considerations to which the greatest weight should currently be applied are NPPG 19 and PAN 62. It is considered that these documents are supportive of the application.

3.3 The proposed mast and associated compound and equipment would be sited so as to minimise their impact on the amenity of the area. The timber

effect, monopole design of the proposed mast is also considered to contribute to minimising its impact on the visual amenity of the area.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control, the application would not require to be referred to the Development Services Committee as it would not be a significant breach of policy.

Alan Neish
Head of Planning and Building Control

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 and Building Control

1. PURPOSE OF REPORT

1.1 The purpose of the report is to present for determination a full planning application, which is to be considered by the Local Planning Committee under the scheme of delegation as it is a telecommunications development and is subject to objections.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site is located to the immediate east of the A77, approximately 110m west of East Wardlaw. The site is higher than the level of the A77. There is a significant belt of semi-mature trees, shrubs and other foliage adjacent to the site with additional screening along the line of the A77. Access to the site would be from Grassyards Road via the East Wardlaw access road.

2.2 **Proposed Development:** Full planning consent is sought for the erection of a 17.5m high slimline timber-effect telecommunications monopole, supporting 3 no. Hutchison 3G antenna and 1 no. 600mm transmission dish. The application also relates to the installation of an equipment cabin and all other ancillary development at Whinpark Farm. These developments would all be located within a compound measuring 10m x 10m and would be surrounded by a 1.2m high post and rail stockproof fence with rylock.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads and Transportation and Environmental Health and Waste Management Divisions have no comments or objections to this application.

Noted.

3.2 The Scottish Environment Protection Agency has no objection to the application.

Noted.

3.3 Moscow and Waterside Community Council object to the application on the grounds that it is sited too near to continuously occupied domestic property and also that the proximity to an existing mast magnifies the visual intrusion. Furthermore, such applications should not be considered piecemeal by East Ayrshire Council. The developer should be required to demonstrate their overall plan for the district and demonstrate how proximity of transmitters to domestic property and visual intrusion could be reduced to a minimum for the district as a whole.

The proposed mast is located outwith 100m of the nearest continuously occupied property. The site is in a location outwith the settlement boundary where it will be visible against a backdrop of semi-mature trees. Notwithstanding the existence of the BT Cellnet mast nearby, it is considered that there will be no detrimental effect on the visual amenity of the area as a result of the proposed timber effect monopole mast. Developers do provide generalised roll out plans for district-wide areas however, each application must be considered on its own merits with cognisance given to any supporting information submitted.

3.4 New Farm Loch Community Council's objections to the mast are:

- (i) the beam will be going over a residential area;
- (ii) it is too close to the local primary school; and
- (iii) it impinges on the visual amenity of the area.

Plans outlining the beam of greatest intensity have been submitted as part of the application. These show that the radio frequency levels of the proposed mast would be a small percentage of the radio frequency public exposure guidelines of the International Commission on Non-ionizing Radiation Protection (ICNIRP). In addition, the nearest property within New Farm Loch to the application site is approx 165m with Silverwood School being 800m away. With regard to the impact on visual amenity, it is considered that the proposed timber effect monopole mast, located against a backdrop of trees, is acceptable at this location and will not adversely affect the visual amenity.

4. REPRESENTATIONS

In addition to the objections from Moscow and Waterside Community Council and New Farm Loch Community Council (see paras 3.4 and 3.5 above) 19 letters of objection have been received on the following grounds.

Property Values

4.1 There will be an adverse effect on property prices and the ability to sell.

The value of properties is not a material planning consideration.

Visual Impact

4.2 Mobile masts are not the prettiest things to look at and this site will be fairly prominent once the surrounding trees are no longer there. The existing view is open countryside but already has electricity pylons and a BT Cellnet mast cluttering the sightline. Residents do not want additional installations of any sort turning it into a complete “aerial farm” with electromagnetic waves being generated within striking distance. There is no reason for another mast to be put up so close to another one. The trees screening the mast are owned by the home owners at East Wardlaw. A lot of these trees are dead and diseased however the owners will remove the rest of the trees to prevent this company using these resources as a tool against them. The mast would therefore be highly visual without the benefit of these trees to screen it.

It is proposed to site the mast in a location outwith the settlement boundary where it will be visible against a backdrop of semi-mature trees. The proposed design of the mast is a timber effect monopole and in these circumstances it is considered that the visual impact of the mast will be acceptable. With regard to the potential loss of some of the trees in the future, this is regrettable however, it is considered that the existence of the trees and vegetation along the A77, in addition to the design of mast, will still allow the proposal to be acceptable in this location.

Use of Ground

4.3 The installation of this mast will seriously affect the children who live at East Wardlaw as they have a right of access to their paddock which is their main source of recreation when not at school. If the mast was erected they would have to pass several times daily within several metres of the base station on the only access track to what is currently their playground. As the properties at East Wardlaw are entirely non agricultural, if the children cannot use this field then there is no purpose for it and hence the owners will have lost a prime amenity representing half of the land attached to the property.

Plans outlining the beam of greatest intensity have been submitted as part of the application. These show that the radio frequency levels of the proposed mast would be a small percentage of the radio frequency public exposure guidelines of the International Commission on Non-ionizing Radiation Protection (ICNIRP). Consequently, the existence of the mast will not impact on any existing rights of access to land.

Access

4.4 As the access to the site is proposed via a single track road along which the owners of East Wardlaw have a right of way, congestion is bound to occur at some point. The Roads Division have already stated that the traffic on this road is at its limit. The Roads Division have told occupiers that the road is unsuitable for heavy plant or large vehicles.

The Roads Division have confirmed in para 3.1 above that they have no objections to this proposal. In addition, the applicant's agent has advised that during the construction phase of the installation the typical maximum number of vehicles required to the site is 5. This will usually be a requirement of only 2/3 at any one time. After construction the site will be visited approximately once every 4/5 months by one vehicle for general maintenance purposes.

Precautionary Approach

4.5 The Scottish Parliament Transport and Environment Committee urge planning authorities to favour sparsely populated sites. This proposal would mean that hundreds of people would be living within the high intensity of the beam. This area is not sparsely populated and people chose to live here because of the open countryside aspects, not to be surrounded by mobile phone masts. The mast could be sited at a more suitable location further along the A77 with the beam well out of range of houses or 2 or 3 miles into the countryside.

As is stated in response to para 4.3 above the radio frequency levels of the proposed mast would be a small percentage of the radio frequency public exposure guidelines of the ICNIRP. Furthermore, the location of the site outwith the settlement boundary is considered to be preferable to one within the urban boundary. Alternative sites were investigated by the applicant but were discounted for various reasons as the apparatus would not be able to function. If the proposals were located further along the A77 the site would be more exposed, it would be too close to existing/proposed sites and the topography is unsuitable to allow the apparatus to function. Any mast located 2/3 miles into the countryside is not in the applicant's search area as it would not provide the requisite coverage for the A77.

Health

4.6 The Stewart Report says that there is no proven health risk however, it also states that children and pregnant mothers are more vulnerable. It states that schools should not be allowed to fall within the beam of greatest intensity (50-200 metres). There are currently six young children and three women of child bearing age living at East Wardlaw and there are currently eight

pregnant women on the other side of the A77, which falls directly in the beam of greatest intensity. Are we to put our children at risk or be denied the opportunity to enlarge our families? Both we and our children spend an average of 16 hours a day here, more for the ones who are pre-school for 365 days a year. The Scottish Executive is clear that health is a material planning consideration. Evidence proves (BMA) that risk increases with frequency, 3G equipment is the highest frequency yet. Until the Government can safely say there is no risk to anyone then no mast should be erected in a built up area. If it does not pose any health risks, why is it switched off for maintenance purposes. Public health should not be secondary to financial benefits for mobile phone companies.

The Scottish Executive through National Planning Policy Guideline 19 in fact states “that it is not necessary for planning authorities to treat radio frequency emissions as a material (planning) consideration.” The Government’s Independent Expert Group under the chairmanship of Sir William Stewart put forward a number of recommendations taken account of in the drafting of NPPG 19. Whilst health concerns are safeguarded by means other than through the planning process, applications as in this case, must be accompanied by an ICNIRP declaration. The applicants have further stated that typically H3G base stations operate at a minute fraction (1/1000th – 1/15,000th) of the ICNIRP guidelines.

Violation of Human Rights

4.7 Article 8 protects “the Right to respect for Private and Family Life, the Home and Possession”. I would intend to appeal any approval of this application under the Human Rights Act.

- It beggars belief that a neighbour at Whinpark Farm can sign over rights to a third party to erect a large un-natural eyesore with potentially fatal, if yet improved health effects over 1000m away from his home and out of his sight and yet only several metres from other people’s boundary fence.
- The mast will prevent safe access to approx 40% of my property which denies much of amenity of my possession. The beam of intensity will affect my living area which deprives the right to enjoy the peace and protection of my home.
- The fact that a third party can, with the support of a neighbour, infringe on my privacy deprives me of a right to privacy in the home.
- A safe environment for my family is deprived due to the fact that families will be exposed to the potential risks and worry over this.
- The negative impact of property values deprives me of the value of my possession. Human rights can only be denied if it can be proved “necessary in the interests of the economic well being of the country,

because technically there was no other alternative possible location.” I do not believe this to be the case.

The potential for third party legal action under the Human Rights Act is noted. Such action would indeed have to establish before the courts that Article 8 was breached. In the determination of this application the Council should be guided by NPPG 19 introduced in June 2001, the Human Rights Act having come into affect on October 2000. (The interrelationship between the HRA and subsequent legislation/guidance can if required be clarified at Committee). Any individual can submit an application or give consent for land in their ownership to be developed. The application is accompanied by an ICNIRP declaration with the technical conditions under which base stations operate being specified in the operator’s Wireless Telegraphy licence. Health concerns are thus safeguarded by means other than through the planning system. As stated in response to para 4.1 above, the value of the properties is not a material planning consideration.

In support of the application the applicant’s agent has submitted the following information.

4.8 “Whinpark Farm lies adjacent to the A77, relatively removed from residential settlements. The proposed telecommunications installation is to be adjacent to a belt of semi mature trees, shrubs and other foliage in such a way that it will benefit from the natural screening. The facility has been located on a slightly raised ground from the A77 and as such, users of this transportation route should not experience unacceptable views of the proposed development.

It is acknowledged that there is an existing BT Cellnet installation within proximity of our client’s application site. We would confirm that consideration was given to locating the required antenna system on the existing structure, we understand that BT Cellnet are not prepared to enter into negotiations with our client. In addition, it is our opinion that the required redevelopment of this already exposed structure would not be appropriate in planning and environmental terms with impact being significantly greater than the installation of a second structure.

We are aware that local residents with regard to the existing facility have previously expressed a degree of concern. Our client is a responsible operator and has endeavoured to fully consult with all interested parties prior to submission of this application. Consultations are ongoing.

H3G are aware that they are at a slight disadvantage given that they have no existing sites. They have adopted procedures and policies however, which will assist in the rollout of this network. H3G are a responsible communications company who have a respect for the environment whilst being commercially minded and will develop their network with this mind in the acute timescales of this project.

The range of services available will greatly enhance personal convenience and security. In addition, they will further the already significant contribution made by mobile communications towards achieving economic and sustainable objectives.

These form the foundation of current government policy, which is one of encouragement.

Against this background of encouragement, the guidance also recognises the need to strike an appropriate balance between operational and environmental considerations. To that end, a series of options are set out to help guide a proposal to an apt solution. These are reviewed below to demonstrate that an apt solution has been reached:

- **The Use of Small Scale Equipment**

The equipment proposed by Hutchison3G is small scale in terms of adequately providing the required communications.

- **The Use of Concealment and Disguising**

The proposed installation is seen to be appropriate for this rural setting.

- **Mast Sharing and Site Sharing**

Our site search team have thoroughly searched this area with a view to locating on existing facilities. It has been established that there are no such structures than can accommodate the required equipment levels without the need for redevelopment.

- **Installations on Buildings**

Our client seeks to locate on buildings wherever possible with there not being any suitable properties within the given search area.

- **Ground Based Masts**

In any given area Hutchison3G will require new ground based masts as part of its network with the company making genuine endeavours to keep numbers to a minimum.

In conclusion, we consider the application site to be appropriate for such a development, given that this property is an accepted location for telecommunications. The design of the installation does not adversely impact upon the quality of the property, or that of its surrounds. The application is compliant with national planning policy, and would respectfully request that due consideration be given to this proposal.”

Noted.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 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 Stewarton Local Plan and the Approved Ayrshire Joint Structure Plan.

5.2 There are no specific policies within the Adopted Local Plan relevant to the determination of this application and the policies within the Structure Plan address issues at a more strategic level than that applicable in this instance. Consequently, greater weight should be attached to the other material considerations referred to below.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of this application are the East Ayrshire Local Plan, (Finalised Version with Modifications (2001), National Planning Policy Guideline 19: Radio Telecommunications (NPPG 19), Planning Advice Note 62: Radio Telecommunications (PAN 62) and the consultation replies.

6.2 The Adopted Local Plan is considerably out of date and therefore it is considered appropriate that greater weight should be attached to more recent expressions of policy. The Council has agreed that the East Ayrshire Local Plan, (Finalised Version with Modifications) (EALP) should be considered as a prime material consideration. The site is affected by Community and Service Infrastructure Policies.

East Ayrshire Local Plan (Finalised Version with Modifications)

6.3 The EALP contains the following telecommunications policies which predate the recent government guidance contained within NPPG 19 and PAN 62. It will eventually be necessary to review these policies following adoption of the Local Plan. Nevertheless, their content should be considered as follows.

6.4 Policy CS2 states that the Council will consider all telecommunication proposals in the light of their particular operational requirements. In all cases, care will be taken to ensure that all telecommunications developments are sensitively sited and the Council will assess each application against the following criteria:

- (i) the visual impact of the proposal on townscape and environment;

It is proposed to site the mast in a location outwith the settlement boundary where it will be visible against a backdrop of semi-mature trees. The proposed design of the mast is a timber effect

monopole and in these circumstances it is considered that the visual impact of the mast will be acceptable.

- (ii) the possibility of shared operational facilities;

It is acknowledged that there is an existing BT Cellnet installation within proximity of the application site. However, the applicant has confirmed that consideration was given to locating the required antenna system on the existing structure although it is understood that BT Cellnet are not prepared to enter into negotiations with the applicant. In addition, the applicant considers that the further development of this already exposed structure would not be appropriate in planning and environmental terms with the impact being significantly greater than the installation of a second structure.

- (iii) the availability of suitable alternative sites;

The applicant's agent has advised that their site search team have thoroughly searched this area with a view to locating on existing facilities. It has been established that there are no such structures that can accommodate the required equipment levels without the need for redevelopment. In addition, in terms of alternative sites, the alternative land available in this area is not of a height capable of covering the target area.

6.5 Policy CS 3 states that, in formulating their development proposals, telecommunications operators will be requested:

- (i) to locate installations, wherever possible, at least 100m from continuously occupied premises in education, health service or residential use; and

The nearest continuously occupied property is more than 100 metres distant from the site, a domestic residence.

- (ii) to indicate on their submitted plans, areas where there would be the greatest intensity of emissions.

Plans outlining the beam of greatest intensity have been submitted as part of the application. These show that the radio frequency levels of the proposed mast would be a small percentage of the radio frequency public exposure guidelines of the International Commission on Non-ionizing Radiation Protection (ICNIRP).

National Planning Policy Guideline 19: Radio Telecommunications

6.6 NPPG 19 outlines Scottish Executive Policy on telecommunications development. With regards to new ground base 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.

The mast would be located against a backdrop of existing trees and over 100m from continuously occupied properties. It is considered that the timber effect monopole mast and its associated compound are acceptable at this location.

6.7 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.

Noted. 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.

6.8 NPPG 19 requires that all applications for planning permission involving antennae 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 Telegraphy licence.

Noted, health concerns are thus safeguarded by means other than through the planning system. The application is accompanied by a ICNIRP declaration.

Planning Advice Note 62: Radio Telecommunications

6.9 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. It offers a series of options in this respect.

The mast would be located against a backdrop of existing trees and over 100m from continuously occupied properties. It is

considered that the timber effect monopole mast and its associated compound are acceptable at this location.

Consultation Replies

6.10 With the exception of Moscow and Waterside Community Council and New Farm Loch Community Council the consultation replies are not such as to indicate that the application should be refused. The content of objections has been considered above and are not of such weight as would indicate that refusal of the application would be appropriate.

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 at Section 5 of the report, applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise. There are no applicable policies contained within the Adopted Stewarton Local Plan or the Ayrshire Joint Structure Plan relevant to the determination of this application and as such, greater weight should be given to other material considerations. As is indicated at Section 6 of the report, there are material considerations relevant to this application.

8.2 Until such time as the EALP is adopted and in view of the more recent guidance issued by the Scottish Executive, the material considerations to which the greatest weight should currently be applied are NPPG 19 and PAN 62. It is considered that these documents are supportive of the application.

8.3 The proposed mast and associated compound and equipment would be sited so as to minimise their impact on the amenity of the area. The timber effect, monopole design of the proposed mast is also considered to contribute to minimising its impact on the visual amenity of the area.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions indicated 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 and Building Control, the application

would not require to be referred to the Development Services Committee as it would not be a significant breach of policy.

Alan Neish
Head of Planning and Building Control

24 July 2002 (YN/SA)
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application form and plans.
2. Statutory Notices/Certificates
3. Consultation responses.
4. Adopted Stewarton Local Plan.
5. Approved Ayrshire Joint Structure Plan.
6. East Ayrshire Local Plan, (Finalised Version with Modifications) (2001).
7. National Planning Policy Guideline 19: Radio Telecommunications.
8. Planning Advice Note 62: Radio Telecommunications.

Anyone wishing to inspect the above papers, please contact Yvonne Nisbet on (01563) 576771.

Implementation Officer: Dave Morris

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Site of Proposal: Whinpark Farm
Grassyards Road
KILMARNOCK

Nature of Proposal: Proposed Installation of 17.5m High Timber
Effect Monopole, Accommodating 3 No.
Antennas, 1 No. Transmission Dish, a
Ground Based Equipment Cabinet, 1.2m
High Fencing and Ancillary Developments

Name & Address of Applicant: Hutchison 3G UK Ltd
C/o Agent

Name & Address of Agent: Stappard Howes
The Fountain Business Centre
Ellis Street
COATBRIDGE ML5 3AA

DPOs Reference: YN/SA

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

1. Within 1 month of the telecommunications apparatus becoming operationally redundant in terms of the applicant's commercial requirements, all the apparatus shall be removed and the site restored to a scheme approved by the Planning Authority.

REASON In the interests of the visual and environmental quality of the surrounding area.

**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.**

AGENDA