

# Appeal Decision

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<b>Appeal Reference:</b>	2023/A0003
<b>Appeal by:</b>	Cornerstone
<b>Appeal against:</b>	The refusal of full planning permission
<b>Proposed Development:</b>	Installation of a 17.5m pole with 6 No. antenna, 2 No. ground-based cabinets, 1 No. electrical cabinet and ancillary development
<b>Location:</b>	On the public footpath approximately 10m west of the entrance of Arches Care Home, 144 Upper Newtownards Road, Belfast
<b>Planning Authority:</b>	Belfast City Council
<b>Application Reference:</b>	LA04/2021/2571/F
<b>Procedure:</b>	Written representations and Commissioner's site visit on 11 <sup>th</sup> April 2024
<b>Decision by:</b>	Commissioner Gareth Kerr, dated 26 <sup>th</sup> April 2024

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## Decision

1. The appeal is allowed and full planning permission is granted, subject to the conditions set out below.

## Reasons

2. The main issues in this appeal are whether the proposal:
  - would cause unacceptable harm to the visual amenity of the area, the Cyprus Avenue Conservation Area and the proposed Hollywood Arches Area of Townscape Character (ATC);
  - represents a better environmental solution than other options; and
  - has sufficient mitigation of its visual and environmental effects.
3. The appeal site is located on the northern footway of the Upper Newtownards Road in East Belfast. It is a mainly residential part of the Newtownards Road located halfway between the more commercial areas of Hollywood Arches / Connswater to the west and Ballyhackamore to the east. To the north of the site is Arches Care Home, an L-shaped two-storey building set to the rear of a car parking area. It is separated from the appeal site on the footway by a low brick wall and metal railings. There are also some trees and shrubs along its frontage.
4. To the opposite side of the entrance to Arches Care Home is an existing 15 metre street pole approved under application Z/2011/0900/F which is shared by Vodafone and O2 antennas to deliver 2G, 3G and 4G signals to the local area. The appellant states that the existing shared installation does not have the capacity to add new

5G technology, so a new mast in close proximity is required to serve the same area with Vodafone 5G signal. A previous application for a 20 metre pole on the appeal site (LA04/2020/0935/F) was refused on 5<sup>th</sup> July 2021 based on its visual impact. The current proposal is for a 17.5 metre pole with 6 antenna and associated ground-based cabinets. The Council refused planning permission on 26<sup>th</sup> January 2023 based on its visual and environmental impact when assessed against Policy TEL1 of Planning Policy Statement 10.

5. Section 45 (1) of the Planning Act (Northern Ireland) 2011 (the Act) states that regard must be had to the Local Development Plan (LDP), so far as material to the application, and to any other material considerations. Where regard is to be had to the LDP, Section 6 (4) of the Act requires that the determination must be made in accordance with the plan unless material considerations indicate otherwise.
6. On 2<sup>nd</sup> May 2023, the Council adopted the Belfast Local Development Plan – Plan Strategy 2035 (PS). The Schedule to the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 indicates that where a PS is adopted by a Council, the LDP now becomes a combination of the Departmental Development Plan (DDP) and the PS read together. Any conflict between a policy contained in the DDP and those of the PS must be resolved in favour of the PS. Previously retained policies including those within PPS 10, upon which the refusal was based, have now ceased to have effect within the Council area. Regional guidance in Development Control Advice Note 14 (DCAN 14): Siting and Design of Radio Telecommunications Equipment remains applicable after the adoption of the PS in accordance with paragraph 1.14 of the Strategic Planning Policy Statement for Northern Ireland (SPPS) and related information on the Department's website. DCAN 14 sits below the PS in the hierarchy of relevant documents and its advice generally corresponds with that contained in the PS.
7. Following the adoption of the PS, the Council provided two amended refusal reasons in its Statement of Case. These are based on the equivalent "Policy ITU1 – Telecommunications development" of the PS. As the appellant had an opportunity to comment on the amended refusal reasons in their rebuttal statement, no prejudice arises. In the policy and legislative context now prevailing, the appeal must be determined having regard to Policy ITU1 of the PS and any relevant designations in the DDP.
8. The Belfast Urban Area Plan 2001 (BUAP) operates as the DDP for the area in which the appeal site is located. In it, the appeal site is within the development limit of the Belfast Urban Area and the Newtownards Road is designated as part of the Existing Strategic Road Network. There are no other pertinent designations.
9. The Cyprus Avenue Conservation Area is located on the opposite side of the Newtownards Road from the appeal site. It was designated on 4<sup>th</sup> August 2000 and includes properties on Cyprus Avenue, Beersbridge Road, North Road and Kirkliston Drive. The area exhibits a very high standard of townscape character with many period Victorian and Edwardian properties contributing to the special quality of this suburban setting. As the special duties to preserve and enhance the character of conservation areas as set out in Section 104 (11) of the Act apply only to land designated as part of a conservation area, they are not applicable in respect of the appeal site which sits outside the designated area. However, any impact on

the setting of the conservation area is capable of being a material consideration and can be objectively assessed.

10. The Holywood Arches ATC was designated in the Belfast Metropolitan Area Plan 2015 (BMAP). On 18<sup>th</sup> May 2017, the Court of Appeal declared the decision to adopt BMAP unlawful. As a result of this ruling, the designations in the draft Belfast Metropolitan Area Plan (dBMAP), published in 2004, can be a material consideration in certain instances. In it, the appeal site is unzoned land within the development limit of Belfast, is located along the Upper Newtownards Road arterial route and lies within the proposed Holywood Arches ATC (Designation BT051). The draft plan indicates that the importance of this area lies in its late Victorian and Edwardian terraced housing and the later mid-war semi-detached houses to the east of Irwin Avenue.
11. The infrastructure, telecoms and utilities policies in the PS aim to facilitate the appropriate provision of infrastructure to meet current and future needs in a timely and co-ordinated way and to minimise visual and environmental impacts of infrastructure, telecoms and utilities in order to support sustainable economic growth. Policy ITU1 relates to telecommunications development. It has three distinct sections, all of which are engaged in this appeal. The first section states that planning permission will be granted for the development of new or upgraded telecommunications infrastructure in appropriate locations where such proposals will:
  - a. Enhance connectivity;
  - b. Encourage investment and support the competitiveness of the city; and
  - c. Not result in unacceptable damage to visual amenity or harm to environmentally sensitive features or locations, or heritage features.Developers will be required to demonstrate that proposals for telecommunications development have regard to technical and operational constraints and have been sited and designed to minimise visual and environmental impact.
12. Paragraph 9.1.5 of the Justification and Amplification to Policy ITU1 acknowledges that technical and operational constraints can determine the suitability of sites for telecommunications development. For example, masts and antennas often require a particular operating height to allow signals to clear trees and buildings. Telecommunications development may therefore need particular locations in order to work effectively. However, there is also a need to control telecommunications development to protect landscapes, townscape character and skylines from harm. Paragraph 9.1.7 states that wherever possible, telecommunications development should avoid sensitive features and locations of archaeological, built or natural heritage value including conservation areas.
13. The supporting information explains that the reduced height of 17.5m is the absolute minimum height required for signals to clear surrounding building and tree clutter and meet the demand for 5G services in the area. It also explains that the existing slimline street pole which is shared by Vodafone and O2 is not capable of accommodating the additional equipment required for 5G services for both operators, so a new mast is required. I consider that the supporting information has due regard to technical and operational constraints and that the reduced height and slimline design of the pole are measures to help to reduce its visual and

environmental impact, however, the height of the pole would be such that it would still have some impact on views in the local area.

14. The Council contends that the proposed telecommunications pole would fail to comply with criterion c, "in that the proposal, if approved, will result in unacceptable damage to visual amenity and the Cyprus Avenue Conservation Area and BT051 Holywood Arches Area of Townscape Character in dBMAP 2004 heritage feature designations by way of its height, location, prominence and resulting clutter, key views into, and setting of the Area of Townscape Character and views out of the Conservation Area." The Council has not disputed the benefits that the proposal would bring in terms of connectivity and economic competitiveness under criteria a and b.
15. As indicated in the policy aims set out above, there is a balance to be struck between the provision of telecoms infrastructure to meet current and future needs and preventing harmful visual and environmental impacts. The policy is permissive and allows for some damage to visual amenity or heritage features provided that damage is not found to be to an unacceptable degree. Where harm would be caused, this must be weighed against the benefits of the proposal in the overall determination.
16. The proposed pole would be located on the inside of a slight bend in the Upper Newtownards Road which, combined with the presence of mature trees along the same frontage, would limit views of the proposal to a relatively short section of the road when travelling both city bound and country bound. As it would be 2.5m taller than the existing street pole, the top section of the pole would be more visible over the trees which are up to around 10m in height. The immediate setting of the proposed pole contains other similar installations including the 15m high mast and associated cabinets on the opposite side of the care home entrance, telegraph poles, lamp posts up to 10m in height, bus shelters and road signage. Given these existing features, the proposed mast would not appear inappropriate nor incongruous in its setting, but would add to clutter along this part of the street. As most people walking or driving along this section of the road would do so at low speed, and their focus would be on features close to ground level, I consider that the additional height of the mast is of limited consequence.
17. As stated above, the appeal site is not within the Cyprus Avenue Conservation Area. The Council's concerns are in respect of views out of the Conservation Area. Although Policy BH2 of the PS includes consideration of views out of conservation areas, the Council did not make reference to or raise any concerns under that policy. The development would be most visible from within the Conservation Area when travelling along the northern section of Beersbridge Road from Bloomfield Presbyterian Church towards its junction with the Upper Newtownards Road. However, it would be viewed against the backdrop of the relatively modern development of the care home and adjacent apartments. From the junction itself, anyone looking at the pole would have their back to the Conservation Area. There would be no significant views from Cyprus Avenue itself due to the existing mature vegetation along it. As the main views of the pole from within the Conservation Area would not also read with the protected Victorian and Edwardian properties, but rather with more modern development to the north, I am not persuaded that the proposal would cause unacceptable harm to the Cyprus Avenue Conservation Area.

or its setting. Both parties referred to appeal decision 2018/A0200 which related to a replacement telecommunications mast in the Malone Conservation Area. As the current appeal relates to a new mast and is not within a Conservation Area, the appeals are not directly comparable.

18. Although the Hollywood Arches ATC remains a draft proposal as dBMAP was not lawfully adopted, an assessment can be made of the potential impact of the appeal development on its important features. The appeal site is divorced from the terraced housing located further west within the proposed designation. The primary consideration is whether it would adversely impact the character of the mid-war semi-detached houses to the east of Irwin Avenue. However, since the publication of the draft Plan, the said houses that would have fronted onto the Upper Newtownards Road from the junction of Irwin Avenue to Arches Care Home have been demolished and replaced by modern three and four storey apartment developments. The appeal proposal would read primarily with this more modern development which has already eroded the character of the proposed ATC to some extent. There remains a row of mid-war semi-detached houses to the east of Arches Care Home, but due to the bend in the road and existing trees, intervisibility between them and the proposed pole would be limited. The proposal would not read with or affect the setting and character of other development further north in the proposed ATC. For these reasons, I consider that the telecommunications pole would not harm the character of the proposed Hollywood Arches ATC.
19. The second section of Policy ITU1 relates to proposals for the development of a new telecommunications mast and is therefore engaged in this appeal. New masts will only be acceptable where it is demonstrated that:
  - d. The sharing of an existing mast or other structure has been investigated and is not feasible; or
  - e. A new mast represents a better environmental solution than other options.The Council was not satisfied that criterion e had been met.
20. The Justification and Amplification to the policy recognises that the development of a new mast should be the last in a series of options. Paragraph 9.1.6 states that the following options should be considered before a new mast:
  - Installing smaller antennas;
  - Disguising antennas and equipment, for example as part of a building or street furniture;
  - Designing antennas and equipment so that they appear to be an integral part of a building, structure, or landscape;
  - Sharing existing sites, masts and other infrastructure; and
  - Installing antennas on a building or structure not already used.

While the application was prepared before this guidance came into effect, the same requirements were found in PPS 10 and it is apparent from the supporting information that such options were considered and found not to be feasible. For example, one of the alternative options considered was the installation of antennas in the main tower of Bloomfield Presbyterian Church to the south, however, the openings were found to be too small to house the antennas. The nature of 5G signal requires larger antennas than previous iterations of telecommunications technology. The existing mast is not capable of accommodating the additional equipment unless replaced with a monopole or lattice tower with a wide headframe and fenced compound. This would be more visually intrusive than the proposal. As the other

options set out above are not possible in this location, I consider that the sharing of the existing pole is not feasible and development of a new street pole is justified.

21. The Council raised concern that details of the 'targeted area of search' were not provided, so they could not confirm that the site is the most appropriate within the search area. Although the search area may not have been identified diagrammatically, the supporting statement reveals that it comprises the land within a 250m radius of the existing base station. This, together with the map of nine other discounted options in the area gives a sufficient sense of the extent of the small area that is targeted. Most of the other options are in closer proximity to period properties in the Conservation Area or draft ATC and would therefore cause more visual detriment. The Council stated that the existing mast and cabinets are at sufficient distance from the draft ATC and Conservation Area. However, they are exactly the same distance from the boundary of the Conservation Area and are within the draft ATC like the proposal. Therefore I cannot accept the Council's argument that the appeal site is subject to different locational characteristics. In any case, good telecommunications coverage is encouraged in all areas by the policy and this must also include areas designated for heritage features.
22. The Council contends that as 5G is already available from other operators in the area, the need for the development is not acute. However, their evidence confirms that there is no Vodafone 5G signal in this postcode and users of the network would have a reasonable expectation that it should become available as connectivity improves across the city. The appellant's evidence states that the higher radio frequencies used for 5G do not travel as far as those frequencies currently in use which increases the need for new sites. The Council provided no persuasive evidence to counter this assertion. Having regard to the supporting information and the appeal evidence, I am satisfied that a new slimline street pole as proposed is the best environmental solution to deliver 5G signal in this area as no other viable and less visible option has been identified. The Council's objections under criterion e are not sustained.
23. The final section of Policy ITU1 concerns what is required in applications for telecommunications developments that require planning permission. The Council considered that sufficient detail had not been provided to satisfy criterion g which requires details of the consideration given to measures to mitigate the visual and environmental impact of the proposal.
24. It will not be possible to completely screen a 17.5m tall structure. However, the supporting information identifies a number of mitigation measures that will lessen the visual and environmental impact of the proposal. Its height has been reduced to the absolute minimum required to propagate 5G signal to the target area following concerns previously raised by the Council. The thinnest available monopole is being used. The number of antennas, the spacing between each antenna and the size of the mast's head frame have all been kept to a minimum. The pole will be painted light grey to help it assimilate into the street scene and skyline alongside the existing mast. The lower parts of the pole will benefit from the backdrop of existing vegetation and this together with the curve in the road will limit longer range views of a significant portion of the structure. Only the top section of the pole would be visible against the skyline. In view of the information provided and my observations of the site and its surroundings, I do not accept that the visual mitigation measures are

inadequate. The Council's objections under criterion g are not sustained. Accordingly, the Council has not sustained its second reason for refusal based on criteria e and g of Policy ITU1.

25. I have found that the appeal development would not harm the visual amenity and character of the specific heritage feature designations referred to by the Council – the Cyprus Avenue Conservation Area and the proposed Hollywood Arches ATC. However, due to its height and close proximity to a similar installation on the Upper Newtownards Road, it would cause some damage to visual amenity along the arterial route due to clutter. This harm must be weighed against the public benefits of the proposal in terms of improved connectivity and its potential to encourage investment and support the competitiveness of the city. In the evidential context of this appeal, I consider that these benefits should be accorded significant weight.
26. As other potential locations within the search area are likely to suffer a greater adverse impact on visual amenity and townscape character, I consider that the proposed site, which is already compromised to some degree by existing infrastructure, is the most appropriate location for the provision of Vodafone 5G services to the area. I judge that the damage to visual amenity would not be of an unacceptable degree and that the site and design of the proposal contain adequate measures to mitigate its visual impact in the streetscape. In the overall planning balance, the benefits of the proposal outweigh the limited harm that it will cause to visual amenity, so the Council has not sustained its first reason for refusal.
27. A planning condition requiring removal of the pole and restoration of the site within three months if it is no longer required for telecommunications purposes is necessary to ensure that the pole is not a permanent fixture in the streetscape. Subject to this condition and the standard time limit for commencement of development, the appeal proposal is acceptable and the appeal is allowed.

### Conditions

- (1) In the event of any structure or equipment comprised in the development being no longer used for telecommunications purposes, it shall be removed from the site and the site shall be restored to its previous condition within three months of the date on which the use ceased.
- (2) The development shall be begun before the expiration of five years from the date of this permission.

This decision is based on the following drawings:-

Drawing No.	Title	Scale	Received by Council
100	Site Location Maps	1:1250	18 Nov 2021
200	Site Plan Existing	1:125	18 Nov 2021
300	Existing South Elevation	1:100	18 Nov 2021
201	Site Plan Proposed	1:125	18 Nov 2021
301	Proposed South East Elevation	1:100	18 Nov 2021

**COMMISSIONER GARETH KERR**

### **List of Documents**

Planning Authority:-	A	Statement of Case and Appendices Belfast City Council
	B	Rebuttal Statement Belfast City Council
Appellant:-	C	Statement of Case WHP Telecoms Ltd.
	D	Rebuttal Statement WHP Telecoms Ltd.