
Report of the Head of Planning and Development

STRATEGIC PLANNING COMMITTEE

Date: 28-Oct-2020

Subject: Planning Application 2019/93246 Installation of 2 fibre cabins, twelve air conditioning units, two generators and perimeter fence Land to the south of Jack Lane, Dewsbury, WF17 6JT

APPLICANT

City Fibre

DATE VALID

30-Jan-2020

TARGET DATE

26-Mar-2020

EXTENSION EXPIRY DATE

02-Nov-2020

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Batley East

Ward Councillors consulted: No

Public or private: Public

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development to complete the list of conditions including those contained within this report

1.0 INTRODUCTION:

1.1 The application is for the erection of two fibre cabins with 12 no. air conditioning units, two generators and a perimeter fence.

1.2 The application was reported to the Strategic Planning Committee on 29 July 2020 at the request of Cllr Habiban Zaman. The reasons for the request were as follows:

“Can I request this application to go to planning committee and panel members to undertake a site visit too. My reasons for this are I feel the officers have not taken into consideration the impact this application will have on highways issues.

Highways officers do not appear to have taken into account the inevitable overspill on to adjacent streets. This has to be a material consideration in this application in my view, irrespective of the rights or otherwise to park on the land at present. Overspill on to adjacent streets will occur, that’s a fact and a direct consequence of this application if it is approved. We as councillors will have to deal with community concerns and waste tax payers money and waste council officers time in dealing with traffic and highways related issues.

A flood risk sequential assessment is compulsory (that’s according to the National Planning Policy Framework and Local Plan Policy LP27) and this is the responsibility of the Local Planning Authority, not the Environment Agency. Environmental Health categorically did not say a noise report could be left until after determination.

To approve this application without a flood risk sequential assessment would be directly contrary to national and local planning policy.

A community petition is also being planned to be delivered at the next full council meeting”

1.3 The application was deferred at that Committee in order to allow further discussions to take place between the applicant, the mosque and officers regarding the loss of the parking provision. Those discussions have now taken

place and a potential solution has been agreed. Councillor Habiban Zaman has been updated on the outcome of the meeting.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application site is an enclosed tarmac surfaced site which is under the ownership of Kirklees Council located at the junction of Jack Lane and Bradford Road, Batley. To the North of the site is Redbrick Mills which is considered to be a non-designated heritage asset. To the South is a single storey stone building which operates as the Jumma Masjid Mosque. To the East of the site is open staff parking for Redbrick Mills.
- 2.2 On the frontage of the application site along Jack Lane, there is a line of mature trees and low boundary wall to the West. The boundaries of the site to the East and South are open.
- 2.3 Until recently the application was leased to Redbrick Mills for staff parking. This use has since ceased.
- 2.4 The majority of the application site is within a Coal Mining Low Risk Area as defined by the Coal Authority. The site is also within Flood Zone 2.

3.0 PROPOSAL:

- 3.1 Full planning permission is sought for the erection of a data centre which comprises the erection of two fibre units containing 12 no. air conditioning units and 2 no generators contained within an outdoor compound.
- 3.2 Due to the operation of a large number of computer systems, which are typically required to operate at low temperatures, additional air conditioning will be required for the proposed data centres. The proposal includes the installation of freestanding air conditioning units on the northern exterior of the cabins. The units comprise four 25Kw air conditioning units with dimensions of 0.7 metres square and a height of 1.7 metres and two further 7.1Kw air conditioning units with dimension of 0.9m by 0.3m and a height of 0.8 metres. To the north west of the phase 1 cabin, a meter cabinet is proposed on a concrete base.
- 3.3 Access will be from the proposed 3m wide double access gate through the existing car park onto Jack Lane. A new 2.4m high mesh fence on concrete ring beam and a crash barrier are proposed.

4.0 RELEVANT PLANNING HISTORY:

- | | |
|----------------|---|
| 4.1 2004/92855 | Change of use of mill complex to a mixed use comprising retail, cafes, restaurant, academy of visual arts, art gallery, community theatre space, studio workshops and erection of an extension Conditional full permission |
| 97/90880 | Use of land as a temporary car park Conditional full permission |
| 93/04703 | Renewal of temporary permission for change of use of part of warehouse to retail and associated parking Conditional Full Permission |

90/03270 Replacement of fire damaged warehouse
Conditional full permission

Relevant planning application on neighbouring sites

2020/91099 Erection of B8 industrial unit with improvements to site layout at
land
Undecided

5.0 HISTORY OF NEGOTIATIONS:

5.1 Since the deferral of the application at the Strategic Planning Committee on 29 July 2020, a meeting has taken place on site attended by Officers, the applicant, agent and representatives of the adjacent mosque. Discussion took place regarding the land between the mosque and the application site, which could be made available to the Mosque for parking. As a result of this site meeting, the following additional and amended information has been received:

- Amended site layout plan showing a reduction in the extent of the proposed site compound, and the extent of land to the south available for parking for the Mosque.
- A draft memorandum of understanding is currently being prepared relating to the surplus land to made available to the Mosque for parking

5.2 This information has been submitted and subsequently reviewed by consultees as set out below.

5.3 In addition to the above, further consultation has taken place with the Environment Agency regarding the vulnerability classification of the proposed development, following additional information received from the applicant's agent. Having liaised with the Environment Agency, Officers are satisfied that the development constitutes "Essential Infrastructure" and that no further information is required in this respect.

6.0 PLANNING POLICY:

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

6.2 The site is Unallocated within the Kirklees Local Plan.

Kirklees Local Plan (KLP):

The following policies are considered relevant:

LP1 – Achieving sustainable development

LP2 – Place Shaping

LP3 – Location of new development

LP21 – Highway Safety and Access

LP22 – Parking

LP24 – Design

LP27 – Flood Risk
LP28 - Drainage
LP30 – Trees
LP33 – Biodiversity and geodiversity
LP35 – Historic environment
LP38 – Minerals safeguarding
LP51– Protection and improvement of local air quality
LP52– Protection and improvement of environmental quality
LP53 – Contaminated and unstable land

6.4 National Planning Policy Framework (NPPF):

Chapter 2 – Achieving sustainable development
Chapter 11 – Making efficient use of land
Chapter 12 – Achieving well designed places
Chapter 14 – Meeting the challenge of climate change, coastal change and flooding
Chapter 15 – Conserving and enhancing the natural environment
Chapter 16 – Conserving and enhancing the historic environment
Chapter 17 – Facilitating the sustainable use of minerals

6.5 Supplementary Planning Guidance

- Highways Design Guide Supplementary Planning Document
- Kirklees Local Plan allocations and designations
- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The application has been advertised in accordance with the Council's adopted Statement of Community Involvement.

7.2 As a result of the initial statutory publicity period, 2 letters of objection have been received. The original statutory publicity period was extended to reflect a change to the red line boundary of the application site. However, no further objections were received. The concerns raised are summarised as follows:

Highways

- Possible traffic delays on Jack Lane/Bradford Road throughout the construction phase.
- Impact on the level of parking for the neighbouring established uses
- Legal right to the land through the passage of time
- Potential displacement of vehicles onto the highway due to loss of off-street parking spaces which would be of detriment to highway safety and result in obstructions to the free-flow of traffic and inter-visibility.

Visual and residential amenity

- Concerns over the level of noise generated by the air conditioning units and generators (when used) on the neighbouring residential units
- The proposed development is in a prominent position and is not visually attractive and screening is only provided by the existing trees in the summer months

- The design is out of keeping with neighbouring buildings
- The proposal would have a negative impact on the significance of the non-designated heritage asset (Redbrick Mills)

Flood Risk and Drainage

- *A flood risk sequential test is required but has not been submitted to support the application*
- *The Applicant's Flood Risk Assessment identifies the proposed development as 'essential infrastructure' but has not identified why the proposal is classed as 'essential utility infrastructure' given that broadband is more of a desirable than an essential utility.*
- *There do not appear to be any reasons why the proposed development needs to be located in a flood risk zone for operational reasons.*
- *The proposed development would most likely fall within the 'highly vulnerable' category and therefore an exceptions is also required.*

7.3 A response to the comments received above will be provided in section 10 of this report.

7.4 No further site publicity was undertaken following receipt of amended plans and additional information due to the reduced scale in the extent of the application site.

8.0 CONSULTATION RESPONSES:

The following is a brief summary of consultee advice (more details are contained within the assessment section of the report, where appropriate):

8.8 Statutory:

- *K.C Highways Development Management – No objection subject to the addition of condition relating to the submission of a construction management plan*
- *KC Lead Local Flood Authority – No objection*
- *The Environment Agency – No objection subject to the addition of a condition requiring the development to be carried out in accordance with the submitted Flood Risk Assessment*

8.2 Non-statutory:

- *K.C Trees – No objection subject to the condition of the planting of replacement trees should any be removed as part of the development.*
- *K.C Environmental Health – No objection subject to the condition of a noise report prior to the commencement of development.*
- *K.C Conservation and Design – No objection following amendments to the proposed boundary treatment.*

9.0 MAIN ISSUES

- Principle of development, land use and sustainability
- Visual amenity/local character
- Residential amenity
- Highway issues
- Other Matters
- Representations

10.0 APPRAISAL

Principle of development, land use and sustainability

- 10.1 Local Plan Policy 1 states that the Council will take a positive approach that reflects the presumptions in favour of sustainable development contained within the National Planning Policy Framework to secure development that improves the economic, social and environmental conditions in the area. Proposals that accord with policies in the Kirklees Local Plan will be approved without delay, unless material considerations indicate otherwise.
- 10.2 The application has no specific allocation within the Kirklees Local Plan. As such Policy LP24 is relevant in that it states that proposals should promote good design in accordance with a specific set of considerations. All the considerations are addresses within the assessment. Subject to these not being prejudiced, this aspect of the proposal would be considered acceptable in principle.
- 10.3 The proposed development is for a permanent data centre which would represent essential infrastructure within Kirklees to ensure that high-speed full fibre broadband is accessible to Kirklees users. The use of the data centre is regarded as 'storage' of both physical computer systems and of virtual data (use class B8).
- 10.4 The statement of vision for Kirklees within the Kirklees Local Plan (paragraph 4.2) references the need for 'high speed broadband' for the 'next generation digital connectivity'.
- 10.5 Paragraph 7.32 of the Local Plan states 'The delivery of high speed broadband technologies is to be supported and will form a crucial part of high quality communication infrastructure to support the need for long term business prosperity, to increase local employment opportunities, reduce the need to travel and improve business links both locally and internationally'.

Visual amenity

- 10.6 Policy LP24 of the KLP states that good design should be at the core of all proposals. Proposals should incorporate good design by ensuring that the form, scale, layout and details of all development respects and enhances the character of the townscape and landscape. This is supported by The National Planning Policy Framework (NPPF) which sets out that, amongst other things, decisions should ensure that developments are sympathetic to local characterwhile not preventing or discouraging appropriate innovation or change (para.127 of the NPPF).

- 10.7 Paragraph 11.8 of the KLP also refers to the need for telecommunications and the impact of the infrastructure on visual amenity stating 'broadband provision is an important consideration throughout the district and applicants should support the roll out of superfast broadband provision in the district. All telecommunications infrastructure should be capable of accommodating changes in technological requirements, without having a negative impact on the streetscene'.
- 10.8 The proposed development will be located within a prominent position at the junction of Jack Lane and Bradford Road and located directly adjacent to Redbrick Mills, which are considered to be a non-designated heritage asset. Therefore, consideration should be given to the impact of the proposal on visual amenity and the impact on the significance of the heritage asset.
- 10.9 The proposals, within their urban context, would not result in harm to visual amenity, by virtue of their design and scale. Furthermore, the appearance of the fencing proposed is similar to that found within the locality and would not appear out of character within this context. For these reasons, the proposals are considered acceptable from a visual amenity perspective and would accord with Policy LP 24 of the Kirklees Local Plan and guidance contained within Chapter 12 of the NPPF.

Residential Amenity:

- 10.10 Chapter 12 of the National Planning Policy Framework states that planning decisions create places that are safe, inclusive and accessible and which promote health and wellbeing, with a high standard of amenity for existing and future users, and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 10.11 The closest residential dwellings which should be considered are flats on Bradford Road located to the West. There is a separation distance of 20m from the site to the front elevation of the residential dwellings which are located on the opposite side of Bradford Road at a slight angle.
- 10.12 Environmental Health Officers consider that the proposed fibre units could potentially impact on the level of residential amenity enjoyed by the neighbouring residential uses and adjacent Mosque, as a result of noise from the generators (even if used just as a backup power supply) and also from the air conditioning units. On this basis, a condition is recommended to secure the submission of a noise report to address how the existing uses will be protected from the proposed development. The noise report will be required to consider the existing noise climate (both day and night) and assess the noise levels at the boundary of the neighbouring properties. It should then identify any mitigation measures which are required to ensure that the development would not have an unreasonable effect on the amenity of the neighbouring premises. The condition would be a pre-commencement condition to ensure compliance with policy LP52 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework. Furthermore, the proposed generators
- Summary:**
- 10.13 To conclude, the impact on the residential amenity of surrounding occupiers can be sufficiently minimised via suggested conditions, thus complying with Policies LP24 and LP52 of the Kirklees Local Plan and the aims of Chapters 12 and 15 of the National Planning Policy Framework.

Highway issues:

- 10.14 The application seeks approval for the installation of two fibre cabins with associated equipment on an existing tarmac surface car park which is accessed via Jack Lane which is a 30mph, two-way single carriageway link road. There are no Traffic regulation Order markings on the approach to the signalised junction with A652 Bradford Road.
- 10.15 There are no trip generation details submitted with the application. However, it is considered by Officers that the general operation of the proposals would not create a significant increase on the local highway network as to have a severe impact on its operation and efficiency.
- 10.16 The applicant has confirmed that the application site is no longer in use as an overflow car park for Redbrick Mills retail development. The use was surrendered in April 2019 and is currently in ownership by Kirklees Council. Although it is recognised that the site has been used as a car park for the adjacent Mosque for some time, there is no agreement with Kirklees Council for this arrangement. As such, any parking on the site at present is considered to be unauthorised.
- 10.17 Since the deferral of the application at the Strategic Planning Committee on 29 July 2020, a meeting has taken place on site attended by Officers, the applicant, agent and representatives of the adjacent mosque. Discussions took place regarding the land between the mosque and the application site, which could be made available to the Mosque for parking. As a result of this site meeting, the following additional and amended information has been received:
- Amended site layout plan showing a reduction in the extent of the proposed site compound, and the extent of land to the south available for parking for the Mosque.
 - A draft memorandum of understanding is currently being prepared relating to the surplus land to made available to the Mosque for parking.
- 10.18 Although unmarked, the land remaining to the south of the application site is considered to have a capacity for approximately 11/12 vehicles. Whilst the proposed draft memorandum of understanding is not required to make the development acceptable, and therefore not required to be considered as part of the assessment of this application, it is the view of Officers that this represents a commitment to reach a solution in relation to the displaced parking. In addition, a survey has also been carried out by the applicant with respect to available on-street parking opportunities in close proximity to the site. These are located on neighbouring streets beyond the approaches to the Jack Lane/Bradford Road junction. In particular, there is limited unrestricted parking on Jack Lane adjacent to the site which would be suitable for up to 12 vehicles.
- 10.19 Due to the prominent location of the site adjacent to Bradford Road, there may be some disruption and additional traffic during the construction phase of the development due to access constraints of the site. As such, Officers consider it necessary for a condition requiring the submission of a construction management plan to show the type, size and routing of both contractors and delivery vehicles; times of use of the access; parking for both

contractors and delivery vehicles and any other traffic management for large vehicles to the site.

- 10.20 The proposal is acceptable from a highway safety perspective subject to condition. The proposed development and the proposed access to the site is satisfactory to comply with Policies LP21, LP22 and LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

Other Matters

Climate Change

- 10.21 Chapter 12 of the KLP relates to climate change and states that “Effective spatial planning is an important part of a successful response to climate change as it can influence the delivery of appropriately sited green infrastructure and the emission of greenhouse gases. Planning can also help increase resilience to climate change impact through the location, mix and design of development”. This is also reflected in the NPPF as a core land use planning principle. The NPPF emphasis that responding to climate change is central to economic, social and environmental dimensions of sustainable development. This application has been assessed taking into account the requirements summarised and provides opportunity for development that is considered to meet the dimensions of sustainable development.

Trees

- 10.22 There are a number of young trees located along the frontage of the site along Jack Lane. Whilst the trees do not currently meet the criteria for a new Tree Preservation Order to be served, they are considered to provide a degree of public amenity and act as a useful screen for the site and proposed use.
- 10.23 The proposed development site plan shows that the majority of the existing trees will be retained. However, it is unclear from the information provided if operationally, all trees can be retained throughout the construction phase of the site. As such, Officers consider it necessary for a condition to be imposed to secure the level of trees on the site. A condition would therefore be added to replace any trees which are lost as a result of the development. This condition would ensure that the development is in compliance with guidance within LP35 of the Kirklees Local Plan.

Historic Environment

- 10.24 To the North of the site is Redbrick Mills which is considered to be a non-designated heritage asset. As such, Policy LP35 of the Kirklees Local Plan applies which outlines that ‘proposals which would remove, harm or undermine the significance of a non-designated heritage asset, or its contribution to the character of a place will be permitted only where benefits of the development outweigh the harm’. This guidance is also reflected within paragraph 197 of the NPPF.
- 10.25 Following initial comments from the K.C Conservation and Design Officers, amendments were submitted to the proposed boundary treatment of the site due to the impact on the setting of the non-designated heritage asset adjacent. The proposal was amended to include a dwarf wall which

corresponded with that adjacent which is considered to be acceptable and complementary to the neighbouring heritage asset.

Flood Risk

- 10.26 The site is located within flood zone 2 and at risk of flooding from a main river source. The applicant submitted a site-specific Flood Risk Assessment and a flood risk sequential test which have been reviewed and considered to be acceptable.
- 10.27 During the course of the application, and since the deferral of the application at the Strategic Planning Committee in July, further information has been received from the application with respect to the vulnerability classification of the proposed development. The data centre is not specifically required to run in the event of a flood. Whilst the provision of high-speed broadband is a significant benefit to an area, it builds upon an already existing utility and is not considered to be as critical in nature, nor required to remain in operation in a flood event as telephone exchanges or a mobile phone mast, for instance. Officers are satisfied, on the basis of the additional information received, and following liaison with the Environment Agency, that the proposed development comprises “Essential Infrastructure” and that no further information (in the form of an exception test) is required in this respect.
- 10.28 The Environment Agency was recently re-consulted on the application and confirmed that they had no objection to the proposed development, subject to the imposition of a condition requiring the development to be carried out in accordance with the submitted Flood Risk Assessment and flood mitigation measures detailed within it. This would ensure that the development would accord with Policy LP 27 of the KLP and guidance contained within Chapter 14 of the NPPF.

Representations:

- 10.29 2 no. letters of objection were received as a result of the initial publicity period. The representations received raise the following concerns which are addressed by officers as follows:

Highways

Possible traffic delays on Jack Lane/Bradford Road throughout the construction phase.

Response: This would be a short lived, although inevitable consequence of the development, however Officers recommend the imposition of a condition requiring the submission of a construction management plan, should permission be granted. This would be required to show the type, size and routing of both contractors and delivery vehicles; times of use of the access; parking for both contractors and delivery vehicles and any other traffic management for large vehicles to the site.

Impact on the level of parking for the neighbouring established uses

Response: There is unrestricted on street parking available on Jack Lane.

Legal right to the land through the passage of time

Response: No evidence has been provided by any third party to demonstrate that a legal right to the land has been claimed.

Potential displacement of vehicles onto the highway due to loss of off-street parking spaces which would be of detriment to highway safety and result in obstructions to the free-flow of traffic and inter-visibility.

Response: There is unrestricted on street parking available on Jack Lane.

Visual and residential amenity

Concerns over the level of noise generated by the air conditioning units and generators (when used) on the neighbouring residential units

Response: A condition is recommended to secure the submission of a noise report to address how the existing uses will be protected from the proposed development.

The proposed development is in a prominent position and is not visually attractive and screening is only provided by the existing trees in the summer months

Response: The impact of the development on visual amenity is considered to be acceptable for the reasons set out in the main body of the report.

The design is out of keeping with neighbouring buildings

Response: The impact of the development on visual amenity is considered to be acceptable for the reasons set out in the main body of the report

The proposal would have a negative impact on the significance of the non-designated heritage asset (Redbrick Mills)

Response: Amendments have been received which address the context of the site in relation to the non-designated heritage asset.

Flood Risk and Drainage

A flood risk sequential test is required but has not been submitted to support the application

Response: A Flood Risk Sequential Test was submitted and assessed by Officers and considered to be acceptable.

The Applicant's Flood Risk Assessment identifies the proposed development as 'essential infrastructure' but has not identified why the proposal is classed as 'essential utility infrastructure' given that broadband is more of a desirable than an essential utility.

Response: The proposals are necessary to ensure that high-speed full fibre broadband is accessible to Kirklees users; to support the need for long term business prosperity, to increase local employment opportunities, reduce the need to travel and improve business links both locally and internationally. The applicant has recently provided additional information to support this.

There do not appear to be any reasons why the proposed development needs to be located in a flood risk zone for operational reasons.

Response: The applicant has recently submitted additional information to respond to this.

The proposed development would most likely fall within the 'highly vulnerable' category and therefore an exception test is also required.

Response: The development is considered to fall within the "Essential Infrastructure" category and therefore an Exception Test is not required in this instance.

10.30 The representations received have been carefully considered however, for the reasons set out in the assessment, they are not considered to substantiate a reason for refusal.

11.0 Conclusion

11.1 The proposed development would provide essential infrastructure to support the delivery of high speed broadband technologies within the Kirklees district. Since the previous deferral of the application at the Strategic Planning Committee on 29 July 2020, discussions amongst the applicant, agent, officers and adjacent mosque have resulted in the submission of amended and additional information to address Members' concerns regarding the displacement of parking for the adjacent Mosque.

11.2 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

11.3 The proposed development has been assessed against relevant policies in the development plan and other material considerations. It is considered that the proposed development would constitute sustainable development and is therefore recommended for approval.

12.0 Proposed Conditions (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)

1. Standard 3 year timeframe for commencement of development
2. Development to be completed in accordance with the submitted plans and specifications
3. Noise Report
4. Construction Management Plan
5. Scheme of tree planting

Background Papers

Link to the application details:-

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f93246>

Certificate B signed 30.01.2020