

BAKERS GREEN ROAD, KNOWSLEY

Application for Lawful Development Certificate for proposed erection of a pole up to 15m in height to support the carrying of fibre internet cables, together with a street cabinet for the housing of electronic communications apparatus.

REPORT CONTROL

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Project	IXW Network Roll Out
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APPENDIX 1: COPY OF COUNSEL ADVICE FROM DAVID MANLEY QC

/1 INTRODUCTION

- 1.1. IX Wireless Ltd ('the Applicant') wishes to progress an application for a Lawful Development Certificate (LDC) for the proposed erection of certain poles of up to 15m in height to support the carrying of fibre internet cables, together with a street cabinet for the housing of electronic communications apparatus in various locations identified in this Application ("the Proposed Development")
- 1.2. The Applicant is a registered company with powers under the Electronic Communications Code. See the below link to the Ofcom register:

<https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code/register-of-persons-with-powers-under-the-electronic-communications-code>
- 1.3. This statement consists of Section 2 – Relevant Legislation, Section 3 – Pre-Application Advice and Planning History, Section 4 – Planning Considerations and Conclusions. It should be read and considered alongside the accompanying forms, location plans, pole details and elevation plans which have been submitted with the application.
- 1.4. Should the Local Planning Authority (LPA) require any further information to enable the positive and speedy determination of the application, it is requested to contact the Applicant using the contact details provided.

2 RELEVANT LEGISLATION

2.1. As a Code Operator the Applicant has the benefit of Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO"). Save where stated to the contrary, references to paragraph numbers in this Planning Statement are references to the corresponding paragraphs of the GPDO.

2.2. Class A of the GPDO states that **permitted development** is : - Development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network in, on, over or under land controlled by that operator or in accordance with the electronic communications code, consisting of—

(A) ***the installation, alteration or replacement of any electronic communications apparatus,***

2.3. The relevant restrictions under para.A.1 are:

Development not permitted: ground-based apparatus

A.1— (1) Development consisting of the installation, alteration or replacement of electronic communications apparatus (other than on a building) is not permitted by Class A (a) if—

(a) in the case of the installation of electronic communications apparatus (other than a mast), the apparatus, excluding any antenna, would exceed a height of 15 metres above ground level;

2.4. In summary, these provisions allow for the erection of poles, so long as they do not exceed a height of 15 metres above ground level on unprotected land.

2.5. The GPDO goes on to detail at A.2-(3) that permitted development under Class A (a) may require prior approval if the proposed development is of article 2(3) land or forms part of a site of special scientific interest. However, none of the proposed development to which this application relates is on article 2(3) land.

2.6. There is no duty for the Applicant to serve notice on the landowner.

/3 PRE-APPLICATION ADVICE AND PLANNING HISTORY

N/A

/4 PLANNING CONSIDERATIONS

- 4.1. The Applicant applies for a Lawful Development Certificate for the proposed erection of a poles carrying a fibre cables (to deliver a broadband service), with ancillary housing equipment at the locations shown in the accompanying location plan.
- 4.2. The application is accompanied by OS plans, drawings of the typical pole and an annotated photograph which sets out the proposed location of the poles. Together, these demonstrate how the poles that form part of the Proposed Development will be up to 15m in height from ground level. The poles will carry fibre cables together with a covered switch gear and cable devices, as well as splice boxes. The structures that comprise the Proposed Development are electronic communications apparatus within the meaning of the Communications Act 2003, as amended, which will support fibre cables. It should be noted that the poles do not carry equipment that enables the reception or transmission of transmit radio waves.
- 4.3. The Proposed Development comprises the installation of new electronic communications apparatus that will form part of the Applicant's (a Code Operator) electronic communications network. It is therefore *"development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network" within the meaning of Class A.*
- 4.4. The relevant restrictions, namely paragraph A.1-(1) of the GPDO, do not apply to the Proposed Development as the submitted details confirm that the pole and fibre cable will be no greater less than 15 metres in height from ground level.
- 4.5. The Proposed Development, including the supporting poles, are not a 'masts' due to the absence of any equipment that would enable the poles to receive or transmit radio waves. As such, it does not require the prior approval under A.3 of GPDO.
- 4.6. The application for an LDC does not relate to article 2(3) land or land that forms part of an area of special scientific interest.
- 4.7. The Advice of David Manley QC, provided at Appendix 1 of this statement, confirms that the Proposed Development is permitted development for the purposes of Part 16 of the GPDO and that prior approval is not required. It is trusted that this will be of use to the LPA.

- 4.8. Whilst the Applicant is confident that the Proposed Development is permitted development for the purposes of the GPDO, for its own internal compliance and regulatory purposes and in response to the LPA's request (as referred to in para 3.2 above) it seeks a Lawful Development Certificate. It therefore requests that a Lawful Development Certificate is granted for the Proposed Development.

Conclusions

- 4.9. It is submitted that this Planning Statement demonstrates that:
- 4.9.1 The Proposed Development is permitted development within the GPDO; and
- 4.9.2 There is no requirement to seek prior approval and consequently the LPA should properly issue a Lawful Development Certificate for the Proposed Development.
- 4.10. The plans and documents submitted in support of the application should be sufficient to enable the positive assessment of the application. Therefore, it is requested that the LDC is issued at the earliest opportunity.
- 4.11. Should any further information however be necessary and justified considering the GPDO, then the Applicant is willing to discuss this with the LPA.



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