

evergreen tree, was approved on 16/01/2019. This was subject to conditions requiring compliance with the approved plans, and for the tree to be provided within 3 months of the date of the permission. To date the replacement tree has not been planted and it is these conditions which the applicant seeks to remove and are the subject of the current proposal.

- 3.2 In more detail the current application seeks the removal of Condition Nos 1 and 2 of Planning Permission APP/18/01165, which granted permission in retrospect for an existing 15m high Hutchinson T Range Monopole and associated works, and a proposed leylandii tree planting scheme. These conditions state:

1 The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location dwg 130542 -01 issue C

Site location dwg 130542-02 Issue C

Site location dwg 130542-03 Issue C

Reason: - *To ensure provision of a satisfactory development*

and

2 Within 3 months of the date of this permission the landscaping works comprising the planting of a leylandii tree minimum height when planted of 9m, as shown on the approved plans ref. 130541-02 and 130541-03, shall be carried out in accordance with the approved details. The proposed tree shall be planted and maintained in accordance with best practise recommendations set out in BS 8545:2014 Trees: from nursery to independence in the landscape, including the provision of bracing/supporting structures as required and provision for watering. In the event that the tree is removed, uprooted, destroyed, dies or become severely damaged or becomes seriously diseased within 5 years of planting it shall be replaced within the next planting season by a tree of similar size and species to be planted and maintained in accordance with best practise recommendations set out in BS 8545:2014 Trees: from nursery to independence in the landscape, including the provision of bracing/supporting structures as required and provision for watering.

Reason: *To ensure the appearance of the development is satisfactory and in the interest of the amenities of nearby properties and having due regard to policies CS11 and CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.*

- 3.3 The applicant outlines in their submission that they consider that the imposition of a condition in respect to the planting of a 9m high evergreen tree, as required under these conditions, is unreasonable and unenforceable as the available space for planting is not sufficient to accommodate the required root ball. Additionally it is maintained that the requirement is unnecessary due to the existence of the remaining trees on the site. They also maintain that as any future tree would, once it had reached a certain height, interfere with the function of the mast, that no tree planting should be required and the conditions should be removed. An assessment by a Landscaping Consultant is submitted to support the submission.

4 Policy Considerations

National Planning Policy Framework

Havant Borough Council Borough Design Guide SPD December 2011

Havant Borough Local Plan (Core Strategy) March 2011

CS16 (High Quality Design)
CS19 (Effective Provision of Infrastructure)
DM10 (Pollution)

Havant Borough Local Plan (Allocations) July 2014

AL1 (Presumption in Favour of Sustainable Development)

Listed Building Grade: Not applicable.
Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Landscape Architect

We agree with the conclusions of the report.

A possible solution to explore could be to plant a tree at a smaller height that will subsequently require a smaller tree pit. The concerns of root damage to foundation and services is valid, however root directors and root barriers could be implemented to alleviate this issue.

Southern Water

To ensure provision of a satisfactory development condition 1 shall be retained either in current or amended wording.

Southern Water would have no objections to remove condition 2 as proposed by the applicant. Any tree planting proposals within the standoff distances of public critical sewerage apparatus (rising mains) and within Southern Water land ownership shall be agreed with Southern Water before proceeding.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 6

Number of site notices: one

Statutory advertisement: Not applicable.

Number of representations received: 2

Comment	Officer Comment
The letters sent in support of the removal of this planning condition are long and complex. Members of the public should be able to easily look at the issue and make a decision but the documents are complex and difficult to read for ordinary members of the public.	The complainant has been contacted by the case officer to clarify the submission. Please see section 7 for consideration of the planning issues.

<p>My objection is simple: - It was promised to plant a substantial tree to mitigate tree damage/loss. A report showing how this could be done was compiled (planting a 9m tree). It was a condition of planning permission being granted. The company has a duty to ensure the tree cover is maintained and enhanced both in terms of visual amenity and benefit to the environment.</p> <p>The tree should be planted or an equivalent alternative trees should be planted. A 9m tree would have contributed significantly to the ecosystem.</p>	
---	--

7 Planning Considerations

7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Principle of removal of conditions 1 and 2
- (ii) Arboricultural considerations
- (iii) Sustainability
- (iv) Impact upon the character and appearance of the area
- (v) Impact upon residential amenity

(i) Principle of removal of conditions 1 and 2

7.2 This application is for the removal of conditions 1 and 2, which were attached to the approved planning application APP/18/01165 and specifically relate to screen planting in the form of a 9m high evergreen tree. Section 73 of the Town and Country Planning Act 1990, as amended, sets out the means by which the determination of applications to develop land without compliance with conditions previously attached should be undertaken. S73(2) states:

"On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly,

and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application."

Whilst the scope of such an application is only to consider the conditions subject to which

planning permission should be granted, the effect of a planning permission granted under S73 is to grant a fresh permission for the development the subject of the application.

- 7.3 When the Local Planning Authority considers the imposition of conditions on planning permissions it must also comply with the six tests relating to planning conditions outlined in the NPPF, which are that conditions must be:
- (1) necessary
 - (2) relevant to planning
 - (3) relevant to the development to be permitted
 - (4) enforceable
 - (5) precise
 - (6) reasonable in all other respects
- 7.4 The reasons given for the imposition of the conditions in this case were, in respect of condition 1 '*To ensure provision of a satisfactory development*'; and for Condition 2 '*To ensure the appearance of the development is satisfactory and in the interest of the amenities of nearby properties and having due regard to policies CS11 and CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.*'
- 7.5 This part of Hayling Island is relatively flat such that in the absence of appropriate screening tall development is readily visible. Telecommunications development by its nature is tall and often not readily assimilated into the surrounding environment. Although in this case the use of a monopole reduces the visual impact, the increase in height from the original 10m pole approved in 2005 to a more bulky 15m pole and loss of part of the screening has resulted in a more prominent installation. The approved plans in respect of application APP/18/01165, following negotiation, secured the provision of a 9m high evergreen tree, and in order to require compliance with the proposed mitigation screening the imposition of Condition 1 was considered reasonable, enforceable and necessary. The submitted plans did not cover the specific timing requirements for planting and given the requirements for a tree of this height the imposition of a further condition, i.e. Condition 2, was considered justified.
- 7.6 The current application provides additional information with respect to the site and in particular the area available for planting and as such requires a reassessment of the appropriateness of the conditions in question. This is considered below together with the impact on visual amenity and sustainability that arises from the proposal to remove the two conditions in question.
- (ii) Arboricultural considerations
- 7.7 The application seeks the removal of conditions 1 and 2 as not meeting the required tests for conditions based on the physical constraints of the site and the planting requirements for a 9m high tree. The application is supported by a tree planting assessment which concludes that, notwithstanding the negotiations that took place in the case of application APP/18/01165, the space available for the planting of such a tree is inadequate and as such on the basis of this additional information the conditions are considered to be unreasonable, unenforceable and therefore unnecessary.
- 7.8 Additionally it is argued that the proposed planting would breach Southern Water's technical requirements, and it is noted that in their consultation response Southern Water have raised no objections to the removal of Condition 2 and highlighted the need for their approval for any planting within standoff distances of public critical sewerage apparatus.
- 7.9 The Council's Landscape Architect, having reviewed the submitted tree planting assessment, agrees with its conclusions. Whilst the Landscape Architect has advised that

a smaller tree (approx 3m height) could be accommodated, it is argued by the applicant that in time this would grow, causing interference with the operation of the mast, and as such no additional planting forms part of the application. Additionally they consider that the remaining boundary trees provide adequate screening. The proposal therefore falls to be determined on the basis of the nature of the installation as currently seen at the site.

(iii) Sustainability

- 7.10 The development provides for improved telecommunications in accordance with both Government Guidance and Local Plan Policy. At the time of the original application the applicant undertook a search of the area to identify suitable sites, and the current site was chosen in the absence of tall buildings, areas with good tree coverage, industrial areas or existing masts which could provide a suitable site. The current site was identified as it is within a small commercial area (Southern Water compound and adjacent the Household Waste Recycling Centre). The replacement mast provides for mast share and its upgrade accords with the NPPF. The NPPF at Section 10 'Supporting high quality communications' para. 112 states:-

Advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections.

and para 113 states.

The number of radio and electronic communications masts, and the sites for such installations, should be kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion. Use of existing masts, buildings and other structures for new electronic communications capability (including wireless) should be encouraged.

- 7.11 The replacement mast makes use of an existing site and provides essential infrastructure and as such is supported in principle by National and Local Plan Policy.

(iv) Impact upon the character and appearance of the area

- 7.12 The pole the subject of the contested conditions was initially erected pursuant to Prior Approval Application APP/15/01029 but was sited incorrectly and additionally the evergreen screening shown to be retained in that application was reduced by the lopping of branches, to facilitate installation of the pole. Whilst the difference between the approved siting and the actual siting is relatively small, in the order of a 1.5 to 2m discrepancy, this combined with the loss of screening has had an impact on the appearance of the development as viewed from the surrounding area. The aim of the original conditions to secure replacement planting was in order to compensate for the loss of the screening which had occurred. Without the proposed tree the mast is more prominent, however, only part of the tree screening was removed with the majority of tree screening retained. As such the impact is limited and it is considered on balance that the effect of the retention of the mast without a replacement tree in place is not so harmful to the character and appearance of the area as to warrant a refusal of the application.

(v) Impact upon residential amenity

- 7.13 The 15m high mast is visible from nearby properties and the cutting back of the existing vegetation has resulted in the mast becoming more intrusive in views from the residential properties in St Herman's Caravan Estate which lies in close proximity to the west. The 9m high evergreen tree (the subject of the conditions proposed to be removed) would have addressed this, helping to mitigate the impact of the mast, especially when viewed

from the west. Without such planting the mast has therefore resulted in some loss of visual amenity to residential properties which lie directly to the north of the Household Waste Recycling Centre. The impact on residential amenity therefore carries some weight, but this has to be balanced against the essential nature of the infrastructure. In this regard it is noted that the impacted properties do not directly adjoin the site, and the main impact is on views from their gardens and not the habitable rooms within the properties. As such it is considered that the balance lies in removing the conditions.

8 Conclusion

- 8.1 The conditions the subject of this application were imposed having regard to the impact of the replacement mast on visual amenity, and in particular the amenities of the nearby residential properties.
- 8.2 The further assessment by the applicant carried out since planning permission was granted indicates that the space available for planting would not support a tree of the size required by conditions 1 and 2 of planning permission APP/18/01165. This conclusion is accepted by the Council's Landscape Architect. Whilst a smaller tree (approx 3m height) could be accommodated, in time it would grow causing interference with the operation of the mast.
- 8.3 There is an identified need for the provision of telecommunications infrastructure with support in principle for telecommunications development established by planning legislation at the National and Local level. The replacement mast provides a necessary upgrade.
- 8.4 On balance the harm in the longer term to neighbouring amenity from removal of these conditions is considered insufficient to justify a reason for refusal, and given the applicants request to determine the application without provision of new planting, the impact on amenity has to be weighed against the benefits of the proposal in terms of supporting telecommunications infrastructure. It is considered that this outweighs the relatively limited impact on neighbouring amenity.

9 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT PERMISSION** for application APP/19/00803

Appendices:

- (A) Site location
- (B) Site Plan
- (C) Tree planting conditioned under APP/18/01165