

## **Environment, Planning and Countryside Committee**

**Date of Meeting:** Wednesday 5 April 2006

**Venue of Meeting:** Committee Room 1, Senedd

### **Report on the planning regime as it relates to mobile telecommunications.**

#### **Purpose**

1. To provide the Committee with a report on the planning regime as it relates to mobile telecommunications.

#### **Summary**

2. This paper describes the current legislation, policy and technical guidance of the land use planning system as it applies to the development of mobile telecommunications in Wales. It pays particular regard to the operation of permitted development rights. The recent research report "Review of the Code of Best Practice on Mobile Phone Network Development" available at <http://www.wales.gov.uk/subiplanning/content/research/final-mobile-phone-report-e.pdf> is also covered.

#### **Background**

3. At its meeting on 16 February 2006 (Minutes EPC(2) 03-06 ) the Committee requested a paper on the current land use planning system relating to telecommunications development, paying particular attention to permitted development rights.

#### **Land use planning system**

4. It should be noted that the underlying power in primary legislation dealing with the rights of electronic communication code operators to install apparatus is not devolved to the Assembly- it is a Department of Trade and Industry power. In exercising such rights operators, as with any other developer, would need to abide by the controls imposed by the land use planning system which, in relation to telecommunications development, consist of both:

- statutory provisions in primary and secondary legislation; and
- planning policy and guidance which operators and local planning authorities (lpas) should follow.

5. The key **planning legislation** for mobile operators installing their equipment to develop networks is the Statutory Instrument – The Town and Country Planning (General Permitted Development) Order 1995 as amended by the National Assembly in 2002 and by DTI in 2003. This SI is made up of Parts describing in precise lengthy detail what types of development in what contexts have permitted development rights (PDR's) and therefore do not require a full planning application to be made. Generally, small scale minor development has permitted development rights. Part 24 sets out the pdrs for electronic communications network development by electronic communications code operators which include mobile phone operators- T-Mobile, Orange, Vodafone, O2 and Hutchinsons 3 G UK (trading as 3). Pdrs for masts are not applicable where they are to be located in National Parks, AONBs, conservation areas and SSSIs. The term “mast” is often used to refer to the base station which is the cabin or cabinet which houses the radio transmitters and receivers i.e. the equipment that produces the radiation. The mast itself is usually a metal structure to support the antenna(s). The antennas are connected to the transmitters and receivers by feeder cable.

6. The system is further complicated by the fact that some permitted development requires “**prior approval**”. Generally operators have pdrs to install radio masts up to 15 metres in height. Taller masts require full planning permission. However before the operator can install a mast up to 15 metres in height, he has to apply to the local planning authority (lpa) for a decision on whether the lpa's prior approval will be required on the details of the siting and appearance of the mast. The principle of whether the development should be permitted is not for consideration, only the details of siting and appearance.

7. The lpa has 56 days (identical to the performance target for dealing with planning applications), to make and notify its determination on whether their prior approval is required, and to notify the applicant of its decision to either give or refuse such approval. The prior approval application must be advertised for public consultation for 21 days (identical to the public consultation period for planning applications). If the lpa fails to make a decision within the 56 day period, then the mast receives deemed approval. The point of the prior approval route for the smaller masts is to ensure that the lpa does not take an unreasonably long time to reach a decision in the light of the economic and social imperative to roll –out telecommunications infrastructure.

8. **Planning Policy** on telecommunications is set out in Chapter 12, sections 12.11 to 12.13 of “Planning Policy Wales” (2002).

<http://www.wales.gov.uk/subiplanning/content/planningpolicy/pdf/ppw-e.pdf>.

Key principles include:

- numbers of masts should be kept to a minimum and shared where possible while existing sites should be re-used when technological advances require new or upgraded base station sites.

- existing buildings and other structures should where possible be used to site new antennas.
- impact on amenity and the external appearance of buildings should be minimised.
- planning permission and prior approval applications should not be refused on the basis of policies that take insufficient account of the growth and characteristics of modern telecommunications.
- the aim is for operators and lpas to work together to find the best solutions for development and discuss annual roll-out plans.
- Pre –application discussions are also promoted to include residents groups.
- For development near **schools or colleges** the operator is required to discuss the proposal with the relevant body before submitting the planning or prior approval application to the lpa.
- With regard to **health implications**, provided new base stations meet the Internal Commission on Non-ionising Radiation Protection (ICNIRP) guidelines it should not be necessary for the lpa to consider further the health aspects or concerns about them.
- Lpas should neither ban new telecommunications development nor require minimum distances between it and existing development.

9. Planning **Guidance** is contained in **Technical Advice Note 19** "**Telecommunications**" (2002)

<http://www.wales.gov.uk/subiplanning/content/tans/tan19/tan19-e.pdf> and "**Code of Best Practice on Mobile Phone Network Development**" (2003) builds on such guidance

<http://www.wales.gov.uk/subiplanning/content/guidance/mobphone-code-of-prac-e.pdf>. The **TAN** provides detailed best practice for lpas to follow including advice on development control, consultation arrangements, environmental and health considerations. The **Code of Best Practice** brought best practice up to date and stressed the need for greater community involvement and consultation on the siting of base stations. The main aims are to:

- encourage better communication and consultation at all stages of network development between operators, lpas and local people;
- standardise procedures and forms;
- explain technical features; and
- advise on the siting and design.

## **Research on the operation of the Code**

10. The Assembly Government and ODPM jointly commissioned research in September 2004 into how well the Code was operating in Wales and England. Several Welsh Ipas participated in a structured interview process (Blaenau Gwent, Denbighshire, Swansea). Community and stakeholder representatives such as Gower Residents against Mobile Masts (GRAMM) also participated. The report has just been published <http://www.wales.gov.uk/subiplanning/content/research/final-mobile-phone-report-e.pdf>. The key findings are that the introduction of the Code had improved the planning process and where operators complied it was thought to be working well. However there was much variation in Ipa involvement and compliance with the Code. Community representatives did not feel that the Code gives them assurance that their views would be taken into account in siting decisions.

11. I am considering the research recommendations in particular the recommendations that suggest that the positive aspects of the Code should be built on and that its status should be strengthened to give it more weight in planning decision making. This would also require revision of our planning policy and technical advice. The establishment of an independent adjudication body to consider complaints where people think the Code is not being followed properly has also been recommended.

## **Cross-cutting themes**

12. There is continuing discussion with relevant officials across the Assembly so that our goals in relation to public health and the economy are not undermined.

## **Action for the Committee**

13. Committee members are invited to note the current position on the planning system in relation to telecommunications development.

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