

Environment, Planning and Countryside Committee

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Report of the Environment, Planning and Countryside Committee's consideration of evidence taken on the planning aspects of electronic telecommunications apparatus

Introduction

1. At its meeting on 5 April, the Committee agreed to take evidence on the land use implications of mobile telecommunications, including permitted development rights. The Committee took evidence at its meeting on 28 June.
2. The organisations represented on 28 June were:
 - Mobile Operators Association (MOA)
 - Welsh Local Government Association (WLGA)
 - The organisations also submitted written evidence in advance of the meeting. The evidence is appended to this report, as is the transcript of the evidence taken in Committee and other relevant proceedings.
3. The report that follows summarises the main issues raised.

Background

4. The Committee's consideration of this issue arose out of the Minister for Environment, Planning and Countryside's response to a Standing Order 31 debate on 8 February 2006, which was proposed by Janet Davies. Following that debate the Committee requested that the Minister set out the current legislation, policy and technical guidance of the land use planning system, with particular reference to permitted development rights.
5. The evidence session on the planning aspects of mobile telecommunications apparatus arose out of the Committee's discussions of the current land use planning system. The Committee wished in particular to discuss the implementation and operation of the Welsh Assembly Government's Code of Best Practice on Mobile Phone Network Development, published in July 2003, which follows very closely the Code of Best Practice issued by the Office of the Deputy Prime Minister in November 2002, and communication and consultation with the public on the siting of masts.

Technology and demand

6. It is a fact of modern life that consumer demand is driving the rapid expansion of the mobile phone network. Using mobile phones has transformed the way in which we conduct our personal lives. Their potential for direct, high-speed, high-quality communication is also important to maintain business competitiveness and improve customer services. Our emergency services too depend on this vital piece of infrastructure.

7. There are now 62.5 million mobile phone handsets in the UK, a number greater than the population of the country, which stands at around 57 million. Since they are radio technology, they require antennae to operate. The antennae are located on masts, of which there are nearly 2,500 in Wales. The location of masts and the risk of radio-wave emissions from them have raised serious issues of public health concern.

Public perception

8. The level of public discussion about health concerns and consultation regarding the siting of masts is well known and we are aware of the strength of feeling in communities from the issues our constituents bring to our attention. While health concerns regarding emissions from mobile phone masts lay outside the Committee's portfolio, we were able to discuss health issues in the context of whether guidance and advice in the planning system is adequate to aid local planning authorities to deal with such matters.

Scientific advice

9. We heard that Sir William Stewart, who chairs the Health Protection Agency had, in January 2005, called for a review of the planning process and that recent scientific research had made him more concerned about potential health risks. On the other hand, the MOA quoted Professor Lawrence Challis, a physicist who was vice chair of the Stewart inquiry on mobile phones, as stating that the amount of radio-wave transmissions from a mast is a thousand times less than that from a handset. The MOA were concerned therefore that independent scientific research was not being properly communicated to the public.

The Planning Regime

10. The challenge for the planning system is to provide an effective telecommunications system that delivers the benefits of modern, rapid communication, but that ensures that local people are consulted on development proposals and that their concerns are addressed.

11. The underlying primary legislative powers dealing with the rights of electronic communication operators to install apparatus are not devolved to the Assembly. However, in exercising such rights operators must abide by controls imposed by the land use planning system. The Assembly could amend secondary legislation, the Town and Country Planning (General Permitted Development) Order 1995, to exclude permitted development rights.

12. Planning Policy on telecommunications is set out in the Assembly's' Planning Policy Wales, while planning guidance is contained in Technical Advice Note (TAN) 19: 'Telecommunications' and the Code of Best Practice on Mobile Phone Network Development, the main aims of which are to outline best practice on development control, consultation arrangements and environmental and health considerations.

13. A joint review of the code of best practice by Arup, a consulting firm, and the University of Reading was commissioned by the Welsh Assembly Government and the then Office of the Deputy Prime Minister. It published its findings in March this year. The three main recommendations of the review were: that the Code is revised; that it be put on a more formal footing; and that an independent body be established to deal with complaints from the public about the operation of the Code. We recommend that the Welsh Assembly Government revises its Code of Best Practice on Mobile Phone Network Development in line with the findings of the Arup/University of Reading review and in conjunction with subsequent revisions to the UK Government's Code of Best Practice and further that it considers making the code a statutory document or incorporating relevant parts into TAN 19.

14. It was clear to us from the evidence presented that there was not a sufficient level of awareness of the code. We therefore recommend that the Welsh Assembly Government develops a communication strategy to raise awareness of its Code of Best Practice on Mobile Phone Network Development.

Types of telecommunications development

15. Telecommunications development will normally fall into one of three categories: permitted development; permitted development that requires prior approval; development that requires an application for planning permission and/or listed building consent.

Permitted development rights

16. Planning legislation describes precisely what types of development in what context have permitted development rights and therefore do not require a full planning application to be made. Generally operators have permitted development rights to install radio masts up to 15 meters, while those in excess of this require full planning permission. However, some permitted development requires 'prior approval' from the local planning authority relating to the siting and appearance of the mast. (See below).

17. In its written evidence, the WLGA referred to a perceived problem with permitted development in that it feels that there is no clear mechanism for the public to express their concerns. It believes that this has undermined public confidence in the planning system.

Prior Approval

18. Local planning authorities have 56 days to determine applications for prior planning approval. If a decision is not reached within that timeframe, planning permission is granted by default. The WLGA informed us that this causes especial difficulties, and is contrary to all other applications for full planning permission, in the case of which, if not determined within 56 days, the authority would be

granted an extension.

19. The MOA did not believe that revocation of prior approval would be good for network development and much preferred the option of early consultation. In its written evidence it stated that: "...changes to the planning system would not increase the level of consultation that takes place, and would do nothing to address the concerns that some people have".

Planning applications

20. The MOA suggested that many of the more controversial sites would be full-planning sites, it therefore did not believe that a full planning system, as exists in Scotland, would solve current problems, adding in its written evidence that local planning authorities would see a considerable increase in the number of full planning applications submitted.

21. The WLGA was firmly of the view in both its written and oral evidence that there should be full control on planning applications for mobile phone mast developments, as is the case in the National Park Authorities: "all developments should be subject to planning application, and the NPA system should be scrapped, as it undermines confidence". The WLGA went further and suggested that, prior to installation, mobile phone masts' equipment should be subject to a separate regulatory or licensing procedure that would deal solely with health risks.

Planning and Health

22. Planning Policy Wales gives general advice on all planning matters and states that health can be a material consideration in the planning system. TAN 19 states that provided a certificate is issued when an application is presented, it would not normally be appropriate for local authorities to consider the health aspects of the application.

23. The MOA acknowledged that, under current guidance, planning authorities were expected to be quasi-scientific experts on a complex scientific subject, and suggested that the view of central Government was that it should decide on applications because it has the resources and available expertise through the Health Protection Agency.

24. We were most concerned to hear of the difficulties the present planning system causes local authorities and in particular that they are having to do more work than might be necessary at the public's expense. The WLGA told us that the use of the planning process by stakeholders as a way to demonstrate health concerns raises false expectations. It did not believe that current national advice and planning policy, which emphasises the visual impact of any development, was adequate to equip planning authorities to consider applications. We were told that the planning system would normally hold that health and public safety is a material planning consideration. However, current guidance in the TAN dictates that it should not be necessary for a local planning authority, when deliberating on an application for planning permission or prior approval, to consider the health issues raised by telecommunications developments. Since there is clearly a conflict between planning policy and guidance, we recommend that the Minister clarifies guidance in line with Planning Policy Wales to ensure that local planning authorities take health and safety into account when deliberating on

applications for planning permission or prior approval.

Consultation

25. Public perception is that there is insufficient consultation on the siting of electronic telecommunication apparatus and that where consultation does take place, the views expressed are frequently not taken into account. The MOA, on the other hand, informed us that most base stations are built without a great deal of concern or controversy because of robust consultation.

The Mobile Operators' Association Ten Commitments

26. In 2001, the MOA published a list of 10 commitments to best siting practice. The aim of the list was to improve consultation with local authorities and the planning system, and with the public in communities close to the proposed sites. The MOA told us that in publishing the commitments it wished to increase transparency in the consultation process as the network expands. The 10 commitments to best practice were incorporated in the Welsh Assembly Government's Code of Best Practice on Mobile Phone Network Development thus making them part of the planning regime.

27. One of the 10 commitments states that the MOA would participate in obligatory pre-rollout and pre-application consultation with local planning authorities. Since 2001, each operator has provided its forward network building plans for the next 12 months to local authorities. In 2005, under the auspices of the MOA, the plans of the five operating companies were sent out electronically in a single hit to every local authority in the UK. As well as providing this information, we were pleased to hear that the MOA's members offered to hold meetings with local authorities to discuss the plans at as early a stage as possible. We were however concerned to learn that the response rate in taking up this offer is extremely low with up to 90 per cent of authorities in the UK not taking advantage of the opportunity to discuss these forward plans. We therefore recommend that the Welsh Assembly Government, using the auspices of the Welsh Local Government Association, encourages local planning authorities to take up the offer of meetings with the MOA's members following distribution of their annual network development plans each autumn.

28. Since the operators' annual forward network building plans are not confidential, once they are distributed, they could be put in the public domain immediately by local authorities and specifically be sent to councillors and community representatives. We therefore recommend to local authorities that they publish the MOA members' annual network development plans and arrange for them to be sent to key stakeholders as early as possible and that the Welsh Assembly Government revises its Code of Best Practice to reflect this.

Pre-application dialogue – traffic-light rating system

29. The MOA told us that it believed that pre-application consultation with local authorities and communities, "is the single most important thing in helping us to develop our networks in a way that is environmentally friendly but which also meets the needs of the 62.5 million handset users". It has offered, on a voluntary basis, to have pre-application dialogue with planning authorities and communities in the proximity of the proposed mast before lodging the planning application with the

local authority. It devised what it referred to as "a traffic-light rating system", to attempt to determine which sites might require greater community involvement in pre-application consultation. In the case of a red-rated site, which is thought to require more public consultation than others, it is compulsory under the 10 commitments for the operators to contact local ward councillors and community councillors in order to identify potential community concerns.

Consultation with schools

30. We questioned the MOA on why, despite being included in TAN 19 and the code of best practice, we had been informed of a number of examples where there had been a breakdown in communication between operators and schools at the consultation stage of a proposed telecommunications development. We therefore wished to discover how the operators ensured that local schools and governing bodies are properly consulted. The MOA could not account for this and reiterated that operators were aware of the need to consult local schools as a requirement under the code of best practice.

Site Sharing

31. Mast sharing is one of the MOA's 10 commitments. A report by Ipsos MORI, which was distributed to us during the evidence session, states that two-thirds of planners disagree that mobile phone operators make sufficient effort to share base stations. The WLGA informed us that most local authorities would advocate mast sharing and would consider that option before discussing new development. We recommend that guidance be revised to make a commitment to the feasibility of site sharing obligatory in all applications.

32. We raised the particular problem of mast sharing in rural areas, based on information that we had received from Ofcom. Whereas five in six masts are shared in Cardiff and Swansea, the figure is as low as one in 10 in Pembrokeshire and one in six in Ceredigion. We also expressed our concern at the lack of co-operation between operators in rural areas, which may be hindering economic development and investment.

33. The MOA told us that it has set up a group to monitor the issue of site sharing. The group has developed a database, which is available to all operators. It told us that operators always look to sharing as a first option because it made good business sense, since sharing a mast is cheaper than constructing a stand-alone structure. However, it also informed us that because of radio clearance requirements, there must be separation of a few metres between antennae on masts, which in some instances makes sharing impossible.