

**TUNBRIDGE WELLS BOROUGH COUNCIL****OPERATIONAL SERVICES BOARD - 21 SEPTEMBER 2000****DRAFT REPORT OF PLANNING AND BUILDING CONTROL SERVICES MANAGER****CONSULTATION PAPER ON TELECOMMUNICATION MAST DEVELOPMENT****(by Telecommunications Code Systems/Operators)**

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**Executive Summary**

This report provides a summary of the Consultation Paper published by DETR at the end of July and makes recommendations for appropriate responses.

**FOR DECISION**

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**Introduction**

- (1) The Consultation Paper has been issued following the findings of the Independent Expert Group on Mobile Phones (Stewart Report). In its initial response, published on 11 May, the Government welcomed the Stewart Report and accepted many of its recommendations. In particular, the Government accepted the recommended precautionary approach as advised by the report.
- (2) On the planning aspects, the Governments response indicated that it was minded to introduce a requirement for application for planning permission for all new telecommunication masts. It indicated that there would be wide consultation before making any changes, including on the principle and precise scope of any new arrangements.
- (3) Views are sought<sup>4</sup> by 31 October 2000 at the latest on proposals to amend planning legislation under Part 24 of the General Permitted Development Order and related Guidance.
- (4) The paper raises 10 specific questions relating to possible changes to the legislation. It also contains a Draft Revision of Planning Policy Guidance Note 8 (PPG8) Telecommunications on which views are sought. The final draft of the PPG will however depend on the outcome of this consultation exercise on possible changes to the General Permitted Development Order.
- (5) Views are also sought on the Interim Regulatory Impact Assessment (RIA) which considers issues of equity or fairness and identifies the costs and benefits of the various options available.

**Background**

- (6) The report presented to Operational Services Board on 15 June 2000 reviewed the current issues concerning telecommunications development and outlined the present planning function and powers of control of the Local Planning Authority.

- (7) In short, the current planning arrangements are as follows:-

Part 24 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO) permits

*“Development by or on behalf of a telecommunications code system operator for the purpose of the operator’s telecommunication system in, on, over or under land controlled by that operator or in accordance with his licence, consisting of:*

*(a) the installation, alteration or replacement of any telecommunications apparatus*

*(b) the use of land in an emergency for a period not exceeding six months to station and operate moveable telecommunication apparatus required for the replacement of unserviceable telecommunication apparatus, including the provision of moveable structures on the land for the purpose of that use, or*

*(c) development ancillary to radio equipment housing”*

- (8) These allowances are subject to a number of specified exclusions and specified conditions. In particular masts over 15 metres in height require an application for planning permission, as do mast developments in environmentally sensitive areas e.g. AONB, Conservation Areas.
- (9) Certain types of development are subject to a ‘prior approval’ procedure, under which the local planning authority has the opportunity to say whether it wishes to approve details of the siting and appearance of the development.
- (10) The Local Planning Authority (LPA) has 28 days to carry out this process in respect of masts not exceeding 15 metres in height on buildings or other structures. Following amendments to Part 24 of the GPDO last year, the LPA has 42 days to carry out this process in respect of ground-based masts not exceeding 15 metres in height, and the operator has to erect a site notice to publicise the development proposed. This is designed to provide the public with a clear opportunity to comment to the authority on the siting and appearance of the proposed mast, and LPAs are strongly encouraged to undertake any additional publicity that they consider necessary to give people likely to be affected by the proposed development an opportunity to make their views known. If the authority considers that the development will pose a serious threat to amenity, it is able to refuse approval.

### Consultation

- (a) Is there a Case for Change?

- (11) The main criticism of the current system is its perceived complexity and the alleged lack of adequate consultation procedures.
- (12) The Government’s general policy on telecommunications development is to facilitate the rollout of a modern national telecommunications network whilst protecting the environment.

- (13) The current system of prior approval represents a major advantage for mobile phone operators. The set number of days for a response allows operators to work to a definite timescale, and gives an automatic right to go ahead with the development should a decision not be issued within the time specified.
- (14) These arrangements were introduced in order to facilitate the speedy roll-out of telecommunication infrastructure to meet the increased traffic requirements of all business and private users.
- (15) The Stewart report suggested that public consultation under the prior approval arrangements is not working and that many people feel excluded and disempowered by the current planning arrangements. It was identified that the resultant frustration could have a negative effect on peoples health and well being.

**Question 1.** Do you think that greater public consultation could be achieved within the current prior approval procedures, or is it necessary to remove permitted development rights as recommended by the Stewart Group? If the former how could this be achieved?

**Recommended Response:**

**“Tunbridge Wells Borough Council does not believe that greater public consultation could be achieved within the current prior approval procedures. The extent of consultation for 42 days prior approval procedures is the same as that carried out where planning permission is required at Tunbridge Wells Borough Council. However, the response time of necessity is shortened to enable a decision to be issued within the prescribed period. Moreover, there will rarely be the opportunity to consult on any additional information or amendments which may be received. This is seen as inequitable by members of the public. The fact that in many instances mast development does not require planning permission and the restriction to considerations of siting and design, rather than issues of principle for prior approval applications, results in the public feeling that the LPA is bending over backwards to assist the operators and that their views count for very little.**

**Tunbridge Wells Borough Council is of the view that the removal of permitted development rights to bring certain telecommunications development under the same procedure as other applications for planning permission, is essential in restoring public confidence in the system”.**

(b) Scope of Alternative Planning Procedures

- (16) In the Government’s initial response to the Stewart Report it stated that it was minded to introduce a requirement for full planning permission for all new telecommunication masts.
- (17) This consultation paper acknowledges that not all base stations fall within the scope of the planning system e.g. those located inside buildings or attached to buildings but not materially affecting the external appearance do not constitute development.
- (18) The Stewart report was only concerned with mobile phone technology. Consideration needs to be given to whether any revised arrangements should apply to all types of telecommunications development to which Part 24 of the GPDO applies.

- (19) Arguably, someone who has a mast erected close to their property is not so much concerned about the purpose of the mast, but the effect this could have on their immediate environment. The Government proposes that the measures set out in this consultation paper should apply equally to mobile phone operators and other telecommunications code system operators.

**Question 2.** Do you agree that mobile phone operators and other telecommunications code systems operators should be treated in the same way by planning procedures?

**Recommended Response:**

**“Tunbridge Wells Borough Council agrees strongly that mobile phone operators and other telecommunications code system operators should be treated in the same way by planning procedures”.**

- (c) Possible Alternative Planning Arrangements in Response to the Stewart Groups Recommendation for Removal of Permitted Development Rights.

(i) Ground Based Masts

- (20) Currently Part 24 of the GPDO includes a prior approval procedure (42 day procedure) for development of ground based masts less than 15 metres in height.
- (21) Replacing this procedure with a requirement to submit an application for planning permission would enable the LPA to treat ground based masts in the same way as development generally and give the LPA more time to consider fully the comments of local residents and others affected by the proposed mast.
- (22) On the other hand, as the consultation paper points out, a requirement for planning permission has the potential to delay the development of the telecommunications network.

**Question 3.** Do you think that the construction and installation of any ground based telecommunications mast should be subject to an application for planning permission?

**Recommended Response:**

**“Tunbridge Wells Borough Council believes that the construction and installation of any ground based telecommunications mast should be subject to an application for planning permission.**

**The local interest and potential environmental impact of this form of development does not equate to other forms of ‘permitted development’ which are generally ‘minor’ in nature”.**

The experience at Tunbridge Wells Borough Council has been that dealing with the public response to ground-based mast developments outside the standard formalities of a planning application has been cumbersome and time consuming as the public concern is often about the inequity of the system as much as the facts of the case”.

- (23) Currently the alteration or replacement of a mast not exceeding 15m in height is permitted subject to prior approval. Where the alteration or replacement would result in a mast exceeding 15m in height, planning permission is required. For masts in excess of 15m their alteration or replacement is permitted development except where the original height is exceeded.
- (24) The Consultation paper suggests various options for dealing with alterations and replacements:-
- Planning permission required in all cases where the height of the existing mast is exceeded (irrespective of original height)
  - Permitted development in all cases, except where the resulting mast would be higher than the original masts in which case subject to prior approval.

**Question 4.** Do you think that the alteration or replacement of a ground based mast already installed should be permitted except where the alteration or replacement would result in the mast being higher than the original mast? If so, where a mast would be higher than the original mast, should its alteration or replacement be permitted subject to prior approval, or should an application for planning permission be required?

**Recommended Response:**

**“Tunbridge Wells Borough Council believes that simplicity and consistency needs to be built into any new arrangements. It believes that this can only be achieved by making all alterations and replacements subject to the requirement for planning permission, irrespective of the height.**

**The height of the mast and the details of its form can be critical to the developments acceptance. A system which would allow for carefully negotiated masts to be replaced by something less sensitive without the same rigours of a planning application would be inequitable”.**

(ii) Masts on Buildings and Other Structures

- (25) The construction, installation, alteration or replacement of a mast on a building or other structure is permitted development under the current arrangements subject to a 28 day prior approval procedure, which severely restricts the opportunity for public consultation on such developments.

- (26) The options for arrangement for this form of development are set out as follows:-
- Planning permission required for masts on buildings and other structures in order to ensure time for adequate consultation and uniformity of approach to masts irrespective of size or location makes system easier to understand.
  - Permitted development <sup>is</sup> as less likely than ground based masts to have a significant effect on amenity and could encourage more ground based proposals if there was no advantage procedurally to masts on buildings/structures. This would run counter to the Governments policy of sharing masts and other structures.

**Question 5.** Do you think that the construction and installation of any telecommunications mast on a building or other structure should be subject to an application for planning permission?

**Recommended Response:**

**“Tunbridge Wells Borough Council believes that the construction and installation of masts on buildings and structures should be subject to an application for planning permission. This would allow for a more uniform and simplified approach. Tunbridge Wells Borough Council does not agree that a requirement for planning permission for all types of mast would make ground based masts a more attractive proposition for operators as planning policy can clearly steer development towards sharing masts and other structures and therefore making an application for planning permission more likely to succeed”.**

- (27) This leaves the consideration of alteration or replacement of masts on buildings/structures. The current arrangements are particularly complicated, the need for planning permission and prior approval depending not only on its overall height but also its height in relation to the building.
- (28) The Consultation Paper advocates an approach similar to that for ground based masts i.e. permitted development except where the resulting mast would be higher than the original mast.

**Question 6.** Do you think that the alteration or replacement of a mast on a building or other structure should be permitted except where the alteration or replacement would result in the mast being higher than the original mast? If so, where a mast would be higher than the original mast, should its alteration or replacement be permitted subject to prior approval, or should an application for planning permission be required?

**Recommended Response:**

“Tunbridge Wells Borough agrees that the same measures should apply to masts on buildings/structures as to ground based masts. However, in line with the response to Question 4 it believes that all alterations and replacements should be subject to the requirement for planning permission. This would allow for full public consultation. The fact that a mast already exists on the building/structure would be a key factor in determining any proposal and should assist the speed with which an application for replacement or alteration could be dealt with”.

(d) Any Consequential Changes

- (29) If the planning requirements for mast developments are changed it may make sense for development carried out in conjunction with such developments to be subject to the same planning requirements.

**Question 7.** Do you think that the construction, installation, alteration or replacement of radio equipment housing with a volume in excess of 2.5 cubic metres, and of development ancillary to radio equipment housing, when carried out in conjunction with the construction, installation, alteration or replacement of a mast, should be subject to the same planning requirements as that mast?

**Recommended Response:**

“Tunbridge Wells Borough Council agrees that such development carried out in conjunction with mast development should be subject to the same planning requirements as the mast. However, it believes that all development, irrespective of size, carried out in conjunction with mast development should be subject to the same planning requirements as the mast itself. This would enable developments carried out at the same time to be dealt with under one procedure. It would also prevent a situation whereby the LPA may be asked to give prior approval for radio equipment housing in advance of giving planning permission for the related mast”.

**Question 8.** Do you think that any other change would be necessary as a consequence of changes to our planning regulations in respect of masts?

**Recommended Response:**

“Tunbridge Wells Borough Council is not aware of the need for other consequential changes to be made”.

- (30) The Consultation Paper addresses the issue of how microcells should be treated for the purpose of revising the planning arrangements. However, the issue is only addressed in terms of whether microcells attached to buildings constitute development (this will depend on whether the works would materially affect the external appearance of the building). Secondly, what controls, if any, would be appropriate in those cases where microcells proposals constituted development. The Government appears to be minded to treat microcells materially affecting the external appearance of a building in the same way as antennas.
- (31) These are permitted development, subject to a number of restrictions concerning the height and position on the building and the number of antenna already on the building.

**Question 9.** Do you think that the installation, alteration or replacement of a microcell which materially affects the external appearance of the building should be treated in the same way as an antenna in Part 24 of the GPDO?

**Recommended Response:**

**“Tunbridge Wells Borough Council is of the view that the reference to microcells in this consultation paper is misleading. The impression is given that microcells are sited either within or attached to the outside of buildings. In Tunbridge Wells Borough Council’s experience one of the most sensitive forms of development proposal in recent months has been for microcell installations attached to a new ‘lamppost style’ mast. Tunbridge Wells Borough Council would expect such developments to be treated as ground based masts in any new arrangement and consequently the response made to Question 3 and Question 7 would apply here, that the development should be subject to an application for planning permission”.**

**Where the microcell installation is to materially affect the external appearance of the building Tunbridge Wells Borough Council agrees that it should be treated in the same way as an antenna in Part 24 of the GPDO”.**

**Question 10:** Do you want to propose any other amendments to Part 24 of the GPDO?

**Recommended Response:**

**“Tunbridge Wells Borough Council feels that the wording in Section A of Part 24 requires clarification namely the words ..... “or in accordance with his licence”..... The implication of these words is that if the development is not in accordance with the Operators licence then the development is unauthorised. Tunbridge Wells Borough Council has some difficulty with this. As set out in Annexe 2 to the Draft Revision of Planning Policy Guidance Note 8 (PPG8) Telecommunications, code related conditions are applied in different forms to both local and national operators and each code operators licence may also impose its own individual obligations and restrictions. Under such circumstances, when the LPA is not the licensing authority, can it reasonably be expected to determine whether a development falls to be considered under Part 24 of the GPDO, when to do so would require a knowledge of all the relevant conditions and whether any works constitute a breach”.**



**Draft Review of Planning Policy Guidance Note 8 (PPG8) Telecommunications**

- (32) The revision when finalised will replace PPG8 of December 1992 'Telecommunications' and Circular 4/99 'Planning for Telecommunications'. The main changes to policy guidance are:
- to update guidance to take account of developments in telecommunications technology and the growth of the telecommunications industry
  - to update guidance to take account of changes to the permitted development rights that apply to telecommunications code system operators
  - to provide advice about taking account of health considerations in making planning decisions about telecommunications development.

The document is divided into the following sections:-

**Telecommunications Planning Policy**

- (33) The Government's policy is to facilitate the growth of new and existing telecommunications systems whilst keeping the Environmental Impact to a minimum.
- (34) Local Planning Authorities are encouraged to respond positively to telecommunications development proposals, to have regard to any technical constraints on the location and proposed development, not to question the need for the service to be provided and not to seek to prevent competition between different operators. The Government strongly encourages pre-development discussions between operators, authorities, local people and other interested bodies.

**Telecommunications Systems**

- (35) This section describes the principal telecommunications systems and the physical developments associated with them.

**Development Plans**

- (36) Local Plans should set out policies and proposals for the location of telecommunications developments. In certain circumstances they may allocate particular sites for major telecommunications developments, such as tall masts, so as to encourage site sharing. Otherwise, plans should normally include criteria-based policies to guide telecommunications developments.
- (37) Local Plans may also include general policies on the siting and external appearance of apparatus.

**Development Control**

- (38) The control of telecommunications development is dealt with in this section, under the headings of:-
- Minor telecommunications development
  - Permitted Development rights - to be finalised following changes to current planning arrangements.
  - Larger telecommunications development - (Applications should not be refused on the basis of policies which take insufficient account of the growth and characteristics of modern telecommunications. The significance of the proposed development as part of a national network is a material consideration in determining development proposals).
  - Pre-development discussions - (The Government strongly encourages close consultation between operators and local planning authorities).
  - Mast and site sharing - (LPAS may reasonably expect applicants for new masts to show evidence that mast site sharing has been explored).
  - Siting and design - (Authorities should take account of special siting needs of certain developments)
  - Listed Buildings and Scheduled Monuments - (Normal statutory procedures apply).
  - Radio site clearance procedure.

**Health Considerations**

- (39) This section appears to be a consideration of information which has been released to LPAs, by DETR and other organisations, over recent months on health related matters. The information is dealt with under the following headings:-
- What are EMFs (Electromagnetic fields)
  - Health effects of exposure
  - Independent Expert Group on Mobile Phones (Stewart Report)
  - Health & Safety Legislation
  - Taking account of health effects and public perception of danger
  - Precautionary approach
- (40) The majority of this information has been reported to Members in the reports, to Operational Services Board presented on 15 June 2000 and 20 July 2000.
- (41) The guidance on 'taking account of health effects and public perception of danger' is largely a reiteration of the advice contained in a letter from Nick Raynsford dated 29 June 2000 and appended to the 20 July 2000 report.

Report of Planning & Building Control Services Manager Cont/...

- (42) The main points are that health considerations and public concern can in principle be material considerations in determining applications for planning permission and prior approval. It is for the LPA to determine what weight to attach to such considerations in any particular case.
- (43) It is the Government's view that if a proposed development meets the ICNIRP guidelines on the limitation of exposure to electromagnetic fields it should not be necessary for an authority in processing an application, to consider health effects further. All new base stations are expected to meet ICNIRP guidelines and operators should provide a statement to the LPA to confirm the same when submitting an application.
- (44) This guidance is in line with the agreed approach now taken at Tunbridge Wells Borough Council as is the further guidance on additional information to be sought from applicants concerning the characteristics of any installation.
- (45) Local Authorities are advised not to place undue weight on the findings of individual research projects in determining applications for, or in proximity to, telecommunications apparatus. Regard should be given to the expert advice of the NRPB.

**Radiation Interference from Proposed Development**

- (46) LPA's will need to satisfy themselves that the potential for interference has been fully taken into account in the siting and design of developments. The Radiocommunications Agency has powers to deal with interference.

**Telecommunications Aspects in Other Developments**

- (47) The LPA should encourage developers to consider the telecommunications needs of future occupiers of other forms of development.

**RECOMMENDATION,**

1. DETR be advised of the responses to the 10 questions raised concerning changes to current planning arrangements, as set out above.
2. DETR be advised that Tunbridge Wells Borough Council welcomes the Revision of PPG8 Telecommunications and that it has no specific comments to make on the revisions. It would however urge the Government to provide the public with all the necessary information for a clear understanding of the Government's position on Telecommunications development and the limitations of the Local Planning Authority's role, particularly on health-related matters.
3. That Kent County Council and KALA be advised of this Council's response to the Consultation Paper.

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