



Telecoms Masts - Planning

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This note describes the planning law and guidance relating to telecommunication masts. A separate note ‘Mobile Phones, Mobile Phone Masts and Health’ (SN/SC/767) covers health issues.

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A. Planning requirements for Telecom Masts in England

The erection of a mast counts as development, and would therefore normally require planning permission. However, licensed telecommunications operators, like other operators of utilities, have certain permitted development rights, which means that they can carry out certain activities without having to apply for planning permission.

The *Town and Country Planning (General Permitted Development) Order 1995* (Part 24 of Schedule 2) granted a general planning permission for certain telecommunications masts providing:

- ? the mast is erected by a telecommunications code system operator licensed by the Secretary of State for Trade and Industry under the Telecommunications Act 1984;
- ? the mast does not exceed 15 metres in height;¹
- ? the mast is not erected in a National Park, area of outstanding natural beauty, conservation area, or the Broads; and
- ? the mast is not refused prior approval (explained in the following section) by the local planning authority within the period allowed under the Order.

A full application for planning permission is normally required for any mast that does not meet these criteria.

In those circumstances where the exercise of a permitted development could have a serious impact on amenity, the local planning authority may serve a direction under Article 4 of the Order. It is for the local planning authority to determine whether the siting or appearance of the development would pose a serious threat to amenity on a case by case basis. Guidance on factors the authority may take into consideration when determining whether to give or refuse such approval is contained in Planning Policy Guidance Note 8.²

¹ The height limit does not include an antenna installed on top of the mast

² DTLR, *Planning Policy Guidance Note 8: Telecommunications*, August 2001, <http://www.databases.dtlr.gov.uk/planning/npp/PubDetail.asp?thisPub=PPG08>

Where permitted development rights do not exist for a particular mast, because it is higher than 15 metres for example, then the operator can apply to the local authority for planning permission in the normal way. If a local authority refuses planning permission, then the operator can appeal to the Secretary of State and this is dealt with under the usual planning appeal system.

B. The 1999 prior approval procedure

In 1999, after a review of telecommunications permitted development rights, the Government decided to proceed with a new single-stage prior approval period of 42 days for ground based masts. The legislation was *The Town and Country Planning (General Permitted Development) (Amendment) Order 1999* (SI 1661). The explanatory memorandum summarised the changes:

Article 3 amends Part 24 of Schedule 2 to the 1995 Order, which confers permitted development rights in respect of development by telecommunications code system operators. The principal change is the introduction of new conditions, where the proposed development consists of or includes the construction, installation, alteration or replacement of a ground-based mast, requiring a developer to apply to the local planning authority for a determination as to whether the prior approval of the authority will be required to the siting and appearance of the development. Provision is made for a site notice to be displayed informing the public of the application and providing for representations to be made to the local planning authority.

If approval is refused, then the applicant can appeal. After refusal, or after confirmation of refusal on appeal, the applicant may make a fresh application for prior approval determination to the local planning authority. Any fresh application may include details of different sitings and/or appearance at the same or a different location. The system of prior approval has been retained in the revision of telecommunications planning in 2001.

C. Policy after the Stewart Report

1. Conclusions of the Stewart Report

In May 2000, an expert committee appointed by the Public Health Minister, chaired by Sir William Stewart, published a report on Mobile Phones.³ The report found no evidence of harm from emissions from mobile phones or base stations, but it called for a precautionary approach. The report is described in more detail in another Library note⁴ but the following conclusions are relevant to planning:

³ Independent Expert Group on Mobile Phones, *Mobile Phones and Health*, 2000

⁴ SN/SC/767, *Mobile Phones, Mobile Phone Masts and Health*, <http://hcl1.hclibrary.parliament.uk/notes/ses/snsc-00767.pdf>

- ? For base station emissions, exposures of the general population will be to the whole body but normally at levels of intensity many times less than those from handsets.
- ? Some people's well-being may be adversely affected by the environmental impact of mobile phone base stations sited next to houses, schools or other buildings, as well as by fear of perceived direct effects.
- ? For all base stations, including those with masts under 15m, permitted development rights should be revoked and the siting of all new base stations should be subject to the normal planning process.

An action group, Mast Action UK (MAUK) has been formed to oppose the siting of mobile phone masts close to schools. It is a coalition of community groups from across the UK who are concerned about the possible health risks of radiation generated by the masts. Backed by former Conservative health minister Marian Roe, the group is calling for children and other vulnerable groups to be protected against potential radiation risks.⁵

2. The dilemma left by the Stewart Report

The Stewart Report left the Government with a difficult balance. On the one hand, it found no evidence that telephone masts caused health problems. On the other hand, it called for increased consultation before the granting of planning permission and an extension of the scope of planning permission to cover masts that were previously approved by permitted development rights. In view of the popular hostility towards telephone masts, any increase in the scope of planning permission was bound to lead to greater pressure on the local planning authority to reject the application for permission. The Government was also committed to encouraging the development of new technologies like mobile telephones, and sold the licences for radio spectrum for third generation (3G) mobile phones for £22.5bn.

3. Government announcement of the new policy

The new policy was announced, after consultation, on 16 March 2001, and led to the new Planning Policy Guidance of August 2001. Basically it increased the period for consultation in cases of prior application approval, but did not require full planning permission for all masts."⁶

In an Adjournment Debate in May 2002, a Minister (Sally Keeble) summed up other Government activity after the Stewart Report:

The Government accepted the recommended precautionary approach and are introducing a range of precautionary actions. Contrary to what people believe, almost every recommendation by the Stewart report, the responsibility for which covers

⁵ "Site mobile phone masts away from schools", *BBCNews Online*, 13 December 2000

⁶ DETR Press Notice 142, *Better Public Consultation on Mobile Phone Masts*, 16 March 2001

different Departments, is being introduced. There is a slight variation on one planning recommendation, but only in procedure. The net effect on planning is almost the same. So, the idea that we are not complying with the precautionary approach is simply not borne out.

The things that we have done include: ensuring that all base stations meet the international exposure guidelines; setting up a national database with details of base stations; implementing a new £7 million joint Government/industry research programme; publishing leaflets; and auditing mobile phone base stations and masts to assess emissions, focusing on schools. The results from the first 100 audits carried out last year showed emissions ranging from several hundred to many thousands of times lower than the public exposure guideline limits.⁷

D. Schools

1. The Stewart Report 2000 and schools

The Stewart Report also drew attention to the particularly contentious issue of base stations near or within school grounds, recommending that radiation levels be checked for conformity with guidelines. In July 2000, the Government sent advice to local education authorities, with the following passage on base stations and schools:

Base Stations on or near schools

The [Stewart] report does not suggest that existing base stations should be taken down from schools, or that no new base stations should be erected on school premises. However, under its precautionary approach, the report recommends that the “beam of greatest intensity” from a base station’s antenna should not fall on any part of the school grounds or buildings without agreement from the school and parents. Where parents and/or schools wish to know whether the beam of intensity falls on school grounds or buildings, the school should contact the base station’s operator. The operators have agreed to provide schools with information on the level of intensity of radio frequency radiation. This should include an explanation of the way in which the intensity of radiation falls off with distance from the antenna. If there is major concern from the school or parents, they could ask the network operator to adjust the antenna.

Audit of base stations

The Government has asked the Radiocommunications Agency to carry out the report’s recommendation for an independent random audit of base stations. The Radiocommunications Agency has agreed to audit base stations in and around schools first.⁸

⁷ HC Deb 21 May 2002 c 272

⁸ DFEE Guidance, *Mobile phones and base stations*, July 2000

2. The Audit of Base Stations, 2003

In February 2003, the radiocommunications agency published the results of their survey of emission levels of telephone masts. They showed that the level of emissions was far lower than the maximum level allowed:

The Government study examined mobile phone masts on 109 sites across the UK, looking at 82 school sites and 27 hospitals. The study showed: - readings ranged from hundreds to millions of times below international guidelines; - the lowest reading in this year's study was taken at Enniskillen Model Primary School at more than 19 million times below the guidelines; and - the highest reading, still more than 700 times below the limit, was at Aintree Hospital in Liverpool. The Government also announced it will continue the study of masts in 2003.⁹

3. Trying to raise health concerns

As noted above, the new system of planning allows more consultation over the siting of masts, but in many cases there is little chance of the proposed location being changed. In a Westminster Hall debate in January 2004, Andrew Mitchell described his frustrations in various incidents:

The first happened early in my time as Member of Parliament for Sutton Coldfield, when I became involved in the matter of a mast being sited adjacent to St.Nicholas school in Boldmere in my constituency. I hope that I came to it with a clean mind: I certainly came to it with no prejudice. I observed how the school together with the governors and parents, sought in a dignified way to raise its concern about the siting of the mast. I also observed the response of Orange and the way in which it dealt with consultation, the school and me as Member of Parliament...I observed the perfectly legitimate nervousness and concerns of the governors, heads and parents at the lack of information and the high-handed and arrogant way in which Orange behaved. I became very involved in the discussions and was amazed at how blatantly Orange merely paid lip service to them.¹⁰

E. The position on schools after the 2004 NRPB Report

In January 2005, some PQs asked about the Government's position on masts near schools, in the light of the new NRPB Report. The answers show little sign of any imminent change in Government policy:

Chris Ruane: To ask the Deputy Prime Minister what plans he has to review the advice on the location of mobile phone masts near schools; and if he will make a statement.

Yvette Cooper: Mobile phone mast and base station developments near schools are subject to the normal planning regulations in place throughout England, unless

⁹ DTI Press Notice P/2003/100, *New Results from Mobile Phone Masts Study*, 18 February 2003

¹⁰ HC Deb 28 January 2004 c 102WH

exempted by the regulations set out in Part 24 of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO). The planning arrangements for telecommunications developments were significantly strengthened in 2001 and include improved requirements for consulting local people about mast proposals. The changes to the GPDO were underpinned by revised guidance, set out in Planning Policy Guidance Note 8, Telecommunications. The changes to the planning guidance also underlined that school governors must be consulted on all proposals for new masts on or near a school or college. The Office of the Deputy Prime Minister is currently considering the NRPB report on Mobile Phones and Health 2004 and will respond once we have considered them fully.

Chris Ruane: To ask the Deputy Prime Minister what guidelines he has issued on consultation with (a) schools and (b) the public on the location of mobile phone masts; and how many applications have (i) conformed and (ii) failed to conform to the guidelines since their inception.

Yvette Cooper: A Code of Best Practice on Mobile Network Development has been produced to provide clear and practical advice to ensure the delivery of significantly better and more effective communication and consultation between operators, local authorities and local people. It provides more detailed advice than is contained in Planning Policy Guidance Note 8 on Telecommunications (PPG8) about how local communities and particularly schools and colleges should be consulted in relation to telecommunications developments. The Office of the Deputy Prime Minister has commissioned a study to assess the impact that the Code has had since its introduction, how local authorities have implemented the Code and how the public perceives its operation.

The specific information requested is not held centrally by the Office of the Deputy Prime Minister and could provide it only at disproportionate cost.¹¹

F. The Planning Policy Guidance of August 2001 and Code of Best Practice

The new planning guidance opens with a statement of general policy sympathetic to telecom masts:

- ? The Government's policy is to facilitate the growth of new and existing telecommunications systems whilst keeping the environmental impact to a minimum. The Government also has responsibility for protecting public health.
- ? The aim of telecommunications policy is to ensure that people have a wider range of services from which to choose and equitable access to the latest technologies as they become available.
- ? The Government places great emphasis on its well established national policies for the protection of the countryside and urban areas – in particular the National Parks (including the Broads and the New Forest), Areas of Outstanding Natural Beauty, Sites of Special

¹¹ HC Deb 18 January 2005 cc864-5W

Scientific Interest, the Green Belts, the Heritage Coast and areas and buildings of architectural or historic importance.

- ? Whilst local planning authorities are encouraged to respond positively to telecommunications development proposals, they should take account of the advice on the protection of urban and rural areas in other planning policy guidance notes.
- ? Material considerations include the significance of the proposed development as part of a national network. In making an application for planning permission or prior approval, operators may be expected to provide evidence regarding the need for the proposed development.
- ? Authorities should not seek to prevent competition between different operators and should not question the need for the telecommunications system which the proposed development is to support.¹²

The need for “protection from visual intrusion” is stressed. Mast sharing is encouraged:

- ? In order to limit visual intrusion, the Government attaches considerable importance to keeping the numbers of radio and telecommunications masts, and of the sites for such installations, to the minimum consistent with the efficient operations of the network.
- ? The sharing of masts and sites is strongly encouraged where that represents the optimum environmental solution in a particular case. Authorities will need to consider the cumulative impact upon the environment of additional antennas sharing a mast or masts sharing a site.
- ? Use should also be made of existing buildings and other structures, such as electricity pylons, to site new antennas. Local planning authorities may reasonably expect applicants for new masts to show evidence that they have explored the possibility of erecting antennas on an existing building, mast or other structure.
- ? Authorities are encouraged to help applicants identify existing and potential sites by making suitable local authority owned property available to users and by encouraging others to do the same with their property.
- ? With the closure of the analogue mobile phone network, the re-use of the existing sites is encouraged to minimise the need for new second and third generation base station sites.

The importance of design is emphasised, and lower emission guidelines, recommended by the International Commission on Non-Ionizing Radiation Protection (ICNIRP), are introduced. The planning policy guidance states plainly that health considerations should not be grounds for rejection of applications :

- ? Health considerations and public concern can in principle be material considerations in determining applications for planning permission and prior approval. Whether such matters are material in a particular case is ultimately a matter for the courts. It is for the decision-maker (usually the local planning authority) to determine what weight to attach to such considerations in any particular case.
- ? However, it is the Government’s firm view that the planning system is not the place for determining health safeguards. It remains central Government’s responsibility to decide

¹² DTLR, *Planning Policy Guidance Note 8: Telecommunications*, August 2001, <http://www.databases.dtlr.gov.uk/planning/npp/PubDetail.asp?thisPub=PPG08>

what measures are necessary to protect public health. In the Government's view, if a proposed mobile phone base station meets the ICNIRP guidelines for public exposure it should not be necessary for a local planning authority, in processing an application for planning permission or prior approval, to consider further the health aspects and concerns about them.

? The Government's acceptance of the precautionary approach recommended by the Stewart Group's report "mobile phones and health" is limited to the specific recommendations in the Group's report and the Government's response to them. The report does not provide any basis for precautionary actions beyond those already proposed. In the Government's view, local planning authorities should not implement their own precautionary policies e.g. by way of imposing a ban or moratorium on new telecommunications development or insisting on minimum distances between new telecommunications development and existing development.

The Planning Policy Guidance also includes the following passage relating to the siting of masts near schools:

62 Where the operator submits an application to the local planning authority for planning permission or prior approval for the installation, alteration or replacement of a mobile phone base station wither at or near a school or college, it is important that operators discuss the proposed development with the relevant body of the school or further education (FE) college concerned *before* submitting any such application to the local planning authority. When making the application the operator should provide evidence to the local planning authority that they have consulted the relevant body of the school or college (e.g. the school's governing body or the corporation of the FE college).

63 When an application has been submitted to the local planning authority for planning permission or prior approval for the installation, alteration or replacement of a mobile phone base station either on or near a school or college, the local planning authority should consult the relevant bodies, and should take into account any relevant views expressed. Consultation should be in the form of written notification to the school's governing body or the corporation of the FE college, inviting their comments by a specified date.

The new Planning Policy Guidance was accompanied by two statutory instruments, both now in force:

1 *The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2001* (SI 2718)¹³

2 *The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2001* (SI 2719).¹⁴

The first Order amended the permitted development rights to bring in the extended prior application procedure for items such as telecommunications masts under 15 metres. The

¹³ <http://www.legislation.hmso.gov.uk/si/si2001/20012718.htm>

¹⁴ <http://www.legislation.hmso.gov.uk/si/si2001/20012719.htm>

second Order allowed local planning authorities to increase charges, so as to enable them to devote more resources to investigating the applications.

There is some difference in policies within the UK, although the practical effect of these differences is not yet clear. In Wales, the Administration has said that in 2001/2002 it will “introduce policy and new procedures for the siting of new Telecommunications masts.”¹⁵ That follows consultation from December 2000 after a decision by the Assembly Environment Secretary to make all masts subject to full planning control.¹⁶ The *Town and Country Planning Act 1990* applies to Wales, and there have not yet been any notable changes in planning statutory instruments, although the statutory instruments introduced in July 2001 to implement English policy do not apply in Wales. In addition, planning guidance in Wales already differed from that in England since before devolution. In Scotland, where planning law is different from that in England, although organised similarly, the executive has already placed all masts under full planning control. The Northern Ireland executive has announced its intention to remove permitted development rights, after an Executive Committee decision of 14 June 2001.¹⁷

The Code of Best Practice was announced by the Deputy Prime Minister on 12 November 2002. It was produced jointly by representatives of central and local government and the mobile phone industry, building on Government guidance and operators’ commitments. Amongst other things, it contains guidance on siting and design.

It is available at:

http://www.odpm.gov.uk/stellent/groups/odpm_control/documents/contentservertemplate/odpm_index.hcst?n=2348&l=2

G. The Telecommunication Operators’ Ten Commitments

1. The Ten Commitments

All five operators of mobile telecommunications services have signed up to “ten best practice commitments” to:

- ? develop, with other stakeholders, clear standards and procedures to deliver significantly improved consultation with local communities
- ? participate in obligatory pre-rollout and pre-application consultation with local planning authorities
- ? publish clear, transparent and accountable criteria and cross-industry agreement on site sharing, against which progress will be published regularly

¹⁵ Welsh Assembly Website,

http://www.wales.gov.uk/subiassemblybusiness/content/assembly_business_prog_2001-e.htm

¹⁶ Welsh Assembly Consultation Paper on Telecommunications Mast Development,

http://www.wales.gov.uk/subiplanning/content/consultationpapers/telecomms_letter_e.htm

¹⁷ <http://www.northernireland.gov.uk/>

- ? establish professional development workshops on technological developments within telecommunications for local authority officers and elected members
- ? deliver, with the Government, a database of information available to the public on radio base stations
- ? assess all radio base stations for international (ICNIRP) compliance for public exposure, and produce a programme for ICNIRP compliance for all radio base stations as recommended by the Independent Expert Group on Mobile Phones
- ? provide, as part of planning applications for radio base stations, a certification of compliance with ICNIRP public exposure guidelines
- ? provide specific staff resources to respond to complaints and enquiries about radio base stations, within ten working days
- ? begin financially supporting the Government's independent scientific research programme on mobile communications health issues
- ? develop standard supporting documentation for all planning submissions whether full planning or prior approval.¹⁸

2. Implementation of the Ten Commitments

In July 2003, accountants Deloitte & Touche published a report on the implementation of the ten commitments. The authors expressed the following opinion, first stating their methods:

Based on the above, in our opinion, the evidence we have seen of the operators' processes and procedures during our review fairly reflect the Operators assertion that the Operators have made demonstrable progress in implementing the Ten Commitments (including both the "Essential components" and the "Optimal components"). Progress in implementing the "Essential components" was reasonably strong. Given the relatively new nature of some of the Commitments at the time of review some of the processes were not fully operational and there are areas where implementation was not comprehensive or thorough – most notably in the "Optimal components" of the Site Selection and Planning Model.

In our opinion, the specific planning procedures that we tested...operated as described in section 3 of this report in the period from 1 September to 12 August 2003. Our scope included no assessment of the effectiveness of the objectives of the Ten Commitments...¹⁹

3. Mast Sharing

Many people argue that mast sharing would reduce the need for so many planning applications for new masts. According to the electronics trade association, Intellect, about two thirds of telecommunications masts are either shared or on buildings.

¹⁸ <http://www.fei.org.uk/fei/feiweb.nsf/framesetter/MGIO4FREFN?OpenDocument>

¹⁹ Deloitte & Touche, *Implementation Review of the Ten Commitments to Best Siting Practice for the UK Mobile Industry*, 9 July 2003

H. Have courts or inspectors blocked masts on health grounds?

It is clear that many people would like planning permission for local mobile phone masts to be refused. As explained, that is not normally an option under the rules. There have been some rulings in which perceptions of health risk have been taken into account. They have not gone so far as to challenge the permitted level of public exposure to emissions. Rather, they have taken into account the fact that people are unhappy because of their concerns.

A decision by a planning inspector in Brixton in 2002 has made some people think that applications might be refused on the grounds of perceptions of dangers, even when unproven. The ruling did take account of perceptions, but only as one part of the argument. The following report appeared in *Planning*:

A proposal by BT Cellnet Ltd for a radio base station on the roof of a six-storey office block in Brixton has been rejected because of harm to the amenity of a conservation area and local residents' perceptions of health fears. The inspector judged that the tripod antennas would clutter the roofscape, harming the building's architectural integrity and the street scene. In accessing the public's fears of a potential risk to health from the installation, the inspector noted that while the residents' concerns were not based on proven scientific facts, the perceptions could be a material consideration. She referred to paragraph 89 of PPG8...which accepts that it remains the responsibility of the government to decide what measures are necessary to protect public health.

Although the radiation emitted by the installation would be well below the recommended guidelines, she accepted that there would be an adverse visual impact for residents overlooking the installation. She acknowledged that "their daily observation of it could heighten their sensitivity about the potential risks to health, especially if that was already aggravated by concerns about pollution from the A23".

The inspector felt that this factor could reduce the perception of the quality of the environment in which the residents lived...²⁰

The inspector's ruling certainly does not mean that any applications for base stations could be rejected. The rejection was only possible because of a lack of technical or operational requirements for the installation. On the other hand, it does allow a wider range of considerations to be taken into account than is normal.

That followed a decision in May 2001 by Mr Justice Ousley to grant judicial review of a decision to approve a mast in Stockport. He said:

It is arguable that actual and perceived health risks are relevant to siting of these masts, and that the latter was not taken into account...²¹

²⁰ "Antennas rejected due to perceived health risk", *Planning*, 19 July 2002; DCS No:46832990, 25 June 2002

²¹ *Smith and Smith v Stockport Metropolitan Borough Council*, 25 May 2001

That predated the August 2001 PPG8. In 2002, the High Court heard a judicial review of the siting of a TETRA mast in Stroud. The court upheld the decision of the inspector who had approved the application. The High Court approved the inspector's statements that perceived health risk should be taken into account, alongside objective evidence about the health risk. The court approved the conclusion of the inspector:

My overall conclusions on the issues in these cases are that the perceived health concerns and the visual impact of the appeal proposals, while material to my consideration of the proposals, do not provide compelling reasons for withholding planning permission,. In coming to these conclusions I have taken account of the benefits which would arise from the introduction of the TETRA emergency services communications system.²²

Opponents of telecommunications masts cite such judgements as evidence that perceived health effects can be grounds for refusal of planning permission or prior application approval for telecommunications masts. However, the judgements do not go as far as to say that local opposition and concerns about masts are grounds for refusal. Such concerns are material considerations to be taken into account. However, they can be outweighed by other factors, including the benefits of the masts, in reaching a judgement.

The Phillips case in 2003, considered in more detail in section G of this note, is also relevant here. It does not suggest that health concerns could be grounds for preventing the erection of a telecommunications mast. However, it does suggest that such considerations should be taken into account in deciding between alternative locations.

I. Phillips v First Secretary of State, High Court October 2003

Both planning and prior approval applications for telecommunications masts mostly come down to the question of whether there is a feasible alternative site that satisfies the requirements of the telecommunications company. In the Phillips case there were changes in the size of the specified search area between the original application and an appeal. In a high Court challenge, the judge ruled that this was unfair to the claimant who had not been able to make representations about all the alternatives sites. Public health concern was taken into account.

The case

Phillips (P) was a local resident objecting to a telecommunications mast built by a 3G Telecommunications Company, Hutchison 3G (H). On 19 September 2002 H submitted a planning application for the mast claiming that the site at issue was the only viable choice,

²² *Susan Trevett v The Secretary of State for Transport, Local Government and the Regions*, [2002] EWHC 2696 Admin

and that named alternatives had been considered and rejected. One of the reasons cited was a technical requirement for a search area no greater than 200 metres in diameter. Objections were made by local residents including P. On 14 November 2002 the council refused approval for reasons of visual amenity and public perception of danger to health. On 6 December 2002 H appealed and P made representations in response within the procedural time allowed. Documents admitted subsequently by H quoted a search area of 400 metres, and included a map with an incorrect scale. P had little time to examine them. The planning inspector allowed the appeal on 27 March 2003, having decided that the plan was in accord with development policies, would not harm the street scene and that concerns of objectors on health grounds did not provide a strong enough basis to outweigh recent technical advice and current national policy. P suggested an alternative site to H and complained to the inspectorate about the conduct of the appeal process. The inspectorate rejected these complaints on 28 April 2003 and the present action was launched mainly on the basis that H's case had changed materially, especially as regards the size of the "search area".

The Judgement

Held:

1 Although the existence of alternative sites was generally immaterial or of negligible weight, there might be exceptional circumstances in which they became a relevant planning consideration (*R v North Warwickshire Borough Council, ex parte Jones & Anor* (2001) EWCA Civ 315). For example, a development plan or policy guidance could make it relevant, as Planning Policy Guidance 8: Telecommunications ('PPG8') did in the instant case by making consideration of alternatives an integral part of the process of assessment. The inspector's decision was based on the premise put forward by H that no alternative sites existed. Despite the guidance in PPG 8 that it should not be necessary to consider health aspects, there was recognition that public concerns could be material. It would be lawful for a decision-maker to approach the matter in that way.

2 H had considered alternative sites up to 880 metres away from the site at issue but the fact that H had submitted wrong information, which third parties, such as P, could not reasonably have known was wrong, led P to limit her representations to H. This resulted in procedural unfairness to P which caused her substantial prejudice.

3 It was reasonable for the inspector to have accepted H's evidence about the unavailability of alternative sites.

Claim allowed.²³

The importance of the judgement

The magazine *Planning* made the following comment:

This judgement could possibly rank as a landmark ruling. On the face of it, it requires a comparison to be made of alternative sites based on the level of local

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<http://www.lawtel2002.com/~4e088246d9504c079d75c3144957153c~/login/default.asp?TargetURL=%2Fcontent%2Fdisplay%2Easp%3FID%3DAC0105925%26HL%3DY%26BK%3DY>

objection. Thus a council or inspector, in deciding between two equally acceptable sites in environmental and operational terms, would be required to choose on the basis of which site attracts the least public objection.²⁴

It should be noted that this is an early comment. The judgement might be appealed. Other judgements might be made in this area of law. Interpretations of the judgement might vary.

The point about health considerations in PPG8 is covered in section D of this note, while section F mentions some cases in which inspectors or judges dealt with health considerations.

J. All-Party Parliamentary Mobile Group Report, July 2004

This report took evidence including procedures for planning and consultation in other countries.²⁵ It recommended tightening up planning procedures and contained the following conclusions:

R1. We recommend that the Government implements the proposal made by Sir William Stewart in the Independent Expert Group Report on Mobile Phones that permitted development rights be revoked for the erection of all base stations.

R2. We recommend that the provisions of the GPDO in respect of telecommunications should be comprehensively reviewed and revised using plain English, with a view to making them easier to interpret, including a review of permitted development rights on Article 1(5) land.

R3. We recommend that the ODPM should take the lead on a comparative review of relevant law and practice across the UK in collaboration with the responsible authorities in the devolved administrations with a view to ensuring consistent best practice and a common approach where this is beneficial.

R4. We recommend that in a revised GPDO, the Government investigates the ways in which emergency provisions can prevail, but with more stringent regulations regarding what constitutes an emergency, and with suitable penalties for operators who do not comply with these procedures. In addition, we recommend that temporary consents be reviewed.

R5. We recommend that a revised PPG8 should specify much more clearly the arrangements for public consultation during annual pre-rollout discussions to encourage local planning authorities, in conjunction with the operators, to publicise the strategic plans for mobile phone networks.

R6. We recommend that all local planning authorities are obliged by the Secretary of State to include a 'Telecommunications Plan' as a local development document (LDD) in their local development scheme (LDS).

R7. We recommend that a revised PPG8 includes further guidance on pre-application discussions, with a view to allowing local planning authorities to charge for these; and that consultation and advertisement arrangements are widened to ensure that everyone who might be affected by a proposal is well informed.

²⁴ "Mast challenge upheld over alternative location", *Planning*, 7 November 2003

²⁵ <http://www.apmobile.org.uk/apmobile%20rpt%203.pdf>

R8. We recommend that local planning authorities lay down policies and guidance in the development plan on the siting, design and appearance of telecommunications installations with the aim of minimising the visual impact of mobile phone masts and base stations.

R9. We recommend that the ODPM and mobile phone operators undertake research into the potential of alternative design solutions for telecommunication apparatus, and their implementation to reduce visual intrusion, and that this forms the basis for best practice guidance in a revised PPG8. July 2004 27 Mobile Phone Masts: Report of an Inquiry by the All Party Mobile Group R10. We recommend that the mobile phone operators adopt common digital mapping techniques to enable a national map of the location of mobile phone masts and base stations to be produced on an Ordnance Survey base.

R11. We recommend that further research is carried out in the field of mast and site sharing in order to better inform the Government in its formulation of policy guidance and local authorities in their dealings with applications for masts. In the meantime, we recommend that sharing solutions continue to be pursued by the industry in conjunction with local planning authorities.

R12. We recommend that the perceived risk and fear arising out of health concerns could be reduced by the adoption of consultation methods which are aimed at involving communities and others more.

R13. We recommend that until much more detailed and scientifically robust information on any health effects from the use of mobile phone technologies becomes available, the precautionary approach be adopted when discussing and allowing for the siting and location of masts, in line with Sir William Stewart's recommendation in the IEGMP Report of 2000, and that this be reflected in a revised PPG 8.

R14. We recommend that methods of providing technical advice to local planning authorities are actively sought. These might take the form of a dedicated adviser/expert employed by the Government who can act as an independent source of knowledge and expertise for local authorities and a government sponsored website offering independent information on all issues relating to mobile phone masts. In addition, the Government should identify sources of funding for local authorities to share an expert, especially in rural areas, and investigate sources of funding for specific training for local authority planning officers who deal with telecommunications applications.

R15. We recommend that fees are increased to reflect the resource demands on local authorities in their consideration of telecommunications applications, and that further guidance be published by the Secretary of State on the circumstances under which charges can be made for pre-application discussions.

R16. We recommend that through the pre-development discussions and the production of a 'telecommunications plan', the process of searching for and allocating sites follows a more rigorous procedure, independent of ownership, to enable the location of optimum sites.

R17. It is recommended that further research be carried out to identify best practice in other European countries for possible application in the UK.

R18. We recommend that a joint body be established between the Government and the industry, with representatives from local authorities and the regulator, (currently known as Ofcom) and that this body will:

- ? aim to build confidence between all parties and the community; July 2004 28 Mobile Phone Masts: Report of an Inquiry by the All Party Mobile Group
- ? sign a concordat regarding working practices;

- ? Lay down and monitor informal processes for consultation;
- ? Monitor the implementation of the Ten Commitments;
- ? Monitor annual rollout plans;
- ? Co-ordinate the production, through common digital mapping techniques, of an annual map on an Ordnance Survey base showing all mobile phone masts and base stations in the UK;
- ? Sponsor joint research.

R19. We acknowledge that changes to legislation can take some time to implement, but that in order to restore confidence in the planning system, we recommend that a ministerial statement be made as soon as possible to add strength to the requirements for consultation on pre-development and pre-application proposals for telecommunications installations.

K. Scottish Lessons from the removal of permitted development rights

Research published in July 2004 evaluated the Scottish experience of removing permitted development rights for telecommunications masts. The assessment was basically positive, although noting the disappointment of public expectations that masts could be prevented on health grounds:

There is wide support from the planning authorities for the new controls which have, they argue, enabled better planning outcomes on the ground. There was strong consensus that the new controls have resulted in better siting and design. Clarification of the remaining permitted development rights is required, particularly with respect to the large-scale (30 metre) masts being sited on railway land.

Whilst the new regulations provide opportunities for greater consultation and information sharing, the perceived exclusion of health-related matters in the context of telecommunications is problematic. There is frustration that the planning system is confined to matters of siting and design. The findings suggest that the public remains unconvinced in general terms as to the protection afforded communities by the planning system with respect to telecommunications developments. More needs to be done to convince the public of the openness and transparency of the planning decision-making process.

Advances in stealth technology mean that the operators consider that visual concerns will be much reduced. The view of the industry is that the Ten Commitments and a prior approval system, such as that operating in England and Wales are adequate and that the relatively stricter regime in Scotland will hinder the roll-out of 3G.

There was, however, no evidence that the new planning controls in Scotland had slowed up telecommunications infrastructure roll-out.²⁶

²⁶ M.G.Lloyd and D.M.Peel, *Evaluation of Revised Planning Controls over Telecommunications Development*, Scottish Executive Research Findings 183/2004

L. Adjournment Debate October 2004

In an adjournment debate on 18 October 2004, Paul Truswell, Secretary of the All-Party Group on mobile communications, put forward several proposals relating to masts based on their report, but they were rejected by the Minister Phil Hope:

Mr. Paul Truswell (Pudsey): ...In May, the group conducted a two-day hearing into planning procedures relating to mobile phone masts. We did not feel that we had the expertise to adjudicate on health issues, but there are still several inescapable references to them in our report. We believe that the perceived risk and fear arising from health concerns can and should be reduced by the adoption of consultation methods that involve communities and others much more. Our report, containing 19 recommendations, was published in July...

We believe that the Town and Country Planning (General Permitted Development) Order 1995—or GPDO—is outdated. The 56-day deadline is arbitrary and difficult for planning authorities to meet, especially given the number and controversial nature of many applications. It is difficult for communities to engage in the process... Our report also highlights the inconsistencies in planning approaches across the UK. We feel that the ODPM should take the lead in a comparative review of relevant law and practice across the UK to ensure consistent best practice and a common approach where that would be beneficial.. The all-party group recommends that, in revising the GPDO, the Government investigate ways in which emergency provisions can prevail, but with much more stringent regulations about what constitutes an emergency and with suitable penalties for operators who do not comply with those procedures. In addition, we recommend that temporary consent should be reviewed.

There is a strong view that communities are not properly consulted in the process of development of mobile telecoms, as I suggested when I mentioned permitted development rights. We were attracted to the practice of Basingstoke and Deane council of holding a telecommunications inquiry, which produced guidance on three stages of consultation: roll out, pre-application and when prior approval or permission had been applied for—more jargon.

The provision for earlier involvement of interested parties, in particular the public, led us to recommend that a revised planning policy guidance note 8—the planning guidance relating to the issue—should specify much more clearly the arrangements for public consultation during annual roll-out discussions to encourage local planning authorities, in conjunction with operators, to publicise the strategic plans for mobile phone networks.

As a further aid to public involvement in scrutiny we also recommend that under the Planning and Compulsory Purchase Act 2004 all local planning authorities should be obliged to include a telecommunications plan as a local development document, or LDD, in their local development scheme, or LDS—even more jargon. Later in the report we recommend that mobile phone operators adopt common digital mapping techniques to enable a national map of the location of mobile phone masts and base stations to be produced on an ordnance survey basis. That would help to inform discussions on the overall siting of masts.

The often controversial and time-consuming nature of mast applications can demand extensive work from planning officers for which the fee levels are grossly inadequate. We were attracted by proposals for notification of neighbours within 200 m of an application site and for councils to have dedicated planning sub-committees,

developing real expertise on mast applications. Even a city the size of Leeds has limited expertise in dealing with such applications.

Extending involvement in the ways suggested carries a financial cost. It is therefore our view that a revised PPG8 should include further guidance on pre-application discussions with a view to allowing local planning authorities to charge for them. We also believe that consultation and advertisement arrangements should be widened to ensure that everyone who might be affected by a proposal is well informed. A further important recommendation is that fees should be increased to reflect the resource demands on local authorities in their consideration of applications and that more guidance should be published by the Secretary of State on where charges can be made for pre-application discussions...

The group has recommended that further research should be carried out into mast and site sharing to better inform the Government in their formulation of policy guidance and also local authorities in their dealings with applications for masts.

As I said, the group did not think that it could adjudicate on health considerations, yet they are obviously at the forefront of many people's minds. The perceived risk and fear arising out of health concerns could be reduced by the adoption of consultation methods that are aimed at involving communities much more closely and at an earlier stage. Until more detailed and scientifically robust information on any health effects from the use of mobile phone technology becomes available, the precautionary approach should be adopted in line with Sir William Stewart's recommendation in his report. That should be reflected in a revised PPG8.

I mentioned the idea of planning committees developing special expertise. We also think that the Government should actively seek methods of providing technical advice to local planning authorities. We suggested that those might include a dedicated adviser employed by the Government, a Government-sponsored website offering independent information, and the identification of sources of funding for local authorities to share experts and resources for specific training for local authority planning officers dealing with mobile phone mast applications.

There are other recommendations, of which my hon. Friend the Minister is no doubt aware having assiduously read the report, which I am sure he has done. They call for more rigorous procedures to enable locations to be on optimum sites and for further research to be carried out to identify best practice in other European countries for possible application in the UK. We called for a formal joint body to be established by the Government and the industry, with representation from local authorities and the regulator, to build confidence between all parties, especially the community, on the range of issues that our report covered.

Our final recommendation acknowledges that changes to legislation can take some time to implement, but to restore confidence in the planning system we recommend that a ministerial statement be made as soon as possible to add strength to the requirements for consultation on pre-development and pre-application proposals for telecommunications installations. I shall conclude on that point and hope that my hon. Friend the Minister will use this opportunity to make just such a statement.²⁷

²⁷ HC Deb 18 October 2004 cc739-42

The Minister's reply, rejecting all the proposal on permitted development rights, included some information about planning appeals:

The statistics from the Planning Inspectorate suggest that a disproportionate number of telecommunications applications are refused at local level. Approximately two thirds of telecommunications cases are approved on appeal compared to the usual rate of one third for all cases. Of course, the Government recognise why so many applications are refused at a local level, and I will return to this in a moment. However, as Members may be aware, the Planning Inspectorate has had to deal with a greatly increased work load and we do not want add to the burden. The Government believe therefore that removing the permitted development arrangements would significantly add to the burden of the planning system to the detriment of all applications and appeals.²⁸

M. Keith Hill's call for more consultation, December 2004

On 9 December 2004, Planning Minister Keith Hill made a statement to Parliament on mobile phone masts:

I am seeking to place a renewed emphasis on the importance of both the local planning authority and network operators participating in the annual rollout discussion process described in the Code of Best Practice on Mobile Phone Network Development. The importance of this was recognised in Planning Policy Guidance Note 8 (revised) Telecommunications (PPG8) and the Code of Practice and has recently been emphasised by the All Party Group on Mobile Phones (apMobile) in their report into planning procedures. The report recognised the benefits of local planning authorities and operators working with the local community, to review annual roll out plans and to develop local strategies for telecommunication developments.

The Government believes that information sharing and negotiation at this early stage could greatly reduce the levels of concern and conflict when specific applications are submitted in line with the agreed local plan or strategy. Therefore, it is desirable that in their local development frameworks, local planning authorities consider how they plan to manage the developments needed to meet the growing demand for communication services. Where appropriate, authorities may need to consider developing a suitable policy basis for communication developments in their local development documents. Such policies must of course be in accordance with the national policy as set out in Planning Policy Guidance Note 8 Telecommunications (revised).

I am also reiterating the importance of effective pre-application discussions, especially in the absence of an agreed communications plan or strategy. It is of course

²⁸ HC Deb 18 October 2004 cc744-5

open to local planning authorities to charge for such discussions under section 93 of the Local Government Act 2003, if they consider it necessary or appropriate.

The Code of Best Practice sets out the traffic light model which is designed to help network operators and their representatives to identify issues that might arise should a site be selected for a telecommunication development and to help the preparation of consultation strategies to address such issues. It is important that the rating under the traffic light model is discussed with the local planning authority. In red and amber rated areas this discussion should include consideration of the optional elements of the consultation strategy that will be undertaken by the applicant. In accordance with the Code of Best Practice, it is reasonable for the local planning authority to expect evidence of the consultation undertaken should be provided as part of the supplementary information sent with an application.

The Office of the Deputy Prime Minister has commissioned a study by the University of Reading and Arup to assess the impact that the Code of Best Practice has had since its introduction and how local authorities have implemented the Code and how the public perceives its operation. The mobile network operators have also commissioned the second independent review of their Ten Commitments which will demonstrate in a quantitative way how their operations and procedures align with the requirements of the Code. This will provide the Government with evidence on whether the Code has been effective and whether there are any areas of weakness that need to be addressed. Informed by this evidence the Government will consider whether changes to the Code are appropriate.

Finally, in respect of the Court of Appeal case, *First Secretary of State v T-Mobile and others*, on 12 November the Court dismissed an appeal by the First Secretary of State against the decision of Sir Richard Tucker in relation to an application by T Mobile for a shared mast in Harrogate. In essence the issue before the Court of Appeal was whether the judge in the High Court had dealt correctly with the extent to which public fears about the health risks arising from masts was material, when the development in question had the benefit of an ICNIRP certificate. Sir Richard had held that the Inspector had misconstrued PPG8 when dealing with this issue in his Decision Letter.

The Court of Appeal gave consideration to the policy guidance in PPG8. Taking into account that advice, the Court found the FSS' policy to mean that in cases where an ICNIRP certificate exists, only in exceptional circumstances would it be legitimate for a local planning authority to take public fears about health risks into account. They agreed with Sir Richard that the Inspector had misconstrued this advice, and his decision was therefore flawed. We will be carefully reviewing the transcript of the judgment of Lord Justices Pill, Mummery and Laws before deciding what action may need to be taken in the light of this judgement.

My officials will be writing to all local planning authorities and licensed communications code system operators drawing their attention to this statement.²⁹

²⁹ ODPM Press Notice 308, *Minister calls for more consultation on mobile phone masts*, 9 December 2004

N. National Radiological Protection board Advice, January 2005

In January 2005, the National Radiological Protection Board (NRPB), now chaired by Sir William Stewart, published another survey of studies on the health effects of mobile phones:

The main conclusion is that there is no hard evidence at present that the health of the public, in general, is being affected adversely by the use of mobile phone technologies, but uncertainties remain and a continued precautionary approach to their use is recommended until the situation is further clarified.³⁰

Although most comment centred upon the advice that children should not use mobile phones, there were several recommendations relating to planning and mobile phone masts. In particular:

- ? the planning process associated with the erection of mobile phone base stations be subject to independent review.

Other recommendations were:

- ? improvements be made in ensuring ready access by the public to all up to date and relevant information related to the use of mobile phones and of masts.
- ? the legal responsibilities and regulations in relation to the installation of microcells and picocells should be clarified and more information about their deployment be made available.
- ? monitoring of potential exposures from 3G base stations be carried out concomitantly with the rollout of the network.
- ? a formal inspection procedure be set in place to ensure that exclusion zones around base stations are clearly identified.
- ? comparative information on the SAR values of different phones be made readily available to better inform consumer choice.
- ? particular attention be given to how best to minimise exposure of potentially vulnerable sub-groups such as children and to consider the possibility that there may be other sub-groups who may be particularly sensitive to radiowaves.
- ? a continuing research programme on the possible health effects of mobile phone technologies be strongly supported.

The Board also places high importance on accumulating knowledge of exposure levels and possible biological effects of TETRA based technology used by the police.

The report, *Mobile Phones and Health 2004: Report by the Board of NRPB*, is available at: http://www.nrpb.org/publications/documents_of_nrpb/abstracts/absd15-5.htm

³⁰ http://www.nrpb.org/press/press_releases/2005/press_release_02_05.htm

O. The Government position in 2005

On 4 April 2005, the Government made a policy announcement, perhaps most notable for not giving ground to objectors against masts:

The Government is to commission research to identify the future direction of mobile phone technology and the future needs for mast developments, it was announced today.

The research will also look at the potential for increased sharing of masts. The research will consider the effectiveness of the Sitefinder database and options for its future development. The Government is currently reviewing planning arrangements for mobile phone masts

Planning Minister Yvette Cooper said:

"It is important to identify the future direction of mobile phone technology in order to inform policy development and to respond to public interest in this area."³¹

Many people ask whether the Government is about to change planning guidance relating to telecommunications but there is no sign of that yet, as shown by a PQ in June 2005:

Mr. Davey: To ask the Deputy Prime Minister what plans he has to review national planning policy guidance on mobile telephone telecommunications masts; and if he will make a statement.

Yvette Cooper: Current planning guidance for all electronic communication developments is set out in Planning Policy Guidance Note 8 (revised) (PPG8). The Office of the Deputy Prime Minister has also issued a Code of Best Practice on Mobile Phone Network Development. In September last year we commissioned the University of Reading and Arup to undertake an independent study to assess the impact that the code has had since its introduction. The report will be published in due course. This forms part of a review the Government are undertaking of all the planning arrangements surrounding telecommunication masts.³²

³¹ ODPM Press Notice, *Government to commission research on future development*, 4 April 2005

³² HC Deb 13 June 2005 cc120-1W