

TO BE OR NOT TO BE - TELECOMMUNICATION EQUIPMENT?

by Wendy Le-Las

There has been an outbreak of cast iron carbuncles up and down the land, which is causing consternation amongst local councils. Yes, you've guessed it - it's the advent of your friendly neighbourhood telecommunication mast, not forgetting his smaller cousins, arrays of antennae.

The four current mobile telecommunications operators are obliged to aim for 98% coverage as a condition of their licence. Vodaphone and Cellnet had a head-start with their analogue systems in the 1980s, and progressing to digital technology in 1993/4. One 2 One and Orange began to compete in 1995. Now the DTI is gearing up for a third round of licensing - so there will be more masts and antennae to come!

The necessary coverage tends to come in four phases: along main roads; urban areas; apparatus to access cars; and equipment to penetrate buildings. The cellular system consists of a series of cells operating from a base station. The system is demand led. The size of each cell is determined by the number of subscribers expected to require access to the system during peak usage. As the number of subscribers increases, so must the number of cells and base stations.

The location of transmitter aerials is crucial as signals from one cell cannot be allowed to spill over into another cell with the same frequency. To avoid blind spots from buildings and hills, antennas must usually be placed high up. Hence their predilection for the local beauty spot. In urban areas they are usually placed on existing buildings, and, as many of you have found out, conservation areas are no exception.

Government advice on this subject is still to be found in PPG8, 1992. Planning authorities are expected to incorporate policies in structure and local plans and unitary development plans. Typically the local plan will say "Borchester District Council will have regard to

- : · The need for the equipment in the context of the company's network;
- That no satisfactory alternative sites are available, including mast sharing;
- That the development has been sited and designed to minimise visual impact.

When it comes to development control, there are no less than five categories of activities: minor operations; permitted development which does not require prior approval; that subject to the 42 day procedure; that subject to the 28 day procedure; and development subject to full planning permission.

At the very minor end of the scale some operations or changes of use may not even constitute development in terms of the 1990 Town and Country Planning Act (s.55). Domestic television aerials have always fallen into this category, and the same is to apply to small telecommunications apparatus.

Then there is the question of permitted development rights. These do fall within the definition of "development", but the burden on the planning system would be excessive were it not for allowing minor development to proceed without the need to apply for planning permission. The thirty-three categories of permitted development are to be found in the 1995 Town & Country (General Permitted Development) Order (GPDO): an invaluable document for local councils and one of the better cures for

insomnia on the market! The detail on telecommunications equipment is to be found in the GPDO, Schedule 2, Part 24. If you are concerned about this issue, you would be well advised to have a copy to hand. In 1998 and 1999 this was updated by Amendment Orders: interested readers should acquire a copy of DETR Circular 04/99 for what passes as a user-friendly explanation of the changes. If you still don't understand it, ask the relevant planning officer: there is likely to be someone who has specialised in the subject.

Part 24, Class A says that on land controlled by the telecommunications licensee, he is permitted to:

- (a) install, alter or replace apparatus;
- (b) use the land for up to six months to undertake repairs;
- (c) undertake development ancillary to radio equipment housing.

This blanket permission is not untrammelled. Firstly, there is lengthy list of developments which have to have a traditional planning application, and these will be dealt with later. Secondly, there are conditions attached to Class A:

- Apparatus and equipment is supposed to be sited so as to minimise the effect on the external appearance of a building;
- Surplus equipment is moved from the site;
- If a proposed mast is within 3m. of the perimeter fence of an aerodrome, the CAA or MOD must be informed;
- Before commencing the development an application has to be made to the LPA to see whether prior approval will be required as to the siting and appearance of the development.

Just to add to life's rich pattern, there are two separate procedures: the 42 day period for considering masts up to 15m. and a 24 day period for other equipment.

For mast up to 15m. the applicant has to supply:

1. A written description of the proposed development;
2. A plan of the proposed location;
3. A copy of the site notice erected by the applicant together with a plan of location;
4. The appropriate fee.
5. Evidence that the possible use of an existing mast has been considered before applying for this one.

With regard to additional publicity, it is up to the local authority to decide, on a case by case basis, whether additional publicity is needed e.g. advertisements in local papers, and the notification of local councils and nearby property owners. This may include those outside their LPA area. If the setting is affected of a listed building, World Heritage Site, historic battlefield or registered historic park, the LPA is advised to consult English Heritage and the Garden History Society. The opinions of those who respond will be taken into account when deciding whether prior approval will be required, and, if so, what their verdict should be.

The acceptability of the mast and ancillary equipment may be much influenced by the materials used, colour and general design. An alternative approach may solve the problem. With regard to siting, the following factors may be involved:

- The height of the site in relation to surrounding land;
- Topographical features and natural vegetation;
- The effect on the skyline or horizon;
- The view of the site from all sides;
- The site in relation to areas designated for scenic or nature conservation reasons;
- The site in relation to existing masts, structures, buildings, especially those of historic interest;
- The site in relation to residential property.

Landscaping or screening may be the key to limiting impact on existing development and the local scene. If the LPA decides that it wishes to go through the prior approval procedure, it has up to 42 days in which to make up its mind. With good luck and a following wind, the decision may be made by the planning committee.

The 28 day procedure applies to:

- A mast installed on a building or structure;
- A public call box;
- Radio equipment housing with a volume in excess of 2.5m³;
- Development ancillary to radio equipment housing e.g. fences, roads etc.
- Any Part 24 development carried out in a National Park, AONB, conservation areas, the Broads, and within a SSSI.

The details required are similar to those needed for the 42 day procedure. The LPA has 28 days from their receipt to decide whether it wishes to influence the siting and appearance of the above equipment. There is no statutory requirement to publicise such proposals but it is encouraged. If your council is having difficulty responding to these, the DETR has suggested pre-application discussions so that the LPA can be quick off the mark. English Heritage, the Garden History Society and English Nature are also obliged to get their skates on. The short time-scale also means that the decision is likely to be made by a planning officer under delegated powers, rather than being decided by the planning committee.

Full planning permission allows consideration over eight weeks or longer, rather than the non-negotiable deadlines of 28 or 42 days. Development subject to full planning permission is listed in Part 24, A1: much depends on precise dimension of the apparatus and its location. It includes:

- Masts less than 15m and antennae in National Parks, AONBs, conservation areas, the Broads, and SSSIs;
- All masts over 15m. - and that includes those of less than 15m. that mysteriously grow thanks to a

concrete plinth.

- Antennae facing located on a wall or roof slope facing a highway less than 20m. away.
- Antennae on top of a listed building

Not being able to query the need for something is a familiar situation for local councils dealing with planning matters e.g. the demand for housing or minerals. Telecommunications equipment is an extreme case because the government sees electronic communication as essential for the growth of the economy, and the locational requirements do not leave much room for flexibility. It is a question of where do we put it. That said, operators can be encourage to share masts, which are liable to grow in height and complexity, or the antennae can be made less unsightly if spread out across the tops of building or attached to lamp standards down a trunk road. Much depends on the calibre of the LPA officer dealing with these matters and what options are open, and this includes property owners willing to rent land and property for this use. If the matter goes to appeal, the inspector is likely to rule against proposals which are visually obtrusive in, say, AONBs or on listed buildings.

There is also the vexed question of public health. The statutory agency dealing with this issue is the National Radiological Protection Board. In its evidence to the International Commission on Non-ionising Radiation, in 1998, NRPB said

"It is scientifically proven that ionising radiation, such as X rays, gamma rays and neutrons, can do damage to the DNA in the nucleus of a cell. They can induce both cancer and hereditary disease. At high enough doses they can cause death. Hence the fear of a nuclear war, or even nuclear power. However the jury is still out on non-ionising radiation which include electric and magnetic fields, and radiations which arise from sources such as power-lines, radio transmitters and mobile phones. They do not have enough energy to damage DNA directly and thus cannot cause cancer. They can however give rise to other effects on the body and there have been suggestions that they can speed up the development of cancer that has been caused by other agents."

It would appear that the really dangerous place to be is within a few metres in front of live antennae. After that the signal is too weak to damage DNA. However, as yet, any damage to human health from long term exposure to non-ionising radiation remains unproven. As the NRPB are required by Act of Parliament to base their recommendations on "conclusive scientific proof", they are obliged to limit their advice to the dangers of thermal radiation.

In 1996 The European Commission set up an Expert Group mandated to draw up a "blueprint for research" into the possible health effects of mobile telephony, including non-thermal effects. The EC Fifth Framework Programme of Research reflects the concerns of the Expert Group. In April 1999 Tessa Jowell, Minister for Public Health, instructed the NRPB to set up an Independent Expert Group on Mobile Phones (including base-stations and transmitters). The committee has invited evidence through the scientific, broadsheet and tabloid press, and held open meetings in Liverpool, Cardiff, London and Belfast. It is to conduct a rigorous assessment of existing research and to give advice on the present state of knowledge. It will report to the Government in April 2000 and the findings published in May 2000, so watch this space!

Meanwhile, a third of all local authorities in Scotland have decided that there are too many unanswered questions to risk exposing the public needlessly to levels of microwave radiation which could or may in time prove harmful to health. South of the border the LGA has now advised its member authorities to

adopt a precautionary approach. On 12th August 1999 the LGA Planning Executive Chairman said

"The Government must stop dithering and give Councils some clear guidance to the threat posed by radiation and the planning powers to keep the public safe - especially vulnerable children and the elderly, rather than wait two or three years until the research is finished."

A variety of local authorities have followed suit. In September 1999, Belfast City Council and Hampshire County Council banned transmitter masts and base stations on their property. In October, Oxfordshire County Council decided not to allow mobile phone masts on school or council owned sites, within 200 metres of school boundaries, pending further research. Uncertainties about the health effects led Restormel Borough in Cornwall to refuse a full planning application for a 20m high telecommunications mast as it would be close to a school and housing. Wyre Borough Council in Lancashire turned down a mast given its proximity to a primary school and housing. Interestingly they cited the now famous 1998 Court of Appeal judgement that stated

"genuine public fear and concern is a material consideration, even if that fear is irrational and nor properly based on evidence" Newport BC v Secretary of State for Wales

Thus it is official: public concern is a legitimate planning consideration which constitutes a valid reason for turning down an application. However if an applicant goes to appeal, the Inspectorate are likely to tow the NRPB line. The only consolation is that the LPA won't be had up for costs. This was confirmed, in February 2000 by the Court of Appeal, in a case brought by that man of many parts, Mohammed al Fayed.

This begs the question the apparent conflict between the Precautionary Principle and the practice of the Secretary of State and the judiciary. Successive EU treaties have endorsed the precautionary approach and the British Government signed up to it in the Maastricht Treaty in 1993. The EU Community Policy on the Environment sets out the Precautionary Principle and the virtues of preventative action in Article 174 of the Treaty of Amsterdam. The Protection of Public Health is specified in Article 174(I). These treaties provide the framework in which European environmental law and policy is to be formulated. It is not binding on the decisions of individual Ministers or judges in Member States. Until such times as there is conclusive proof that non-ionising radiation is damaging, it will be difficult to win a case on appeal or through the courts.

Meanwhile what should a concerned local council do? A possible way forward would be to persuade their LPA to put a suitably worded precautionary policy in their local plan. Even if it was recommended against by the inspector, after the local plan inquiry, it could always be re-inserted by the LPA provided they gave good reason for doing so e.g. public concern. It is unlikely that the Secretary of State or the judiciary would get involved. As the emerging plan proceeds through its procedures, the policies gain in weight even before the plan is adopted. The specialist planning officer can then use the precautionary policy to persuade the applicant to move the apparatus. Although the necessary coverage limits the local of such equipment, the requirements are not that inflexible. Their predilection for being sited near to habitation is not for the pleasure of micro-waving the local population, but rather because the equipment needs electricity. To site it a few hundred yards away would increase the installation costs, that's all. However, armed with a suitable policy, the planning officer may be able to persuade the operator that it is cheaper and quicker than going to appeal. Let's hope they believe him!