



REPORT OF:	THE DIRECTOR OF GROWTH & DEVELOPMENT
TO:	PLANNING AND HIGHWAYS COMMITTEE
ON:	17th OCTOBER 2019
ORIGINATING SECTION:	DEVELOPMENT MANAGEMENT
WARDS AFFECTED:	ALL
COUNCILLORS:	ALL

TITLE OF REPORT:

BLACKBURN WITH DARWEN BOROUGH COUNCIL'S RESPONSE TO THE DEPARTMENT FOR DIGITAL, CULTURE, MEDIA AND SPORT CONSULTATION – PROPOSED REFORMS TO PERMITTED DEVELOPMENT RIGHTS TO SUPPORT THE DEPLOYMENT OF 5G AND EXTEND MOBILE COVERAGE

1. PURPOSE OF THE REPORT

- 1.1 To inform Members of the Council's response and views on the Government's proposals to amend the permitted development rights in England to grant planning permission for mobile infrastructure to support deployment of 5G and extend mobile coverage particularly in rural areas, and the circumstances in which it would be appropriate.
- 1.2 To agree the responses to the questions set in the Consultation paper, and that the responses should form the formal views of the Council.

2. BACKGROUND

- 2.1 A recent report to the House of Lords Select Committee on the Rural Economy in April 2019 found, that better mobile infrastructure has the potential to transform the rural economy by enabling small businesses to grow, recruit and retain staff and make it easier for people to work from home. 5G networks are also crucial to drive productivity and growth across the sectors.
- 2.2 Over the past few years the Government have been working towards ensuring the UK gets better coverage and connectivity, and have been working with the mobile network operators. As a result of this, the Government introduced in 2017 the Electronic Communications Code (Code) which incentivises and supports network investment. In addition, in 2016 the Government also made significant reforms to the planning system by amending the planning regulations i.e.

extending the existing permitted development rights. Then in 2018 the National Planning Policy Framework (NPPF) was also strengthened to support the expansion of electronic communications networks.

- 2.3 The Government are now considering further reforms to the planning system in England in order to support the network upgrades that will be required to deploy 5G and to extend network coverage, particularly in rural areas. The purpose of the consultation is to seek views on the proposed changes. The consultation period ends on the 4th November 2019. Secondary legislation would be required in order to implement any proposed changes to the planning regulations.

Code Operators and Permitted Development Rights

- 2.4 The Code is set out in Schedule 3 of the Communications Act 2003. Mobile network operators can obtain “Code Operator” status by applying to Ofcom. The Code is supported by secondary legislation – The Electronic Communications Code (Conditions & Restrictions) Regulations 2003. These Regulations set out the duties the Operators must fulfil, including adhering to a Code of Practice, and to consult with local planning authorities when deploying infrastructure. The Regulations also include a duty for all operators to share the use of their apparatus where possible. Permitted development rights for Code Operators are set out in Part 16 of Schedule 2 to the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Most permitted development rights are subject to conditions that seek to minimise their impact and protect local amenity. If a development does not meet the limits set out in Part 16, then a full planning application is required to be submitted where all the material planning considerations can be assessed.

3. RATIONALE

- 3.1 The Government contend that the case for 5G is compelling as it will bring faster, more responsive and reliable connections than ever before. The Government goes further by saying that 5G has the potential to improve the way people live, work and travel, and delivers significant benefits to the economy and industry e.g. ability to connect more devices to the internet at the same time. It is recognised that the demand for mobile data in the UK is increasing rapidly, and the Government are recognising that as households and businesses become increasingly reliant on mobile connectivity, the infrastructure must be in place to ensure supply does not become a constraint on future demand. Mobile network operators have now started rolling out 5G in the UK, and the Government consider it is now timely to consider whether further planning reforms should be introduced.
- 3.2 In order to deploy 5G and improve coverage in areas with poor connections, mobile network operators will need to strengthen existing sites to accommodate additional equipment, and also identify and develop new sites.
- 3.3 Members will be aware that such development normally requires planning permission, which is obtained in two ways:

- (i) A planning application is submitted to the local planning authority;
- (ii) Government grant planning permission through permitted development rights:
 - (a) Where Prior Approval is needed – relating to the siting and appearance of apparatus before carrying out any development. This is a light touch approach as the principle has already been established, but it allows the local planning authority to carry out public consultation and seek the views before issuing a decision within 56 days.
 - (b) Permitted development with the requirement to notify – in certain instances there are certain permitted development rights that do not require the prior approval of the local planning authority, only the developer must notify the local planning authority of its intention with one calendar month's notice.

3.4 Mobile network operators have identified to the Government that to provide greater mobile coverage and to support the deployment of 5G this would need taller and wider masts, building based masts located nearer to highways, and faster deployment of radio equipment housing located on both protected and unprotected land.

4. KEY ISSUES

4.1 The Consultation format is set with a series of questions around the proposed changes. The questions in the consultation are listed below in sections, together with the rationale behind each question, and the proposed response from the Council.

QUESTION 1: ROLE OF INDUSTRY

4.2 The Government are seeking evidence from the industry of the impact the proposed changes set out in Questions 2 to 5 would have on meeting their ambitions for 5G and mobile coverage.

Question 1.1: If these in principle proposals (set out in Questions 2 to 5) were taken forward, what impact would they have on meeting the Government's ambitions in relation to mobile coverage including addressing 'total not-spots' and 'partial not-spots'?

Question 1.2: If these in principle proposals (set out in Questions 2 to 5) were taken forward, what impact would they have on planned deployment of 5G technology?

Question 1.3: If these in principle proposals (set out in Questions 2 to 5) were taken forward, what further measures could industry offer to reduce visual impacts of new electronic communications infrastructure and how would these be delivered?

Question 1.4: If these in principle proposals (set out in Questions 2 to 5) were taken forward, what further measures could industry offer to ensure that

equipment at redundant sites is removed and the land is restored, and how would these be delivered?

1.5: If these in principle proposals (set out in Questions 2 to 5) were taken forward, what further measures could industry offer to ensure that the use of existing sites and infrastructure were maximised before new sites are identified, for example through increased sharing?

Comments

The proposed reforms would assist in providing faster broadband and better phone signals in the rural communities to ensure they remain viable for the future. The increased mobile coverage in the rural areas would also be a positive move for businesses and services which rely on communications. The industry though needs to balance the better coverage by ensuring the visual impact is not ignored and is subject to careful consideration. This can be through looking at the design and materials of the structures i.e. slimline monopole, appearance, and mast sharing to reduce the number of structures. Operators should also consider using existing infrastructure particular in rural areas e.g use of existing buildings, pylons, turbines utilising new technologies. If this is not feasible or viable, then operators must be required to fully demonstrate and explain why.

With regards to ensuring equipment is removed from redundant sites and the land is restored this should be set out in the Code of Practice and as conditions set out in the permitted development rights.

With regards to sharing, operators must be required to submit evidence to demonstrate they have attempted to look at sharing and considered utilising other infrastructure.

QUESTION 2: ENABLING DEPLOYMENT OF RADIO EQUIPMENT HOUSING ON LAND WITHOUT REQUIRING PRIOR APPROVAL, EXCLUDING SITES OF SPECIAL SCIENTIFIC INTEREST, TO SUPPORT 5G DEPLOYMENT.

4.3 This issue covers structures such as small cabinets to a purpose built cabin serving several operators. Currently Part 16 of the GPDO allows the local planning authority consider the siting and appearance of the development within a 56 day period. This currently relates to structures exceeding 2.5 cubic metres, or located within conservation areas/sites of special scientific interest (SSSI). The proposal is to remove the requirement for prior approval for development within conservation areas, and for development on unprotected land which exceeds 2.5 cubic metres. Instead of the 56 prior approval process, operators would only be required to give one month's notice to the local planning authority.

Question 2.1: Do you agree with the principle of amending permitted development rights for equipment housing to remove the requirement for prior approval for development within Article 2(3) protected land (Conservation Areas) and on unprotected land which exceeds 2.5 cubic metres, to support deployment of 5G?

Yes No Not Sure

Comments

It is considered by removing the requirement for prior approval in conservation areas it would contradict the principles of protecting heritage assets set out in the NPPF (2019) paragraphs 189-190. In addition, this could also have an impact on Conservation Area Appraisals already undertaken by local planning authorities. There would be no control over the siting of the structures which could impact on the setting of listed buildings and more importantly affect the character and appearance of street scenes.

Question 2.2: What impact could this proposal have on the surrounding area and how could this be addressed?

Comments

By removing control within protected areas such as conservation areas, it could lead to structures being introduced which will have an adverse visual impact on the character and appearance of the areas. In addition, Conservation Area Appraisals would also be affected, and it could lead to setting a precedent for future development in the areas where there have been no controls relating to the equipment housing in terms of visual appearance.

QUESTION 3: STRENGTHENING EXISTING GROUND-BASED MASTS TO ENABLE SITES TO BE UPGRADED FOR 5G AND FOR MAST SHARING WITHOUT PRIOR APPROVAL.

- 4.4 The Government consider there is now an opportunity to consider whether the limit on increasing the width of existing ground-based masts up to one third under permitted development rights without prior approval should be amended, to encourage greater use of existing sites, before new sites are identified. In addition, as the Code Operators Code of Practice encourages site sharing, the Government are also considering amending the permitted development rights to strengthen existing masts to enable upgrading and infrastructure sharing.

Questions 3.1 & 3.2: Do you agree with the principle of amending permitted development rights to allow an increase in the width of existing ground-based masts by more than one third, to support 5G deployment and encourage greater utilisation of existing sites? If yes, what increase in width should be granted?

Yes No Not Sure

Comments

It is considered that by increasing the width of existing ground-based masts by more than one-third could have a detrimental visual impact on sites and the surrounding area. The existing allowance of up to a third is considered to be quite a large area, and by increasing this allowance would only exacerbate the situation. This could be particularly apparent in rural areas where large areas of hardstanding could be created.

If the permitted development rights were to be amended the measurement should be more proportionate and it is considered that by increasing the width by up to a half, would help in encouraging greater sharing of sites.

Question 3.3: To further incentivise operators to maximise the use of existing sites, should permitted development rights be amended to increase the height of existing masts to the relevant permitted height without prior approval? If yes, what restrictions are appropriate to protect safety and security, and visual impact considerations.

Yes No Not Sure

Comments

The current permitted development rights under the Prior Approval process for poles & antennae at 8 metres, and masts/antennae up to 15 metres, allows the local planning authority to consider the siting and appearance. The existing 15 metre masts already have an impact on areas (which is currently evident by the roll out from Internexus in the borough), and by increasing this height restriction it is considered would be detrimental to local communities in terms of the visual impact.

Question 3.4: Are there any other amendments to permitted development rights that would further incentivise operators to maximise the use of existing sites? If yes, what are these and what restrictions would be appropriate to ensure that the visual impact on the surrounding area is minimised?

Yes No Not Sure

Comments

The existing permitted development rights have already been relaxed in 2016. By further relaxing the permitted development rights would reduce the control local planning authorities would have. As such, no further incentives should be applied.

QUESTION 4: ENABLING DEPLOYMENT OF BUILDING-BASED MASTS NEARER TO HIGHWAYS TO SUPPORT DEPLOYMENT OF 5G AND EXTEND MOBILE COVERAGE.

4.5 The Government are considering amending the GPDO to allow building-based masts to be deployed nearer to highways. This would encourage greater use of existing buildings for the siting of apparatus, reducing the need for ground-based masts. Currently in accordance with the GPDO, masts are subject to the prior approval process where they are located on un-protected and protected land i.e. conservation areas, which exceeds the height of the mast prior to alteration or replacements and exceeds a height of 20 metres. The Government are looking to change this to allow the deployment of building-based masts within 20 metres of the highway, located on buildings less than 15 metres tall, subject to the prior approval process.

Question 4.1: Do you agree in principle with creating a permitted development rights to grant permission for masts to be located within 20 metres of a highway on buildings less than 15 metres in height, in all areas?

Yes No Not Sure

Comments

By having no controls in sensitive areas such as the green belt and conservation areas could lead to a proliferation of structures that would have an adverse visual impact. Also it is not clear what height the masts would be, for example, would they be 15 metres from the ground level or 15 metres when located on a building? This needs clarifying.

QUESTION 5: ENABLING HIGHER MASTS TO DELIVER BETTER MOBILE COVERAGE AND MAST SHARING.

4.6 To reduce the need to build new masts, minimise the visual impact of the networks and to deploy these more cost-effectively, mobile network operators have committed in the Code of Best Practice to site sharing wherever viable. By doing this operators have identified that taller masts are likely to be needed. The Government have given an example in the consultation of a 50 metre mast being erected in 2018 in the rural community of Kildary and Milton in Scotland, which offers greater coverage than that of traditional masts, and as a result the local area as well as the local major road, now enjoys greatly improved 4G coverage. The Government are now considering amending the GPDO by increasing the height of new masts which can be deployed by Code Operators through permitted development rights, subject to the prior approval process. Consideration would need to be given to what restrictions should be put in place to control development e.g. there is currently a lower permitted height limit for masts in conservation areas and land on a highway. Should this approach be retained given the demand for better coverage in rural areas and protected areas?

Question 5.1: Do you agree in principle with amending permitted development rights to increase the height of new masts, subject to prior approval ?

Yes No Not Sure

Comments

With the acceptance of the need to improve connectivity in rural areas, and that more people/businesses are using the internet and require greater coverage, there is an argument that higher masts will be required. Careful consideration should be given on the design and appearance (including materials) e.g. slimline monopole rather than the traditional lattice masts. Consideration should also be given to the commitment of sharing the apparatus and infrastructure and imposing a restriction zone so that no other masts could be erected in the area e.g. up to 100metres?

Question 5.2: If yes to question 5.1, what permitted height should masts be increased to and why?

Comments

The GPDO relaxed the height limit to up to 15 metres in 2016 where prior approval is not required, and up to 25 metres where prior approval is required. With regards to the 15 metre height restriction this relates to only poles. So there is a loophole where operators can once the pole is erected submit a further application relating to the antennae. The local planning authority then can only consider the siting and appearance of the antennae and not the pole. As such, it is considered that the existing permitted height is already excessive, which is evident in the urban areas. If it is to be increased it is considered that the maximum height should be 20 metres.

Question 5.3: If yes to question 5.1, should a lower height limit be permitted for masts located in Article 2(3) land (conservation areas) or on land on a highway and why?

Yes No Not Sure

Comments

These areas are protected for a reason, and as such, any increase in the permitted height limit will have an adverse visual impact on conservation areas, and could also affect the safety of highway users.

Question 5.4: If yes to question 5.1, what restrictions (if any) should be put in place to control development of permitted higher masts?

Comments

There should be restrictions on the design i.e. only slimline monopoles accepted; evidence of sharing; evidence that the equipment/apparatus cannot be erected on buildings or other infrastructure.

The choice of location of masts should be informed by landscape evidence such as Landscape Character Assessments, Landscape and Visual Impact Assessments and evidence on the Cumulative Impact of Vertical Infrastructure.

SUMMARY:

- 4.7 Blackburn With Darwen Borough Council understands that rural communities are keen to obtain levels of digital connectivity such as fast broadband and good mobile 'phone signals in order to support both work and leisure. Such technology is essential not only for our rural communities to remain vital and viable into the future but also to ensure that the emergency services, including Mountain Rescue, can continue to operate effectively across the borough. It is considered that the Consultation is very much operator led and appears to be removing further controls from the planning regime, which will lead to local planning authorities having reduced powers to protect their local communities. The requirement for new taller communications masts will have to strike a balance between the landscape and better connectivity and respect certain protected areas, in particular here in Blackburn With Darwen Borough, the SSSI site in the south of the borough, Country Heritage Sites, which contain significant ecological/biodiversity attributes, and the conservation areas. It is crucial that if the Government are to push ahead with the larger masts that they must accommodate more equipment, potentially reducing the number of masts required overall, and the design including materials of these structures are important issues to consider.
- 4.8 As the borough contains large rural areas, and the proposed reforms are aimed at improving connectivity in such areas, it is important the Government fully consider the following issues and include these any changes to the legislation:
- The choice of location of masts should be informed by landscape evidence such as Landscape Character Assessments, Landscape and Visual Impact Assessments and evidence on the Cumulative Impact of Vertical Infrastructure. This should be a requirement for operators to adhere to;
 - Special considerations for protected landscapes and their settings, such as additional need and landscape evidence requirements, additional design and mitigation requirements and a lower maximum height (as is currently the case);
 - Maximise mast sharing between different providers;

- A commitment to rationalise mast provision (i.e. to always use the minimum number of masts needed) and to remove any masts that are no longer required - including a buffer zone where a new mast is erected so that no additional masts can be erected;

5. POLICY IMPLICATIONS

- 5.1 The adopted Blackburn With Darwen Borough Local Plan Part 2 (Site Allocations and Development Management Policies) 2015, currently has a policy relating to telecommunications. Policy 44 states:

“Applications for the siting of new telecommunications equipment will be permitted provided that:

- (i) It has been demonstrated that co-siting the equipment with existing equipment or in the case of antennae, their siting on an existing building, mast or structure, is not a viable option;*
- (ii) It is not located in nor likely to have an unacceptable harmful impact on a Site of Special Scientific Interest, County Heritage Site, Local Nature Reserve, other sensitive landscape setting, or on significance of heritage assets including views and their setting, unless it can be demonstrated that no technically acceptable alternative sites is available and the need for the development outweighs the degree of harm caused; and*
- (iii) The impact of the development on the landscape or townscape is minimised within the constraints of operating requirements, through siting, design, materials and colour.”*

The issues contained in the policy would still apply with any changes in secondary legislation relating to the proposed amendments to the planning reforms.

6. FINANCIAL IMPLICATIONS

- 6.1 None.

7. LEGAL IMPLICATIONS

- 7.1 None.

8. RESOURCE IMPLICATIONS

- 8.1 None.

9. EQUALITY IMPLICATIONS

- 9.1 These are changes proposed to secondary legislation, therefore no local equality impact assessment has been made.

10. CONSULTATIONS

- 10.1 A draft version of the Council's response to the Consultation is being presented to the Executive Member for Growth and Development on the 14th October 2019, and the Cross Party Member's Planning Working Group on the 15th October 2019.

11. RECOMMENDATION

- 11.1 (i) That the Committee note the issues described in the report.
- (ii) That the Committee endorse and approve the proposed responses to the questions raised in the consultation document, and agree they are sent to the Department for Digital, Culture, Media and Sport by the 4th November 2019.

Contact Officer: **Gavin Prescott, Planning Manager (Development Management)**

Date: **4th October 2019**

Background Papers: "Department for Digital, Culture, Media and Sport Consultation: "Proposed reforms to permitted development rights to support the deployment of 5G and extend mobile coverage."