

**South Derbyshire Mobile Phone
Mast Agreement
(advice for operators and other
interested parties)**

EXECUTIVE SUMMARY

South Derbyshire District Council considers that it is essential for pre-rollout and pre-application discussions to take place for telecommunications development to allow an early opportunity to discuss issues of location, design and public concerns. Through effective discussion and negotiation it is considered that many contentious issues can be resolved prior to receiving an application. **Operators are urged to avoid 'sensitive' areas for the siting of new masts.** On receipt of an application, the considerations of mast sharing and the use of existing structures (including electricity pylons), assessment of visual impact, and use of screening should be considered in line with Policy ENV 3 of the South Derbyshire District Local Plan. Where new sites are proposed, applicants must submit proper evidence demonstrating why existing masts or structures are inadequate.

The Local Planning Authority has an obligation to take into account the Human Rights Act. When making a decision with regard to applications for telecommunications masts, the Local Planning Authority takes into account health considerations of individuals living nearby. However, in doing so the Local Planning Authority, (and the Planning Inspectorate when the matter is appealed), are obliged to follow the guidelines in PPG8. PPG8 is in accordance with the European decisions of *Balmer-Schafroth v Switzerland [1997]* and *Athanassoglou v Switzerland [2000]*. These state that if a scheme meets international guidelines on radio wave emissions then the danger is not specific or imminent and consequently no violation of human rights arises.

INTRODUCTION

Need for an agreement

This document sets out advice for telecommunications base station development within South Derbyshire. The document aims to provide guidance to prospective applicants and their agents considering telecommunications mast development within the District. It also aims to be a source of information to all interested parties in explaining the approach taken by the Council on this issue.

A large number of base stations already exist to serve current operators' mobile phone networks. However as more users enter the market and new facilities are marketed some new base stations and infrastructure may be necessary to meet the demand. In addition the new third generation mobile phone system (also known as 3G) requires a new nation-wide network of antennae. It is envisaged that the new digital network will provide an enhanced service for mobile phone users through higher data rates than the present GSM system. Under the terms of licences issued by the Government to the five 3G operators each operator is required to provide a network that will cover 80% of the population by 2007.

This document has been published to supplement Central Government advice set out in Planning Policy Guidance Note 8 (revised August 2001) and the increasing need for telecommunications masts within the District. 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. This document aims to set out South Derbyshire District Council's approach to telecommunication development and how it aims to tackle these issues.

In developing this Document the Council has reviewed its procedures. The Council considers it essential, within the legislative framework, to work with the mobile phone operators and local residents to attempt to overcome concerns in this area.

The Status of this agreement

This draft document is published in support of Community Facilities Policy 4 of the adopted South Derbyshire Local Plan (Appendix 3 below). However, the bulk of the document is based upon fact and has already had input from Members and the industry. The intention is that the respective operators are encouraged to sign up to the document so it could be published as the 'South Derbyshire Mobile Phone Mast Agreement'.

As research in this field continues any future material considerations that post-date this document should also be taken into account.

PLANNING POLICY CONTEXT

National Planning Guidance

PPG8 "Telecommunications"

Planning Policy Guidance Note 8 "Telecommunications" (PPG8) sets out the Government's guidance on planning for telecommunications development. Local Planning Authorities are required to consider the guidance contained within PPG8 when preparing their development plans. The guidance is also material to the consideration of both prior approval and full planning applications, including the consideration of appeals.

The general policy of the Government set out in PPG8 may be summarised as follows:

- Encourage the rollout of a modern national telecommunications network whilst protecting the environment. The Government also has responsibility for protecting public health
- To ensure people have a choice as to who provides the service and to ensure a wide range of services
- Network development must be balanced with environmental objectives
- Government attaches great importance to keeping to a minimum the level of environmental impact caused by network development

Town and Country Planning (General Permitted Development) Order 1995 (as amended)

Under the current legislation certain forms of telecommunication development are permitted development, by virtue of the Town and Country Planning (General Permitted Development) Order (Amended) 1995 (GPDO). An example would be a radio mast that is being installed on the ground which does not exceed 15m above ground level. Masts up to and including 15m in height are subject to 56 day "prior approval" for the development from the Local Planning Authority (LPA). The prior approval procedure means the principle of development is not at issue and enables the LPA to only consider siting and appearance of the proposal.

The requirement of the GPDO is that development in conservation areas (article 1(5) land) and masts over 15m everywhere require a full planning application.

Full Planning Applications

Where the development proposed does not fall within the limitations of the GPDO the operator is required to submit a full planning application for the development. In considering such a proposal the LPA is required to take into account relevant policies of the development plan in addition to any other material considerations.

Minor Development

Certain minor telecommunications proposals may not constitute development in which instance applications for prior approval or full planning permission will not be necessary.

Enforcement Action

Enforcement action will be taken by the Council against breaches of planning control in relation to telecommunications development, where the Council consider it expedient to do so having due regard to the advice contained within PPG18: "Enforcing planning control" and all other material considerations. This could relate to the siting and appearance of a telecommunications mast or the expiry of a temporary permission.

Development Plans and Other Guidance

Apart from national guidance, the Council will take account of the latest advice available, at the time when planning applications are being considered. The District Council's policy for telecommunications development is set out in Adopted South Derbyshire Local Plan (May 1998): Community Facilities Policy 4 Telecommunications Development (Appendix 3).

THE MAIN POINTS OF CONSIDERATION IN ASSESSING TELECOMMUNICATIONS DEVELOPMENT

Need for the Development

PPG8 identifies that in general terms the Government's policy is to "facilitate the growth of new and existing telecommunications systems whilst keeping environmental impact to a minimum". The aim of its policy is to ensure there is a

choice as to who provides the public with their telecommunications service whilst ensuring the public has access to the latest technologies as they come forward.

An important principle identified within PPG8 is that 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". However, PPG8 states that LPAs may request evidence regarding the need for the proposed development. Therefore the Council expects that prior notification and full planning applications include details of how the proposed development will relate to the operator's existing network in terms of current coverage and capacity. Where proposals are required to improve capacity of existing coverage the operator will be expected to provide details of the shortfall of capacity in relation to network demand.

Discussion and Consultation

Pre- roll out discussion

Central government guidance strongly encourages telecommunications operators and local planning authorities to carry out annual discussions concerning rollout plans for each authority's area. In line with this advice South Derbyshire District Council is committed to carry out pre-rollout meetings with operators with the view to the production of an overview plan. It is considered this will provide an early opportunity to discuss technical and environmental constraints and to explore alternative approaches, particularly the opportunities for mast and site sharing and also in terms of the location and alternative design of the apparatus. Discussion and addressing issues and concerns early on in the process would reduce planning problems for applicants and the community.

Pre-application discussion

In line with current central government guidance South Derbyshire District Council encourages pre-application discussions between operators and the planning authority on specific development proposals. The discussion should be set in the context of the operator's strategy for telecommunications development in the area. Pre-application discussions should also be carried out by the operators with other organisations with an interest in the proposed development, such as residential groups, parish councils or amenity groups. The Government is specific in stating where a mast is to be installed on or near a college or school operators should discuss proposed development with the relevant body of the school.

Prior to submission of a planning application

South Derbyshire District Council encourages operators to consult with parish councils, (and any resident or amenity groups), prior to the submission of a planning application. The telecommunications operators have developed ten

commitments to address community concerns, including improved consultation with local residents about new developments (See Appendix 4). The amount and type of consultation will vary with each site, based on an evaluation system for assessing the sensitivity of any installation. This includes the proximity to residential properties and schools, and the impact on the environment. This is known as the 'traffic light ratings model'. A green rating suggests there are few concerns, whereas a red rating highlights that there are several. Further information on this can be obtained by contacting the Mobile Operators Association¹ or any of the operators.

On receipt of a planning application

The Council is obliged to deal with any application that is submitted. The Council is keen to give town and parish councils, local residents, and amenity groups, the opportunity to express their views on any proposal. When the Council receives an application for prior approval or full planning permission:

- The application will be listed in the list of applications received which is available on the Council website.
- Any schools and colleges within 400m of the site will be notified
- Site notices will be displayed on all streets within a 50 metre radius of the site

Environmental considerations

Protection from visual intrusion and the implications for subsequent network development will be important considerations in determining applications. In accordance with PPS7 high priority should be given to safeguard areas of particular environmental importance. These include SSSI's, Green Belt and buildings of architectural or historical importance. In Green Belts, telecommunications development is likely to be inappropriate unless the applicant can demonstrate to the satisfaction of the LPA that there are very special circumstances to outweigh the harm caused to the openness and purposes of the Green Belt by the inappropriate development. It is for the applicant to demonstrate the very special circumstances. These may exist where the applicant can demonstrate, to the satisfaction of the LPA, that there is a need to fill a deficiency (in terms of coverage and capacity) in the network, subject to other considerations.

Mast and site sharing

Criterion (II) of Policy C7 of the South Derbyshire District Local Plan requires the applicant to demonstrate that there is no possibility of sharing existing facilities including electricity pylons. In order to limit visual intrusion considerable

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importance is given to keeping the number of masts to a minimum. The sharing of masts and sites is strongly encouraged where that represents the "optimum environmental solution in a particular case"². In certain instances the upgrading of an existing mast may have a more prominent environmental impact than the installation of a new structure. It will therefore be necessary for operators to have clearly demonstrated that options for upgrading existing masts and utilising existing structures have been considered in terms of environmental impacts when submitting proposals for new masts. Full justification/evidence will be necessary to explain why it is not appropriate to site the proposal on an existing mast or structure. This cannot be emphasised too strongly. The Council has compiled a Telecommunications Register in line with PPG8, paragraph 72 and is available on the Council's web site. This will assist in taking full advantage of the opportunities for mast and site sharing.

Design

In seeking to arrive at the best solution for an individual site, operators should use sympathetic design to minimise the visual impact of the development on its location. As far as possible, existing buildings and structures (such as electricity pylons) should be used for siting new antennae. The telecommunications industry is encouraged to continue to develop innovative design solutions.

Examples of good design alternatives can be found in the ODPM Code of Best Practice on Mobile Phone Network Development, section on 'Siting and Design'."

³ Operators will be expected to use designs that limit the visual impact of the proposal, except where technical constraints justify otherwise. Issues taken into consideration when assessing the visual impact of such proposals will include, the height of the mast, the appearance of the structure proposed, topography of the land and the prominence of the development in relation to existing vegetation/buildings. Any associated equipment housing should be designed so as to minimise any visual impact. Where appropriate operators will be expected to submit a landscaping scheme to limit the visual impact of their proposals. The Council considers that a location within a conservation area or affecting the setting of a listed building would not normally be acceptable.

Health Considerations

The public concern about the possible health effects associated with telecommunications base stations resulted in the Government asking the

² PPG8 (August 2001) p9

³ <http://www.planning.odpm.gov.uk/telecomms/pdf/sitedes1.pdf>

National Radiological Protection Board (NRPB) to set up an Independent Expert Group on Mobile Phones, chaired by Sir William Stewart. The Group's Report (The Stewart Report) concludes that

"It is not possible at present to say that exposure to Radiofrequency Radiation, even at levels below national guidelines, is totally without potential adverse health effects, and that the gaps in knowledge are sufficient to justify a precautionary approach."

In light of this PPG8 states:

"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."⁴

It is the government's view that if a proposed development meets the International Commission on Non-ionizing Radiation Protection (ICNIRP) guidelines for public exposure, it should not be necessary for a planning authority, in processing an application, to consider further the health aspects and concerns about them. Therefore, in submitting both prior approval and full planning applications operators will be expected to provide evidence to confirm that the proposal would be compliant with the ICNIRP guidelines.

The Government accepts a precautionary approach as is recommended by the Stewart Group's report⁵. In the Government's view, local planning authorities should not implement their own precautionary principles e.g. by imposing a ban or moratorium on new telecommunications development or insisting on minimum distances between new telecommunications development and existing development.

However, notwithstanding the findings of the Stewart Report, compliance with the ICNIRP guidelines does not address concerns people may have that there is a perceived health risk from telecommunications development.

Recent case law confirms that the perception of health risk from a proposed development can be a consideration material to the determination of a planning application.

- The case of Sullivan J in *Trevett v SoS ex parte BT Airwave and Stroud DC* ([2002] EWHC 2696) showed that if ICNIRP certification is provided then it should not be necessary for a local planning authority to further

⁴ Source: PPG8 (Aug 2001) pg.10

⁵ 'Mobile Phones and health' A copy can be found at www.iegmp.co.uk

consider health aspects or concerns about them. However the inspector had not dismissed the public's fears as being 'irrelevant because they were not objectively justified', but that on the facts they did not justify refusing planning permission.

- In a case involving the Diocese of Ripon and Leeds (May 2003) the Inspector concluded that he was satisfied on the key issue that, so long as the base stations conform to the International Commission on Non-Ionizing Radiation Protection guidelines there was no compelling evidence of real risk to health; that stress or anxiety, real enough in itself, is attributable to the perception of risk and will not be attributable to the levels of radiowaves.
- The Planning Inspectorate upheld the rejection of Vodafone's proposed development of a 15m monopole mast, on a site to the west of a railway line close to an industrial estate in Birmingham (2003). The Inspector accepted that the functional appearance of the mast would cause little harm to the immediate area, but observed that there was a children's adventure play centre and city farm on the opposite side of the line. These uses were housed in attractive modern buildings which greatly enhanced the character and appearance of the partially residential area within which they were located. The mast would harm their setting by 'looming above' the area, representing a constant reminder to parents of its presence when taking children to and from the facilities. Permitting the mast would undermine initiatives to improve the quality of life in this disadvantaged part of the inner city.
- The Planning Inspectorate upheld Southampton City Council's decision to refuse an application by Orange for a 12m high monopole mast next to a school playing field and children's play area (2003). The proposal was contrary to the Council's planning policies. The Inspector concluded that 'the appearance of the proposed development would be harmful to the character and appearance of the locality' and 'insufficient evidence had been provided on emission levels at nearby locations in the grounds of schools and used by schools for outside games and PE purposes'. **Although the Inspector noted health concerns regarding children using the play areas, the principal issue was that the mast would have intruded on the openness of the area.**

Although case law demonstrates that the perception of health risk is often examined as a potential overriding material consideration to justify a refusal of permission, only visual amenity issues have been persuasive.

Nevertheless, the Council considers that such a fear is likely to be exacerbated where the development proposed is sited in close proximity to sensitive land

uses, such as schools, hospitals and residential properties. In such instances the Council will expect the operator to take into account that such concerns may exist and seek to site their installations away from such sensitive locations in so far as is possible. The Council would expect operators to take a sequential approach to the siting of masts:

- Keeping away from sensitive areas wherever possible
- Sharing existing opportunities and facilities
- Properly investigating the use of existing structures for the siting of equipment.

Appropriate pre-application consultation will help to highlight sites where such concern may arise.

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APPENDIX 1 - GLOSSARY

Antenna : Device designed to radiate or receive electromagnetic energy.

Base station: Facility providing transmission and reception for radio systems. For macrocells, the infrastructure comprises either roof or mast-mounted antennae and an equipment cabinet or container. For smaller microcells and picocells, the aerials and other equipment may be housed in a single unit.

Cell and Cellular: A cell in the context of mobile phone technology is the area of geographical coverage from a radio base station.

Electromagnetic fields (EMF): The electric and magnetic fields associated with electromagnetic radiation.

Electromagnetic radiation: A wave of electric and magnetic energy that travels or radiates from a source.

Frequency: The number of complete cycles of an electromagnetic wave in a second. This is measured in units of hertz (Hz).

International Commission on Non-ionising Radiation Protection (ICNIRP): An independent scientific organisation responsible for providing guidance and advice on the health hazards of non-ionising radiation exposure.

Ionising radiation: Radiation which is powerful enough to alter the structure of human cells. Radio waves are not ionising radiation.

LPA: Local Planning Authority.

Macrocell: The main type of telecommunications transmitter providing the framework for a code system operator's coverage. Designed to provide coverage for a radius of up to 35km dependent upon terrain and surroundings.

Microcell: Transmitters designed to boost coverage over small areas already covered by a macrocell transmitter, typically 50 to 250 metres.

Microwaves: Electromagnetic radiation in the wavelength range 0.3m to 0.001m.

National Radiological Protection Board (NRPB): Statutory authority whose responsibilities include the acquisition of knowledge about the protection of mankind from radiation hazards, and the provision of information and advice to persons and organisations (including Government Departments) with responsibilities in the United Kingdom in relation to the protection from radiation

hazards either of the community as a whole or of particular sections of the community.

Radiation: The emissions or transfer of radiant energy as particles, electromagnetic waves, sound etc.

Radiofrequency radiation (RF radiation): Electromagnetic radiation used for telecommunications and found in the electromagnetic spectrum at longer wavelengths than infrared radiation.

Radio Waves: An electromagnetic wave of radio frequency, which allows the transmission of signals at set frequencies over distance.

SPG : Supplementary Planning Guidance.

Wavelength: Distance between two successive points of a periodic wave in the direction of propagation, in which the oscillation has the same phase. This is measured in units of metres.

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APPENDIX 2

GUIDANCE ON PRIOR APPROVAL PROCEDURES FOR TELECOMMUNICATIONS PERMITTED DEVELOPMENT (August 2001)⁶

On 22 August 2001 the revised Part 24 of the GPDO came into effect, and it applies to all applications for prior approval received from that date.

1. Telecommunications code system operators enjoy a general planning permission under Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) (as amended). This allows an operator to carry out the development permitted by Class A of Part 24 - subject to the exclusions in paragraph A.1 and the conditions in paragraph A.2 and A.3 – without making a planning application to the LPA.
2. Under paragraph A.2(4), certain development permitted under Part 24 is conditional upon the operator making a **prior approval application**, as set out in A.3, to the LPA. Such an application will allow the LPA to consider, within 56 days, the siting and appearance of the proposed development. Guidance on the operation of the prior approval procedure is given below.
3. An application under paragraph A.3 is neither a notification nor an application for planning permission. A submission under the paragraph seeks the authority's determination concerning prior approval of siting and appearance. Where permission is granted under Part 24 subject to a condition that a prior approval submission to the LPA is required, failure to comply in full with the condition will mean that the development is not authorised under the Order, and may be subject to enforcement action by the LPA.
4. Under paragraph A.2 (4) of Part 24, the prior approval procedure applies to the construction, installation, alteration or replacement of:
 - ❖ A ground based mast of up to and including 15m in height
 - ❖ A mast of up to and including 15m in height installed on a building or structure
 - ❖ An antenna (including any supporting structure) which exceeds the height of the building or structure (other than a mast) by 4 metres or more at the point where it is installed or to be installed
 - ❖ A public call box
 - ❖ Radio equipment housing with a volume in excess of 2.5 cubic metres

⁶ Taken from PPG8 (August 2001)

- ❖ Development ancillary to radio equipment housing (eg. fences, access roads)
- ❖ Class A development on Article 1(5) land or an SSSI which has not been excluded by paragraph A.1.

5. An application for prior approval will allow the LPA to consider the siting and appearance of the proposed development. The LPA have 56 days in which to make and notify its determination on whether prior approval is required to siting and appearance and to notify the applicant of its decision to give or refuse such approval. There is no power to extend the 56-day period. If no decision is made, or the LPA fails to notify the developer of its decision within the 56 days, permission is deemed to have been granted.

APPENDIX 3

COMMUNITY FACILITIES POLICY 4 : TELECOMMUNICATIONS DEVELOPMENT

- A. PLANNING PERMISSION WILL BE GRANTED FOR TELECOMMUNICATIONS DEVELOPMENT PROVIDED THAT:
- (i) THERE ARE NO SATISFACTORY ALTERNATIVE MEANS FOR TELECOMMUNICATIONS AVAILABLE;
 - (ii) THE SITING OF THE DEVELOPMENT DOES NOT RESULT IN AN UNDULY PROMINENT INTRUSION IN THE COUNTRYSIDE OR DAMAGE THE CHARACTER OF AREAS OF LOCAL LANDSCAPE VALUE, CONSERVATION AREAS OR THE SETTING OR FABRIC OF LISTED BUILDINGS.
- B. ANY DEVELOPMENT SHOULD BE SITED AND DESIGNED SO AS TO MINIMISE ITS VISUAL IMPACT.

APPENDIX 4

Mobile Phone Operators' Ten Commitments to best siting practice

The mobile phone operators have introduced their ten best practice commitments to help address concerns relating to the development of base stations.

Launched in 2001, the aim of the Ten Commitments is to ensure transparency in building mobile phone networks, to provide more information to the public and local planners and to boost the community's role in the siting of radio base stations.

1. IMPROVED CONSULTATIONS WITH COMMUNITIES

Develop, with other stakeholders, clear standards and procedures to deliver significantly improved consultation with local communities.

2. DETAILED CONSULTATION WITH PLANNERS

Participate in obligatory pre-rollout and pre-application consultation with local planning authorities.

3. SITE SHARING

Publish clear, transparent and accountable criteria and cross-industry agreement on site sharing, against which progress will be published regularly.

4. WORKSHOPS FOR COUNCILS

Establish professional development workshops on technological developments within telecommunications for local authority officers and elected members.

5. COMPLIANCE WITH ICNIRP PUBLIC EXPOSURE LEVELS GUIDANCE

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 (IEGMP).

6. DATABASE OF BASE STATION SITES

Deliver, with the Government, a database of information available to the public on radio base stations.

7. ICNIRP CERTIFICATION

Provide, as part of planning applications for radio base stations, a certification of compliance with ICNIRP public exposure guidelines.

8. PROMPT RESPONSES TO ENQUIRIES

Provide specific staff resources to respond to complaints and enquiries about radio base stations, within ten working days.

9. SUPPORT RESEARCH INTO HEALTH AND MOBILE PHONES

Begin financially supporting the Government's independent scientific research programme on mobile communications health issues.

10. STANDARD DOCUMENTATION FOR PLANNING SUBMISSIONS

Develop standard supporting documentation for all planning submissions whether for full planning or prior approval.

Taken from http://www.mobilemastinfo.com/planning/best_practice