

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE - 13 FEBRUARY 2001

CONSULTATION PAPER ON PROPOSED CHANGES TO PERMITTED DEVELOPMENT ARRANGEMENTS FOR TELECOMMUNICATIONS DEVELOPMENTS AND DRAFT NATIONAL PLANNING POLICY GUIDELINE

Report by Director of Development Services

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to set out the planning implications of the recent draft guidance on planning and radio telecommunications issued by the Scottish Executive and make recommendations to the Committee regarding the Council's formal response on this guidance.
- 1.2 The Scottish Executive requires a response from the Council regarding the above guidance by 16 February 2001.

2. BACKGROUND

- 2.1 In January 2000 the Development Services Committee agreed an Interim Council Policy on controlling mobile phone installations in East Ayrshire.
- 2.2 The findings of an Independent Expert Group Report on Mobile Phones, (IEGMP) commissioned by the Government to investigate the potential effects of mobile phone technology on human health was published in July 2000. The Scottish Executive, in an interim response to these findings, concluded that there should be proposals to bring telecommunications proposals under full planning control and that there was also a need to develop further guidance.
- 2.3 The Development Services Committee agreed at its meeting on 5 September 2000 to modify the Interim Council Policy on telecommunications developments in the light of the above findings of the Independent Expert Group Report on Mobile Phones and also the Scottish Executive interim response. The revised policies were incorporated to the East Ayrshire Local Plan as modified and were approved by Committee on 19 December 2000.
- 2.4 The existing Town and Country Planning (General Permitted Development) (Scotland) Order 1992 grants deemed permission for a range of development carried out by telecommunications code system operators. Ground based masts that do not exceed 15 metres in height are classed as "permitted development" under this Order.

3. PROPOSED NEW PROVISIONS ON PLANNING AND RADIO TELECOMMUNICATIONS

3.1 The consultation package on planning and radio telecommunications recently issued by the Scottish Executive comprises,

- Consultation paper
- Draft NPPG
- Draft Scottish Statutory Instrument and
- Draft Regulatory Impact Assessment

Consultation Paper

3.2 The paper sets out the Scottish Executive's proposals to strengthen planning control over telecommunications development while retaining the benefits of the technology. The main proposals are that:

- All new ground based masts and associated development should be subject to full planning control;
- Certain new installations of telecommunications apparatus on buildings will be subject to full planning control;
- All new installations of telecommunications apparatus in national scenic areas, national parks, conservation areas, historic gardens or designed landscapes, sites of special scientific interest or European Sites will be subject to full planning control;
- Radio equipment housing on the ground will be subject to full planning control if it exceeds 3 metres in height or 90 cubic metres in volume; and
- Radio equipment housing on a building will be subject to full planning control if it exceeds 3 metres in height or 30 cubic metres in volume.

The main purposes of enhancing the level of planning control through the above provisions are to ensure that public involvement is achieved through the neighbour notification procedure and to achieve siting and design outcomes that are less obtrusive.

The Scottish Executive supports the continuing expansion of telecommunications networks and does not envisage that the above proposed revised planning controls would unduly hinder the further expansion of these networks.

Draft National Planning Policy Guideline

3.3 The Scottish Executive policy is to enable the telecommunications industry to expand so that Scotland is served by the best radio telecommunications infrastructure. The NPPG therefore emphasises the economic importance of such infrastructure. It points to the social and educational benefits of radio telecommunications in terms of promotion of social inclusion, particularly in rural

areas where landlines may not be practical or commercially viable and generally in reducing the need for travel. However, the document also refers to the need to consider the general visual impact of proposals, health issues and the effects on sensitive parts of the built and natural environment. It indicates that expansion of the network should be undertaken in a manner that minimises the environmental impact of telecommunications apparatus and that such equipment becomes an accepted feature of urban and rural areas.

3.4 The draft NPPG refers to the following ways of minimising the visual impact of telecommunications equipment:-

- The principle of “de minimis” – the term refers to minor structures which may not have a material visual impact because they can be integrated into the townscape/landscape and do not require planning permission. The use of equipment of this scale would be visually beneficial.
- Concealing/camouflage - operators and planning authorities should discuss ways of disguising or concealing apparatus or designing it as a positive feature.
- Installations on buildings - the placing and design of equipment on an existing building should be sympathetic to its architectural form.
- Rural Areas - sensitive landscapes, habitats and species can be seriously affected by radio telecommunications equipment which should therefore be carefully sited and designed. The potential cumulative impact of such proposals on the rural environment can be serious and sharing of masts, use of smaller masts and camouflage should be considered as a means of mitigating such an impact.

3.5 In respect of health concerns the NPPG requires planning authorities to have regard to the above IEGMP report referred to in Section 2 above. A summary of the findings of that report is given in the Appendix to this report. However, the draft NPPG noted the report as stating that “the balance of evidence indicates that there is no general risk to the health of people living near to base stations....” “There can be indirect adverse effects on their well being in some cases”. In that the possibility of harm could not be ruled out with confidence, and given the gaps in current knowledge, a precautionary approach is recommended by Government and enshrined in a series of specific measures, including commissioning further research and this shaped the revised East Ayrshire Council Interim Council Interim Policy of September 2000.

4. SUGGESTED RESPONSE

4.1 The additional control over telecommunications developments is supported although it would appear that the industry is currently embarking on a rapid expansion of its activities to avoid regulation.

4.2 The Council has already adopted an interim policy as suggested in the NPPG although this will require the Local Plan to be modified to include:

- Present development control criteria for telecommunications development, including siting and design matters;
- An outline of the types of location, e.g. industrial areas, suitable for the more sizeable pieces of equipment;
- Designated areas specified in the GPDO where there are no permitted development rights for telecommunications development, and set out policies to control the standard of development for these areas; and
- Other areas, for example, “wild land”, the isolated coast or green belt where special care should be exercised.

4.3 The Council supports the precautionary approval underlying the consultation exercise, the adoption of maximum emission levels for mobile phone base stations, the creation of a national data base of all base stations and their emissions, the commitment to further research, clear exclusion zones around the base stations and the principle that the “beam of greatest intensity” from base stations should not fall on schools without parental and school agreement. **Since the issue relates to the possible health effects relating to young people this principle should be extended to residential and health related buildings.**

4.4 The health related measures are supplemented by the NPPG confirming that “health considerations and public concern are in principle material considerations in determining applications for planning permission.” As such it is “for the decision maker to determine what weight to attach to such considerations in any particular case”, but if a planning authority wishes to refuse a new base station on health grounds, it would require “authoritative scientific evidence” specific to the case.

4.5 The Council’s Interim policy reflects the precautionary approach to masts and apparatus and this policy is being recommended for inclusion in the East Ayrshire Local Plan. Specifically, the policy is;

“In formulating their development proposals, telecommunications operators will be requested:-

- (i) to locate installations, wherever possible, at least 100m for continuously occupied premises in educational, health service or residential use; and

- (ii) to indicate on their submitted plans, areas where there would be the greatest intensity of emissions.

Telecommunications operators will be encouraged to share masts and other operational facilities with other operators.”

It is recommended that the Executive should be more specific in its guidance to reflect the precautionary approach in accordance with the above by specifying preferred distances between installations and sensitive properties including educational, health service and residential uses.

4.6 With regard to the draft Statutory Instrument (S.I.), and as mentioned above, it is indicated that all ground based masts will require consent; that apparatus of only limited height, (4 metres), may be placed on buildings without consent, and that consent for telecommunications apparatus will be more rigorously applied in high quality environments such as Conservation Areas, Designed Landscapes and sites of special scientific interest. These and other proposals generally simplify and tighten the controls over such apparatus, however there are a further number of specific issues worthy of comment.

- **Whilst it is made clear that the intention is to always require planning consent for ground based masts, the draft S.I. in Class 67 paragraph 2 (n) appears to leave a loophole by indicating that “apparatus” not exceeding 15 metres above ground level would be permitted development.** This is on the basis that “apparatus” is said to take its definition from paragraph 1, Schedule 2 of the 1984 Telecommunications Act wherein it is defined as, amongst other things, “any structure, pole or other thing in, on by or from which any telecommunications apparatus is or may be installed, supported, carried or suspended.”
- **The term “ground based radio equipment” is used in a number of paragraphs, however without definition; potentially creating an area for unnecessary future debate.**
- **There are numerous references to the need or otherwise for planning consent in respect of an “antenna”, but no direct definition; the only guidance is with regard to what constitutes a “small” antenna, this being guidance with regard to dimensions.** It is clearly a term intended to be worded such as to embrace a range of apparatus including dishes, however experience has shown that where there is dubiety over a definition, operators may seek to interpret terminology to their advantage.

4.7 The Council supports in principle the confirmation in paragraph 4 of Class 67 that any installation of antennas, which is otherwise permitted development, cannot proceed unless the developer has submitted in writing to the Planning Authority;

1. A detailed description of the equipment and its location, and
2. A declaration that it complies with the International Commission on Non-Ionising Radiation Protection Guidelines

In practice it requires clarification as to whether a small antenna to be erected on a house would also involve the householder in submitting such a declaration, and from where they would have access to such information.

- 4.8 As the new provisions would make all ground based masts subject to full planning control the current permitted development limit of 15 metres would not apply. This might result in applications for fewer but taller masts, and implies that there might be many fewer suitable sites within any given area that would meet the strict environmental criteria required for their location by the draft NPPG and the above existing Council planning policies.
- 4.9 Paragraph 3 of the draft Class 67 identifies permitted development involving the installation of radio equipment housings or antennas as requiring to be notified in advance, in writing by the developer to the planning authority who then have 28 days to comment; (again the importance of definitions will be noted). The planning authority have no right of veto as a result of this process which would exist only to make authorities aware of potentially controversial developments before they took place. If an authority commented to the effect that a proposal was unacceptable, it would be possible for the developer to proceed regardless of public concerns. Consequently, any time and resources committed to responding to such notifications could be wasted and would be diverted from other more productive areas of activity.
- 4.10. The 4 metre permitted development height limit for building/structure mounted apparatus proposed by the Consultation Paper is considered too great, particularly given the probability that sharing of masts might not be commercially feasible. The planning implication here is that this proposal could lead to substantial visual intrusion within those areas favoured for emission of radio signals. Paragraph 5 of the draft Class 67 retains the proviso with regard to utilising 'permitted development' that any antenna or supporting apparatus installed, altered or replaced on a building in accordance with that permission shall, "so far as is practicable, be sited so as to minimise its effect on the external appearance of the building." In practice, this has been, and will in the future, be of limited value to planning authorities given the debate that can arise out of what is "practicable" and when has the effect been minimised.
- 4.11 There is an issue regarding the potential affects on health of the "small 'de minimus' installations which would not need planning permission under the new proposals. **The potential and cumulative impact of such installations do not seem to be addressed by the new provisions and this runs counter to the general precautionary approach set out in the draft NPPG.**

5. CONCLUSIONS

- 5.1 The new provisions as detailed in Section 3 above should give Councils greater powers to protect the environment against inappropriate telecommunications developments. However, as referred to in Section 4, certain issues regarding the effect such provisions would have for cumulative impact of smaller radio masts in terms of public health and the environment, and other potential effects of the provisions on the potential distribution and prominence of both ground and building based masts require more detailed consideration by the Scottish Executive Development Department. The principle of a precautionary approach should be extended in specific guidance regarding the proximity of installations to sensitive properties including educational institutions, residential properties and health centres.
- 5.2 Finally the opportunity should be taken to introduce all necessary clarifications and definitions into the legislation and guidance, thereby limiting the scope for the confusion and unproductive debate which has characterised the interpretation of the current legislation.
- 5.3 The principle points which it is considered require strengthening or clarification are highlighted in bold text.

6. RECOMMENDATIONS

6.1 It is recommended that

- (i) the Committee note the contents of this Report and**
- (ii) the Head of Planning and Building Control respond to the Scottish Executive Development Department in the terms expressed in Sections 4 and 5.**

Stephen Chorley
Director of Development Services

2 February 2001 (JT/DVM/SA)
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LIST OF BACKGROUND PAPERS

- 1. Planning and Radio Telecommunications – A Consultation Paper on Proposed Changes to Permitted Development Arrangements for Telecommunications Developments and Draft NPPG (Scottish Executive Development Department – November 2000)**

2. **Planning and Radio Telecommunications – Proposed Amendments to Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (Scottish Executive Development Department – November 2000)**
3. **Consultative Draft NPPG: Radio Telecommunications (Scottish Executive Development Department – November 2000)**
4. **Report by Director of Development Services to Development Services Committee 29/8/00 : Proposed New Planning Procedures for Telecommunications Developments**

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AGENDA