

LONDON BOROUGH OF BRENT

EXECUTIVE

DATE: Monday 22 September 2003

FROM THE DIRECTOR OF ENVIRONMENT

FOR ACTION

NAME OF WARD: All

REPORT TITLE : MOBILE PHONE MAST POLICY

1.0 SUMMARY

- 1.1 There is continuing interest and concern from the public and media with regard to the health, safety and environmental impacts associated with the use of mobile phones, base stations and associated technology. This report summarises the available information and proposes a policy approach for the Council in its role as landowner.

2.0 RECOMMENDATION

- 2.1 That Members:
- 2.1.1 note the conclusions of the Stewart Report "Mobile Phones and Health" and the subsequent response by Government described in paragraph 7.2
- 2.1.2 agree to make full use of the opportunities for better engagement with the operators afforded by the non-statutory Code of Best Practice on Mobile Phone Development.
- 2.1.3 agree that siting of base stations on Council property will be acceptable (subject to planning considerations) where concentrations of children and young people will not spend extended periods of time in close proximity (100m) to base stations.
- 2.1.4 agree that before agreeing to site base stations on Council property full consultation will be undertaken with local stakeholders and the outcome of that consultation be taken into account.
- 2.1.5 agree that before agreeing to site base stations on Council property, a full assessment of associated costs and overheads be undertaken to ensure that the deal offers real benefit.

3.0 FINANCIAL IMPLICATIONS

- 3.1 Fully meeting the requirements of the Code of Best Practice on Mobile Phone Development will require around one quarter of a full time equivalent planning officer. Including on-costs this is around £10,000 per annum which can be met from Planning Delivery Grant so long as the grant remains at its current level or higher.

- 3.2 Significant revenue may be available if acceptable Council owned sites for mobile phone base stations can be found within the framework of the proposed policy. Revenue of up to £15,000 per annum may be available in respect of each base station.

4.0 STAFFING IMPLICATIONS

- 4.1 Fully meeting the requirements of the Code of Best Practice on Mobile Phone Development will require around one quarter of a full time equivalent planning officer.

5.0 LEGAL IMPLICATIONS

- 5.1 The legal position regarding planning permission for siting masts is dealt with in paragraph 7 below.
- 5.2 Planning Policy Guidance (PPG8 mentioned in paragraph 7.3 below) in regard to permissions has also been issued
- 5.3 Under the planning legislation all applications have to be fully considered on each case's own merits. The main planning objections to masts in general are their impact on the visual environment and the alleged and perceived risk to health that they may cause. Both objections are difficult for the local planning authority to assess. Visual impact is essentially subjective and on the health concerns the Stewart report concluded that on the balance of evidence at this present time there was no general risk to people living near base stations, although a precautionary approach was recommended to the siting of mast particularly near schools.
- 5.4 The Government's advice on the issue of the health risk is that LPA's clearly can consider these issues as a material consideration in determining a planning application, but that applications should not be refused planning permission on health grounds alone. The Health and Safety Executive is responsible for ensuring the safety of the telecommunication masts and equipment and has powers to deal with matters where there is a genuine and real health risk. However, this is merely advice and the Council does not automatically have to follow it, although it would need to give reasons for departing from it.
- 5.5 Operators wishing to install equipment on Council land and buildings must also approach the Council as a landowner as well as planning authority for permission to erect the equipment on Council land and buildings. It is possible for the planning use to be permissible but for the Council to refuse to allow its buildings to be used in this way. Where the property is tenanted, the Council consults its tenants on the Operator's proposal (although there is no statutory duty to do so) and if the majority of the Tenants are in favour of the proposal the Council will grant permission to the Operator to erect the equipment. The Council will not grant permission to the Operator if the proposal is opposed by the majority. This is a practical step designed to prevent any disposal being subject to judicial review.
- 5.6 Under section 123 of the local Government and Housing Act 1972 the Council must dispose of its property for the best consideration (unless it is granting a lease for less than 7 years). If it chooses not to do so, it must obtain the Secretary of State's consent or bring itself within the terms of the general disposal consent. The disposal consent permits disposals up to an undervalue of up to £2M provided

certain conditions are satisfied such as the disposal being in pursuance of the social and economic welfare of its inhabitants.

- 5.7 In the case of land held for housing purposes the disposal is covered by section 32 of the Housing Act 1985 and requires the consent of the Secretary of State. Management of Council residential properties was delegated to the Council's ALMO, Brent Housing Partnership Limited, with effect from 1 October 2002. Pursuant to the Management Agreement between the Council and BHP, BHP is required to contribute to the development of policies such as that proposed in this report and to ensure that BHP's own policies support the Council's
- 5.8 Clearly the perceived health risk in relation to both the above Council duties and responsibilities could potentially raise issues of a breach of the Human Rights Act 1998, in particular Articles 6 and 8 (right to a fair trial and the right to respect for private and family life) and possibly Protocol 1 (protection of property). However interference with any individual rights is permitted if the action is proportional and in accordance with the Council's statutory duties.
- 5.9 It seems unlikely that, at present, the Council's actions in carrying out its duties would be held to be a breach of human rights. It acts reasonably by consulting and follows guidance. The actions it takes are permitted by domestic legislation. The individuals affected have recourse to the Courts and can review decisions taken. There does not seem to be concrete evidence to date that there is a real threat or risk to health. Of course any potential human rights implications should be fully considered when decisions are made with the latest available evidence.
- 5.10 As the Planning function is a Council as opposed to an Executive function, there are no recommendations as to planning matters to avoid any fettering of the Committee's ability to exercise its discretion in a particular manner.

6.0 ENVIRONMENTAL IMPLICATIONS

- 6.1 The most significant environmental impacts from the siting of mobile phone base stations are those of visual intrusion. The Code of Best Practice on Mobile Phone Development will help minimise those impacts.

7.0 DETAIL

7.1 Mobile Phones and Base Stations

- 7.1.1 Mobile phones have become an important element of our everyday way of life. More than 46 million people in the UK now have mobile phones and the number continues to grow as does the use made of them. The phones themselves are low powered devices that emit and receive radio waves. These connect each phone to a network of base stations, so that users can make and receive calls. These base stations are radio transmitters and receivers that form an essential link in mobile phone communications. They have antennae, mounted either on freestanding masts or on existing structures and buildings, which use radio signals similar to those used in TV and radio broadcasting.
- 7.1.2 Calls pass through these antennae as people use mobile phones within their area of cover – their “cells”. Cells usually have a radius of several kilometres. Each base station can handle a limited number of simultaneous calls, so more base

stations are needed where mobile phone usage is high. So, particularly in urban areas, there is an increasing need for more base stations with associated masts equipment and antennas.

7.2 Mobile Phones and Health

7.2.1 There has been considerable public concern for some years about the possible health implications of both the use of phones and the proximity of base stations and masts sited close to where people live or work. The Independent Expert Group on Mobile Phones (the Stewart Group) investigated possible health effects posed by mobile phone technology including base stations and masts on behalf of the Government. The group looked at previous research, took evidence from scientists, and listened to the view of the public at open meetings around the UK. Their report was published in May 2000.

7.2.2 Their main conclusions were that:

- ◆ the balance of evidence does not suggest that mobile phone technology puts the health of the general population of the UK at risk
- ◆ there is no general risk to the health of people living near base stations, on the basis that exposures are expected to be small fractions of guidelines
- ◆ there was some evidence of biological effects, mainly heating effects, which would not necessarily lead to disease or injury. Children seemed to be more susceptible.
- ◆ in consequence a precautionary approach should be taken to the use of mobile phones and the siting of base stations in sensitive locations, for example on or near to schools
- ◆ a substantial research programme relating to health aspects of mobile phone technology should be undertaken to fill the gaps in knowledge
- ◆ there should be changes to the planning procedures relating to new base stations.

7.2.3 Since the publication of the Stewart report there has been considerable further activity in this field. Many organisations have commented on the conclusions of the report, and the Government, through a number of agencies, have responded to the main recommendations. The main points of that response are:

- ◆ A programme of monitoring the output of base stations to ensure that exposures are a small fraction of guidelines has been put in place through the Radiocommunications Agency. The programme concentrated in the first year on base stations and sites near to schools. Subsequently the programme has included both schools and hospitals. The range of exposure levels found so far has been from 1/250th to around 1/40,000th of the maximum permitted exposure levels
- ◆ Recognising the greater potential susceptibility of children to adverse consequences from radio frequency emissions a public health leaflet “Mobile Phones and Health” recommends that where children and young people do use mobile phones they should be encouraged to use them for essential purposes only and to keep all calls short. The use of mobile phones leads to much greater exposures than emissions from base stations.

- ◆ New consultation procedures have been put in place that ensure that, where a base station is proposed close to a school, the governors are directly consulted by the operator before a planning application is submitted.
- ◆ A substantial research programme (The Mobile Telecommunications Health Research Programme) was established in February 2001 with a total budget of £7.4 million to look at a wide range of health issues associated with the use of mobile communications. A further review of the available research is currently being undertaken by the National Radiological Protection Board and will be completed this year.
- ◆ There have been significant changes to the planning regime for mobile phone masts and base stations. The changes are discussed in more detail below.

7.3 Mobile Phones and Planning Policy

- 7.3.1 At the time of the Stewart report some masts required express planning permission while certain others (in essence masts up to 15 metres in height installed by telecommunications operators licensed under the Department of Trade and Industry under the Telecommunications Act 1984), enjoyed permitted development rights under (Town & Country Planning (General Permitted Development) Order 1995 Schedule Two Part 24) (GPDO). This part in effect requires notification to the LPA of the operators' intention to site the equipment and prior approval from the Council is required regarding its siting. The planning consideration here was one of amenity.
- 7.3.2 In March 2001 the Government announced a series of changes to the planning system for siting mobile phone base stations. A new Planning Policy Guidance note (PPG8) came into effect in August 2001. Much of the guidance concerns aspects of visual amenity and encourages, amongst other things, mast sharing and site sharing by operators. Significantly it made amendments to the prior approval regime to bring the requirements and periods for public consultation into line with those for express planning permission.
- 7.3.3 So far as health issues are concerned the Government's view remained that the planning system is not the place for determining health safeguards. If a proposed base station meets the prescribed standards it should not be necessary for a local planning authority to consider further the health aspects or concerns about them. Some local planning authorities have attempted to refuse applications on the basis that public concern about health issues was a material consideration. Although in principle health issues can be material considerations in assessing applications, appeals against refusals have all succeeded where there were no significant visual amenity or other grounds for refusal alongside the health concerns. Policy BE19 in Brent's Revised Unitary Development Plan (UDP) sets out the Borough's approach to telecommunications applications for planning permission or prior approval. This policy also seeks to minimise their impact on Listed Buildings and sensitive areas such as Metropolitan open land. It also seeks sufficient information and justifications for locations near schools and hospitals, and within Conservation Areas or Sites of Special Scientific Interest (i.e. the Welsh Harp).
- 7.3.4 In November 2002 the Office of the Deputy Prime Minister published a Code of Best Practice on Mobile Phone Network Development which had been prepared with the LGA and the mobile phone operators. This is non-statutory but encourages much better communication between operators and local planning authorities. Key features of the improved consultation are:

- ◆ Annual provision of network roll-out plans to each authority by each operator. This is likely to start this autumn.
- ◆ Annual roll out discussions between the operators and each local planning authority
- ◆ Development of a mast register in each authority. This will be a welcome development which will provide clarity about the location, characteristics and ownership of each base station.
- ◆ Pre application discussions and consultation including identification of opportunities for mast and site sharing.
- ◆ A formal system of consultation with the schools and colleges where masts are proposed on or near the institution.
- ◆ The development of a “ traffic light model” to give an initial assessment of the likely controversy associated with a proposed base station.

7.3.5 The Code also offers a guide to best practice on siting and design for base stations. This includes sections on mast and site sharing, installation on existing buildings and structures, camouflaging and disguising equipment, the use of small scale equipment and issues around sensitive areas such as conservation areas. This focus on design issues reinforces the Government’s conviction that the main issues concerning base stations are those of amenity and that health issues need not be considered by local planning authorities.

7.3.6 It is recommended that the Council make full use of the opportunities for better engagement with the operators afforded by the non-statutory Code of Best Practice on Mobile Phone Development. This will require one quarter of a full time equivalent at a cost of £10,000 per full year if it is to be done thoroughly. This cost can be met from Planning Delivery Grant so long as it remains at least at its present level.

7.4 Base Stations on Council Property

7.4.1 Apart from its role as local planning authority, the Council has a significant potential interest in the location of mobile phone base stations through the possibilities for siting stations on its property. Competition between operators for sites can be fierce and they are willing to pay premium rents for good locations. It is not uncommon for operators to pay yearly rents of up to £15,000 for such locations.

7.4.2 However, relatively few base stations are currently sited on Council property. Sixteen base stations are located on Housing properties now in the management of Brent Housing Partnership. The Parks Service have, in the past, entered into negotiation with operators for two sites but, given the likely controversy over the siting of base stations in open space, the negotiations came to nothing and the Parks Service is currently operating an informal policy of not providing sites to operators. None of the Council’s freehold office and non-housing operational buildings currently provide sites.

7.4.3 There is no reason in principle why the Council should not provide sites for base stations to the operators. Mobile phones are an important element of the modern economy and an increasing number of base stations are needed for their operation. The precautionary principle recommended by the Stewart Report has been and is the guiding principle of national policy in this field. Provided that Council sites can accord with the precautionary principle, and the deal offers benefit to the Council,

there seems to be no good reason for the Council to refuse to provide sites or to receive income from them.

7.4.4 The precautionary principle suggests that before accepting any new development there should be positive evidence that any risks from it are acceptably low and not a reliance on an absence of convincing evidence that the risks are unacceptably high. The principle suggests that measures should be adopted to avoid harm even when it is not certain to occur, the emphasis being that the measures taken are proportional to the risk and include a cost-benefit assessment.

7.4.5 The conclusions of the Stewart Group that:

- ◆ the balance of evidence does not suggest that mobile phone technology puts the health of the general population of the UK at risk
- ◆ there is no general risk to the health of people living near base stations, on the basis that exposures are expected to be small fractions of guidelines

were based on an evaluation of all the available evidence at the time. It is recommended that in Brent the principle should be taken to mean that siting of base stations on Council property is acceptable where concentrations of children and young people will not spend extended periods of time in close proximity to base stations. PPG8, in respect of schools, talks about sites on or near schools or colleges without defining “on or near”. However, this is planning guidance and not necessarily relevant to the council acting as a landowner. It is recommended that “close proximity” should mean within 100m.

7.4.6 Apart from this concern over potential health impacts addressed by the precautionary principle, there are two other considerations that would militate against siting base stations on Council property. The first is concern amongst those close to the base stations. This can be addressed by effective consultation over any proposed site. Taking into account views expressed through consultation will offer protection to the Council from Judicial Review of its decisions and it is recommended that this continues to be the Council’s approach.

7.4.7 Locating base stations on the roofs of buildings can restrict access and impede maintenance as well as imposing an additional burden on building management. This has been a concern over the base stations located on our housing stock.

7.4.8 In respect of tenanted residential property the Council agreed in 1996 to allocate the revenue from licence agreements for base stations to the Area Housing Board in question for the benefit of the property in question. The Council consults its tenants on any proposed installation and if the majority of the tenants are in favour of the proposal the Council will grant permission to the Operator to erect the equipment. Although the property itself, and the tenants within the property, benefit the financial benefit to the Council is limited to bringing forward repair and maintenance work that would not otherwise be affordable.

7.4.9 Managing these arrangements and providing access to the stations for maintenance is a continuing burden. Before the establishment of Brent Housing Partnership, officers within Housing had concluded that it would be preferable not to enter into any further such agreements and to not renew leases where that is possible. Officers within Housing and Brent Housing Partnership remain of this view. It is recommended that before concluding any future agreement in relation to the housing stock or elsewhere, that an assessment of costs as well as benefits be undertaken by officers to ensure that there is clear benefit in the deal.

- 7.4.10 Decisions about the stock managed by Brent Housing Partnership are now a matter for the Partnership rather than the Council. However, it is important that Brent Housing Partnership, who have more experience of the practical implications of these installations than any other part of the Council contribute to the development of our policy, and that the policy of BHP and the Council be consistent. The requirements for effective consultation and for a full assessment of costs and benefits before concluding any deal meet this requirement.
- 7.4.11 The recent Best Value review of Property Services, Asset Management and Facilities Management concluded that, as a 'Quick Win', a short review should be carried out on income from telecommunications masts /installations to see if more income can be generated. In respect of tenanted residential property it is suggested that the assessment of Brent Housing Partnership, that taking into account costs and dis-benefits, these deals do not offer clear benefit, should exclude tenanted residential property from such a review.
- 7.4.12 It is unlikely, given parental concerns, that school governors will choose to allow base stations on schools and colleges, although if the council owns the property because it is a community school the council could override their concerns.
- 7.4.13 Within parks, open space and sports centres the precautionary principle, and the effect of consultation, would avoid locating base stations close to children's play areas but would not affect sites near playing fields etc which are not occupied by young people for extended periods of time.
- 7.4.14 Although telecommunications operators have the ability to compulsorily purchase sites where they cannot secure them by agreement there are no recorded cases of the use of the powers by the operators.

8.0 BACKGROUND DOCUMENTATION

8.1 Details of Documents:-

Mobile Phone Mast Policy file

8.2 Any person wishing to inspect the above papers should contact Michael Read, Environmental Services, Brent House, 349 High Road, Wembley, Middlesex, HA9 6BZ,

Telephone: 0208 937 5302

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