

**COMMITTEE:** Planning and Licensing Committee  
**DATE:** Tuesday 6<sup>th</sup>. November 2001  
**SUBJECT:** Enforcement in respect of Telecommunications Masts  
**REPORT OF:** Head of Planning and Head of Legal and Property Services

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**Ward(s):** All

**Purpose:** To report to members concerning breaches of control by a telecommunications operator and to seek guidance in respect of potential enforcement action

**Contact:** Keith Pullin Planning Enforcement officer Telephone 01323 415213 or internally on extension 5213.

**Recommendation:** Members wish strictly to control the erection of telecommunications masts and that injunctive action should be used under delegated powers where appropriate.

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**1.0 Background/Introduction**

- 1.1 Over the course of the last few months it has become noticeable that Orange plc have become very confrontational in the manner in which they are dealing with certain sites for which they wish to erect mobile phone masts.
- 1.2 Underground cables and the start of excavations to erect a mast in East Dean Road were undertaken. The works were stopped upon action by the Enforcement officer. Orange however has left the cabling intact and reserves the right to erect the mast at some future date.
- 1.3 Orange also erected a mast in Pevensey Bay Road outside Asda. They have not removed this mast or attempted to erect a replacement mast closer to the roundabout at the Crumbles access road.
- 1.4 On both occasions Members had declined to approve the erection of the masts. The decision letters that were sent to Orange have been challenged by Orange as invalid, which they state then gives them permission to erect the masts under the permitted development rights. The opinion of officers is that the refusals were valid and that Orange does not have permission to erect the masts.
- 1.5 Recently One2one have indicated that they wish to erect a mast at Hampden Park Railway Station in replacement of a Railtrack mast. They again claim that this can be achieved through permitted development rights. There have been a number of changes in the details supplied by One2one and those currently proposed have not been the subject of an application. There is not therefore permission for the proposed mast.

**2.0 Development by Telecommunications Code System Operators**

- 2.1 Part 24 Class A - Permitted development is development by or on behalf of a telecommunications code system operator for the purpose of the operator's

telecommunication system in, on, over or under land controlled by that operator or in accordance with his licence, consisting of the installation, alteration or replacement of any telecommunication apparatus.

- 2.2 There are limitations on the permission. The main of these is that the Council must refuse or approve the application within 42 days. If the Council approves the application or fails to refuse it within 42 days then the permission is deemed to stand. (Under new rules this is now 56 days). There is the usual appeal process against any refusal.

### **3.0 The Increase in Masts**

- 3.1 Members will be aware of the increased usage of Mobile Phones over the last few years. Central Government policy has been to encourage the expansion. To that end the growth of masts to improve coverage has grown as rapidly as the use of the phones.

- 3.2 There now seems to be a change of emphasis by certain of the telephone companies. Previously good relations have been soured by the arrival of new agents, who seemed determined to gain the erection of masts at any cost. This has resulted in the number of alleged breaches as outlined in paragraph 1.

### **4.0 Human Resource, Environmental, Youth and Anti-Poverty Implications**

There are none.

### **5.0 The Action to be taken**

- 5.1 The first that officers will often know that a mast is being erected will be a complaint by the public. Bearing in mind that the erection of a monopole mast may be achieved very quickly, there will be occasions when officers want to ensure that swift action is taken to stop the erection of the mast. A very effective way of dealing with this type of problem is the obtaining of a High Court injunction restraining the Operator from erecting the mast. Whether or not an injunction should be sought will depend on the precise circumstances surrounding the breach of control.

- 5.2 Whilst the Head of Planning has delegated authority to pursue injunctive action this would normally be undertaken in consultation with the Chairman and Opposition Spokesperson; in accordance with the Enforcement Policy Statement. It is unlikely that there will always be time for such consultation.

- 5.3 It is hoped that by showing determination to prevent the erection of these masts the Council will persuade the Operators to seek to take a lawful route to achieving their goals. This would be by way of a fresh application, which if refused would open the appeal route and final determination without redress, either by the Council or the Operator.

### **6.0 Conclusion**

- 6.1 If the Council accept the arguments of the Operators then the Operators will have carte blanche to erect a mast on any site for which an application has been submitted over the last five years, whether or not a refusal has been issued.

- 6.2 Members are asked therefore to resolve to confirm to officers that they wish strictly to control the erection of telecommunications masts and that support will be given for

injunctive action where the Head of Planning considers that it is appropriate.

**Keith V Pullin**  
**Planning Enforcement Officer**  
**Background Papers:** None