

The Covid-19 pandemic and its context with the provision of mobile network services

Since the submission of the subject application England has been through a further nationwide lockdown due to the ongoing efforts to manage the Covid-19 pandemic. One must therefore consider the operational context of modern communications in our post-lockdown and ongoing pandemic management situation. It is undeniable that the virus and our society's management of future outbreaks will have long-term implications on the way we do business, socialise and function. Very recently, the Department for Digital, Culture, Media and Sport published Guidance¹ on telecommunications infrastructure deployment in England, stating that:

"Government recognises the ongoing importance of the telecommunications industry at this critical time.

Now, more than ever, the country is reliant on fixed line and mobile communications networks. Telecommunications has therefore been included as one of the critical sectors in new government regulations and legislation in response to dealing with the COVID-19 outbreak."

It is clear that as lockdown restrictions ease, there is going to be a greater dependence on mobile communications given that we do not know what the future holds in terms of the risks of further virus spikes before a vaccine is made widely available. On this basis Government advice suggests continued mitigation in the form of working from home where practicable; the minimisation of contact for vulnerable people; and, enforcing local lockdowns in areas where 'R' number increases occur. One must also recognise the fact that mobile connectivity is the main means by which patients and the more vulnerable persons in our society can stay in touch with friends and family members who can no longer visit them in hospital, in care, in isolation or when shielding.

One must also consider the role that mobile communications services play in the educational sector. Whilst all hope that the return to full time schooling in September will be able to continue, this is an evolving situation with a very real risk of having to implement a mix of face-to-face teaching and home-schooling for primary and secondary school children if further school closures are required to help curb virus spikes. Many school establishments have now adopted the use of bespoke apps or the likes of 'seesaw' for teachers and students to record what is happening in school, set and receive homework and to notify parents of important information about school operations. One will also note that the majority of tertiary educational establishments are now heavily reliant upon remote learning, with few face-to-face teaching scenarios taking place.

¹ <https://www.gov.uk/guidance/covid-19-guidance-for-telecommunications-infrastructure-deployment-in-england>

Harm versus Benefit

Telecommunications development is now an accepted infrastructural element in our modern environment and street scenes. It can no longer be considered an 'alien' feature and one must now recognise the fact that mobile telecommunications base stations, like gas water and electrical infrastructure, street lighting, signage, bus stops or any other utilities/infrastructural elements, are an integral element upon which, more so now than ever, our society is heavily dependent. It is undeniable that there are extensive economic, social and sustainability benefits associated with modern communications networks and these many benefits offer circumstances which should be considered more than sufficient to outweigh any limited impact that may occur in this instance.

In addition to the above, an even greater emphasis has been thrust upon such networks by the recent Covid-19 pandemic and the measure that society have had to implement to try and curtail any future virus spikes. At the time of writing, the UK has experienced the introduction of various levels of local lockdowns with the ongoing measures to manage the spread of Covid-19 having resulted in a significant and widespread societal shift to remote working and reliance upon both online services and social media interaction for both business and personal use. Additionally, the role that mobile communications has played as a key facilitator in keeping many industries and commercial entities operating throughout the various stages of the pandemic, especially in case where local restrictions reach the highest level, must not be ignored.

The reader should appreciate the operational context of this proposal and that failure to address this network coverage requirement will be to the detriment of all who live, work and travel within the local area. It is imperative that the issue of 'Public Benefit' be given due consideration in determining this application. To assist you in this, we would refer to the Code of Best Practice on Mobile Network Development in England 2016, the principal aim of which is stated as being:

"...to ensure that the Government's objective of supporting high quality communications infrastructure, which is vital to continued economic prosperity and social inclusion for all, is met."

Paragraph 1.3

The Code is very clear that mobile communications are key to social and economic wellbeing in today's society, stating that:

"...digital communications are now a crucial component of everyday life, with improvements in connectivity being key to a vibrant economy."

Paragraph 2.1

And continuing that:

"Consumers, businesses and public bodies increasingly rely on mobile communications and expect to receive a signal wherever they are."

Paragraph 2.2

Whilst we appreciate that every site has its own bespoke situation and context to consider, we would take this opportunity to refer the reader to a number of Decisions by the Planning Inspectorate in relation to what are considered to be significantly more sensitive development proposals, and each of which offers a valid point of reference for decision makers when assessing the issue of 'harm versus benefit' from a well-considered perspective.

The first of these is PINS reference 3151769 which relates to a ground-based mast proposal at land opposite 27-33 Chelsfield Road, Orpington in the Borough of Bromley area. This is considered relevant as it deals with the need for Decision Makers to undertake an appropriate balancing exercise when determining applications. In the Council appeal statement for this development example, they have made what appears to be a perfunctory reference to the fact that need was not considered to outweigh the material harm. However, in their determination of costs against the Council the Inspector has stated that:

"The somewhat cursory reference in the Council's appeal statement stating that it was not considered that the need outweighed the material harms identified is not sufficient evidence to indicate that an appropriate balancing exercise had been undertaken to support its decision. Without any evidence to demonstrate that this had been done therefore I consider that for the Council to have refused to grant prior approval and to continue to pursue the appeal amounts to unreasonable behaviour. The applicants' costs in bringing the appeal flow directly from this unreasonable behaviour and a full award of costs is therefore justified."

Paragraph 8, PINS Ref: 3151769 Appeal Decision Costs, **Appendix 8**

The second example of note is the Vodafone Appeal Decision, PINS Ref: 3176499, at Earby Cricket Club, Earby, where the wider public benefit was considered to outweigh any limited harm caused by the proposal. Again, this situation has a greater sensitivity than that of the subject proposal in that it relates to development within a Conservation Area. However, the Inspectorate's decision letter confirms that:

"...the proposed development would avoid material harm to the character and appearance of its surroundings and the adjacent Conservation Area. Moreover, it would deliver considerable public benefits in terms of increased mobile network coverage in the local area. Accordingly, none of these other matters, either taken individually or together is of sufficient weight to tip the overall planning balance against the proposed development."

Paragraph 24, PINS Ref: 3176499, **Appendix 8**

The third reference point is that of the Appeal Decision issued under PINS Ref: 3182467. This relates to a Vodafone proposal for a 17.5m high mast and associated development located in a much more sensitive context than the subject proposal, i.e. within the Cotswold AONB. However, when considering the development's impact, the Inspectorate has stated that:

"Telecommunications infrastructure is not an uncommon feature and the visual impact of the development would be modest, in this context there are unlikely to be any significant impacts..."

Paragraph 16, PINS Ref: 3182467, **Appendix 8**

A further example of relevance would be that of Appellant's Appeal Decision, PINS Ref: 3183040. Whilst this example relates to a 27m lattice mast and associated cabinetry within a Green Belt and context of a Conservation Area, we would draw your attention to the weighting applied to the many benefits associated with the proposal, resulting in the Inspectorate ruling in favour of the Appellant despite considering there to be a detrimental impact upon general amenity, the Green Belt and a Conservation Area designation. The decision example states:

"I have found that the proposal would be inappropriate development in the Green Belt and it would fail to preserve or enhance the character or appearance of the CA. However, the Framework clearly states the importance of high quality communications infrastructure and the contribution it makes towards the economy and community. The appellant has made a compelling case that there is a need for the proposed development and that sufficient attempts have been made to seek out an alternative site. Accordingly, I attribute more than substantial weight to the public benefits of the proposal..."

Paragraph 18, PINS Ref: 3183040, **Appendix 8**

Before concluding that:

"Overall, I consider that the public benefits of the proposal would outweigh the substantial harm... and would amount to very special circumstances that would justify permitting the development."

Paragraph 21, PINS Ref: 3183040, **Appendix 8**

A further reference point is that of the Appeal Decision, PINS Ref: 3187857. This site is within the Dartmoor National Park and, despite the sensitivities associated with such development, the Inspectorate has suggested that any harm arising from the development would be limited and well outweighed by benefit, concluding that:

"The social and economic benefits of improving telecommunications provision here would be significant. I have identified above that the environmental harm arising from the proposal would only be limited, and that the siting and appearance of the development proposed have been appropriately justified with regard to the operational requirements of the apparatus proposed, the nature of the surrounding environment, and the potential for alternative approaches to be taken. Accordingly, I conclude that the benefits of the development proposed would outweigh the harm that would result."

Paragraph 21, PINS Ref: 3187857, **Appendix 8**

Another relevant reference point would be that of Appeal Decision, PINS Ref: 3197360. Again, the site in question is more sensitive than the subject site in that it is set within a context of a Conservation Area designation. In this case, however, the Inspectorate's decision acknowledges both the social and economic benefits in play and the merit of the shared nature of the base station, stating that:

*"The public benefits of the proposed development would include the significant social and economic benefits associated with supporting advanced, high quality communications infrastructure, most notably through the improvement of network coverage in the area...
...Indeed, I consider that the advantages of the scheme outweigh the less than substantial harm to the Conservation Area."*

Paragraph 6, PINS Ref: 3197360, **Appendix 8**

Before concluding that:

"Therefore, whilst I have found that the development would fail to preserve or enhance the character or appearance of the Conservation Area, I consider that the less than substantial harm to the heritage asset would be outweighed by the substantial public benefits of the scheme."

Paragraph 7, PINS Ref: 3197360, **Appendix 8**

A further reference point can be found in that of Appeal Decision, PINS Ref: 3252355. This example relates to the deployment of a 17.5m street furniture mast and associated cabinetry close to the brow of a hill in Conservation Area in Sheffield. Yet in their consideration the Inspector has stated that:

"...the provision of the installation in this location provides a significant public benefit to the wider area and community, and to which I attach substantial weight in support of the development."

Paragraph 20, PINS Ref: 3252355, **Appendix 8**

Before concluding:

"...I conclude that the benefits resulting from the proposed development would outweigh the less than substantial harm to the significance of the conservation area as a heritage asset and any conflict with Section 72 of The Act."

Paragraph 21, PINS Ref: 3252355, **Appendix 8**

A penultimate reference point is that of Appeal Decision, PINS Ref 3241791. This relates to a very recent development proposal by MBNL (EE Limited and Hutchinson 3G UK Limited) for a 20m high mast and associated development in a

mixed landuse pocket of a predominantly residential area in the Four Oaks area of Birmingham. In assessing the development, the Inspector states:

"...the site is still located in a prominent position and there are numerous short and long-range opportunities to view the site. The proposed new mast would rise above built form in the locality and street furniture."

Paragraph 7, PINS Ref 3241791, **Appendix 8**

Before going on to confirm that:

... the height of the mast would, at roughly 20 metres, be considerably higher than the existing mast and that of existing buildings, trees and street furniture. So, despite the appellant company's efforts to create a discreet design, the proposal would be of a scale that would harm the visual amenity of the area as it would unduly dominate what is a relatively low-scale suburban environment to the extent that it would be overbearing."

Paragraph 8, PINS Ref 3241791, **Appendix 8**

Despite the above, consent is granted with the Decision concluding that:

"In this case, the proposed development would result in harm to the visual amenity of the area, with particular regard to the proposal's scale and siting. As such, conflict would arise with Policy PG3 of the Wolverhampton Development Plan insofar as the development would not reinforce local distinctiveness with a design that responds to site's conditions and the context of the local area. However, I conclude that this harm would, on balance, be outweighed by the economic and social benefits that would stem from the proposed upgrade which would not be realised whilst reducing the height of the mast. Therefore, in the round, the proposal would accord with saved UDP Policies 8.55 and 8.55A-C, the SPD and Framework paragraphs 112 and 113. Collectively, these seek to support the expansion of shared next generation mobile technology to create a modern, high quality and reliable communications infrastructure that is essential for economic growth and the life of the local community."

Paragraph 14, PINS Ref 3241791, **Appendix 8**

A last reference point would be that of Appeal Decision PINS Ref 3256772. This appeal was against enforcement action taken against the retention of a temporary base station next to a Grade II Listed Park and Garden in the Dacorum Council area. However, on the issue of Covid-19 and public benefit, the Inspector ruled that:

"Overall I find there is harm to the character and appearance of the area, as well as to the setting of the Grade II Registered Water Gardens. Whilst therefore there would be policy conflict with Core Strategy Policies CS12 and CS27, I find the public benefits of retaining the temporary mast for a further 12 months to ensure continued network coverage and capacity until the replacement site is operational, outweighs both these harms."

Paragraph 43, PINS Ref 3256772

These appeal examples each offer clear evidence that benefit must not only be considered in the determination of telecommunications proposals but that it also holds significant weight in even the most sensitive of environments. The subject proposal is not nearly as sensitive as these examples but we would urge that the same appreciation of benefit be applied in the determination.

Government Ambition and Legislative Reforms

Following on from the issue of 'Harm versus Benefit', it is also important to consider the subject application in a wider context of current Government guidance and ambition which clearly recognises the benefits that modern communications networks bring. The reader will also be aware that a number of reforms have already taken place to support the provision of improved and of up to date network services for all, including:

The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2016²

A brief indication as to the main amendments to Part 16 included within this revised legislation area as follows:

- An extension of emergency use of land from 6 months to 18 months;
- A reduction in full planning requirements to allow new masts up to 25m (reduced to 20m on highways and other protected areas) to be covered by Prior Approval procedures;
- Increased Permitted Development Rights for extension and replacement of existing masts; and
- Decrease in the limitations on building based apparatus

The Electronic Communications Code (the Code) 2017³

The 2017 amendment make it easier for network operators to install and maintain apparatus such as phone masts, exchanges and cabinets on public and private land with Part 4, Paragraph 20 providing a mechanism for the courts to impose terms of occupation on a landowner and the Operator.

NPPF 2019⁴

One may also be aware that in 2018, the Department for Digital, Culture, Media and Sport published the Future Telecoms Infrastructure Review (FTR)⁵, outlining the Government's intent on being the best place to start and grow digital business with the aim of providing the majority of the population with 5G coverage by 2027. The FTR makes it clear that 5G networks will deliver faster and better mobile broadband services to consumers and businesses and will enable innovative new services for industry sectors, including manufacturing, transport, immersive technologies and healthcare.

Additionally, in August 2019 the Ministry of Housing, Communities and Local Government and the Department for Digital, Culture, Media and Sport issued a consultation on the principle of further amending permitted development rights for operators with rights under the Electronic Communications Code (Code Operators) to support deployment of 5G and extend mobile coverage, and the circumstances in which it would be appropriate to do so. The consultation also sought views on whether it is appropriate to impose specific limitations, conditions and restrictions on any amendments to permitted development rights to mitigate the impact of any new development.⁶ Whilst particularly applicable to rural areas, the consultation's introduction makes it very clear that the provision of 5G mobile network coverage is central to achieving the Government's objective to deliver prosperity, enabling all places to share in the proceeds of growth.

The Government response to this consultation has recently been published in July 2020⁷. Although this document is merely a consultation response and not yet draft legislation, the document confirms that:

² <http://www.legislation.gov.uk/uksi/2016/1040/made>

³ <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPPF_Feb_2019_revised.pdf

⁵ <https://www.gov.uk/government/publications/future-telecoms-infrastructure-review>

⁶ [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827162/Proposed_reforms_to_permitted_deployment_rights_to_support_the_deployment_of_5G_consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827162/Proposed_reforms_to_permitted_development_rights_to_support_the_deployment_of_5G_consultation.pdf)

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902836/Government_Response_Mobile_Planning_Consultation.pdf

“Having considered the responses to the consultation, we are satisfied that there is evidence to demonstrate that the proposed reforms would have a positive impact on the government’s ambitions for the deployment of 5G and extending mobile coverage. In taking forward these proposals in England, we will ensure that the appropriate environmental protections and other safeguards are in place to mitigate the impact of new mobile infrastructure.”

Paragraph 5, Government Response

The response then goes on to state that:

“Therefore, subject to a technical consultation on the detail of the proposals, including the appropriate environmental protections and other safeguards... the government intends to take forward the in-principle proposals consulted on to enable in England:

*deployment of taller and wider masts;
building-based masts located nearer to highways; and
faster deployment of radio equipment housing, such as equipment cabinets.*

These changes will benefit communities and businesses and provide greater certainty to incentivise investment in mobile infrastructure.”

Paragraphs 6 and 7, Government Response

The Government is also set to publish its digital strategy, which Oliver Dowden, the Secretary of State for Digital, Culture, Media and Sport, has recently suggested will set out how to build a highly skilled digital workforce across the country, help people to adjust to a digital-led economy, help businesses become digital and enable people to move into the tech sector.⁸

These amendments and documents demonstrate the Government’s encouragement and recognition of the increasing importance of reliable connectivity now and in the future and set the scene in which the LPA should assess the application.

⁸ <https://www.gov.uk/government/speeches/digital-secretarys-closing-speech-to-the-uk-tech-cluster-group>